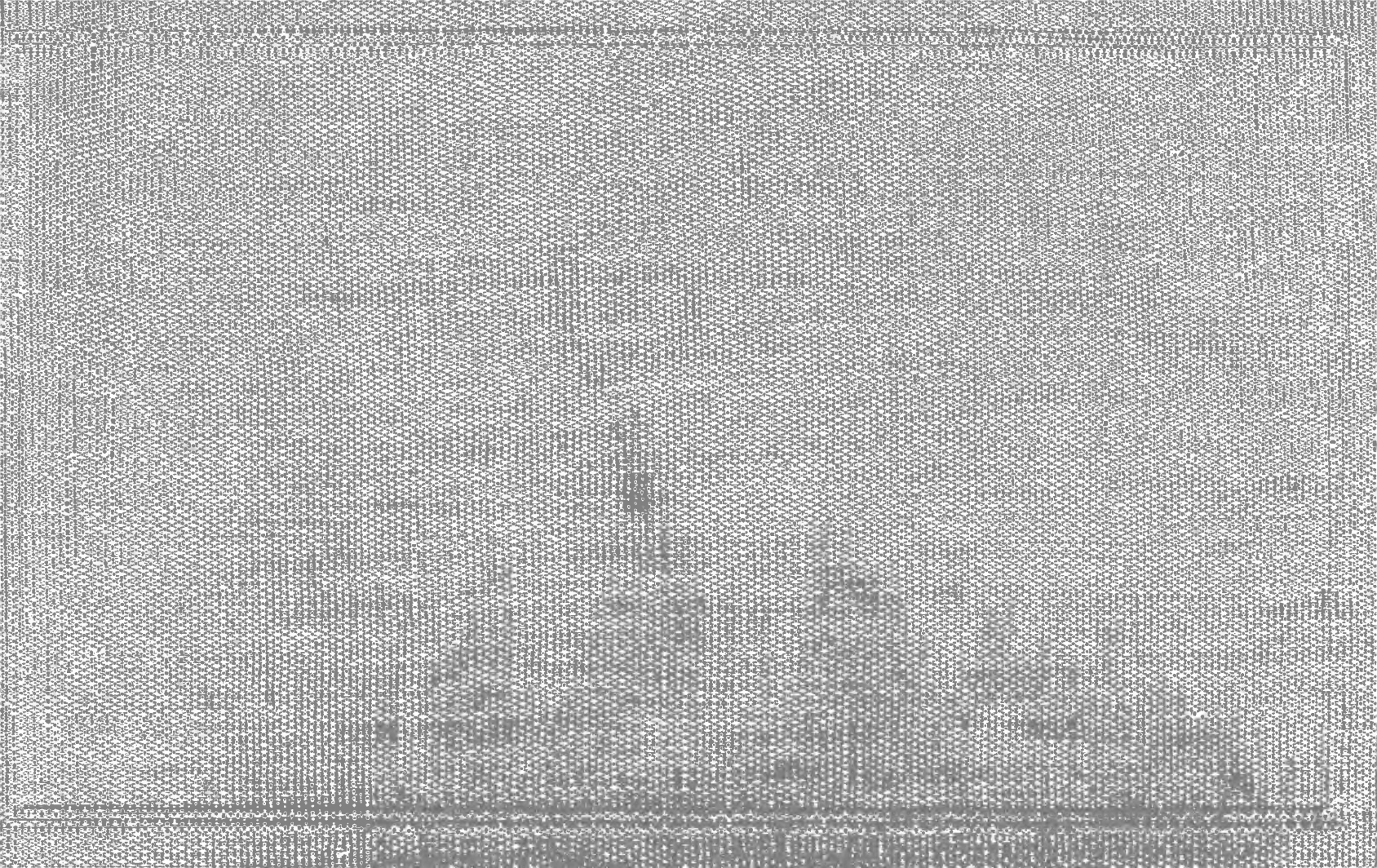

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United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FIVE VOLUMES)

ANGELUS SANITARY CAN MACHINE COMPANY, a Corporation, and HENRY L. GEUNTHER,

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(Testimony of Ray O. Wilson.)

Q. (By the MASTER.) I am not to understand, am I, that you ceased using this patent?

A. We have machines out with that feed on it, and we still furnish repairs for it. In very few cases have we changed to our new feed. This feed worked very satisfactory in lots of cases, but there were some features in the cannery that worked against this feed, and that is the reason we designed this new one.

Q. You say there were some features in the cannery—

A. Yes, conditions in the cannery that would come up in some cases that brought the new design out.

Mr. BLAKESLEE.—Of course it will be understood that in referring to these patents the testimony refers to the particular construction in the drawings and does not attempt to construe the scope of any claim.

The MASTER.—That is what I was getting at.

Mr. TOWNSEND.—Oh, we are talking about the drawings and [477] the structure.

The WITNESS.—Yes.

Mr. TOWNSEND.—Because this man is not qualified to talk about claims. The structure shown and described in the patent.

Mr. BLAKESLEE.—The same, I presume, was true this morning when you referred to the can feed: You referred to the drawings?

Mr. TOWNSEND.—Oh, certainly. This gentle-

(Testimony of Ray O. Wilson.)

man is not qualified to construe the claims in a patent.

Q. What were the features that you say worked in the cannery against this feeder here of 1,250,406?

A. I can show you that on the model here (Defendants' Exhibit "O.") It is right at this point here, where the high fruit would come out; where, in packing high fruit, a cap comes out from under the slide, the high fruit would kick the cap either forward or back. Unusually high fruit would push the cap forwards or backwards out of line with the can.

Q. And you found that the form of 1,250,406 would not take care of that condition?

A. Not in all cases. In some cases it worked fine. But that was the objection we would run up against occasionally, and naturally we started on something else.

Q. Now, this feed, is that patented?

A. Yes. It is not issued yet, but it has been allowed.

Q. Well, this present feed that you have of pushing the caps in that way, in the manner in which you use it now, was [478] generally old already, was it not, when you adopted it four years ago?

A. In the interferences there was nothing shown that was of a slicing nature like this. They pushed the cap in with an arm, but they generally took it in straight. This slices it off and travels longitudinally with the arm as it goes in. That

(Testimony of Ray O. Wilson.)

is a feature that is new in our patent, in our present construction.

Q. In your present construction you slide the cap in cross-wise, as it were, of the circumferential travel of the can? A. That is it.

[479] Q. Do you know how many machines you equipped with that particluar feed of 1,250,406?

A. No. Approximately, you say?

Q. Yes.

A. Well, I would say between thirty and forty.

[486] Q. Why did you discard these shoulders 31, Fig. 5, of 1,301,348?

[487] A. At times the can would come in on top of them, and they were about three-sixteenths high over the face of disk 10 and would have a tilting effect on the can; and then as they roll out from under it would drop.

Q. And what effect did that have on the—

A. It just kind of jarred the can.

Q. With a filled can what would happen—would it spill the contents?

A. It wouldn't spill, but it would sort of stir them up. This feed was put on the machines when the canneries were not able to go as fast as they are at the present, and we had to gradually ease up on the acceleration of the can with the speeding up of the different canneries.

[495] Q. (By Mr. TOWNSEND.) Now, going back to the making of this first machine down at Smith-Booth-Usher's, that you say you built there,

(Testimony of Ray O. Wilson.)

what sort of drawings did you have to build that from? A. Those same drawings.

Q. Did you have any additional drawings?

A. No.

Q. Then I understand that you made all the drawings from which that first machine was built.

A. Yes.

Q. Did they have any patterns made to build that machine from? A. Yes.

Q. Where were those patterns made?

Mr. BLAKESLEE.—We think that is going too far afield, if your Honor please. I do not see how it is material at all. There is no issue here that involves the procedure of the patentees prior to the application for patent.

The MASTER.—I will receive it subject to the objection.

A. I think it was named the Caswell Pattern Shop.

Q. (By Mr. TOWNSEND.) Did they make all the patterns for you?

[496] Mr. BLAKESLEE.—Same objection to this whole line.

A. Yes.

Q. (By Mr. TOWNSEND.) Did you have any castings made from those patterns? A. Yes.

Q. Who made the castings?

A. The Graham Iron Works.

Q. And was there any machine work done on it that you did not do yourself?

(Testimony of Ray O. Wilson.)

A. Yes, planing and gear cutting. I didn't do that.

Q. Where was that done?

A. I don't recall where the planing was done. The gear cutting was done by a little shop on Towne Avenue right off of Central.

Q. By gear cutting what gears do you refer to? A. All the gears of the machine.

Q. Did you take any measurements of the 14–P for any purpose in connection with the building of this machine of yours? A. Not that I know of.

Q. Does that mean that you may have done so?

A. Everything is possible; but I don't recollect anything that I could use, on the 14–P.

Q. Did you have any of the parts before you when you were making your drawings, that belonged on the 14–P? A. No.

Q. Did you have any drawings of patterns of the 14–P at [497] any time?

A. No.

Q. At any time, either when you were making the drawings or when the patternmaker was making the patterns or when the caster was making the castings? A. No.

Q. At the time you got up this machine of yours which I believe you termed a high speed continuous machine, do you know of any other high speed continuous machine on the market? A. No.

Q. Is it your contention that you have the only high speed machine in existence?

A. That we have the only one?

(Testimony of Ray O. Wilson.)

Q. Yes. A. No.

Q. What other high speed continuous machines are there in existence?

A. The American Can Company have two—one that I have heard of and one that I have seen.

Q. What are they called?

A. One is the—I think they call it the type W four-spindle high speed machine.

Q. Is that the one that you have seen?

A. Yes. I understand they have one out now that has eight spindles.

Q. How long have you known this high speed four-spindle [498] machine of the American Can Company? A. I guess about six years.

Q. Are there any high speed continuous machines that you know of other than your own and this one?

A. The Continental Can Company have one out. I never have seen it.

Q. How long have you known of the Continental's?

A. I don't think that goes over a period of around three or four years.

Q. Have you seen drawings or descriptive matter of it so as to know what its construction was?

A. Nothing only a photograph of it installed in a cannery.

Q. What was the general type of that machine?

A. I took it to be a single-turret four-spindle machine.

Q. Are those the only high speed continuous machines you know of?

(Testimony of Ray O. Wilson.)

A. Well, since that I have seen the high-speed machine of the American Can Company that they use in their can plant for putting on bottoms. It is a horizontal machine.

Q. How long have you known of that horizontal machine?

A. About four years, I should judge.

Q. That is your earliest acquaintance with it?

A. That is it.

Q. You don't know but what all these machines have been in existence long before that?

A. They might have been.

[499] Q. Those single-turret four-spindle machines of the American and Continental Companies were vertical machines, were they not? A. Yes.

Q. That is, they rotate on a vertical axis?

A. Yes.

Q. And this other machine of the American was one, you say, that worked on a horizontal axis?

A. That is right.

Q. (By the MASTER.) That is not for filling?

A. No, for putting on bottoms in the can factory.

Q. You say the action was continuous?

A. Yes.

Mr. BLAKESLEE.—We make the formal motion to strike out all this testimony about these machines, inasmuch as nothing has been elicited showing any date prior to the date of application for any one of these patents in suit.

The MASTER.—The motion will be denied for the present, but of course it will have to be con-

(Testimony of Ray O. Wilson.)

nected up. Did you ask him how they obtained their continuity of motion, or do you want to ask him about that?

Mr. TOWNSEND.—No, I don't think he knows. He knows they are continuous high speed machines.

Mr. BLAKESLEE.—We will have to object to that because it is not material, because it is not an early date.

Q. (By Mr. TOWNSEND.) On page 173 of the record you said that [500] the Forry machine had been replaced by the Pacific at the H. G. Prince Company plant. A. Yes.

Q. Where is that company located that you have reference to? A. In Oakland.

Q. Alameda County, California?

A. I guess that is the county.

Q. What did you mean when you said your machine had replaced the Forry machine?

A. It did.

Q. Do you mean to say that they abandoned the use of the Forry machine?

A. No; I believe you will find in that statement it replaced the Forry machine in the main shop of the H. G. Prince Company. Isn't that correct? The way I stated before? I meant to.

Q. No, your statement at page 173 is: "Q. Any other instances? A. And the replacement of the Forry machine in the can plant of H. G. Prince & Company, and the 14–P, Guenther's machine, was replaced in the San Fernando Canning Company," etc. Now, don't you know that those Forry ma-

(Testimony of Ray O. Wilson.)

chines, and several of them, are in operation in the Prince Company's plant in Oakland?

A. Not in the can plant, as I stated there.

Q. What do you mean by in the can plant?

A. Where they make the cans. Not in the cannery. I didn't [501] take in the whole plant, just the can plant. We replaced them in the can plant, and I think we replaced two or four—no, that was a new addition at that time, to their tomato plant. They installed three of our machines.

Q. Do you know how many Forry machines there are in the can plant of the Prince Company at the present time?

A. In the stage of construction there are twelve, I should say; but they are not operating on cans.

Q. That is, they are building twelve new Forry machines in the Prince plant? A. That is true.

Q. For use this season, right now, are they?

A. In their cannery, yes.

Q. And they have also a number of other Forry machines in the cannery?

A. Yes. But in the can plant we have replaced the Forry machines.

[502] 514 Post Office Building,
Los Angeles, California, Thursday, April 5, 1923.
10 A. M.

The MASTER.—Reverting to Mr. Blakeslee's objection just before adjournment yesterday to the question as to what connection Vernon Campbell had with the making of this can-feeding device

(Testimony of Ray O. Wilson.)

(page 491, line 22), the ruling on the objection is to sustain it without prejudice to a renewal of the offer of the evidence later, but we will not receive the evidence on the cross-examination of this witness at this time; and that ruling is made under the authority of the Master to direct the course of the proceedings.

[503] Mr. BLAKESLEE.—Before we finish our opening proofs we are going to ask the Master to attend another demonstration of one of our machines. This demonstration was not as auspiciously conducted as it might have been, as we were not prepared for it. It was not "groomed up"—as I think I have referred to the machine of the defendants in the second demonstration.

[504] Q. (By Mr. TOWNSEND.) Mr. Wilson, you have told us here previously of three instances of Pacific machines returned—that is, to Brandenstein, California Packing Corporation, and Wheeling Can Company. Have you not had complaints of serious damage caused to packers by their use of your Pacific double seamer?

A. Yes, we have had them.

Q. What has been the nature of those complaints?

A. Oh, they were all, as I recall it, unfounded, and the majority of them were traced to trouble with the cans.

Q. Just answer my question. What was the nature of those complaints?

A. It was in some cases a flange, a large body,

(Testimony of Ray O. Wilson.)

that the can could not enter the cap. Now, those two cases I have in mind right now.

[505] Q. In what season were those?

A. That was the first part of the last season, with the L. A. gallon cans. They were running out a lot of cans that had too large a flange, and we had considerable trouble with our gallon machines, in the first part.

Q. Where was that machine located that gave that trouble?

A. At Reedley, California, and Ontario. But, as I say, that was not the machine's trouble. It has been proven since that it was the flange of the can. But the complaint was, in the majority of cases, that the machine was causing it.

Q. (By the MASTER.) That the machine was what? A. That the machine was at fault.

Q. Well, what did they say was the matter?

A. They said it would not seal the cans. That is just the flat statement the majority of them made.

Q. (By Mr. TOWNSEND.) That it resulted in leaky cans? A. Yes.

Q. And spoiled pack?

A. Well, I don't know of any actual cases of spoiled pack. But, as I say, since then, within a month, or after the season started, that was cured by changing the flange of the can.

Q. But I say, where you have a leaky seam, that spoils that portion of the pack?

A. Yes, unless they cut it open and repack it.

(Testimony of Ray O. Wilson.)

Q. Now, what was the nature of any other complaints you [506] have had?

A. I don't know of any other complaints now. We have had complaints, but they have not been settled yet. The Hawaiian Pineapple is complaining about our gallon machine, and that is due entirely—I was over there a year ago, and that is due entirely to a large body. That is in the course of argument now, whether it is the can or the machine. We are corresponding back and forth.

Q. You had leaky seams there?

A. Yes. It was a faulty double seam; it was the fault that the flange would not go into the cap.

Q. Do you know of any instances of complaints from machines built by the Bliss Company?

A. No.

Q. Have you any other instances in mind where you have had complaints? A. No.

Q. Have you had any instances where you or those operating under you have had to pay damages for spoiled pack by the use of your machines failing to make a tight seam?

[508] Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Do you know of or recollect any incident which resulted in money damage being paid in connection with the P–14 machine during the time you were working in the shop where Mr. Guenther was superintendent?

Mr. TOWNSEND.—That is objected to as not proper redirect examination; and, secondly, the

(Testimony of Ray O. Wilson.)

manner of any payments made on behalf of the 14–P would not come to this man's knowledge except by hearsay, if the fact existed, because he was a mere employee, and is not certain in his own mind that he was an employee of Guenther.

The MASTER.—Well, he is asking him whether he knows.

Mr. TOWNSEND.—He cannot know.

The MASTER.—He is the best judge of whether he knows or not.

Q. (By Mr. TOWNSEND.) Well, do you know by either having paid over money or having seen it paid or receiving the money?

The MASTER.—Just yes or no. The objection is overruled.

A. No.

Q. (By Mr. BLAKESLEE.) Do you recollect any instances which attach to that period of time, namely, when you were working in connection with Guenther as superintendent, when damage occurred due to faulty action of the P–14 machine?

Mr. TOWNSEND.—Same objection. Unless he was present and saw such damage occur.

[509] The MASTER.—Answer yes or no.

A. You do not mean a money damage?

Q. (By Mr. BLAKESLEE.) No, a damage to cans. A. Oh, yes; on several occasions.

Q. Can you mention them?

A. I have seen damaged cans in the plant of the L. A. Can Company and in almost every cannery.

(Testimony of Ray O. Wilson.)

That is one of the habits of a double seamer, to do that at times.

Q. (By Mr. TOWNSEND.) And that is true of any machine, is it not?

A. More or less, yes.

Q. (By Mr. BLAKESLEE.) Please state whether or not to your knowledge all of these double seamers, including the defendants' machines, the plaintiffs' machines, and the other machines you have do not at times, in operation, result in spoilage due to improper co-operation of the machine with the can body or flange in the seaming operation?

A. Yes.

[510] Q. (By Mr. BLAKESLEE.) Do you know of instances in the use of modern can-closing machines when cans have been returned for improper bottom seaming? A. Yes.

Q. Is or is not that a common occurrence in the use of modern double-seaming machines generally?

A. I wouldn't say it was common, but it happens quite often.

Q. I now show you a photograph and ask you if you know anything about what it shows.

A. It is the main plant of the E. W. Bliss Company.

Q. (By Mr. TOWNSEND.) Did you take that photograph? A. No.

[511] Q. Were you present when it was taken?

A. No.

Mr. TOWNSEND.—I object to any inquiry about

(Testimony of Ray O. Wilson.)

these photographs. And, furthermore, it is not proper cross-examination.

The MASTER.—What difference does it make, Mr. Blakeslee? The Bliss plant is shown to be a very large concern.

Mr. BLAKESLEE.—I just want something there to show that it was. If he knows the photograph is accurate and correct as to what it purports to show.

The MASTER.—It seems to me the real objection goes to its materiality.

Mr. BLAKESLEE.—It is simply to show, under our theory of the opening proofs in this case, or one theory, the moment of the business that is being done in connection with the patented machines in this case by the licensee; to show it is a large concern.

The MASTER.—It seems to me it is cumulative, but I will receive the evidence subject to the objection.

Q. (By Mr. BLAKESLEE.) Do you konw whether that is a true and correct photograph of what it purports to portray?

Mr. TOWNSEND.—Same objection. He was not present when the photograph was taken.

The MASTER.—I do not know that that is necessary. If a man knows that it is a correct picture, I think that is sufficient.

Q. (By Mr. BLAKESLEE.) When did you last see what that photograph [512] shows?

Mr. TOWNSEND.—He has said he had never seen it.

(Testimony of Ray O. Wilson.)

The MASTER.—Yes, he said he was back there,

A. In February of this year.

Q. (By Mr. BLAKESLEE.) You were at that plant in that month? A. Several times.

Mr. BLAKESLEE.—We offer the photograph in evidence as Plaintiffs' Exhibit 14.

Q. I show you another photograph and ask you if you know anything about what that shows.

Mr. TOWNSEND.—Same objection.

The MASTER.—Same ruling.

A. This is the interior of the 53d Street plant of the E. W. Bliss Company.

Q. (By Mr. BLAKESLEE.) 53d Street, Brooklyn? A. 53d Street, Brooklyn.

Q. Have you been in that plant? A. Yes.

Q. When were you there last?

A. In February of this year.

Q. And what do you know as to the showing in that picture of the contents of the plant?

Mr. TOWNSEND.—Same objection.

A. That is the interior of the assembly department.

Q. (By Mr. BLAKESLEE.) And have you seen that interior with such machines as shown there?

[513] A. Yes. I was on that floor for about seven months in 1920.

Q. And does that photograph correctly portray the interior of that plant as in February of this year?

Mr. TOWNSEND.—Same objection.

A. Yes.

(Testimony of Ray O. Wilson.)

Mr. BLAKESLEE.—We offer that photograph the same as the other.

Mr. TOWNSEND.—Same objection.

(Plaintiffs' Exhibit 15.)

Q. (By Mr. BLAKESLEE.) I show you another photograph and ask you what, if anything, you know about that.

A. That is the Pacific machine installed in the Southern Can Company's plant at Baltimore.

Q. Did you see the machine before it was sent there? A. I installed it myself.

Q. At Baltimore? A. Yes.

Q. When did you so install it? A. In 1919.

Q. And where was it built?

[514] A. In our own shops here.

Q. Did you see it in operation as it is portrayed in that picture? A. Yes.

Q. Set up and installed as it is there? A. Yes.

Q. That picture is true and accurate of what it represents—that photograph?

Mr. TOWNSEND.—Same objection to this whole line of examination.

The MASTER.—What is the objection?

Mr. TOWNSEND.—We object to its materiality; and also that the question itself is leading.

Q. (By Mr. BLAKESLEE.) Does it or does it not correctly portray what it shows? A. It does.

Q. To your knowledge is that machine now in operation at Baltimore? A. Yes.

Q. What is the business of that Baltimore cannery? A. It is entirely a can factory.

(Testimony of Ray O. Wilson.)

Q. And your machine does the bottom seaming there? A. That is right.

Q. While in Brooklyn, New York, month before last, did you acquaint yourself with the volume of the business being done by your licensee, E. W. Bliss Company? [515] A. Yes.

Mr. TOWNSEND.—Now, that calls for hearsay testimony, your Honor, the volume of business or any work done by a licensee.

The MASTER.—Wait until he asks a real question. He has only asked him if he acquainted himself with it. I will overrule the objection.

Mr. BLAKESLEE.—The photograph last identified by the witness, of the Baltimore factory, is offered as Plaintiff's Exhibit 16.

Q. Did you go into the shop of the E. W. Bliss Company on that last trip? A. Yes.

Q. How many machines of the Pacific Closing Machine Company type were being made by your licensee and assembled in that plant when you were there last?

Mr. TOWNSEND.—This whole matter, your Honor, is utterly immaterial. It is cumulative.

The MASTER.—It seems that way to me. I have arrived at the conclusion already that they were doing a big business in this line and that they had a big company that was handling their product.

Mr. BLAKESLEE.—I simply want to show that, he having been back there recently, they are still doing a large business in these machines, which of course is for the obvious purpose of meeting these

(Testimony of Ray O. Wilson.)

attacks of the defendants upon the utility of this machine, although I think the attacks are groundless.

[516] The MASTER.—The utility of your machines and the utility of the machines of your patent are two different things. I don't think we need to have this question answered. He may answer, however, for the purpose of the record. The objection is sustained. Also I think the record should be clear that the objection is sustained as to Plaintiffs' Exhibits 14, 15, and 16.

Mr. BLAKESLEE.—They are admitted under the ruling?

The MASTER.—They are admitted for the purposes of the record.

Mr. BLAKESLEE.—And this question may be answered under the ruling?

The MASTER.—Yes.

A. Seventy-six.

Q. (By Mr. BLAKESLEE.) Seventy-six in the course of construction and assembly? A. Yes.

Q. What sort of tests have you made of cans made on plaintiffs' machine in subjecting them to air pressure when double seamed?

Mr. TOWNSEND.—Now, just a moment.

Q. (By Mr. TOWNSEND.) Now, were these tests made for the purpose of this suit? A. No.

Q. Have you a record of those tests? A. No.

[517] The MASTER.—Testimony of tests would be subject to great suspicion unless they do make

(Testimony of Ray O. Wilson.)

tests in the presence of the Master and counsel, which I suppose they will possibly do later.

Mr. BLAKESLEE.—We shall do so.

The MASTER.—The objection is overruled.

Q. (By Mr. BLAKESLEE.) The question is, you made the tests? A. Yes.

Q. When were such tests made?

[518] A. Oh, we make them a lot of times when the machines go out of the factory; and we have also made them in the plant of the L. A. Can Company, the plant of the H. G. Prince Company, the Hawaiian Pineapple Company, and—

Q. How recently?

A. Why, it has been a year since I tested a can made on the Pacific machine.

Q. How did you go about these tests; what did you do?

A. Subject them to air pressure; and sometimes a portable test, such as with a tire pump and a gauge, and a clamp for holding the tester. Others were a mechanical tester. And the H. G. Prince Company have an air compressor with a rigging for specially testing cans.

Q. Now, please state in each instance, that is, each test, naming the place the test was made, what pressure the can was subjected to—that is, internal atmospheric pressure—and what the nature of the seam was, and whether you used any gasket or anything of that sort in the seam.

Mr. TOWNSEND.—That same objection applies now with still greater force.

(Testimony of Ray O. Wilson.)

The MASTER.—The objection is overruled.

A. With the hand pump and that sort of a tester the maximum pressure you can actually gauge, as I recall it, is thirty pounds. We have had lots of cans that would take it up to the pin, which would be approximately forty pounds; these are all compound ends.

[519] Q. Now, where was such 40-pound pressure withstood?

A. Well, I don't recall exactly now. In our shop it has been done several times; and in the plant of the L. A. Can Company and the H. G. Prince Company I have seen the cans run right along regularly never under 60 pounds. I have had a can out at the plant that reached the point of 150, unusually good cans, at the H. G. Prince Company.

Q. And the average pressure in the tests at the Prince plant was what—the usual pressure?

Mr. TOWNSEND.—That is objected to on the ground that no foundation has been laid.

A. Thirty pounds for automatic testers.

Q. (By Mr. BLAKESLEE.) The usual pressure?

A. Yes. They test the machine up to fifty pounds morning and afternoon.

[520] Q. That is their practice to-day, is it, if you know? A. Yes.

Q. Now, you speak of one test where the can was subjected to internal atmospheric pressure of 150 pounds. Where was that test made?

A. In 1918.

(Testimony of Ray O. Wilson.)

Q. That was at the Prince plant? A. Yes.

Q. And the same sort of compound was used in the seam there? A. The same compound.

Q. And that double seam was made on one of the Pacific machines, was it? A. Yes.

(By Mr. BLAKESLEE.)

Q. How many Pacific machines has this Prince plant now in operation? A. Seven.

Q. And how long have they been using the Pacific machines at that plant?

Mr. TOWNSEND.—Same objection. It is immaterial and cumulative.

[521] The MASTER.—The objection is sustained, but he may answer for the record.

A. Since the season of 1918.

Q. (By Mr. BLAKESLEE.) Do you know of any complaints that have come from that plant as to faulty seaming jobs or packs?

Mr. TOWNSEND.—That is objected to as not cross-examination. Nothing has been asked in regard to the complaints of the Prince Company.

The MASTER.—The objection is overruled.

A. No.

Q. Are you certain, then, as to whether it was the Los Angeles Can Company or who it was that got up the prints, being Plaintiffs' Exhibits 11, 12, and 13, which were delivered to Guenther?

A. Who was it that—

Q. Yes, at what plant was it that those prints were gotten up?

(Testimony of Ray O. Wilson.)

A. At our plant, the Pacific Closing Machine Company.

Q. Those were the prints you have identified as being the ones that were delivered to Mr. Guenther about July, 1919? A. Yes.

Mr. TOWNSEND.—Of course it has not been established, really, [522] that these prints were delivered to Mr. Guenther.

The MASTER.—I thought he admitted it.

Mr. BLAKESLEE.—I admitted it in my question.

Mr. TOWNSEND.—And particularly as to the time when. We only want the matter of proof to come out in an orderly fashion, and this man only handed them to Mr. Stetson and he presumes Mr. Stetson gave them to Mr. Guenther.

Q. (By Mr. BLAKESLEE.) When is it your recollection now that these prints were returned to the Pacific Closing Machine Company?

A. I don't recall that date.

Q. Are you certain in your own mind as to the periods of time during which the Stetson Machine Works and the Pacific Closing Machine Company and the other predecessor of that company were respectively in existence, the three organizations of which the Pacific Closing Machine Company is now the successor? Have you in mind the times that they existed, respectively?

[523] Q. Can you recollect of your own free recollection at what times those organizations existed?

(Testimony of Ray O. Wilson.)

A. No, and I have no way of chasing those dates down accurately.

Q. Are you then certain whether it was the Pacific Closing Machine Company or one of its predecessors that was in existence at the time that the prints Exhibits 11, 12, and 13 were returned by Mr. Guenther?

Mr. TOWNSEND.—That is objected to as the witness has disqualified [524] himself as to his recollection of dates, and it calls for a mere opinion.

The MASTER.—The objection is overruled.

A. The Pacific Closing Machine Company was in existence when the prints were returned.

Q. (By Mr. BLAKESLEE.) Did anyone besides the defendants, to your knowledge, ever make or sell a 14–P machine? A. No.

Q. Did Mr. Sumner, patentee, jointly with you in connection with the inventions of the patents in suit, as shown on the face of the patents, work with you at the Smith-Booth-Usher plant in connection with making the first machine you have told us about?

A. No, only on Saturday afternoons he was down there and helped me out a little bit.

Q. Now, before you went down there to commence work on that first machine, to what extent did you and Mr. Sumner discuss this enterprise?

A. He was up at the house quite a few nights a week, and almost every Sunday we were working there.

Q. And for what period of time?

(Testimony of Ray O. Wilson.)

A. That covered a period of from six to eight months.

Q. Now, during those meetings at your house, over that extended period of time, what did you do? I don't mean to ask you to repeat any conversation, but what was it you did at those times in connection with these inventions?

[525] A. Planned on the machine and made drawings.

Q. Did he make some sketches himself?

A. Pencil sketches, yes.

Q. And you made some? A. Yes.

Q. And did he make suggestions of construction of parts of machines?

Mr. TOWNSEND.—Now, that is getting to be pretty leading on the question of establishing joint inventorship. I object to it as leading.

The MASTER.—It is leading.

Q. (By the MASTER.) What did you do up there?

Q. (By Mr. BLAKESLEE.) What did you and Mr. Sumner do on those occasions? Tell us briefly how it was that you co-operated—

Mr. TOWNSEND.—Now, that is leading again, this co-operation.

Mr. BLAKESLEE.—Strike out the "co-operation" part.

Q. What was it your practice to do on those occasions when Mr. Sumner came to your house?

Mr. TOWNSEND.—It is not a question of what was it their practice to do, but what were the facts.

Q. (By the MASTER.) Well, what did you do?

(Testimony of Ray O. Wilson.)

A. I say, we planned on the machine and made drawings and talked it over and made pencil sketches and—

Q. (By Mr. BLAKESLEE.) When you went down to the Smith-Booth-Usher plant what was Mr. Sumner doing?

[526] A. He has charge of the miscellaneous department of the L. A. Can Company and he was in that position.

Q. And he continued doing that work while you were down at that shop, did he? A. Yes.

Q. And did his occupation there keep him busy so that Saturday afternoons were the only times he could come down to the Smith-Booth-Usher shop?

Mr. TOWNSEND.—That is objected to as hearsay and as calling for a conclusion of the witness.

The MASTER.—Yes.

Q. (By the MASTER.) Why was he not down there any other day except Saturday?

A. Because he was working at the L. A. Can Company.

[527] Q. Please state whether or not the Pacific Closing Machine Company has constructed machines in its business from the second tracings, or blue-prints of it, to wit, the tracings from which the blue-prints of Exhibits 11, 12, and 13 were made.

A. Yes.

Q. Is that the practice at the present day?

A. As far as I recall, yes.

Q. And how long has it been the practice at the shop?

(Testimony of Ray O. Wilson.)

Mr. TOWNSEND.—That is objected to as irrelevant and immaterial, and no foundation laid. The books would be the best evidence. Furthermore, whether or not the machines were new—

A. We have made changes from time to time in the construction, so that those blue-prints would cover probably a period of three years.

Q. (By Mr. BLAKESLEE.) The first period of three years?

A. The last period of three years.

[528] Q. These blue-prints would cover?

A. Yes.

Q. Since 1919? A. Yes.

Q. And the changes you refer to are the changes which counsel brought out in cross-examination of you? A. Some of them, yes.

Q. Those were some of the changes? A. Yes.

The MASTER.—Now, those blue-prints were delivered to Mr. Stetson on what date?

Mr. BLAKESLEE.—July, 1919, was the testimony of this witness, and they were returned in December, 1919.

Mr. TOWNSEND.—We will say that those dates, or at least the date of delivery, is incorrect.

Mr. BLAKESLEE.—Well, I am speaking of the testimony of this witness.

Q. And there have been changes made during the last three years in your construction in departure from these blue-prints, have there? A. Yes.

Q. Were they major or minor changes?

Mr. TOWNSEND.—That is objected to as self-

(Testimony of Ray O. Wilson.)

serving and as calling for a conclusion of the witness.

[529] A. One I recall was in the cap feed mechanism.

Q. And that is the change which you told us about in your cross-examination, is it?

A. No, it is not. There was a change in the can feed, was one; and the change between the old style cap feed and the new.

Q. Have you determined approximately what the total number [530] of Pacific closing machines turned out and sold by that company to date is? Do you know what that number is now?

A. No.

Q. You haven't looked that up? A. No.

Q. When did you first meet Mr. Guenther, the defendant by that name?

A. I think it was in the year 1912, in the spring.

Q. In what connection?

A. Or in 1911, I should say.

Q. In what connection?

A. I applied for a job.

Q. And that was at what plant?

A. At the plant of the L. A. Can Company.

Q. Was Mr. F. F. Stetson connected with the L. A. Can Company then? A. Yes.

Q. What was his office, if you know?

A. I think president of the organization.

Q. And what was Mr. Guenther's position at that plant?

Mr. TOWNSEND.—This witness was not an

(Testimony of Ray O. Wilson.)

officer, and I don't think he is able to testify as to record matters.

Mr. BLAKESLEE.—I asked for his position, not his office.

Q. What was he doing?

A. He was in charge of the machine shop.

Q. (By the MASTER.) Who? Mr. Guenther?

[531] A. Yes.

Q. (By Mr. BLAKESLEE.) What work did you do in the machine shop?

A. I ran a lathe for a good while, a milling machine, a planer, and worked on the floor part of the time.

[532] Q. Now, prior to the time you went to the Smith-Booth-Usher Company's shop did you have any discussion with Mr. Guenther about the machine as you planned to build it down at that Smith-Booth-Usher shop? A. No.

Q. No discussion with him at all?

A. No discussion. We spoke of the machine at the time I left. I remember that.

Q. You merely said you were going to build a machine?

A. Yes. How far the conversation went I don't remember.

Q. Do you remember anything further than that statement that you were going to build a machine?

A. No.

Q. Did Mr. Guenther at any time, either prior to your leaving the L. A. Can Company's shop for the purpose of constructing that machine, or subsequent to such time and during the building of such

(Testimony of Ray O. Wilson.)

first machine, make any suggestion to you as to the construction of that machine? A. No.

Q. Did you never know of Mr. Guenther talking with Mr. [533] Sumner, your joint patentee in the patents in suit, concerning that first machine and its construction? A. No.

Q. Now, when that first machine was completed where did you first try it out?

A. We had a small try-out at the Smith-Booth-Usher plant, and then in the cannery of F. F. Stetson.

Q. Was the try-out putting bottoms on can bodies or closing cans at the top?

Mr. TOWNSEND.—I object to that as grossly leading.

The MASTER.—Ask him what he did.

Q. (By Mr. BLAKESLEE.) What was the nature of your first try-out of that machine down at the Smith-Booth-Usher plant?

A. We tried about a case of cans—a hundred cans or so.

Q. Where did you get those cans?

A. From the Los Angeles Can Company.

Q. What did you do with the cans on that try-out? A. I don't recall.

Q. Well, what did you do to the cans? Did you put the bottoms or tops on?

A. We put the bottoms on—no, the tops, rather; the tops. They were complete cans.

Q. Was Mr. Sumner present at the time?

A. Part of the time he was.

(Testimony of Ray O. Wilson.)

Q. Was Mr. Guenther there? A. No.

[534] Q. Was Mr. Guenther ever at the Smith-Booth-Usher Company's shop during the construction or try-out of that first machine?

A. Not that I know of.

Q. What speed of can closing did you get on this first try-out of a hundred cans from the L. A. Can Company?

Mr. TOWNSEND.—Now, that again is a leading question.

The MASTER.—No, I think not. They must have had some speed. The objection is overruled. What was the speed, if any?

Mr. TOWNSEND.—Well, how was his power applied? We should first know about those things.

The MASTER.—I will let him answer that question.

A. We belted it up to the line shaft. I don't remember about the speed; about 80, I think.

Q. (By Mr. BLAKESLEE.) About 80 what?

A. Eighty cans per minute.

Q. When and where did the next try-out take place with that machine?

A. In the F. F. Stetson Canning Company.

Q. (By Mr. BLAKESLEE.) When did that next try-out take place?

[535] A. In the fall of 1914.

Q. You were present, were you? A. Yes.

Q. How long did that second try-out take place before you applied jointly with Mr. Sumner for

(Testimony of Ray O. Wilson.)

patent 1,203,295, being Plaintiffs' Exhibit 3 in suit?

Mr. TOWNSEND.—That is grossly leading, because if the date when this was done has not been definitely fixed—

The MASTER.—The objection is overruled. He might know the relative time.

A. We applied for patent while the machine was in the Smith-Booth-Usher shop.

[537] Q. (By Mr. TOWNSEND.) Did you go to the Smith-Booth-Usher plant while you were still in Mr. Guenther's employ?

A. I don't think so. I don't recall.

Q. It was some time subsequent to the severance of your relations with Mr. Guenther that you went to Smith-Booth-Usher?

A. I think so. I was in touch with the Smith-Booth-Usher Company off and on, because I used to work there and had several friends there. That was my main reason for going there. So just when I made those arrangements—I don't think it was before.

Q. Smith-Booth-Usher rendered bills to someone for the work you had done there when you went there to work on this proposition, didn't they?

A. I don't recall how that was taken care of. I paid them so much an hour for the use of the shop.

Q. Did the bills run to you or to Mr. Stetson or to whom? A. I don't recall.

Mr. TOWNSEND.—I think the records of the

(Testimony of Ray O. Wilson.)

Smith-Booth-Usher Company would be the best evidence to fix these things definitely if it is material.

[538] Mr. BLAKESLEE.—If we thought it was material we would produce them, but we are trying to trace the relations of this witness to Mr. Stetson and Mr. Sumner, and that is as far as we are going

Mr. TOWNSEND.—It is objected to as irrelevant and immaterial.

The MASTER.—I think there is no question pending.

Q. (By Mr. BLAKESLEE.) You were, then, out of the shop of the L. A. Can Company before you went to the Smith-Booth-Usher plant?

A. I think it was three or four days before I finally made arrangements to go to work there.

[540] Q. (By Mr. BLAKESLEE.) Did the nature of your duties change any at the time you commenced to receive your pay checks or pay from the Angelus Sanitary Can Machine Company instead of from the L. A. Can Company? A. No.

Q. Did you receive any instructions at that time of change different from the instructions you had previously received in the shop as to the scope of your employment and your duties? A. No.

Q. Did Mr. Guenther at any time prior to the time that you went to the Smith-Booth-Usher Company shop to construct your first machine make any contention or claim in your presence that he was in any way connected with or had contributed toward

(Testimony of Ray O. Wilson.)

the development of the machine which you went down there to build or the drawings thereof?

A. No.

Mr. BLAKESLEE.—That is all.

[543] Q. I didn't happen to have these two patents before me on your previous cross-examination—that is, the Black and Johnson patents—at the time you stated that after construction of the machine had progressed a ways, or was at a certain stage, you had heard about the Johnson and Black patents and went to the library to see them?

A. Yes.

Q. Now I show you a copy of the Black patent 858,785, July 2, 1907, can flanging and head seaming mechanism, forming part of the bound volume in connection with Mr. Abbett's affidavit, and ask you if that is the Black patent you had reference to.

A. I can't identify the patent, because I don't recall the numbers; but that is evidently it because there is a certain amount of similarity between the two.

Q. (By Mr. BLAKESLEE.) Referring to Fig. what? A. Referring to Fig. 2.

Mr. BLAKESLEE.—Is that in evidence?

Mr. TOWNSEND.—No, but it was referred to in Mr. Abbett's affidavit and proffer made of it. It is the only assembly of the patent we have and we are only using it as a sort of working copy, to be filed, and of course you are free to see [544] it at any time you want to, Mr. Blakeslee.

(Testimony of Ray O. Wilson.)

Q. (By Mr. TOWNSEND.) Now I show you the Johnson patent in the same volume, 1,040,951, October 8, 1912, combined can body, flanging and double-seaming machine, and ask you if you recognize that as the Johnson patent you had reference to

A. No; I think, to correct my former statement, that the Johnson was the one we referred to; that the remark was made that our machine compared in a way to that, and this was the one that we went up to the library and looked up.

Q. That is Johnson 1,040,951?

A. Yes. I don't recall seeing the Black patent until later on; I don't know when.

Q. Well, you subsequently, I suppose, obtained a complete copy of those patents? A. Yes.

Q. You referred in your direct examination to a "small try-out" that you made of your machine at the time of building it at the Smith-Booth-Usher place and said that you had some cans, a case of cans there, to operate it upon. Do you know where you got those cans?

A. I am pretty sure at the L. A. Can Company.

Q. And do you know what machine the bottoms had been put on by?

A. I would judge on the Angelus 14–P.

Q. Now in regard to this test, just tell us what you did and how you did it.

[545] A. We put the cans through the machine and double-seamed them.

Q. How many did you run through in succession at a time? A. I don't recall.

(Testimony of Ray O. Wilson.)

Q. Did you run this whole hundred through at once?

A. I think there was approximately a hundred cans. Now whether I ran all of them through I don't know. Anyway, the machine looked as though it had possibilities, and we shipped it right out to Mr. Stetson's plant.

Q. Is that the only time that you made any trial of that machine at the Smith-Booth-Usher Company?

A. Oh, I might have made them a day or two before we finally set up, and I might have run a few cans through after I had it partially constructed, as far as the first operation was concerned. I don't recall.

Q. Where was the machine located at Smith-Booth-Usher's when you had it up on the dump line and ran it in this test of 80 cans a minute?

A. In their machine shop in the back of their store.

Q. Did you hold a watch on the machine to time it? A. I think I did.

Q. Did you make any memorandum at that time of how many cans you ran? A. No.

Q. You were depending entirely on your memory after a lapse of some nine years or so to recall that specific incident. [546] A. Yes.

Q. And over how long a period was that machine operated there at Smith-Booth-Usher's with cans?

A. I don't recall, but it could not have been very long on one case of cans.

(Testimony of Ray O. Wilson.)

Q. Well, if you can't recall, that is one thing, but whether it could be a long or short time is another. Just tell us what your recollection is and what the possibilities might have been.

A. I don't remember.

Q. And do you remember any other way that you operated that machine to see whether it would roll the seam of a can or not? A. No.

Q. You don't recall any other way of operating except on the belt there in the machine shop?

A. No.

[547] Q. Didn't you ever run any cans through there by turning the machine over by hand?

A. I might have done so; I don't remember.

Q. Well, don't you know that you did?

A. No, I do not; no.

Q. You referred to a test you made at the H. G. Prince Company, as I understood you, where you ran the test up to 150 pounds. Just explain that so that there will be no misunderstanding about it.

A. The can was put in their tester and stuck into a—I think it is a tub of water there and run up to about 50 pounds, then placed on a rack that they hold this clamp with and the pressure was run up to 150 pounds—that is as far as the gauge would go—and stopped, and the can taken out without a leak.

Q. What was the size of that can?

A. A 2½ size; 4 inches in diameter, 4⅝ tall.

[548] Do you know what machine they used to put the end on with? A. The Pacific.

(Testimony of Ray O. Wilson.)

Q. Then you put the end on that can, at the bottom? A. Yes.

Q. And by what machine was that sealed?

A. Turned it right over and put it through the same machine.

Q. (By the MASTER.) Did you put the bottom on that can?

A. The bottom and top. No, pardon me, those ends were put on the Pacific up in the tomato plant, the top, and the bottom was put on the Pacific down below, down in their factory, as I recall it.

Q. (By Mr. TOWNSEND.) I don't quite understand that answer.

A. We have two Pacifics up in their tomato plant, up in the third floor, in their cannery, in their tomato plant. We have two machines set up in their tomato plant, 2½ machines, which we installed in 1918, and we also have three machines down in their can-making plant.

Q. And where was the bottom put on this can?

A. In the can plant.

Q. Were you present when that particular bottom was put on that particular can? A. No.

[549] Q. And what sort of testing machine did you use?

A. It is a sort of C–Clamp arrangement. It clamps the can on the end.

Q. What is the name of the tester?

A. It is a home-made affair.

Q. Do you know what sort of a gauge you had to indicate the pressures?

(Testimony of Ray O. Wilson.)

A. I can't recollect. It was up on the wall, connected with a small tank.

Q. Did you test that gauge as to its accuracy to begin with? A. No.

Q. Now, you say that that test registered 150 pounds internal [550] pressure? A. Yes.

Q. What do you mean by that?

A. 150 pounds to the square inch on the inside of the can.

Q. Do you know the gauge of that tin plate that was used in that tester? A. No.

Q. Or in that can? A. No.

Q. Did all four cans show the same gauge test?

A. No.

Q. Do you recall what the others showed?

A. Nothing under 60 pounds. They all went up over 60 pounds.

Q. Sixty pounds according to that gauge?

A. Yes.

Q. And which you say you did not test yourself to know whether it registered accurately or not?

A. No.

Q. Do you want us to believe that a tin can sealed in any such manner will stand 150 pounds internal pressure?

Mr. BLAKESLEE.—Now, the witness has testified to facts, and what counsel believes is subject to his mental qualities. I don't think that is proper cross-examination.

The MASTER.—The objection is sustained.

(Testimony of Ray O. Wilson.)

Q. (By Mr. TOWNSEND.) Do you believe that that gauge—

The MASTER.—What he believes is not competent. What is [551] the fact?

Q. (By Mr. TOWNSEND.) Why did that can that was tested, as you say, to 150 pounds give way?

A. It didn't give way. The gauge went up to 150, and we shut the compression off and took the can out. I wanted it as a sort of curio myself.

Q. Where did the other cans give way that were tested up to 60 pounds?

A. Some of them gave way at 65.

Q. I mean at what alleged pressure. Whereabouts on the can?

A. At the body seam. The body simply bent right up.

Q. Was it a solder seam or a rolled seam?

A. A solder seam; a double solder seam.

Q. And that gave way before the double seam on the end gave way? A. Yes.

Q. Is that customary in practice, that the soldering seams gives way before the end gives way?

A. In that tester, yes.

Q. Well, I mean in ordinary practice when you are testing.

A. I think under the ordinary hand pump tester —well, I don't know where the can would give way; I have no way of knowing.

Q. You referred to a recent trip east, in February, 1923. [552] Did Mr. Stetson, who is here present, accompany you on that trip?

(Testimony of Ray O. Wilson.)

A. No, I met Mr. Stetson in New York.

A. I called on the Metal Package Corporation.

Q. That is next door to the Southern Can Company in Baltimore? A. Yes.

Q. That is quite a large manufactory of cans, is it not? A. Yes.

Q. Do you know what the name of that company was originally? A. The Boyle Can Company.

[553] Q. Did you go into the Metal Package Company's plant? A. Yes.

Q. What double seamers did you see working there?

A. The 14–P, and the Bliss Pacific, and I think some Max Ams. I am not positive of the Max Ams, but the 14–P and the Bliss Pacific.

Q. How many Bliss Pacifics in there?

A. Only one in their can plant.

Q. How many 14–P did you see?

A. I don't recall. I remember seeing two. I don't recall any others.

Q. You only saw two?

A. That is true. That is the only ones I can recollect of seeing, two.

Q. Did you see any 19–P gallon-can, the Angelus?

A. No. I may have seen them, but I don't remember it. I had seen them before in the Boyle plant, yes, when I was back before.

Q. Well, don't you know that they have over 100 14–P's [554] and 19–P's in the Metal Package plant? A. No, I don't think they have.

Q. I refer to a fact there to refresh your recol-

(Testimony of Ray O. Wilson.)

lection that you possibly saw more than two if you went into their plant.

A. I think if you would check it up you would find there wasn't anywhere near a hundred in the Metal Package Corporation plant.

Q. Well, after giving it some consideration would you say there were more than two 14–P's?

A. Oh, yes; no question about that. How many more there were I don't know. I remember seeing two.

Q. Were they in operation? A. Yes.

Q. Making cans or putting the ends on cans?

A. Yes; putting the bottoms on.

Q. What other plants did you visit?

A. The Heekin Can Company in Cincinnati.

Q. What sort of a machine did they use?

A. The Max Ams.

Q. Altogether?

[555] Excepting one Bliss Pacific they had in there. They just had their cannery installed in the plant, trying it out; just a temporary installation.

Q. No other double seamers?

A. Not that I recollect.

Q. Was there any other double seaming plant you visited?

A. The Sherwin-Williams, Chicago.

Q. What kind of machines did they have there?

A. Altogether Max Ams.

Q. And what other place in the east—

A. They have one of our large gallons, just moved it in on the floor.

(Testimony of Ray O. Wilson.)

Q. Was that on trial?

A. No, we sold it to them.

[556] Q. At any of those places did you make mention of this pending litigation?

A. At the E. W. Bliss Company I remember making mention of it. The other places I don't recall. I mentioned it to the Southern Can Company, yes.

Q. Did you mention it at any other place?

A. Not that I recall.

Q. What did you tell the Southern Can Company about this litigation?

Mr. BLAKESLEE.—We think that is immaterial.

The MASTER.—I don't see the materiality of it.

Mr. TOWNSEND.—One of our defenses that we put in here is the improper use that these people have been making of this litigation, and it is alleged in paragraph 14 of the answer. Now, I want to know what he said.

Mr. BLAKESLEE.—There is no counterclaim as to any such thing.

Mr. TOWNSEND.—No, it is an affirmative defense, that these people do not come into court with clean hands, and are using this suit for inequitable and improper purposes, and I am entitled to show by their own witnesses, if I may, what representations they have made in regard to this litigation.

The MASTER.—I don't think that is a proper question on cross-examination anyway.

(Testimony of Ray O. Wilson.)

[557] Mr. TOWNSEND.—In regard to the eastern trip and the fact that it was connected with this litigation, I think it is germane to the subject.

The MASTER.—I will not allow this evidence to go in, because it occurred subsequent to the filing of the suit anyway, and I cannot see that it would help the defense in anyway whatsoever.

Mr. TOWNSEND.—Well, it will do this: it will give them a chance at this time to make such explanation as they want to make of their activities, because it may be necessary on our part to apply for an injunction against the improper use they are making of this litigation.

The MASTER.—This is not a matter that the Master should assist you on.

Mr. TOWNSEND.—It is not a matter of assisting us, it is a question of getting at the truth of this thing in accordance with our pleadings—paragraph 14.

Mr. BLAKESLEE.—They cannot elicit on cross-examination something to support an injunction suit on an entirely extraneous issue.

Mr. TOWNSEND.—He has mentioned the litigation, and now I want to know what he said about it, and I will let the matter drop there.

The MASTER.—Very well; he may answer for the purpose of the record.

[558] A. I really don't recall what I did tell them now.

A. I would answer the question—I am not ashamed of what I said—if I could recall what I said.

(Testimony of Ray O. Wilson.)

A. I know I didn't say very much.

Q. Well, what was that?

A. That I can't remember.

Q. But what was said in regard to this litigation and its pendency and the present defendants? You can't remember a word of it? A. No.

Q. You can't remember anything that they said in reply? A. No.

Q. And can you remember when this visit was made? A. It was about the first of March.

[559] A. I can check it up on the calendar. It was on a Monday, the 26th of February, 1923.

Q. You can't remember a single word that you said in regard to the pending litigation to any of those gentlemen there at the Southern Can Company? A. No.

The MASTER.—Are they customers of your client?

Mr. TOWNSEND.—Prospective customers.

Q. Where did these blue-prints represented by the packages, Plaintiffs' Exhibits 12, 13 and 14,—did you state that those were put in the safe of your company when they were returned to you by Mr. Stetson? A. Yes.

Q. And what date did you say that was?

A. It was around December some time; the first of December, 1921. I forget just the exact date. I think in my former statement I said that that set of blue-prints was put into the safe on its return, because it was a complete set and we wanted a complete set in safe keeping.

(Testimony of Ray O. Wilson.)

[562] Q. Do you know how many Pacific closing machines of the Bliss type, or the Bliss Company manufacture, the Southern Can Company has?

A. There are over forty.

Mr. BLAKESLEE.—That is all.

The MASTER.—Have you a set of blue-prints in the safe now?

The WITNESS.—No.

Q. (By Mr. BLAKESLEE.) As these Exhibits 11, 12 and 13 stand, will you please state whether, in 1920, when they were delivered, as you have testified, to Mr. Guenther they were sufficiently complete, or are sufficiently complete now, so [563] that a mechanic or mechanics skilled in building machines of that type could construct a closing machine from them?

Mr. TOWNSEND.—That question is grossly leading, to begin with, and I don't know that this witness has given the year 1920 either.

Mr. BLAKESLEE.—Well, I will withdraw this question about 1920, the year, and allow the question to stand as to the possibility of one skilled in manufacturing machines of this type manufacturing a closing machine from these blue-prints as they were in 1920 and are to-day.

Mr. TOWNSEND.—That is objected to as grossly leading.

The MASTER.—I will accept his answer as a summary of his testimony. A. Yes.

Q. (By Mr. BLAKESLEE.) Now, as to this

(Testimony of Ray O. Wilson.)

matter of the year [564] these blue-prints were delivered to Mr. Stetson, what year was that?

A. By Mr. Guenther or by us?

Q. Delivered to Mr. Guenther, I mean, first.

A. 1920.

Q. And the year they were returned to you—the Pacific Closing Machine Company?

A. I don't recall that date exactly. It was on the prints when they were brought into this room —into the court—and I think it was December, 1920.

Mr. BLAKESLEE.—That is all.

Mr. TOWNSEND.—Q. You fix these dates regarding these blue-prints simply by the notation appearing on the wrapper? A. Yes.

Q. Did you put that notation on there yourself?

A. No, the draftsman did, the date they were put in the safe.

Q. (By Mr. BLAKESLEE.) Were you present when any notation was put on them?

A. Yes. I helped wrap them up.

The MASTER.—I think the testimony, then, should be corrected, if you so desire. My note here shows that they were delivered in July, 1919, and returned in December, 1919, and the notation here is December, 1920.

Mr. TOWNSEND.—And he testified a few moments ago on recross that they were delivered back to him and put in the [565] safe in December, 1921.

(Testimony of Thomas Slater.)

Mr. BLAKESLEE.—Well, he misspoke. I have asked him to clear it up.

Mr. TOWNSEND.—It only goes to show how absolutely unreliable the witness is as to recalling dates over a long period of time.

Mr. BLAKESLEE.—He has identified it by a notation made at the time, when he was present, which is the best sort of evidence—documentary.

TESTIMONY OF THOMAS SLATER, FOR PLAINTIFFS.

[566] THOMAS SLATER, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Please state your name, age, residence, and occupation.

A. Thomas Slater; age, fifty-two; residence, 3446 Arroyo Seco Avenue, Los Angeles.

Q. And your occupation?

A. Well, taking care of the double-seamers, supervising, and the testers and the flangers, at the Los Angeles Can Company in this city.

Q. How long have you been with the Los Angeles Can Company?

A. Eighteen years this coming month of May.

Q. Are you acquainted with Mr. Guenther, one of the defendants in this case, who is present in the courtroom here? A. Yes.

(Testimony of Thomas Slater.)

Q. How long have you known Mr. Guenther?

A. Why, I first met him when we first introduced the Sanitary machine in the L. A. Can Company's factory. I don't recall just how long it was ago.

Q. Do you remember when Mr. Guenther went over to the brick shop across the street from the L. A. Can Company? A. Yes, sir.

Q. When was that?

[567] A. I don't remember when that was.

Q. You don't remember the year?

A. No, sir.

Q. After that time did you ever see Mr. Guenther in the shop of the L. A. Can Company?

A. Oh, yes, quite a number of times.

Q. How frequently?

A. Oh, I saw him over there seven or eight different times.

Q. Do you remember any occasion when he called at that shop, the L. A. Can Company, after he moved across the street, and made any inspection of the closing machines in the plant of the L. A. Can Company?

A. Yes, sir, I saw him on two or three occasions come through the shop and stop at one of the closing machines and examine it.

Q. Those closing machines were furnished by whom to the L. A. Can Company?

A. Los Angeles Closing Machine Company; Wilson and Sumner.

Q. And they were made where, if you know?

(Testimony of Thomas Slater.)

A. Across the street at Wilson and Sumner's place.

Q. Now, when was the first occurrence of this sort that you remember, when Mr. Guenther came over to the L. A. Can Company's shop and took note of or inspected the Pacific or Wilson closing machines there?

[568] A. It was about in April or May, 1921, that I remember one particular incident, and on that occasion he came in with a draftsman and they stopped at this machine and then passed down through the shop.

A. I don't recall that Mr. Guenther or the draftsman did anything when they were both together; but on one occasion I remember Mr. Guenther taking a paper and writing something on it at the double-seamer. He was on the next double-seamer, about four feet across from them.

Q. Did you at any time see Mr. Guenther's draftsman make any sketch or memorandum at those machines? A. No, sir.

Q. Do you remember any other occasions when Mr. Guenther and his draftsman called at the L. A. Can Company's shop?

A. Not together, I don't.

Q. Did you at any time see Mr. Guenther's draftsman making sketches and memoranda while standing by a Pacific double-seamer in the L. A. Can Company's shop? A. No, sir.

Q. How did you fix that time in the spring of 1921 when Mr. [569] Guenther came to the L. A.

(Testimony of Thomas Slater.)

Can Company's shop and, standing by one of the Pacific double-seamers, apparently made certain notations on paper?

A. It was in 1920 that they took me off the testing machine to take charge of or assist in operating the double-seamers and that is how I remember. It was the following year. I finished the season out when they took me off the tester to look after the double seamers. It was the next year, That is how I place it at 1921.

Q. Did you ever work for Mr. Guenther over in the brick shop? A. No.

Q. You have been constantly with the L. A. Can Company since you first went with them?

A. Yes, sir.

Q. Do you remember the installation of any 14–P seamers in the L. A. Can Company's shop?

A. Yes, I was there testing the cans when they first installed them.

Q. What did you do in testing cans which were seamed by the 14–P—when the 14–P first was installed there?

A. The cans ran from the double-seamer into an elevator; they ran down the line and came into the tester; they ran through the tester—a water tester. There was 15 pounds pressure in these cans. And as they came through the water then I located the leak.

[570] Q. Well, what did you locate in the nature of leaks, if anything, in those 14–P seamed cans?

A. Oh, double-seam leaks.

(Testimony of Thomas Slater.)

Q. How frequently did those leaks appear?

A. They were very frequent.

Q. Are you doing testing now on the cans double-seamed in the L. A. Can Company's shop?

A. I don't run the tester; there is another man has charge of the tester. It is my duty to examine those cans every day to see if they are correct and perfect. I take them and put them in a water tester and examine them myself. I also take the can and cut it open to see what tin I have got on the inside.

Q. And what machines are used now for that purpose there? A. To put the bottoms on the cans?

Q. Yes. A. The Pacific closing machine.

Q. And what at the present day is your experience with the cans so supplied with bottoms on the Pacific double-seamer at the L. A. Can Company? What do the tests show?

Mr. TOWNSEND.—I call attention to the same fact that I did a while ago, that it goes to the weight of the evidence. These tests not being made in the presence of either the [571] Court or counsel, they are not entitled to much consideration.

A. It is my duty to test those cans to see if they are perfect before they are sent out, and, as I said a little while ago, every so often, once in the morning, and sometimes twice, I will take those cans and test them in a foot tester with fifteen or twenty pounds of pressure.

Q. (By Mr. BLAKESLEE.) And what are the results of your tests from day to day now on such cans?

(Testimony of Thomas Slater.)

A. They run very good. I ran a machine myself Tuesday all day, nine hours, on a 3-inch can, and that ran 74,209 hours. During the time the foreman came and took my place, and I would go and examine these cans, and found them perfect, all through the day.

Q. What do certain machines run per day?

A. One runs 154 cans per minute, and the other about 135 a minute.

[572] Q. How many Pacific machines are there working there a day?

A. Seven. No, I beg pardon; not running all the time. Just at the present time we are running them just occasionally.

Q. Now, how do you conduct this test at present on the cans which have the bottoms put in on the Pacific Closing machine?

A. We had four testers made by Mr. Guenther. We used them. There is a rubber at the front, that the flange of the can comes against. We set them in the machine, press down with the foot, and it presses the can down under the water. There is a tank that is full of water. When you put your foot down upon a valve at the back, that lets the pressure through into the can, and we hold them down there until we examine them and see.

Q. (By Mr. BLAKESLEE.) What is your experience to-day as to the number of cans per thousand as tested by you showing leakage in the bottom double seam?

(Testimony of Thomas Slater.)

[573] A. Under the present machines that we are running you would not get more than five or six out of a thousand; perhaps not that many. I would vouch to say you will not get that many; but I will say that.

Q. What, if anything, do you use to assist the sealing of the double seam to make it tighter: do you use any preparation?

A. Oh, they have a compound made out of rubber and other stuff that we put in the lid.

Q. (By the MASTER.) How many cans do you test? You don't test every can that runs through?

A. Every so often we take two off of each chuck.

Q. How often do you do that?

A. Oh, three or four times a day. We keep track of them all the time and then examine them in the tester. The automatic tester, that throws the cans out, we test that as well, to see that it is doing its work.

Q. (By Mr. BLAKESLEE.) The 14–P machines when first put in were used to put the bottoms in the cans also, were they not? A. Yes.

Q. Now, how did those tests you have told about compare with the tests you are making to-day?

A. Oh, they were not in it at all.

[574] Q. Well, in leakage for a number of cans how did they compare?

A. Well, I couldn't commence to tell you. They were not running very good. There were hundreds of them that they threw out for leaks. And when they went over to the new building and moved the

(Testimony of Thomas Slater.)

machinery over there they got a little better. But they wouldn't compare with the cans that we have out to-day.

Q. They didn't compare in the results as to tight seaming?

A. As to tight seaming, with the Pacific machine.

Q. Do you remember whether at any time any Angelus 19–P gallon machines were put in the L. A. Can Company's plant? A. Yes, sir.

Q. When was that?

A. Oh, they have had them in for a good many years. I have one in there running occasionally now.

A. The gallon double-seamer, 19–P, Mr. Guenther's machine, does not compare with the Wilson gallon machine.

[575] You mean as to tightness of the joint on the bottom?

A. As to tightness, and the roll. We have more or less trouble with the 19–P causing a lip; that is, a piece of tin, instead of rolling under, will shoot down at the roll. We don't have any trouble in that way on the Wilson gallon double seamer to-day.

Q. How many of those Angelus 19–P's were put in at the beginning, do you remember? A. Two.

Q. And then how soon afterwards was the Wilson gallon machine put in?

A. Mr. Wilson's gallon machine was not put in until—when was it? The first part of last year.

Q. Now, when the Wilson machine was put in were the two 19–P's continued in service?

(Testimony of Thomas Slater.)

A. No, sir; one was taken out.

Q. How frequently did the tits or burs or little deformations appear on the 19–P seams?

A. Quite frequently. We had to keep behind it all the time, regulate it, and put more tin in the roll all the time.

Q. When such a formation occurs what is the objection that results?

A. The objection is that it will not stand the pressure.

Q. It produces a weak spot at that point?

A. Yes, sir.

Q. Tending to produce a leakage. Now, in the use of the [576] Wilson gallon machine how frequently do such tits or projections appear?

A. I have never seen any of them.

Q. You have never seen one? A. No, sir.

Q. Are you familiar with the operation of the 19–P machine? A. Yes, sir.

Q. How frequently do you find leaks in the bottom seam of the gallon cans made on the Wilson machine? A. Not very often.

Q. From your knowledge of the operation of the 19–P machine, can you state how it is that these tits or burs or projections are formed? A. Yes, sir.

Q. What is it that does that?

A. The amount of pressure of the tin going up under the cap; and they were constructed so that it happened quite frequently. A good deal of it was done, I believe, in the lightness or heaviness of the tin.

(Testimony of Thomas Slater.)

Q. Were or were not the same grades of tin, the same gauges of tin, used in operating the 19–P and the Wilson gallon machine?

A. Yes, sir, the same.

Q. And is that true to-day? A. Yes, sir.

Mr. BLAKESLEE.—Counsel may inquire.

[577] Cross-examination.

(By Mr. TOWNSEND.)

Q. Have you records at your plant showing spoilage? A. No, sir.

Q. Don't you keep a record at the L. A. plant of the spoilage of cans made by the various machines?

A. I believe they do; yes, sir. Yes.

Q. Then you have in your records there definite and accurate data of the number of spoiled cans produced on a 14–P or 19–P, have you not?

A. They are not running the 19–P now, only occasionally to put on the tops, so that they are not running that very often. When we make a can to put on the bottom we run it with the Pacific closing machine.

Q. You are using the 19–P to-day occasionally to put on tops? A. To put on a top; yes, sir.

Q. What does that mean when you say, "to put on a top"? Does that mean on a filled can?

A. No, sir. We send them out with the top, and there is a stud-hole on the top there where they put the fruit—before they made a sanitary can they made a can with the top on and left a place open in the center, and then a cap that the canners—or whoever puts the stuff in—seals.

(Testimony of Thomas Slater.)

Q. How is that sealing after filling it in done?

A. That is done out of our shop.

[578] Q. Done by soldering?

A. I presume so.

Q. Now to get back to the spoilage records, whenever you employed the 14–P or 19–P for putting bottoms on cans in the regular manufacture of cans you kept records, did you not, showing the work performed and the amount of spoilage?

A. When we ran the 14–P—I presume that is Mr. Guenther's double-seamer?

Q. Yes.

A. Yes, I was running a tester at that time. I didn't have anything to do with the machinery outside of looking after my tester, running a water tester.

Q. Now, when you had spoils, and so forth, did you turn in reports to the office or to your superior?

A. When I ran the tester I didn't have charge of how many leaks there were; it was my duty to sort out the leaks from good ones. That is all I done, and it kept me going all the time on that machine. I didn't have charge of counting the leaks or anything.

Q. What were the records that were kept? How were they kept? I mean of spoilage.

A. Since I have been going around taking care of the double seamers I notice a man that takes charge of all that work. Before that I didn't know anything at all about it; I simply ran the tester.

Q. You didn't have any record—

(Testimony of Thomas Slater.)

[579] A. Not to my knowledge, at that time.

Q. You are speaking here, then, from memory and conclusions of what you thought represented the amount of spoilage per thousand?

A. It was my duty to throw these cans out. It was my duty to remove a crate and put another crate there to receive them. That is all I know how many there would be.

Q. Just answer my question.

Mr. BLAKESLEE.—The question calls not for facts but for conclusions.

(Last question read.)

A. I am speaking from what I know, because I had the experience in testing those cans to know. I know positively what they were that I threw out.

Q. You know you may have thrown them out, but did you have a record or are you depending on recollection? There are two ways by which you can give facts here to-day in the way of numbers—either from a record or from your recollection.

A. I never kept a record of it.

Q. So naturally you are testifying here from recollection? A. Sure.

Q. Now, I understood you to say a while ago that there was a record in the plant showing spoilage.

A. At the present time; yes, sir.

Mr. TOWNSEND.—We submit, your Honor, that the records are the best evidence of these facts, particularly when we [580] have testimony of a self-serving character.

(Testimony of Thomas Slater.)

Q. (By Mr. BLAKESLEE.) Do you know that there is any such record kept? Have you ever seen it?

A. Well, I have never seen the report; no, sir.

Q. (By Mr. TOWNSEND.) Now is there a record kept of spoilage resulting from the use of the Pacific machine?

A. I was under the impression that there is; that they kept a record of that; but I can't say positively because I don't see the report and it is not handed to me and I have nothing to do with that. I may have been mistaken, but I was under the impression it was kept.

Mr. TOWNSEND.—Now you see what comes from an interruption by opposing counsel. He stated that the record was kept. I don't care whether he keeps a record or not, but if he knows that these things are matters of record an interference with the examination in this way is improper.

Mr. BLAKESLEE.—He cannot know it if he has not seen it.

Q. (By the MASTER.) Well, you do know that a man takes up those—

A. Yes, that is what I meant, and whether he makes a final report to the office or not I don't know; never to me. I was under the impression that they do. I couldn't swear, though, that they do.

Q. (By Mr. TOWNSEND.) Do you remember when you first met Mr. Guenther?

(Testimony of Thomas Slater.)

A. No, I don't remember when I first met him.

[581] Q. How many years ago was it?

A. I don't remember when it was. When he first started his Sanitary machines in the L. A. Can Company. I was running the water tester at the time, and he frequently came to the tester, testing his cans.

Q. Was that five years ago or ten years ago?

A. Well, I don't know how many years ago. I couldn't give you a definite answer, so—I don't know.

Q. Can't you approximate the year?

A. No. Not definitely I couldn't.

Q. What is your best recollection of when you first met Mr. Guenther? You have no recollection of it?

A. No, I couldn't say definitely, because I don't remember, and I don't want to say unless I am positive about it. It was a good many years ago that I met him there.

Q. Well, I don't want to ask you impossible questions, but when one has known a person for a good many years he generally has some way by which he can fix the time approximately, whether it was 1906, or 1909, or 1912, or 1915,—it was somewhere in there, I suppose. If you have any recollection about it—

A. Well, it might have been seven or eight years ago now.

The MASTER.—My experience with those gentlemen who work around machine-shops is that they do

(Testimony of Thomas Slater.)

not have a good recollection of dates, but that does not affect them on the question of machinery. I would like to ask a question or [582] have counsel ask it: What are they doing with these 14–P machines they have down there now?

A. They have got about sixty, I believe, out in the barn.

Q. Are they not using them at all?

A. They are not using them.

Q. Do they rent them out?

A. They put them out; yes, sir.

Q. They don't use them themselves?

A. No, sir.

Q. (By Mr. TOWNSEND.) They are renting them each season, are they not?

A. Those out in the barn—there is about sixty of them out there—they are not using any of them.

Q. Do you know whether they have been renting them to canneries, or renting some of them?

A. I don't know.

Mr. BLAKESLEE.—The witness is not competent to answer that question.

Mr. TOWNSEND.—I object to these interruptions. Counsel is giving the hint here that the witness is not to know anything about this thing.

The MASTER.—All right; make your objections in legal form.

Mr. BLAKESLEE.—My objection is that the witness is not competent to answer the question, because of his services being rendered in the shop and not in the management.

(Testimony of Thomas Slater.)

The MASTER.—Well, that objection is overruled. I think [583] he can tell whether they are rented out or not. He knows what they are doing with them.

The WITNESS.—I don't know whether they rent them out or not.

Q. (By Mr. TOWNSEND.) When you first met Mr. Guenther where was he?

A. In the old shop of the L. A. Can Company.

Q. What was Mr. Guenther doing or about to do; do you know?

A. He was building a double seamer to make sanitary cans where we had been making the ordinary soldered cans before.

Q. You say you had been making the ordinary soldered cans? A. Yes, sir.

Q. How were those cans made?

A. They were made with the top and bottom on and soldered instead of being double-seamed.

Q. How did you make the body?

A. The body was made on a body-maker.

Q. And how was the bottom put on?

A. Then the bottom was squoze on. They came down through a runway, and they fed the top or the bottom on one side, and as they got down into a header the header came together and pushed the lid on. They went down into a crimper and it crimped them. They continued down to the chain fire, which is a fire and gas and hot solder. The chain carried them along, which picked up the acid and ran them through the [584] solder. They come down on a

(Testimony of Thomas Slater.)

wet belt and that cooled them off. It continued around on the other side of the machine, and in the meantime that can turned so that it soldered the other end, and the same thing was gone through again, and they ran down and came through the tester.

Q. And those soldered tops you speak of had the filling vent in similar to what you have already described in connection with the old 19–P?

A. Yes, sir.

Q. Now what was this Sanitary can machine that Mr. Guenther was building there?

A. It was a 14–P, that is, something similar to that, that they started to put in then.

Q. And do you know whether or not he actually built some of those machines?

A. Oh, yes, I seen him building them in the shop close by.

Q. Do you know what was done on any of them?

Mr. BLAKESLEE.—Now I don't think this is cross-examination, your Honor. My only questions to Mr. Slater concerned his meeting him and his coming to the shop and inspecting the—

[586] The MASTER.—I will receive it subject to the objection.

Mr. BLAKESLEE.—May it be understood that counsel is making the witness his own?

The MASTER.—No; I will receive it subject to the objection and you may move to strike it out later if you like.

(Last question read.)

(Testimony of Thomas Slater.)

A. No, I don't know what was done with them.

Q. (By Mr. TOWNSEND.) Well, you know that a number of those machines were put into use there in the Los Angeles Can Company's plant?

Mr. BLAKESLEE.—Same objection to this whole line, without repeating.

A. Yes, at the time I was talking of there was two in there. They didn't put any more in there.

Q. (By Mr. TOWNSEND.) During all the years you worked for the Los Angeles Can Company were there only two 14–P's delivered to the Los Angeles Can Company?

A. No, there were more; but at that time when I remember seeing them build them there was only two there, and that is what they had in at that time.

Q. What became of your old soldering machines?

[587] A. They have got them yet.

Q. Did they use them?

A. I don't know. They are in another building from where I am.

Q. When did you cease testing cans made on the soldering machine?

A. I don't remember the time. It was about the time I first met Mr. Guenther; somewhere around that time.

Q. That is what I am getting at, Mr. Slater. Is it not a fact that these 14–P's that were put in there for making Sanitary cans very soon displaced the soldered can machines? A. Yes, sir.

Q. You don't recall during how many years, do

(Testimony of Thomas Slater.)

you, those two machines, the 14–P's, continued in use in the L. A. Can Company's plant?

A. No, sir, I don't recall how long they were there.

Q. Are those machines there now? A. No, sir.

Q. You don't know when you last saw them, either, do you?

A. It has been about four or five years ago.

Q. How do you fix that date as four or five years ago?

A. The only way I figure that date is by the time we moved into the new brick factory.

Q. That is, when the Pacific moved into its factory or the L. A. Can Company moved into its new factory?

A. No, I will take that all back. I am off. When we [588] moved into the new factory we had the Guenther machines over there. I don't remember how long it is ago since we moved them there. And a few years ago they took them all out and put in a Pacific closing machine. I had nothing to do with the double-seamers at the time; I was running the tester, and I don't remember when it was or how long ago it is. Of course I remember when it was done, but I don't remember how long ago it was.

Q. At the time you were running the tester how were those cans made—by what machine or machines? Were they all being made on the 14–P when you were running the tester?

A. Until they put in the Pacific closing machines.

(Testimony of Thomas Slater.)

Q. And do you know where those Pacific closing machines were made that you put in there?

A. Yes, sir.

Q. Across the street at the Pacific Company?

A. Yes, sir.

Q. So up to the time that the Pacific Company began manufacturing, you were using the Angelus 14–P?

A. Up to that time; yes, sir.

Q. What was meant on direct examination with reference to when Mr. Guenther went to the brick shop? What is the brick shop?

A. Why, he moved out from the L. A. Can Company across the street into a brick building.

Q. Mr. Guenther did?

A. Yes, sir.

[589] Q. Where was he located when he was in the plant of the L. A. Can Company?

A. He was located in the old machine shop of the L. A. Can Company.

Q. And from there he moved across the street to what was called the brick shop?

A. Into a brick place; Fuller's paint shop there. It belongs to Fuller now. It was across the street anyway.

Q. It was a brick building, was it?

A. Yes.

Q. What was the concern called when it was across the street?

A. Why, I believe it was the Angelus double-seamer or something like that.

(Testimony of Thomas Slater.)

Q. That is the name of the company?

A. I am not sure. I think that is what it said. Los Angeles Double-Seaming Company, or something like that, or the Angelus Double Seam, or something.

Q. Do you know the name of Mr. Guenther's present company? A. No, sir.

Q. How long ago was it that he moved across the street; what year was that, if you remember?

A. I don't remember.

Q. How long ago was it he moved away from across the street?

A. I don't know definitely how long ago that is either.

[590] Q. One or two or three or four years ago?

A. I don't know.

Q. You can't remember within four years?

A. If I could give you the correct year, I would; but I don't know; and if I give you one I wouldn't be sure about it.

Q. You say when he was located across the street in this brick building that he and his draftsman came over to the L. A. plant and inspected a Pacific machine?

A. Yes. Came through there, yes, and stood at the machines and looked at them and talked about them.

Q. About what date was that?

A. I don't remember.

Q. Don't you remember the year?

A. In 1921.

(Testimony of Thomas Slater.)

Q. Oh, you remember that year as being 1921?

A. Yes.

Q. Now, what year was it that you had a change made in your position in the L. A. Can Company?

A. That was in 1920.

Q. In what month?

A. Oh, I don't remember the month I was taken off. It was early in the season that I was taken off the tester to assist with the double-seamers. It was in the summer season of 1920.

Q. In the summer season of 1920?

A. Yes, sir.

[591] Q. About what month was that? We have perennial summer here.

A. In May, June, or July, or some one of those months.

Q. You were taken off the tester, you say?

A. Yes, sir.

Q. And what job were you given?

A. Looking after the double-seamers and testers and flanger.

Q. Now, are you sure it was after that that Mr. Guenther came over there?

A. Yes, I am positive, because I knew nothing at all about the double-seamers. I had been on the tester all the time, and they took me off in 1922, and it was the following year that I met Mr. Guenther over there.

Q. How do you fix the time as the following year, the whole year, that this thing happened, and not the next year or two years?

(Testimony of Thomas Slater.)

A. The next season. It was 1920 that I went off the tester on to the double-seamers. It was the following season that I saw Mr. Guenther in there.

Q. (By Mr. BLAKESLEE.) How many months in a season?

A. Oh, I don't know. It all depends. What I consider the season is when they need the cans. Sometimes we start a month or two sooner, and sometimes three or four weeks sooner, and it lasts longer. It all depends on when the fruit comes in and when they are through. What I consider a season.

[592] Q. What months are those included in a season?

A. Sometimes they start as early as May, and I have known them to run up into December, when the frost has kept away from the tomatoes.

Q. (By Mr. TOWNSEND.) So by a season you include the months between May and the following December of that year? A. Yes.

Q. Now, you don't think it could have been two seasons later that Mr. Guenther came over there?

A. I believe I told you when it was. I think, sir, that ought to be enough; that one answer is enough.

The MASTER.—He has a right to inquire, even if you repeat.

The WITNESS.—I beg pardon.

Q. (By Mr. TOWNSEND.) Now, you have had so much difficulty in remembering dates and days that I want to see if I cannot help you out either with reference to this or some other dates; you

(Testimony of Thomas Slater.)

can't remember when you met Mr. Guenther; you can't remember when he moved out of the L. A. Can Company place; you can't remember when he moved away from across the street. Now I want to see how it is that you are able to fix this particular date and the particular season and not be able to fix some of these other dates.

A. At the time I met Mr. Guenther I was not impressed enough to remember the date. The day that he moved was not of enough interest to me to remember. When they took me off one job and put me on another was a different proposition.

[593] Q. Excepting that you remember you changed your job. Can you tell us the month that that took place in?

A. When I changed my job?

Q. Yes.

A. It was in the early part of the season, in May or June or July, I am not sure which.

Q. You can't fix it any closer than three or four months there of the year 1920? A. No.

Q. Do you remember when that season of can-making and working began?

A. I don't remember when it began.

Q. Did it begin in May?

A. I am not sure.

Q. Did it begin in June? (Pause.) I want a fair answer to a fair question.

A. I told you that I don't remember.

Q. It is not possible that Mr. Guenther could have come over there in the year 1920, and after

(Testimony of Thomas Slater.)

you changed your job, and while the job was new to you, and you saw Mr. Guenther come in? Are you willing to state under oath here that it was not in 1920?

A. I believe when I came here I promised to tell the truth. I am doing so as far as possible.

Q. (By Mr. BLAKESLEE.) What?

A. To tell the truth. That is what I am doing.

[594] Mr. TOWNSEND.—Are you willing to state here under oath that it was not in 1920 that Mr. Guenther came over there and saw that double seamer?

A. I don't know what Mr. Guenther saw previous to the time that I saw him. He may have been in there, and was in there time and again, but I am talking of the time in 1921 when I saw him in there. Now, he was a frequent visitor in there, and he may have been in before, as you say. At the time I saw him come in there and examine the double seamer and make a little memorandum in a book was between May and June—April, May, or June, 1921.

Q. Now, how do you fix it as April, May, or June, 1921, when you cannot remember a single date—

A. Because that is just before we started to make that season's cans.

Q. That is the best answer you can give?

A. Yes, sir.

Q. Are you sure it was not in July, 1921, that you saw him in there making memoranda?

Mr. BLAKESLEE.—I think this examination has gone for enough, if your Honor please.

(Testimony of Thomas Slater.)

The MASTER.—You are not getting anywhere with it.

Mr. TOWNSEND.—I realize that it is pretty slow, but when this man has one date—

The MASTER.—Well, that is a matter of argument. Proceed with something else.

[595] Mr. TOWNSEND.—There is a conspiracy here to blacken Mr. Guenther's reputation, that he came there and stole—

The MASTER.—No, you are arguing the case.

Mr. TOWNSEND.—I want to see now why this witness has got fixed in his mind one date only of all the dates of all these years.

The MASTER.—No, he has two dates.

Mr. BLAKESLEE.—And he allocates those dates with respect to each other.

Q. (By Mr. TOWNSEND.) With whom have you talked in regard to the testimony you are giving here to-day?

A. The time my attention was drawn particularly to Mr. Guenther coming through the shop—

The MASTER.—No, counsel has left that subject and now wants to know with whom you have talked.

Mr. BLAKESLEE.—He wants to know if you talked about it with me or anybody on our side.

Mr. TOWNSEND.—Now, just a minute, Mr. Blakeslee.

Q. With whom have you talked concerning the facts regarding which you have testified here to-day?

(Testimony of Thomas Slater.)

A. Why, I talked to Mr. Wilson at the time it happened, and three or four of the boys in the shop spoke about it at the same time. That is how, I presume, they came to know that I knew about it.

Q. Haven't you talked to anybody since then?

A. I talked with Mr. Blakeslee.

[596] Q. How recently?

A. Oh, maybe a month ago, maybe, or more.

Q. Who else have you talked with?

A. Nobody.

Q. Have you talked with Mr. Stetson lately in regard to this testimony? A. No, sir.

Q. Within the last three months?

A. No, sir.

Q. Have you talked with Mr. Wilson?

A. Mr. Wilson? In regard to my testimony, no, sir; not since.

Q. Well, in regard to any of these facts about what took place, about Mr. Guenther's visit over there?

A. No, that was done previously, that I talked with Mr. Wilson about it.

Q. When did you talk with Wilson?

A. Soon after it happened.

Q. Whereabouts were you when you talked with him?

A. In the L. A. Can Company's shop.

Q. Who was present?

A. I don't know who else was present.

Q. Did you tell the incident to Mr. Stetson?

(Testimony of Thomas Slater.)

A. I never spoke to Mr. Stetson about it.

Q. You never at any time mentioned it to Mr. Stetson? A. I don't remember.

[597] Q. Has Mr. Stetson mentioned any of these facts to you? A. No, sir.

Q. Has Mr. Wilson mentioned any of these facts to you?

A. I spoke to Mr. Wilson, as I said a while ago, previous to that, about it.

Q. When?

A. Soon after it happened, or probably the same day.

Q. And you haven't talked with him since?

A. As a general thing right along we would josh him about it.

Q. Josh whom about it? A. Wilson.

Q. About what?

A. About Mr. Guenther coming in and examining his machine.

Q. Was the date mentioned when this took place?

A. No, sir.

Q. Has the date of May or June, 1921, been mentioned since the date of that occurrence?

A. Not to my knowledge.

Mr. BLAKESLEE.—Except to me, you mean?

The WITNESS.—Except to you, Mr. Blakeslee. I spoke to you about it.

Q. (By Mr. TOWNSEND.) How did you happen to talk to Mr. Blakeslee about it?

A. Well, I had occasion to be up in his office one day.

(Testimony of Thomas Slater.)

Q. What was the occasion of your going to his office?

[598] Mr. BLAKESLEE.—I think that is obvious.

The MASTER.—Let the witness testify.

A. I presume it was because I had told Mr. Wilson of what I had seen.

The MASTER.—What counsel is getting at is how did you happen to go up to Mr. Blakeslee to talk this over. A. Invited up there.

Q. (By Mr. TOWNSEND.) Who requested you to call at his office?

A. I don't know. Mr. Wilson, I believe.

Q. Did Mr. Wilson tell you to go up to see Mr. Blakeslee?

A. He didn't tell me to go; he invited me to come up. I was not compelled to go.

Q. He invited you to come up there?

A. Yes, sir.

Q. And did he accompany you? A. Yes.

Q. Was anybody else present at the conference with Mr. Blakeslee?

A. I don't think that I have any right to say who was there or not.

The MASTER.—Go ahead and answer the question. Did they have a stenographer there?

A. No.

Q. (By Mr. TOWNSEND.) Who else was present?

A. Am I compelled to answer that, who was there?

(Testimony of Thomas Slater.)

[599] Mr. BLAKESLEE.—Yes, tell it all. We have nothing to conceal. Tell it all. If you don't remember, I am willing to stipulate who was there.

Mr. TOWNSEND.—No, I want the witness' testimony.

A. I think Mr. Stetson was there, and Mr. Wilson, and Mr. Davis—a gentleman by the name of Davis.

Mr. BLAKESLEE.—D-a-v-i-e-s.

Q. (By Mr. TOWNSEND.) Who is Mr. Davies; is he in the courtroom? A. Yes.

Q. What is his occupation or profession or work, if you know? A. I don't know.

Q. Had you ever met Mr. Davies before?

A. Yes.

Q. Where?

A. He used to live over towards where I lived, and I met him over that way.

Q. Have you ever told him at any time about this occurrence? A. No, sir.

Q. Is he in the canning business?

A. I don't know.

Q. You don't know what business he is in?

A. No, I do not.

Q. Do you know why he was present?

[600] A. No.

Q. Now, you say you, Mr. Wilson, Mr. Stetson, and Mr. Davies were there in this conference with Mr. Blakeslee. Who else was present?

A. I don't remember who else was present.

Q. Well, were there others present?

(Testimony of Thomas Slater.)

A. I don't remember.

Q. What did Mr. Wilson say?

A. I don't remember what he said.

Q. He said something, I suppose.

A. I might get at that better if you will tell me when.

Q. Well, we are talking now about this conference about a month ago in Mr. Blakeslee's office when you stated that you, Mr. Wilson, Mr. Stetson, and Mr. Davies were present and others that you cannot remember.

Mr. BLAKESLEE.—I think the question is privileged as to Messrs. Wilson and Stetson. They are parties to the case, they are my clients, they brought this witness there, and I don't think the question is proper.

Mr. TOWNSEND.—The inquiry is directed to the matter of the testimony given to-day. I have no concern with the private affairs of Mr. Blakeslee and his clients except as it affects the matters here, and it is quite material, as to what the promptings may have been and the inspirations of the present testimony.

Mr. BLAKESLEE.—That is entirely privileged. They had a [601] right to say anything they wanted to in the discussion of this case with this witness and of his testimony.

The MASTER.—I think you have gone far enough into the matter now.

Mr. TOWNSEND.—Well, perhaps so.

(Testimony of Thomas Slater.)

Q. Did Mr. Stetson have anything to say about the matter? A. No.

Q. Did Mr. Davies offer any suggestions?

A. Not to my knowledge.

Q. Well, you were present there, were you not?

A. Part of the time.

Q. Is that occasion of about a month ago when you were all at Mr. Blakeslee's office the only occasion when you have discussed the matter or had the matter discussed in Mr. Stetson's or Mr. Wilson's presence? A. That is the only time.

Q. You spoke of Mr. Davies. When did you first meet Mr. Davies?

A. I don't remember just how long ago it was. I don't know whether I met him going to the school or whether it was going over to the church. I am not sure which.

Mr. BLAKESLEE.—By the way, Mr. Davies is here, and if you want him excluded you are entitled to it; although I don't think his testimony will relate to this at all.

The MASTER.—Proceed.

Q. (By Mr. TOWNSEND.) What do you mean by going to the school?

[602] A. To the high school for the children's graduation. I am not sure whether I met him there or over at the church.

Q. What was he going to school for? He seems to be a man of mature years.

A. The graduation of the children. I either met him there or over at the church. I am not sure

(Testimony of Thomas Slater.)

which one it was that I met him at. That was the first time, I believe, that I was introduced to him. I may have met him other times, previous to that, but I don't remember.

Q. Whereabouts had you met him at any other time than at school or church?

A. I have met him since then in the L. A. Can Company.

Q. And when was that?

A. Oh, two or three times. I don't know. He has come into the shop, I presume he had business there, I don't know, and I just met him and said how do you do and passed on.

Q. Did you know what Mr. Davies' business was at the time he came into the L. A. Can Company's shop?

A. I believe he used to work for Mr. Guenther; but I was not acquainted with him then.

Q. You were not acquainted with him when he was working for Mr. Guenther? A. No.

Q. Working for Mr. Guenther where?

A. Well, he worked in the brick building. I am not sure [603] now whether he worked for Mr. Guenther before that or not. Probably he did.

Q. In the brick building across the street?

A. Across the street from the L. A. Can Company's shop now.

Q. What was his work with Mr. Guenther?

A. I don't know what he was supposed to be doing there.

(Testimony of Thomas Slater.)

Q. You can't tell when it was that you first knew that he was working for Mr. Guenther? A. No.

Q. And you don't know what his position was?

A. No.

Q. Do you know how long he was with Mr. Guenther? A. No, I don't know that.

Q. Don't you know and haven't you known all along that at one time he was Mr. Guenther's foreman?

A. I had heard that he was, but I didn't know for sure.

Q. Well, why didn't you come out and say it?

A. Because I wasn't sure about it. I am trying to give you the facts as far as I know them, and if I don't know them I don't know.

Q. Don't you also know that Mr. Davies was with Mr. Guenther at the time Mr. Wilson was working for Mr. Guenther?

A. I don't remember if he was.

Q. Well, do you know whether Mr. Wilson ever worked for Mr. Guenther? Do you know that?

A. I worked for the L. A. Can Company; I didn't work for [604] Mr. Guenther.

Q. You were all under the same roof, were you not?

A. No, sir, not in the same room; in different rooms.

Q. But I say, practically under the same roof?

A. Well, the roof extended, I presume, over another room.

(Testimony of Thomas Slater.)

Q. Did you ever go over into Mr. Guenther's shop and see him building his 14–P's?

A. Only when it was necessary to go in for a bolt or screw for my machine, and I had no time to stay and look around there.

Q. Then your answer is yes, you did go in there; didn't you?

A. Yes, it was necessary. It was the same machine-shop, belonging to the L. A. Can Company, too.

Q. I am not talking about the necessity of your going anywhere. I assume when you go to a place you go there under proper authority, and that part of it is all right; but you were in Mr. Guenther's shop when he was building the 14–P?

A. I don't know why you should call it Mr. Guenther's shop any more than the L. A. Can Company's shop. The L. A. Can Company had a machine shop in the same room. If I understand it correctly, Mr. Guenther's part was on one end and the L. A. Can Company's on the other.

[605] Q. (By Mr. TOWNSEND.) You referred to one of the Pacific machines operating at the speed of 154 cans a minute. A. Yes, sir.

Q. Empty or filled cans? A. Empty.

Q. You referred to others operating at 135 a minute. Were those empty or filled? A. Empty.

Q. You referred to the use of Guenther testers in making a test. Did you ever have or have you any other Guenther apparatus there in the L. A. Can Company's place?

(Testimony of Thomas Slater.)

A. Yes, we have a Guenther flanger.

Q. And you have a 14–P, and a tester, and what else have you got?

[606] A. I don't recall. We have a body-maker, I believe, that was made by Mr. Guenther, too.

Q. A body-maker and a flanger?

A. And foot testers.

Q. And any others?

A. Not that I am aware of, no.

Q. What is the limit of indication on the dial of the gauges used in testing—how many pounds do they test up to? A. Thirty.

Mr. BLAKESLEE.—You mean at the present time?

Q. (By Mr. TOWNSEND.) What is the highest gauge that you know of used in testing?

Mr. BLAKESLEE.—We object unless the verb be made definite—whether it means past tense or present.

The MASTER.—He says the highest gauge. Do they test over thirty pounds?

A. No, sir. The test gauge I use will run up to thirty pounds.

Q. (By Mr. TOWNSEND.) Any other can testers that you know of that have gauges of higher amounts than that?

A. Yes, some gauges will run up to sixty; I believe we have one.

Q. Do you know of any that will run any higher than that? A. I do not, no.

(Testimony of Thomas Slater.)

Q. Are these tests that you make made after the can has been double-seamed, that is, passed through the first and [607] second operations?

A. Yes, sir.

Q. Did you make any tests on your first seaming operations? A. No.

Q. Have you ever made any tests on your first seaming operation on the Pacific? A. No.

[608] Q. Now, what are you talking about—the 14–P?

A. Yes. And it is the same way when I am running my Angelus 14–P or 19–P gallon: we don't run the first operation as tight as we might, because you don't get as good results.

[609] Q. Then you really depend on your second seaming operation to give you your tight joint, to complete the seam?

A. We depend on the first operation to give us a perfect start; that the tin is located in the right position on the lead and makes a perfectly round seam for a start, then it gives us a better chance and we have better results on the second operation that way.

Q. In the cans you test on the Pacific what are the causes of faulty cans?

A. I had to test out one machine in particular all last summer. I never found fault with that machine all summer on a double seam.

The MASTER.—When you do find a fault, what is the trouble?

A. There are a good many things the trouble. It

(Testimony of Thomas Slater.)

may be the effect of the body-maker in not making the body the right [610] size; it may be the fault of the tin in not being big enough when it was first run through the slitter, that it is not trimmed just right, and the tin may be a little crooked, which means that one end of the can will be a little longer than the other. In other words, one edge of the can will stick out farther than the other. That is one thing that will cause a bad leak. It may be that the flange has got moved and you flange them either too much or not enough. There is quite a number of things that you find out when you make a leak besides the double-seamer. But on the machines we are running to-day, when the cans are in good shape we have but very little trouble with the double-seamer.

Q. (By Mr. TOWNSEND.) Now, you put the blame on everything but the machine that puts the cap or the end on. What are the causes, if any, in the can-sealing machine—and I am now talking about the Pacific machine—that produces these defects?

A. I couldn't name any definite thing the matter with the double-seamer at all. It was only Tuesday, as I told you, I ran so many cans and tested them three or four times and never found any trouble with it at all. I presume if the machine is worn out or the rolls or the rings are worn we would have trouble with the double-seaming. That is the only fault there can be with the double-seamer, is the

(Testimony of Thomas Slater.)

double-seam leaks, and we don't have but very little trouble with them.

[611] Q. Well, now, that is what I am getting at. Any trouble you would have in your machine in making a tight seam would be in your double-seaming means?

A. Yes. Well, not always so. As I said before—

Q. What other part of your machine would give rise to faulty can construction?

A. None other.

Q. So any trouble you have, if it is in the machine, you blame it on your seaming means; is that correct?

A. If there is anything the matter with the double-seamer, why, I don't know as that would make a bad can. There might be something wrong with the machine and it wouldn't run properly.

Q. Have you stated now all the causes of defective cans?

A. Have I stated all the causes of defective cans? Oh, there may be other cans that the tin is not perfect. Lots of times the tin is not perfect. It is brittle and snags and breaks and may have holes in it. That is no fault of the double-seamer.

Q. By the way, you mentioned a can-slitter a bit ago. You have a Guenther can-slitter out there at the L. A. Can Company, have you not?

A. A tin-slitter?

Q. Yes.

A. I believe there is. I am not sure, though.

(Testimony of Thomas Slater.)

We have so many of them I don't know where they came from.

[612] Q. Do you know the name of this draftsman who accompanied Mr. Guenther over there at the shop?

A. No, sir, I don't know his name.

Q. Had you ever seen him before?

A. Yes, sir, I had seen him in the L. A. Can Company's shop before.

Q. Do you know whether he was employed by the L. A. Can Company or by Mr. Guenther?

Q. When did you last see him?

A. I don't know whether I seen him at any time after that particular season or not. They were drawing plans for a body-maker and I seen him in there at the same time.

Q. Who was drawing plans for a body-maker?

A. The Guenther parties.

Q. For what purpose, do you know? For whom? How do you know he was drawing plans for a body-maker?

A. I saw him at the body-maker with a pad, pencil, and scale.

[613] Q. You stated that Mr. Guenther had been in and out of the plant a number of times.

A. Oh, yes. Yes.

Q. Can you mention some of the times when you had seen him in and out of the plant?

A. I couldn't give you the date or the time. He was in there pretty frequently at one time there.

Q. Before he removed across the street?

(Testimony of Thomas Slater.)

A. After.

Q. After he moved across the street?

A. Yes, sir.

Q. Was any objection made, do you know, to his presence there, by anybody?

A. I never heard of any.

Q. Did you see Mr. Guenther over there at any other times later than the time when he was there with his draftsman making certain notations?

A. I don't remember that I saw him thereafter.

[614] Q. He might have been there afterwards?

A. He might have been there afterwards, yes, sir; but I don't remember.

Q. Your relations with Mr. Guenther have always been of a friendly nature, have they not?

A. Yes, sir.

Q. And you did not attribute any wrong motives to him when he was over there at that time, did you?

A. I will tell you: The reason it was brought to our mind, more so than any other way, they both had machines over there. The boys preferred the Wilson machine to the other, and we naturally noticed when Mr. Guenther came and looked at it. That is how I noticed it. And remarks were passed about it at the time on that account, of the two men having machines over there, the boys preferring the Wilson machine, and they passed remarks about Mr. Guenther examining this machine. That is how we came to notice it.

(Testimony of Thomas Slater.)

Q. Did you talk to Mr. Guenther at that time about it? A. No.

Q. Did Mr. Guenther explain to you why he was there? A. No.

Q. Then you don't know the reason why he was over there? A. Oh, no. No.

Mr. TOWNSEND.—That is all.

[615] Redirect Examination.

(By Mr. BLAKESLEE.)

Q. I call your attention to a can specimen having a hole in one side, and marked Defendants' Exhibit "T," and ask you if you know the difference between the seaming at the two ends of this can (handing same to witness).

Mr. TOWNSEND.—This is not proper redirect examination.

Mr. BLAKESLEE.—I will recall the witness, then.

The MASTER.—Proceed.

A. Yes, sir, I see the difference between the two.

Q. (By Mr. BLAKESLEE.) Do you know what that difference results from?

A. Yes; one is on the first operation, the first roll, and the bottom here is where it has been finished—the second operation.

Q. Could you tell from those seams upon what machine that can was seamed?

A. No, I could not.

Q. Is it the practice in the L. A. Can Company's shop to finish off cans with a seam like the single seam on that can? A. No, sir.

(Testimony of Thomas Slater.)

Q. Would such a single-seam operation be a satisfactory one in putting a cap on a can?

A. No, sir.

Q. Why?

A. Because there is not enough of substance there to hold [616] that firm. I believe that by moving this can in the car from one place to another it would have a tendency to weaken that roll. It may be tight enough to hold the pressure now, but unless there was a second-operation roll on there it wouldn't be substantial, I don't believe.

Mr. TOWNSEND.—As far as the opinion of the witness is concerned, I move that it be stricken out as mere conjecture and as argumentative.

The MASTER.—It is harmless; the objection is overruled.

Q. (By Mr. BLAKESLEE.) Now, if either the Angelus double-seaming machine or the Pacific double-seaming machine were used in regular practice day after day in seaming bottoms or tops on cans, as the single-operation double-seam has been produced on this can, what would be the effect upon the seaming machine of the parts coming in contact with the metal?

Mr. TOWNSEND.—That question is not only not proper here under the qualifications of this witness, but it is hypothetical and there is no proper foundation laid for it.

Mr. BLAKESLEE.—He is a can tester and has worked on the machines and in and about the machines—both the 14–P and the 19–P.

(Testimony of Thomas Slater.)

Mr. TOWNSEND.—Furthermore, it is objectionable on the point of—

The MASTER.—Now, do you understand the question?

The WITNESS.—Yes, sir.

The MASTER.—I don't

[617 Mr. TOWNSEND.—I don't either, because you can't form that seam on a Pacific machine.

Mr. BLAKESLEE.—I said on either machine.

Q. What would be the effect on the machine that produced the seam if that was continued in regular practice day after day?

Mr. TOWNSEND.—Just a minute.

A. The result would be the wearing out of the roll or ring.

The MASTER.—I didn't understand the question.

Mr. BLAKESLEE.—What would be the effect on the machine when that was done currently day after day? What would be the effect of making that seam by a double seam operation? What effect would it have on the machine, in wear and tear or otherwise?

Mr. TOWNSEND.—Same objection, no proper foundation laid; and on the further ground that the witness is not qualified, because they do roll this seam day after day on the machines, and the testimony is utterly worthless.

Mr. BLAKESLEE.—We deny that absolutely, that the final seaming is being done on any machine by a single operation to produce such a seam as is in the bottom, having the one operation. It is a

(Testimony of Thomas Slater.)

hypothetical question, and we are asking him to tell us what would happen if that were done.

The MASTER.—I will sustain the objection, but he may answer.

A. The result of that would be, on a 19–P or 14–P, on the first operation,—I can talk mostly on the gallon, because [618] we are running one to-day —that if I put my rolls in tight enough to hold that seam tight is would wear the rolls out in a very short time: no question about it. The rolls would come in contact with the chuck and they wouldn't last.

The MASTER.—What is the purpose of this question and answer. Do you want to show that you have got to have two operations?

Mr. BLAKESLEE.—To show that that can, tested as it was there, is not a can that ever would be or could be made in commercial practice on the P–14 machine; that it is a freak can, and that it was rolled extra and unusually tight in the single-seaming operation to make it appear that the P–14 machine could do that commercially, when, as a matter of fact, it cannot do it; and I am asking the witness what would occur if the 14–P machine were used constantly day after day.

The MASTER.—Now he has answered that and the answer may stand.

[619] Q. (By Mr. BLAKESLEE.) Did you ever see a can with the seam at bottom or top rolled down finally like that single-operation seam in Exhibit "T" in the commercial manufacture of the can?

A. No, sir.

(Testimony of Thomas Slater.)

Mr. TOWNSEND.—That is wholly immaterial, as to what the man has seen, your Honor. If you want to show how ignorant this witness is, that is one thing.

A. The can itself is in bad shape. It is almost cut through now.

Mr. TOWNSEND.—I object to any voluntary answers by the witness.

The MASTER.—Yes, but he has answered it.

Q. (By Mr. BLAKESLEE.) Please examine that can where the seam has been formed in a single operation and state whether, from your experience and knowledge, that is a satisfactory seam for a can that is in final shape.

Mr. TOWNSEND.—Now, I object to that question on the ground that no proper foundation has been laid. This man knows nothing about the operation of a 24–P machine, and he didn't [620] roll this can or roll this seam.

The MASTER.—Now what is the objection—that it is not competent?

Mr. TOWNSEND.—That it is not competent; that no foundation has been laid; that he has had no experience with the operation of the 24–P, and this operation was performed on the 24–P and in the presence of the Court and counsel the man who is now on the stand rolled it—

The MASTER.—Now, you are getting into argument again.

Mr. TOWNSEND.—Well, those are the reasons why it is improper.

(Testimony of Thomas Slater.)

Mr. BLAKESLEE.—My question is merely whether this witness, who is competent as an inspector and examiner of seams on cans, will state whether that is a satisfactory seam on a can.

The MASTER.—He may answer. The objection is overruled.

A. The seam is not a good one.

Q. (By Mr. BLAKESLEE.) Why?

A. It is almost cut through here now. It is very sharp right here. And that is why it is not practicable. You can feel this—

Q. What is that condition of its being nearly cut through due to?

A. Pressure of the roller; tightening up the first operation. That is why it is not practicable. You can feel it almost cut through there.

Q. Are such seams as that rolled in one operation at any [621] time in the factory of the L. A. Can Company?

A. No, sir, we don't roll them. The next operation would be liable to open that out. That is almost cut through now.

Q. Now, on any similar machine that you know of if the seam were rolled down finally in one operation like that, what would be the result upon the parts of the machine which came in contact with the metal in rolling it down?

The MASTER.—He has already answered that.

Mr. BLAKESLEE.—I am asking him as to any machine he knows of. He knows the 14–P, the 19–P, and the Pacific.

(Testimony of Thomas Slater.)

A. The fact is that the roller would be coming in contact with that so tight that it would wear it out in a short time—both the roller and the chuck. That is the reason we never do roll them down as tight as that.

A. That would require frequent replacing and would not be practicable.

Mr. BLAKESLEE.—That is all.

Recross-examination.

(By Mr. TOWNSEND.)

Q. Now, how is it that you are able to tell that this can, Defendants' Exhibit "T," which you have just been talking about, had not been rolled on a Pacific machine?

A. I don't know whether it has or not. I couldn't tell the difference.

[622] Q. Well, you look at them and see if you can tell whether either of those seams has been rolled on the Pacific?

A. I couldn't tell by looking at it. I couldn't tell for sure. And that is the only answer I could give. (Examining Exhibit "T.") I couldn't tell whether it was or not.

Q. That is the best answer you can make, is it?

A. Yes.

(Adjournment was thereupon taken until Friday, April 6, 1923, at ten o'clock A. M.)

(Testimony of Thomas Slater.)

[623] 514 Post Office Building,
Los Angeles, California, Friday, April 6, 1923.
10 A. M.

THOMAS SLATER recalled.

Recross-examination (Resumed).

Q. (By Mr. TOWNSEND.) I show you a can, which is Defendants' Exhibit "U" in evidence, and ask you if you can tell on what machine that was seamed or the ends put on, on what kind of a machine?

A. No, I couldn't tell what kind of a machine it was.

Q. You couldn't tell whether that was a Pacific machine or an Angelus machine? Just take a good look at it and see if you recognize it.

A. No, sir, I couldn't tell.

Mr. BLAKESLEE.—I hardly think that is cross-examination. It seems to me the witness is being made counsel's own witness.

The MASTER.—Objection overruled.

Q. (By Mr. TOWNSEND.) Have you ever seen any seams like that on Exhibit "U" before?

[624] A. Not that I know of, no.

Q. I thought you were a can seaming expert?

A. I didn't say I was an expert.

Q. I thought you had testified as an expert on seaming.

A. I can't help what you thought.

Mr. BLAKESLEE.—He has testified to facts, not as an expert.

(Testimony of Thomas Slater.)

Mr. TOWNSEND.—I want to get the witness' answer.

A. I say I did not testify as an expert.

Q. You don't claim that you are an expert in the double-seaming business? A. No, sir.

A. Then I don't suppose that you could tell me now what kind of a machine this Exhibit "T" was seamed on, that I showed you last night?

A. I couldn't tell you what kind of a machine it was.

Q. Have you talked to anyone interested in this case since we adjourned last evening?

A. No, sir.

Q. You have not discussed your testimony at all?

A. No, sir.

Q. How many days have you been in attendance here during the taking of testimony?

A. I was here Wednesday and Thursday, and two half days, I believe, before you adjourned. Two half days, or something like that, before you adjourned.

[625] Q. When was that, do you recall?

A. I don't recall the date; but it was just before you adjourned the last time.

Q. Before we took that long adjournment?

A. Yes, sir.

Q. Can't you give us any closer date when that was? A. No, sir, I couldn't.

Q. Can you give us the approximate time?

A. No. It has slipped my mind. I don't remember just when it was, but we had the meetings

(Testimony of Thomas Slater.)

in here and Mr. Wilson was on the stand for the blue-prints. That is all I remember. I couldn't give the date.

Q. Were you here when Mr. Augensen was testifying?

A. No, sir. Well, I beg your pardon, I was here when he testified, yes. That was the last time I was here.

Q. But you can't remember when that was?

A. No.

Q. Can you remember what month that was in?

A. I don't remember, but it was about a month ago, I think. I am not sure, though.

Q. You can't tell what month it was, can you?

A. No, I couldn't name the month.

Q. Was your meeting in Mr. Blakeslee's office prior to that time or subsequent?

A. Prior to that time.

Q. Prior to that time? [626] A. Yes, sir.

Q. Have you attempted to refresh your recollection as to any other parties who were present at that meeting?

A. I tried to last night, but I couldn't.

Q. You couldn't think of any others?

A. No, sir.

Q. Have you been able to refresh your memory as to the name of that draftsman who visited the Pacific plant that time with Mr. Guenther?

A. No, sir; I never knew his name.

Q. Are you still certain about the approximate

(Testimony of Thomas Slater.)

time of that visit of Mr. Guenther and the draftsman to inspect that machine, as you testified about?

A. Yes.

Q. When do you say that was?

A. In 1921, about May or June; between that time.

Q. Did you know then how far Mr. Guenther had progressed with the manufacture of his 24–P?

A. I don't know a thing about that.

Q. You didn't know then whether he had started a 24–P or built it or sold any of them?

A. I didn't know; only heard that he was making one, that was all.

Q. At the time he was over there you heard that he was making a machine later known as the 24–P?

A. Yes, sir.

[627] Q. Did you ever go and look at that machine? A. No, sir.

Q. Do you remember who told you that Mr. Guenther was building his 24–P at that time?

A. No, sir, I don't. It was the general talk at the shop.

Q. You had heard that, I suppose, even before Mr. Guenther came over? A. Before that time.

Q. You don't know how long before, though?

A. No.

Mr. TOWNSEND.—That is all.

Further Redirect Examination.

(By Mr. BLAKESLEE.)

Q. As to your knowledge of seams and the efficiency of seams on cans, you have gained that from

(Testimony of Thomas Slater.)

your work in the L. A. Can Company shop and in operating canning machines or can making machines, and in testing the machines; is that correct?

Mr. TOWNSEND.—That is objected to as leading, and this man has already testified that he is not a seam expert.

Mr. BLAKESLEE.—That is just exactly what I want to clear up.

The MASTER.—Objection overruled.

A. My experience I learned in the L. A. Can Company.

Q. (By Mr. BLAKESLEE.) What do you understand the term "expert" to mean?

[628] Mr. TOWNSEND.—That calls for the opinion of the witness.

The MASTER.—Overruled.

A. Why, to be able to tell a seam, what kind of a machine made it.

Q. (By Mr. BLAKESLEE.) Does that word convey to you anything as to preliminary education or study or not?

Mr. TOWNSEND.—Objected to as leading.

The MASTER.—Overruled.

A. I believe that an expert should understand all about the tin, the different grades of tin, and should also understand the making of the rolls, that causes the double-seam roll, and should understand all that and be able to produce the same thing.

Q. (By Mr. BLAKESLEE.) Do you think such a man should be a graduate engineer?

(Testimony of Thomas Slater.)

Mr. TOWNSEND.—That is grossly leading.

A. I should think he should be an expert mechanic.

Q. (By Mr. BLAKESLEE.) An expert mechanic? A. Yes.

Q. (By the MASTER.) Do I understand your answer to mean that you do not consider he would have to be a graduate engineer? A. Yes.

Q. (By Mr. BLAKESLEE.) Do you know what is meant by the term "tensile strength"?

A. No, sir.

[629] Q. Do you know the difference between the terms "strain" and "stress," what they mean, what each one means? A. Yes, I do.

Q. Can you state the difference between those terms? A. The strain—

Mr. TOWNSEND.—Your Honor, this is irrelevant.

Mr. BLAKESLEE.—I am trying to determine his status here.

The MASTER.—It is redirect on the qualifications of the witness.

A. The strain is when a roller or a thing is pushed and pressed, and the stress is when it is curved over and pulled over, and strain is just in one particular point.

Q. (By Mr. BLAKESLEE.) How about the term "stress"? What does that mean?

Mr. TOWNSEND.—Are you trying to qualify this man as an expert now?

(Testimony of Thomas Slater.)

Mr. BLAKESLEE.—I think the examination speaks for itself.

Q. What is the answer?

A. Stress is when there has been too much weight put on it.

Q. Then I take it that you wish to be understood,—and if I am not correct please correct me—that what you know about seams has come from your practical work as a mechanic in the L. A. Can Company shop in connection with making seams and testing them; is that correct? A. Yes, sir.

[630] Mr. BLAKESLEE.—That is all.

Further Recross-examination.

(By Mr. TOWNSEND.)

Q. Do you know the difference between a tight seam and a loose seam? A. Yes, sir.

Q. Do you know the qualities that go into making a tight seam or to cause a loose seam?

A. I know what causes a tight seam and what causes a loose seam.

Q. (By the MASTER.) Do you know anybody that can tell by looking at a can whether it was made at one place or another?

Mr. TOWNSEND.—Your Honor, he can't answer that, but we can produce witnesses who can answer it.

Mr. BLAKESLEE.—He is asking this man.

A. I don't know anybody that could tell what machine a can was made on.

Q. (By Mr. BLAKESLEE.) Can you tell by looking at two cans, one made on a P–24 machine

(Testimony of Thomas Slater.)

and the other on a Pacific machine, which was made on which, which seam was made on which?

Mr. TOWNSEND.—I object to that; he is trying to impeach his own witness.

A. Not on every can I couldn't.

Q. (By Mr. BLAKESLEE.) You couldn't tell definitely? A. No, sir.

[631] Q. Why is that?

A. Why, there is a difference in the shape of the rolls.

Q. But sometimes they are made so they look about the same?

A. When the rolls are practically new they do.

Q. When what?

A. When the rolls that do the double seaming are practically new.

Q. You say "used practically"?

A. When they are new.

Mr. BLAKESLEE.—That is all, Mr. Slater.

TESTIMONY OF DAVID DAVIES, FOR PLAINTIFFS.

DAVID DAVIES, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. What is your age and what is your residence, Mr. Davies?

A. I am fifty-five, and my residence is 2307 Huron Street, Los Angeles.

(Testimony of David Davies.)

Q. And what is your trade occupation?

A. A machinist.

Q. How long have you worked at that trade?

A. Thirty-eight years.

Q. Where are you working at present?

A. I am running a machine shop of my own at 625 North Broadway.

Q. What is the name of that shop?

A. Bozzanni & Davies.

[633] Q. How long have you been running that?

A. Three years and about six months.

Q. Previous to opening up that shop with Mr. Bozzanni where did you work?

A. At the Angelus Sanitary Can Machine Company.

Q. The defendant in this case? A. Yes.

Q. Who was at the head of that business then?

A. Mr. Henry Guenther.

Q. You mean Mr. Guenther who is a defendant in this case? A. Yes, sir.

Q. How long were you connected with Mr. Guenther and his interests, or worked for them?

A. Well, in the first place I worked for the L. A. Can Company and Mr. Guenther was my boss there. Do you mean the whole time I worked under Mr. Guenther's direction?

Q. You were with the L. A. Can Company before you were with Mr. Guenther?

A. No. At the beginning I was employed by the L. A. Can Company, that is, who paid the wages.

Q. And Mr. Guenther was working there?

(Testimony of David Davies.)

A. Yes. He was the manager or superintendent there.

[634] A. That was the machine shop at the back of the L. A. Can Company.

Q. You know where the L. A. Can Company shop is to-day, don't you? A. Yes, sir.

Q. Was this shop on those same premises?

A. Yes, sir; at the rear of the present shop.

Q. About what year was it that you first went to work for the L. A. Can Company under Mr. Guenther as superintendent?

A. I will have to figure that out a little bit. About October, 1911.

Q. About October, 1911? A. Yes.

Q. How long, if you know and remember, did that relation between Mr. Guenther and the L. A. Can Company continue after you went there, I mean the arrangement by which you worked under him as superintendent of the machine shop?

A. I couldn't say exactly. I think though about three or four years.

Q. Then what took place, if you remember?

A. I believe Mr. Guenther bought the machinery out, and he was the owner of the Angelus Sanitary Can Company afterwards.

Q. He bought the machinery that was in the L. A. Can Company's [635] shop, or some of it?

A. Yes, sir, part of it.

Q. Part of it? A. Yes.

Q. Where did he continue business?

(Testimony of David Davies.)

A. He continued right there in the same place for some time.

Q. How long was that?

A. I couldn't say exactly; maybe two or three years.

Q. Did he leave those premises after a while?

A. Yes, sir.

Q. Where did he go then?

A. He moved across the street into the Fuller Building.

Q. In the brick building across the street?

A. The brick building.

Q. What was the name of the business over there? A. Previous to that?

Q. No; across the street, after Mr. Guenther moved across the street, what was the name of the business?

A. The Angelus Sanitary Can Machine Company.

Q. Did you go with him across the street?

A. Yes, sir.

Q. The L. A. Can Company still continued to operate at the old place, didn't it? A. Yes.

Q. Mr. Guenther I understand bought part of the machinery in the machine shop and moved it across the street; is that correct?

[636] A. Yes; he bought the greater part of it.

Mr. TOWNSEND.—This purchase and telling what Mr. Guenther did in the way of ownership of course is beyond the information and knowledge of this witness. He may say what he did himself,

(Testimony of David Davies.)

but trying to say what Mr. Guenther did, other than the matter of employment, is entirely irrelevant.

A. Well, Mr. Guenther told me himself. I have his word for it.

The MASTER.—Proceed.

Q. (By Mr. BLAKESLEE.) Mr. Guenther moved across the street and took some of the machinery that had been in the machine shop of the L. A. Can Company with him, did he?

A. Yes, sir.

Q. And the Angelus Sanitary Can Machine Company operated then in the brick building across the street, and the L. A. Can Company continued to operate in the old shop opposite, is that right?

A. Yes, sir.

Q. Can you remember the month it was that you left Mr. Guenther or the Angelus Sanitary Can Machine Company?

A. I left there the latter part of September three and a half years ago.

Q. Three and a half years ago?

A. Yes; that would be in 1919.

Q. How do you fix that date, Mr. Davies? By any other occurrence?

[637] A. Yes, sir, by the time I started my own shop. I started right on the 1st of October.

Q. And you know that from the records of Bozzanni & Davies that that was the time you started it? A. Yes, sir.

(Testimony of David Davies.)

Q. You started it how soon after you did your last day's work for Mr. Guenther?

A. The next day, that is, we went down there the next day and prepared the place. We couldn't put a lot of machinery in on that one day, but we went down and prepared it the next day.

Q. Did you get to know Mr. Guenther pretty well during the period of years you were with him?

A. Why, yes.

Q. Did you ever see him outside of the shop?

A. Very seldom.

Q. Did you ever go anywhere with him or drive with him?

A. Oh, yes, occasionally we would drive home, and I have been down to the beach with him occasionally.

Q. Occasionally he would drive you home?

A. Yes, sir.

Q. Do you remember anything that was said during any such time that you were driving with Mr. Guenther?

A. Yes. I remember one thing in particular that happened just before I left there.

Q. Just before you left his shop?

[638] A. Yes, sir.

Q. Please state what was said on that occasion. State it in the exact words, if you can, and if not, give the substance of what was said between you and Mr. Guenther.

A. This night in particular Mr. Guenther drove

(Testimony of David Davies.)

me home and we had to pass the Stetson Machine Company at that time.

Q. How close was that to the Angelus Sanitary Can Machine Company?

A. It was in the next block.

Q. Do you know where it is to-day?

A. Oh, yes.

Q. Is that concern in existence to-day?

A. Yes; but it is called the Pacific Closing Machine Company now.

Q. And they were located then at the Stetson Machine Works at the same place? A. Yes.

Mr. TOWNSEND.—Just a minute. We are going into some loose gossip and we want to know in advance what the purpose is. He might have said a great many things that have no bearing on this case.

Mr. BLAKESLEE.—I am not going to lead him.

Mr. TOWNSEND.—Well, let us know what the object is.

The MASTER.—There should be some indication of the nature of the conversation, I think.

Q. (By Mr. BLAKESLEE.) What did this conversation relate to?

[639] Mr. TOWNSEND.—Just a moment. Objected to—

The MASTER.—That is a general preliminary question.

Mr. BLAKESLEE.—I don't want to lead the witness. I am trying my best to avoid that.

Q. What was this conversation about generally?

(Testimony of David Davies.)

You say you were passing the Stetson Machine Works? A. Yes.

Q. Did the conversation relate to anything that—

The MASTER.—Let the witness answer.

A. It had to do with the Stetson machine.

Q. (By Mr. BLAKESLEE.) It related to the Stetson machine? A. Yes, sir.

Q. What machine was that?

A. We generally called it the Wilson double-seamer.

Q. For what purpose? A. For seaming cans.

Q. You say the conversation related to that?

A. Yes.

Q. Please state what that conversation was, giving it in exact words if you can, and, if not, the substance of the conversation.

Mr. TOWNSEND.—Just a moment. We want to know what the object of this is, whether it is idle gossip or whether it has some bearing on the case.

Mr. BLAKESLEE.—Well, the time was pertinent. It was in 1919. The reference was to the machine which is in controversy here, and it seems to me that is enough.

[640] The MASTER.—Overruled.

Q. (By Mr. BLAKESLEE.) Please state, if you can remember, just what was said?

A. Well, we were, as I said before, driving home. Mr. Guenther was taking me home, and as we passed the Stetson shop he nudged me and he said, "I understand that these people are going under."

(Testimony of David Davies.)

I said, "Is that so?" He said, "Yes." I said, "Henry, why don't you try and get hold of that machine? It would make a find combination. You have the best slow machine on the market and I believe Stetson has got the best fast machine on the market, and it would make a fine combination." He said, "Do you know how much they want for that?" I said, "No, I have got no idea." He said, "They want $75,000." I says, "Is that so?" "Well," I says, "what about it? You would make that up in a very short while. You would have a very good combination"—

Mr. TOWNSEND.—I will interrupt right there, your Honor. This is mere gossip and unless it is to connect this witness with some act of alleged infringement it is grossly improper. This man is called here for the self-serving purpose of the plaintiff and mere idle gossip of this sort is grossly improper in a patent suit.

The MASTER.—Overruled.

Mr. TOWNSEND.—We are willing to have the facts, but we ought to have the matter brought out in orderly fashion.

The MASTER.—Overruled.

[641] Mr. BLAKESLEE.—Now continue, Mr. Davies. Read the last part of his answer before the interruption.

(Answer read.)

A. Well, he says, "To hell with them! I wouldn't give them $10,000."

Q. Anything further?

(Testimony of David Davies.)

A. "But," he says, "I will get it yet."

The MASTER.—That, of course, would have to be connected up with something else hereafter. The materiality doesn't show so far.

Mr. BLAKESLEE.—We will connect it up, your Honor. Our position is this, under the precedence in this Circuit of the Los Alamitos Sugar Co. vs. Carroll, 173 Fed., by our Circuit Court of Appeals, we will show here that the defendant wilfully followed the invention of the plaintiffs here and appropriated it with intent, which is very material, particularly in view of the announced attitude of the defendants here to show that in some way we followed Guenther. We will show that Guenther and the defendant wilfully and purposely followed the plaintiffs' invention and appropriated the invention with premeditation. It is all part of the general line of proof of that sort, and this connects up directly with these prints, Exhibits 11, 12, and 13, and it connects up directly with the testimony of Mr. Slater as to the visits to the shop of the Los Angeles Can Company and the making of sketches and memoranda of the machines.

[642] Mr. TOWNSEND.—We resent that imputation.

The MASTER.—You don't need to resent the imputation.

Mr. TOWNSEND.—But this stuff is spread all over, and they simply smear this in every time they get a chance. You might just as well say this is a plan of blackmailing Guenther.

(Testimony of David Davies.)

The MASTER.—I will assume that both of you will slur the other just as much as you can.

Mr. TOWNSEND.—No, your Honor, but we would like to have this as a clean-cut infringement case. They start out at the very beginning and throw mud, and if we have to show the facts on our side we certainly cannot be the one that is smeared. I think we should simply get right down and find out the merits of the present case.

The MASTER.—That is what I have been begging counsel to do for the last two days. Now I am going to insist on it. Proceed with your questions.

Q. (By Mr. BLAKESLEE.) When you referred, on this occasion when being driven home by Mr. Guenther, to his having the best slow machine, what machine did you refer to?

A. Their own double-seamer, the 14–P.

Q. Do you remember any other occasion when you and Mr. Guenther discussed this matter or anything pertaining to it?

Mr. TOWNSEND.—There is the same thing again, your Honor.

Mr. BLAKESLEE.—And we have plenty of it.

The MASTER.—Proceed.

Mr. TOWNSEND.—It is just blackmailing Mr. Guenther.

[643] Mr. BLAKESLEE.—If your Honor please, I think we should be protected from these imputations of blackmail and such things. Those things are not correct.

(Testimony of David Davies.)

The MASTER.—Proceed.

Mr. BLAKESLEE.—It is insulting and boyish.

Q. Will you answer the question?

A. Mr. Guenther called at my shop where I am located now, at one time, and we discussed this case then, and he asked me if I had heard that Wilson was suing him for infringement, and I said yes, I had heard so. Wilson had told me himself. Well, he asked me what I thought of it. I said I didn't know what to think of it, that I wasn't familiar enough with what they were doing at present because I was out of the business. "Well," he said, "Davies, you remember that I had that machine in mind long before Wilson ever made it." I said, "No, I do not remember anything of the kind. You always ridiculed the machine to me." And that ended that conversation.

Q. Where did this last conversation take place?

A. At 625 North Broadway.

Q. At Bozzanni & Davies' shop? A. Yes, sir.

Q. When was it, as near as you can place it?

A. Oh, it may have been four or five months ago.

Q. When was it with relation to the time this suit started?

A. It was after the time the suit was started.

[644] Q. What machine did you understand was being referred to in this last discussion when mention was made of a machine which Guenther claimed he wanted you to remember he had been getting up? A. His present double-seamer.

Q. The present double-seamer?

(Testimony of David Davies.)

A. The new one, yes.

Mr. TOWNSEND.—You will note, your Honor, the imputation in the question of counsel, "he wanted you to remember." That isn't Mr. Guenther's nature—

The MASTER.—Proceed.

Q. (By Mr. BLAKESLEE.) Did you continue as an ordinary or regular mechanic all the time you were working under Mr. Guenther, or did your position change in any respect?

A. I started with him as a lathe hand, and was afterwards promoted to be a foreman.

Q. How soon did that advancement to foreman take place after you went with him on the premises of the L. A. Can Company?

A. Oh, a matter of two or three years, I should think. I couldn't swear to that, though.

Q. Two or three years?

A. About two or three years, but I don't remember exactly.

Q. During all the time you were with Mr. Guenther, did you have access to his office when he was superintendent, or the place he made his headquarters in in the shop?

[645] A. After I became foreman, yes.

Q. Did Mr. Guenther have a drafting room after you became foreman? A. Yes.

Q. And did you ever go into that drafting room?

A. Yes, sir. I had to go in there to get drawings.

(Testimony of David Davies.)

Q. Did he have a drafting room in the old L. A. Can Company shop? A. Yes, sir.

Q. And did he have one across the street in the brick shop? A. Yes, sir.

Q. How frequently did you go into that drafting room in each place?

A. Well, sometimes I would go there three or four times a day, and then maybe just as the occasion demanded.

Q. What called you into that drafting room?

A. I would go there to get drawings or get instructions from the draftsmen.

Q. Did you or did you not take occasion or have occasion to keep informed as to what drafting was going on in those drafting rooms?

A. Why, yes, I would naturally know what was going on because I would be there and see what was going on.

Q. Did the drafting pertain to work that was being carried on under you in the shop as foreman?

A. Yes, sir.

[646] Q. Did you confer with the draftsman or draftsmen who worked in those drafting rooms?

A. Yes, sir.

Q. And did they come into the shop and check your work with the drawings?

A. Well, I don't know about that.

Q. Did you go into the drafting room and check up the work with the drawings?

A. I used to go to the drafting room to get the

(Testimony of David Davies.)

drawings and then we worked to them, and if they didn't jibe we would go back and thresh it out.

Q. When any changes were made or necessary you went into the drafting room and discussed the matters with the draftsmen?

A. Yes, sir, and Mr. Guenther.

Q. And at the same time you observed any drafting that was being done in the drafting room?

A. Yes, sir.

Q. During the time that you were with Mr. Guenther and the L. A. Can Company, or with the Angelus Sanitary Can Machine Company, either on the premises of the L. A. Can Company or across the street in the brick shop, did you at any time see any drawings being made, or sketches being made, either by Mr. Guenther or his draftsmen or anyone else on those premises, pertaining to a double seam can closing machine?

[647] Mr. TOWNSEND.—If this inquiry is directed to the 24–P in any way, the question is improper. It is calling for mere negative testimony. He may answer yes or no and quit there, if he wants; but to try to prove this by negative testimony, or to try to anticipate or put in alleged rebuttal at this time, is wholly improper.

Mr. BLAKESLEE.—The question calls for yes or no, if the Master please.

The MASTER.—Just answer yes or no.

A. No.

Q. (By Mr. BLAKESLEE.) Are you acquainted with the present-day construction of the

(Testimony of David Davies.)

Angelus P–24 machine and the construction of it ever since it was put on the market?

A. No, sir. I have seen it once.

Q. You have seen it once? A. That is all.

Q. Did you ever see any such machine, or any part of such machine, to be used in such machine, when you were foreman for the Angelus Sanitary Can Machine Company across the street from the L. A. Can Company in the brick shop?

Mr. TOWNSEND.—I make the same objection, your Honor.

The MASTER.—I think the question is a little indefinite where you say "part of such machine."

Mr. BLAKESLEE.—I mean prior to assemblage. The question may be qualified that way.

The MASTER.—He may answer, but I don't think it has much [648] force.

A. I don't quite get that question.

Mr. BLAKESLEE.—It will all connect up with the fact that he didn't have this machine.

Mr. TOWNSEND.—That is right. Tell him what the answer is, Mr. Blakeslee.

Mr. BLAKESLEE.—Well, you have asked my position. Read the question, please.

(Question read as follows: "Q. Did you ever see any such machine, or any part of such machine to be used in such machine—")

Mr. BLAKESLEE.—To be assembled for and used in.

(Question, as re-framed, read.)

(Testimony of David Davies.)

The MASTER.—Just answer yes or no.

A. No.

Q. (By Mr. BLAKESLEE.) During the time prior to your leaving Mr. Guenther's company and starting up your present shop, to wit, while you were with or under Mr. Guenther, did you or did you not at any time have any conversation with Mr. Guenther or receive any information in any manner from Mr. Guenther regarding his working upon any such machine or preparing for the manufacture of any such machine as the 24–P can closing machine?

Mr. TOWNSEND.—Same objection.

The MASTER.—Yes or no. A. No.

[649] (By Mr. BLAKESLEE.) Your answer is no? A. No.

Q. How frequently was it that you went into the drafting room after you became foreman?

A. There was very seldom a day passed but what I would have to go out there for something.

Mr. BLAKESLEE.—Counsel may inquire.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Where was it you saw this 24–P on the single occasion that you state?

A. At the brick shop there. That was the first machine he built. Mr. Guenther took me over there to see it.

Q. Speak a little louder.

A. Over at the brick shop, what they called the

(Testimony of David Davies.)

brick shop, across the street from the L. A. Can Company.

Q. When was that?

A. Just before it was finished. It was almost completed at that time.

Q. Can you fix the time?

A. I couldn't fix the date now, but I should think it was about eighteen months ago, but I can't fix the time exactly.

Q. Can you fix the year?

A. Well, if I could fix the year I could fix the time [650] pretty nearly. I think it is about eighteen months ago.

A. That would be in the latter part of 1921, I think, or about then. About the latter part of 1921, I should think.

Q. Did you examine the machine closely?

A. As close as one could see it from the outside. I suppose I spent about half an hour there.

Q. Is that the only time you have ever seen the 24–P? A. That is the only time.

Q. What was the occasion of your going over there?

A. I met Mr. Guenther at the L. A. Can Company and he invited me over to see his new machine.

Q. Were you doing work for the L. A. Can Company then?

A. At that time, yes, and since. We often do work for them.

Q. Speak up.

A. I do work for them regularly.

(Testimony of David Davies.)

Q. They are one of your regular customers, aren't they? A. Yes.

Q. Do you do any work for Mr. Guenther?

A. No, sir.

[651] Q. What is the nature of the work that you had for the L. A. Can Company, as far as affecting double seamers is concerned?

A. To make chucks and rolls and sometimes repairs on their machinery, not double seamers but other machinery that they have got around there.

Q. Making chucks and rolls; is that on their 14–P's that they use and rent out? A. Yes.

Q. Have you done any of that sort of work on the 19–P? A. What do you mean by 19–P?

Q. That is the gallon-can machine.

A. The old gallon machine?

Q. Yes.

A. Yes; chucks for them, too, and rolls.

Q. Any other work on either the 14–P's or the 19–P's?

A. Chucks, rolls, and roll pins. Those are the three items.

Q. How about repla cements on the can cap feed? A. Nothing of that kind.

Q. Have you done any work on the can feeding end of it?

A. No, sir, not since I left Mr. Guenther.

Q. Have you done any other work on 14–P's except at the L. A. Can plant, since you went into business for yourself? A. Yes, sir.

(Testimony of David Davies.)

Q. Whereabouts was that?

A. I think several cases I made some rolls for the [652] Bernardin Bottle Cap Company, and one other firm. I can't think of the name of that firm now, but another firm back East.

Q. Have you done any overhauling on the 14–P's for Ortega since you went into business for yourself?

A. No, sir, I have never done any overhauling of the 14–P's since I have been in business.

Q. This bottle cap company has 14–P's in operation? A. Yes, sir.

Q. How many?

A. I don't remember. They have got quite a few, or they had quite a few. Maybe half a dozen or more.

Q. How long ago was it that you did the repair work on those machines?

A. Replacement work; I didn't do any repairs.

Q. Well, replacement work.

[653] A. 1920, the summer season of 1920.

Q. And you haven't had occasion to do any further work on those machines since? A. No.

Q. Do you think of any other 14–P's that you have done work on besides the Bottle Cap Company and the concern you can't think of and the L. A. Can Company?

A. No, not that I know of. No, I don't remember. That other firm I can't think of the name of. I will think of it later.

Q. Was it the Empson Packing Company?

(Testimony of David Davies.)

A. The Empson Packing Company, that is right.

Q. Where are they located?

A. In Colorado; Greenly, Colorado, I think; somewhere in Colorado, I know. I haven't got their address.

Q. When did you do that work?

A. The same year—1920.

Q. Have you done any replacement work in connection with the Pacific machine?

A. Not replacement work; but I have done some new work for them.

Q. What do you mean by new work?

A. I have made new parts for them as they were building.

Q. What were those parts?

A. Oh, I have made gears and several other parts, can guards. I couldn't enumerate them all. The names don't mean [654] anything to me, as we go by the drawing.

Q. The name is always on the drawings, isn't it?

A. Yes, sir.

Q. When did you say you went to work for Mr. Guenther first? A. About the year 1911.

Q. And did you fix the month?

A. Yes; about October.

Q. And what was the nature of your work that you started on?

A. Lathe work, running a lathe.

Q. And in connection with what class of machinery?

A. We were building double-seamers at the time.

(Testimony of David Davies.)

Q. Do you know what the name of those double-seamers was?

A. Yes; they were called the Angelus.

Q. Angelus 14–P?

A. 14–P. Now that name was not very familiar in the shop. We just called it the Angelus.

Q. That was the name of Mr. Guenther's company?

A. Yes; and it has always been known as the Angelus machine.

Q. And you have always known Mr. Guenther's company from that time to this by that name, of the Angelus Sanitary Can Machine Company?

A. Yes. It was called the Angelus for short.

Q. While you were lathe man there who else was employed by Mr. Guenther with you?

A. Ray Wilson.

[655] Q. He is one of the plaintiffs here in this suit?

A. Yes, sir; and Jim Miller, Clyde Bell, Charley Prevear, Arthur Coberly, Merton Harrington; and that is about all I remember right now. There were one or two more but I don't remember their names.

Q. Were you making any other machinery than the Sanitary double-seamer?

A. Oh, yes. We were doing the repairs for the L. A. Can Company and we made some—I don't remember the name of the machine, but it was a machine for fixing up the flange of the cans when they get damaged.

(Testimony of David Davies.)

Q. What we call a flanger?

A. No, it wasn't a flanger. It was for fixing up the flanges. And we also made flanges there.

Q. A can straightener?

A. Yes, sir, a can straightener. We also made flangers and cookers and several other machines, and curlers.

Q. And body-makers?

A. And we made one or two body-makers in that old shop.

Q. And slitters? A. Yes, slitters.

Q. Is any of that type of machinery standard today? A. Yes, I believe so.

Q. Who was foreman while you were on the lathe and before [656] you became foreman?

A. Charley Prevear.

Q. And then you became foreman?

A. Yes.

Q. And you continued that until you quit Mr. Guenther's employ? A. Yes, sir.

Q. Do you recall the occasion of your quitting Mr. Guenther's employ, the reason for it?

A. Yes, sir.

Q. Do you know Mr. Keefer? A. Yes, sir.

Q. During how long a period of time was he employed there with you?

A. Well, he worked there in the old shop at one time as a machine hand. I don't know how long. Maybe six months or maybe a year. And then he came back afterwards and took my place and Mr. Guenther's place.

(Testimony of David Davies.)

Q. Do you recall the time when Mr. Guenther came to you and said he was going to make Mr. Keefer the manager or superintendent so he, Mr. Guenther, could have more time in the office and outside? A. No.

Q. You don't recall that occasion was the time you told him you were going to quit? A. Yes.

[657] Q. You told him you were going to quit when he said he was going to put Keefer in charge as manager, and then you would take orders from Keefer and not from Mr. Guenther?

A. No; they never got to that.

Q. Well, the appointment of Mr. Keefer as manager may not have gotten that far; but do you recall that instance and conversation?

A. Surely, I remember word for word what was said there. That interested me.

Q. You didn't want to work under Mr. Keefer?

A. Oh, no; I would have worked under Mr. Keefer, but previous to that I had given Mr. Guenther notice that I was leaving, quite awhile before that.

Q. Didn't you give Mr. Guenther periodic notice that you were going to quit, over a period of several years?

A. No; there was twice that I did.

Q. And then you didn't always quit when you said you were going to quit?

A. I never made any definite statement as to when I was going to quit. I can also give the reason why I was going to quit.

(Testimony of David Davies.)

The MASTER.—Don't volunteer anything. Just answer his questions.

A. All right.

Q. (By Mr. TOWNSEND.) While you were employed there by Mr. Guenther, did you know Mr. Slater, who was the witness just [658] ahead of you? A. Yes.

Q. How long a time have you known him?

A. I have known him since I have been at the work. I saw him working as a tester.

Q. Did you come in frequent contact with him when you were working there?

A. No, sir; just to pass the time of day as we would go along was all.

Q. Well, you would frequently see him?

A. Oh, yes, I would see him every time I would pass the tester. He was there.

Q. And I suppose occasionally he would come around your department?

A. No, sir. His business was not in my department, but my business was in his department.

Q. You had occasion to meet with one another from time to time? A. Yes.

Q. What work was Mr. Ray Wilson doing when you were there working on the lathe?

A. I think he run the milling machine at that time. Yes, that is right.

The MASTER.—On another lathe?

A. No, not at that time. He was running a milling machine I believe at that time.

(Testimony of David Davies.)

[659],Q. (By Mr. TOWNSEND.) He was doing work also on the 14–P, wasn't he? A. Oh, yes.

Q. What was Mr. Guenther doing around the shop? What was the nature of his work?

A. Mr. Guenther wasn't very much around the shop in those days. He was generally up in the office. He spent most of his time I think in the office.

Q. I wasn't assuming that he did the mill work or the manual work.

A. No, as there was a foreman in the shop.

Q. He was in and out of the shop?

A. Oh, yes, a lot.

Q. And maintained active contact with it?

A. Yes.

Q. And supervised the work that was going on?

A. Yes.

Q. You stated that Mr. Guenther visited your shop some four or five months ago, when a conversation about this litigation came up?

A. Yes, sir.

Q. And you said you had already heard about it from Mr. Ray Wilson? A. Yes, sir.

Q. What did Mr. Ray Wilson tell you?

A. He told me they were suing Mr. Guenther for infringement.

[660] Q. Did he say anything else about it, what he was going to do or his company was going to do?

A. I can't recall any of the conversation, only it was that they were going to sue Mr. Guenther

(Testimony of David Davies.)

for infringement on the double-seamer; but all of the conversation I don't remember.

Q. That is all there was to it?

A. That is all there was to it.

Q. Did he state that the suit had been brought or that they were going to bring it?

A. That they were going to bring it, I think at that time.

Q. Then that must have been some time prior—

A. I am not positive whether they were going to bring it or whether they had already brought it at that time. I couldn't swear to that.

Q. How did he characterize the defendant company?

A. Well, just in that way—"we are suing," or "are going to sue Mr. Guenther for infringement on our double-seamer."

Q. He didn't go into any details?

A. No, not to my recollection. He may have said some more about that. I would have to think back a little bit. I don't remember the rest of the conversation, but I know we talked more than that.

Q. You can't remember any more of that conversation, and yet you remember very clearly the exact words used by Mr. Guenther?

[661] A. Yes.

Q. At these other times?

A. Yes. There was reasons for that.

Q. You don't hold a very friendly attitude toward Mr. Guenther, do you?

(Testimony of David Davies.)

A. Well, I don't know whether that is anybody's business or not. Is it?

Q. That is the best answer you want to give to that question, is it?

Mr. BLAKESLEE.—We think counsel should call for the facts and not for mere—

The MASTER.—He knows whether he is friendly or not. What is the answer?

(Answer read.)

The MASTER.—What is your attitude toward him? Do you feel friendly toward him?

A. No.

Q. (By Mr. TOWNSEND.) Even although when you quit Mr. Guenther three years ago because he was going to put another man in charge of your department and you were to take orders from him so Mr. Guenther could have more freedom, and gave you a $100 Liberty bond as a bonus, you entertain that attitude toward him to-day?

A. You put the question about that wrong altogether. That is not so as you have stated it.

Q. What part have I stated that is wrong?

[662] A. Mr. Guenther never told me that he was going to put somebody over me.

Q. He hadn't mentioned that to you?

A. No.

Q. Is there any other part of my statement that is wrong? A. No, that is all.

The MASTER.—You may explain, if you like, the reason for your leaving Mr. Guenther.

A. Yes, I might as well tell you that right now.

(Testimony of David Davies.)

From the time I came to Los Angeles I intended going into that machine shop where I am now, and I always regarded that job as a temporary job.

Q. (By Mr. BLAKESLEE.) Why do you feel unfriendly to Mr. Guenther?

Mr. TOWNSEND.—Just a minute. You can take him for cross-examination in just a minute.

The MASTER.—You may reserve that for your redirect.

Q. (By Mr. TOWNSEND.) When you made parts for the 14–P since you went into business for yourself, who has furnished the drawings for you to make those parts?

A. I didn't need drawings.

Q. What did you work from?

A. Well, I made those rolls for many years, and I didn't need the drawings. I knew all the sizes by heart. I made my own tools, and they are not the same as any other roll.

[663] Q. You made your own jigs, did you?

A. No jigs are necessary; but I made my own forming tools.

Q. You made your own parts for the 14–P, made and sold originally by Mr. Guenther?

A. Yes, sir.

Q. And under whose orders did you make those parts or make those replacements?

A. The people that I made them for.

Q. Were you told by the L. A. Can Company to go out and do this work, or did the orders come through the L. A. Can Company to you, or how?

(Testimony of David Davies.)

A. I solicited that order.

Q. You went out and solicited it?

A. Yes; from the L. A. Can Company. I asked them to let me make their rolls.

Q. And then you went out and solicited repair work and replacement work on 14–P's?

A. Not repair work.

Q. Replacement work? A. Yes.

Q. On 14–P's, on machines of other customers, former customers of Mr. Guenther's; is that right?

A. Yes; but there were only two or three replacement parts. It was rolls, chucks, and roll pins.

Q. Didn't you know those parts were parts of the patented machine?

[664] A. I know that those parts are not patented.

Q. That was your impression, that they were not patented? A. Yes.

Q. You didn't know that Mr. Guenther controlled and owned the patents covering those features that you speak of?

Mr. BLAKESLEE.—That calls for a conclusion.

A. No.

Q. (By Mr. TOWNSEND.) You knew that Mr. Guenther had patents on his 14–P machine, didn't you? A. Surely.

Q. (By Mr. TOWNSEND.) Why was it that you thought the 14–P in 1919 was the best slow machine on the market?

A. That is my opinion that it was, and that is

(Testimony of David Davies.)

still my impression, that it is the best slow machine on the market. It is built very substantially.

Q. Have you ever operated a machine for double-seaming so as to know about speeds, to characterize what you call a high speed and a lot speed?

A. I have never operated a can machine except to try it out in the shop after we built it.

[665] Q. You are merely speaking from a mechanic's standpoint?

A. Yes, the manufacturing standpoint, and from what I have heard from canners about the machine, that it was a good, substantial machine.

Q. So when you speak of high speed or low speed you are depending on what somebody told you about the speeds of the machine?

A. No. I depended on what I saw at the L. A. Can Company. A slow machine I would call up to about 60 or 75 per minute, and a fast machine would be from 75 upward.

Q. On direct examination you were asked if you had ever had any conversation with Mr. Guenther, and we will assume that was extending over some eight years of association with him, and I believe you said you remembered one in particular, and in the next answer you launched into this talk about the ride home and what you said and what Mr. Guenther said. Why did you remember that one conversation out of all the years of talk that you had, and practically anticipated your counsel and brought it right out here at this time?

(Testimony of David Davies.)

Mr. BLAKESLEE.—That doesn't call for a statement of fact. It is a purposeless question. It calls for a conclusion, a psychological conclusion of why his memory recorded a certain conversation, and it is argumentative.

The MASTER.—I will let him answer.

A. Mr. Guenther was in the habit of ridiculing that machine, the Wilson machine. We had to be very careful, and [666] I had to be careful not to say much about it because he would fly right off the handle and ridicule the machine. And why wouldn't I know this, when he turned right around and indicated that he wanted to get hold of the machine?

Q. (By Mr. TOWNSEND.) I object to any of your conclusions about what Mr. Guenther had in mind. You limit your statement to what Mr. Guenther said, not what you think he had in mind.

Mr. BLAKESLEE.—The question called for his reasons of remembering it.

The MASTER.—Proceed. Ask another question.

Q. (By Mr. TOWNSEND.) That is the only reason why you answered that question in that way, is it? A. Yes.

Q. When was this matter of this conversation last discussed before you took the witness-stand and were sworn this morning?

A. Oh, I should think a month or two ago, up at Mr. Blakeslee's office.

Q. At the same time Mr. Slater was there?

(Testimony of David Davies.)

A. Yes.

Q. And Mr. Wilson? A. And Mr. Wilson.

Q. And Mr. Stetson? A. Yes.

Q. And who else?

[667] A. James Miller, and I think Murray was there, but I am not sure about Murray, whether he was there or not.

Q. Mr. Murray who was in here yesterday sitting alongside of you? A. Yes.

Q. What are Mr. Murray's initials?

A. I don't know.

Q. Do you know his front name?

A. No. I always called him Murray.

Q. What is Mr. Murray's business?

A. Machinist.

Q. Were any others present?

A. There may have been. Let's see, there was Slater, Miller, Stetson, Wilson, Murray, and myself, I think, and Mr. Blakeslee.

Q. And these various incidents that you have testified to and the incidents that Mr. Slater testified about were discussed at that time? A. Yes.

Q. And what brought up the—or how was the subject of yours brought up?

A. Mr. Blakeslee asked me if I remembered that incident.

Q. He evidently knew of it, then, beforehand, did he? A. Yes; somebody must have told him.

Q. Had you told him?

A. No; that was the first time I had seen Mr. Blakeslee.

(Testimony of David Davies.)

[668] Q. Whom had you told before and talked to about that incident? A. Mr. Wilson.

Q. When did you talk to him about it?

A. Within a day or two of the occurrence. The next time I seen him after that.

Q. Before you left Mr. Guenther's employ?

A. I believe it was before I left there, as I thought it would be a good chance for Wilson to sell out there.

Q. I don't care anything about your psychological reactions there or what you thought about it.

A. All right.

Q. I am only interested in the fact that while you were still in Mr. Guenther's employ—

The MASTER.—Now counsel will cease right now and put a question. You have no right to talk that way to the witness.

Mr. TOWNSEND.—I don't intend to be disrespectful.

The MASTER.—No, but if you will read your record to-morrow you will see I am correct about it.

Mr. TOWNSEND.—I don't think it calls for a reprimand in that way, your Honor, because I certainly tried to be courteous to counsel and the witness. I don't like to have him volunteer a lot of this stuff, though, about what he thought about things.

The MASTER.—If you confine yourself to questions and objections, the witness won't volunteer.

(Testimony of David Davies.)

We have too much [669] discussion, that is the trouble.

Mr. TOWNSEND.—I regret that you felt that for a moment I overstepped the bounds.

Mr. BLAKESLEE.—I object to counsel's attempts to belittle the witness and embarrass him and rag him.

Mr. TOWNSEND.—I don't intend to do anything of the sort.

The WITNESS.—You inferred all the time—

The MASTER.—Mr. Witness, you shouldn't make any answers at all, or I mean make any remarks at all except in answer to a question.

The WITNESS.—Pardon me; sometimes a direct answer would mislead.

The MASTER.—Well, you should make your answers direct and then if there is any explanation you are at liberty to give it.

Q. (By Mr. TOWNSEND.) Did you discuss this matter with Mr. Wilson at any later time?

A. I don't think so.

Q. Or with Mr. Stetson?

A. No, sir. I never had much conversation with Mr. Stetson.

Q. Or with anyone else?

A. No, not that I know of. I might have discussed it with my wife at that time. I think I did tell her.

Mr. TOWNSEND.—That is all.

(Testimony of David Davies.)

[670] Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Now tell us fully and frankly, Mr. Davies, please, why you feel unfriendly toward Mr. Guenther, if you do? Just tell us why it is.

A. Well, our ideals are different.

Mr. TOWNSEND.—That, your Honor, we are not concerned with. The final result of unfriendliness was expressed, and that is the only thing that counts.

The MASTER.—I think it would be material as being on the weight of the testimony. He might be unfriendly in such a way that would not interfere at all with his telling the truth.

Mr. TOWNSEND.—Well, your Honor, it is analogous to this: if a man says, "I am unfriendly," it is practically the same thing as the code provision concerning a man's reputation for truth and veracity. The answer is given of "yes" or "no" to the question, "Is it good or bad?" and no explanations or reasons are permitted, and by analogy the same thing exists here.

The MASTER.—I don't think so. A man might be so entirely unfriendly that he might be willing to perjure himself on the witness-stand.

Mr. BLAKESLEE.—Mr. Guenther may have given him a bad cigar at some time, to cause the unfriendliness.

The MASTER.—Well, let's have no more argument. The objection [671] is overruled. Answer.

A. Our ideals are altogether different.

(Testimony of David Davies.)

Q. (By Mr. BLAKESLEE.) Ideas about what?

A. Ideals.

Q. Well, what are your ideals?

Mr. TOWNSEND.—We object to that.

The MASTER.—That is going too far.

Q. (By Mr. BLAKESLEE.) I mean ideals about what? Manufacturing, business, religion, or what?

Mr. TOWNSEND.—The same objection.

The MASTER.—I don't think anything except what occurred between them would be material.

Q. (By Mr. BLAKESLEE.) Then your unfriendliness is directed to your opinion of him and his ideals as a man; is that it? A. That is all.

Q. And not based upon any act or transaction affecting your interests and his together, is that right?

The MASTER.—That is leading, Mr. Blakeslee.

Mr. TOWNSEND.—Very much so.

Q. (By Mr. BLAKESLEE.) Has any act occurred in your direct dealings with him concerning your business and his business that has created any unfriendliness?

A. It is pretty hard to answer a question like that. His whole life is different, but what I—I have got no particular incident in mind, but the whole thing is we didn't agree.

[672] Q. Your attitude is generally one of unfriendliness toward him because of the type of man that you consider him to be, or as to his ideals?

Mr. TOWNSEND.—That is leading.

The MASTER.—Proceed.

(Testimony of David Davies.)

A. Well, I had a kind of contempt for Mr. Guenther right through from beginning to end.

Q. (By Mr. TOWNSEND.) And yet you worked for him eight years?

A. Yes; I worked for him eight years, and was expecting to leave every day, and told Mr. Guenther so, myself; and he knew that and knew why I was leaving.

Q. (By Mr. BLAKESLEE.) Your contempt then pertains to ideals rather than any business transactions, is that it?

Mr. TOWNSEND.—Objected to—

The MASTER.—That is getting a little bit afield.

Mr. BLAKESLEE.—I am just summing it up.

Q. Is that the general situation? A. Yes, sir.

Q. These rollers that you have been testifying about for can-seaming machines, what was the makeup of those rollers?

A. The rollers were made out of steel. There is one there something like it, that model there.

[673] Mr. TOWNSEND.—Pointing to Defendants' Exhibit "P."

A. That is a double-seam roll there.

Q. (By Mr. BLAKESLEE.) And you made some replacements for double-seam rolls, did you, like Exhibit "P," on 14–P machines?

A. It answered the same purpose.

Q. In other words, rollers like those on Exhibit "P"? A. Yes, sir.

Q. For 14–P machines? A. Yes, sir.

(Testimony of David Davies.)

Q. Is that a stock or standard form of roller for those purposes?

Mr. TOWNSEND.—I object to that, your Honor, because he said he made his own special tools to make those with, so apparently it was not standard stock.

The MASTER.—Overruled.

A. There is a difference in the shape of the groove there. Some people adopt one standard and some another.

Q. (By Mr. BLAKESLEE.) That depends upon the make of the machine, does it, and the work that the roller has to do, doesn't it?

A. Not always. It doesn't depend on the make of the machine for the make of the groove.

Q. I mean it depends on the type of machine and the particular way the metal is to be rolled down, doesn't it?

A. There are two ways of doing it, to roll it on the outside and roll it on the inside.

[674] Q. To your knowledge aren't such rollers as that used in other machines than the 14–P?

Mr. TOWNSEND.—Objected to as leading.

Q. (By Mr. BLAKESLEE.) Are they or are they not used in other machines?

A. They have to use that kind of roll in almost any kind of double-seamer, unless they use the Wilson patented roll-seaming ring.

Q. They use that for rolling down the seams, do they? A. Yes; the Max Ams, for instance.

Mr. BLAKESLEE.—That is all.

(Testimony of David Davies.)

Recross-examination.

(By Mr. TOWNSEND.)

[677] Q. The point is this: The rollers used for these Angelus machines are different than are used on any other type of double seamers?

A. Yes, there is a difference.

Mr. TOWNSEND.—That is all.

Further Redirect Examination.

(By Mr. BLAKESLEE.)

Q. If there is a difference, what is the difference?

[678] A. In the width of that middle part there.

Q. The width of that annular central portion there? A. Yes.

Q. Between the chamfered-off parts? A. Yes.

Mr. BLAKESLEE.—That is all.

TESTIMONY OF JOHN J. MILLER, FOR PLAINTIFFS.

[679] JOHN J. MILLER, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Your name is James Miller?

A. Yes, I am known as James Miller.

Q. And your age? A. Sixty years.

Q. And you live in Los Angeles? A. Yes, sir.

Q. And your occupation? A. I am a machinist.

Q. Where are you working as a machinist now?

A. For the Angelus Tool Machine Works.

(Testimony of John J. Miller.)

Q. Where is that?

A. That is on the San Fernando Road, 297 San Fernando Road.

Q. Has that any connection with the L. A. Can Company or the Pacific Closing Machine Company?

A. None whatever.

Q. Or the Angelus Sanitary Can Machine Company?

[680] A. None whatever.

Q. You are doing general machinist work there?

A. General machinist work, yes, sir.

Q. Do you know Mr. Guenther, who is a defendant in this case? A. Yes, sir.

Q. When did you first meet Mr. Guenther?

A. Well, now, I think it was in the latter part of 1909 or the early part of 1910.

Q. Did you ever work for him?

A. Yes, sir.

Q. When did you commence to work for him?

A. I started to work for Mr. Guenther in 1913.

Q. How long did work for him?

A. I worked for Mr. Guenther until I think it was the 23d day of May, 1920.

A. Yes. I had been living in Fresno and it was in 1913 that I left Fresno; it was in October when I left Fresno and came down to Los Angeles. And the 1920 date was taken from the fact that I was keeping track of my income tax, so I had to keep track of that and watch it.

Q. How do you connect that up with May, 1920?[

A. Well, it was on the 23d day of May, I think,

(Testimony of John J. Miller.)

that I quit Mr. Guenther's, and I made a note of it at the time and [681] marked down the wages that I had received up to that time.

Q. For your income tax statement?

A. Yes, for my income tax statement.

Q. Have you referred to that memorandum recently, to determine what that date was you put down?

A. No, I haven't, for the simple reason that the place I am working at now, I started to work there I think it was on the 23d day of May, 1921, so the two dates coincide, the two days being the same. That is how I remember that.

Q. And you remember it was a year apart?

A. Yes, sir.

Q. During the time you worked for Mr. Guenther, where did you perform your services? On what premises, or buildings?

A. Part of the time in a part of the shop he had rented from the L. A. Can Company, and there was part of that time that he had rented floor space or room from the Puma Winery, [682] on San Fernando Boulevard, and then they moved over across the street.

Q. That was a brick shop, that second place, was it? A. Yes, that was a brick shop, the second place.

Q. What did Mr. Guenther do around the shop, if anything, in the first location you mentioned, and also in the brick shop? Was he in attendance at the shop from time to time?

(Testimony of John J. Miller.)

A. Well, he used to come into the shop every day. He was there pretty regular, looking around.

Q. Did Mr. Guenther have a drafting room in the shop on the premises of the L. A. Can Company while you were there?

A. Yes, in their office, in a part that they used for their office. They had a table in there that they done their drawing on.

Q. Did he have a drafting room, or what answered for a drafting room, across the street in the brick shop while you were there?

A. Well, they had a room there after they moved over into the brick shop, that they converted into a drafting room, that made a nice place there for them for drafting purposes, and then when they moved the office from the brick shop into the frame building they had a nice drafting room there.

Q. Did you ever go into either of those drafting rooms?

A. Yes; I used to get up there quite frequently.

Q. How frequently?

A. Well, sometimes I would get up there, I would say, two [683] or three times a week.

Q. What called you into those drafting rooms? Was it anything connected with your work?

A. Yes. I would go up and get up some information in regard to some drawings or work that I was doing.

Q. Are you acquainted with the P–24 machine, or 24–P machine, the double-seam can closing ma-

(Testimony of John J. Miller.)

chine which is made by the Angelus Sanitary Can Machine Company to-day?

A. Well, I may be acquainted with the machine, but probably not in the way that you put it there.

Q. The double-seaming continuous operation machine. A. I never seen the machine.

Q. Did you ever hear Mr. Guenther discuss any such continuous operation double turret machine while you were connected with his shop, either at the back of the L. A. Can Company shop or across the street? A. No.

Mr. TOWNSEND.—Just a minute. We object to that as tending [684] to anticipate our defense, perhaps, that is, as assuming that we are going to say something affirmatively, and they are trying to negative it here in advance.

The MASTER.—Mr. Townsend, the weight of that evidence is so slight that I don't think it is objectionable to allow the answer to stay in.

The MASTER.—I have allowed the evidence. He said no.

Q. (By Mr. BLAKESLEE.) During that period of time, and while you were working in either of those shops, did you see in the drafting rooms of those shops, or in the shops at any place, any drawing of any such continuous operating double turret machine?

Mr. TOWNSEND.—The same objection. And I would like to ask what the witness' previous answer was as to having seen the 24–P.

The MASTER.—He said he never saw one.

(Testimony of John J. Miller.)

[685] The MASTER.—I don't know whether this witness would recognize a drawing if he did see it.

Mr. BLAKESLEE.—Well, as a mechanic he would know what a two-turret machine was.

The MASTER.—I will let him answer.

A. No, I never seen any drawings in the shop for that purpose, for a continuous feed machine.

Q. (By Mr. BLAKESLEE.) In that connection, are you familiar with drawings and blueprints, and especially drawings and scale drawings and dimension drawings?

A. I am, yes, to a certain extent.

Q. Do you use them in turning out your work from day to day, in your mechanical experience?

A. Not from day to day. Of course there is lots of work coming to our place where people don't bring any drawings for that purpose; but I have worked off of drawings. I have done quite a lot of work from drawings.

Q. Following the drawings and executing your work on machine tools?

A. Yes. The fact of the matter is I would rather work from a drawing than to have anybody tell me what they want done, because you have the evidence then to prove you have worked according to your drawing, where otherwise you haven't it. If a man tells you to do a thing in a certain way and it doesn't meet with his approval, of course you haven't got [686] anything to come back on.

Q. Did you follow working drawings or blue-

(Testimony of John J. Miller.)

prints during your mechanical work in the shops where you worked under Mr. Guenther?

A. We did to a certain extent. There was some of the work there that the drawings didn't carry out fully that we worked on, and of course we used our judgment there as to what it should be.

Q. Did you at times follow such drawings?

A. Yes, at times we followed them, or we tried to confine ourselves as close to the drawings as we possibly could; but when we would notice there was an error some place we would try to rectify it.

Q. Did you do any work in either of those shops under Mr. Guenther on any machine for closing cans, having two turrets? A. No.

Q. You were familar at that time, were you, with the P–14 machine for closing cans, that intermittent operating machine? A. Yes.

Q. You were familiar with that?

A. Yes. I had assembled quite a few of them.

Q. They were built, some of them, in the old shop of the L. A. Can Company in the rear?

A. Yes.

[687] Q. Did you ever see or hear of or receive information of any other type ofcan closing machine while you were working in either of those shops under Mr. Guenther?

A. Well, he built what he called a hand machine. It was a small machine that in closing the machine you just pulled a lever and that double-seamed the end on there. He built quite a few of those machines.

(Testimony of John J. Miller.)

Q. You are familiar with the Wilson type of can closing machine having two turrets and continuous operation, are you?

A. I can't say that I am familiar with the machine. I have seen the machine and I have seen it work, but outside of that—

Q. Had you seen it work before you left Guenther's employment?

A. Oh, yes; I seen it work before I left Mr. Guenther's employment. But outside of that I don't know anything about Wilson's machine only from what I see it work.

Q. Did Mr. Guenther at any time prior to the date upon which you left the brick shop where you last worked under Mr. Guenther—did he at any time ever tell you that he was working up or devising or scheming out or working upon any double-turret continuous operation can closing machine of the type of the Wilson machine or any other type?

A. No.

[688] Mr. TOWNSEND.—The same objection. There has been no contention here that Guenther ever discussed the matter with this witness.

The MASTER.—The objection is overruled. Is there any reason why he would have discussed it with him?

[689] Mr. BLAKESLEE.—He stated he was a machinist there.

Q. What was the nature of your work in both of those shops?

A. Well, I was building body makers in the old

(Testimony of John J. Miller.)

shop. The fact of the matter is I built all of the body makers that was built there up to the time I quit.

Q. Do you mean can body-makers?

A. Yes, sir.

Q. Those are those long machines with a saddle upon which they make the body?

A. Yes, for making those bodies; and after Mr. Davies left there he give me charge of the erecting department, so I had charge of the erection department up to the time I left.

Q. (By Mr. TOWNSEND.) For how long was that?

[690] A. Well, that was about six months, I would judge.

Q. (By Mr. BLAKESLEE.) What did you erect in that department?

A. We erected double-seamers, body-makers, slitters, hand double-seamers, and a flanger.

Q. To your knowledge, then, in that capacity, or those capacities, to your knowledge and recollection was there any work done in that shop, or in either of those shops, prior to the time that you left them, on any such double-turret continuous operating machine?

Mr. TOWNSEND.—I—

A. No.

Mr. TOWNSEND.—Just a moment. Will your Honor caution the witness not to answer until I put in my objection.

(Testimony of John J. Miller.)

The MASTER.—Don't answer until the objection is made.

Mr. TOWNSEND.—I make the same objection, that it is of a negative character and calls for a conclusion, because the work might have been done there and he might not have known about it. It is for the Court to draw the conclusion as to what work was done, and not the witness.

The MASTER.—Overruled.

Mr. BLAKESLEE.—Was there an answer to the question?

The MASTER.—He answered no.

A. I answered no.

(Thereupon a recess was had until two o'clock P. M.)

[693] Q. Mr. Miller, are you in position to state whether, during the time you were in the two shops under Mr. Guenther, various improvements were made from time to time on machines used in those shops for making cans?

Q. (By Mr. BLAKESLEE.) Do you know whether any such improvements were made there upon machines for making cans during the [694] time you were employed?

A. Not for making cans. I don't know of any improvements that had been made for making cans, but there had been some improvements made for closing a can.

Q. Machines for closing cans?

A. Yes, but not for making.

(Testimony of John J. Miller.)

Q. No improvements made in body making machines or anything of that sort?

A. Well, the body-maker was practically the same when I left there as when we started on it.

Q. What make of body-maker did you have in the shop there?

A. Well, it was a body-maker that was gotten out practically by copying the Troyer-Fox machine.

Q. You were familiar with the Troyer-Fox machine while you were there, were you—the body-maker?

A. Only what I saw on the one that the L. A. Can Company had.

Q. They had a Troyer-Fox machine? A. Yes.

Q. Were changes made from the construction of that Troyer-Fox machine in the body-maker which was in the shop where you worked?

A. There was some changes made, but they were very slight.

Q. Do you know who made those changes?

A. Well, most of the changes that were made were generally suggested by the men working in the shop.

[695] Q. To your knowledge did Mr. Guenther make any improvements or changes in any machine or device in the shop while you were under him?

Mr. TOWNSEND.—That is objected to as incompetent, irrelevant, and immaterial.

The MASTER.—The objection is overruled.

A. Not in a direct way do I remember of Mr. Guenther making any direct improvements. Now,

(Testimony of John J. Miller.)

there had been some improvements made there in the shop, but I couldn't say that Mr. Guenther made those improvements. I know that some of them had been gotten out by some of the men in the shop.

Q. (By Mr. BLAKESLEE.) Do you know from any statement or act on the part of Mr. Guenther what his attitude was toward making machines for use in the shop while you were there?

Mr. TOWNSEND.—Same objection; it is calling for a conclusion of the witness, and is incompetent, irrelevant, and immaterial.

The MASTER.—I don't see the materiality of it. What difference does it make what his attitude was?

Mr. BLAKESLEE.—If he made some statement or did some act which showed that he was opposed to improvement, it would be material in connection with our other proofs as to what he did.

The MASTER.—He may answer.

A. Well, there was a time that I was working on a little improvement there myself when Mr. Guenther came around and seen it and says, "To hell with the improvements! Let the other [696] fellow do the experimenting." Now if you will allow me I will tell you what that improvement was. The agent that was out on the road seemed to have some trouble with some of the people that he was selling goods to and wanted something to fasten the cover on that can to keep it from spilling, and that is what I was working on, was something to fasten that cover on there. But I wanted to get that thing

(Testimony of John J. Miller.)

completed before Mr. Guenther got wise to it, that we were doing anything like that, and then let it go through the shop, but he caught me in the act and he stopped it; so there was two other fellows took it up afterwards and they carried it through, but they done quite a lot of work on Sundays, on their own time, on that job.

Mr. TOWNSEND.—I move to strike out the answer as not responsive to the question, on the grounds stated in the objection.

The MASTER.—The motion is granted.

Mr. BLAKESLEE.—Now the question was directed to any act or statement of Mr. Guenther.

The MASTER.—It is the matter after that that is stricken out.

Mr. TOWNSEND.—Following the first sentence. The latter part of it.

(First part of last answer read.)

Mr. BLAKESLEE.—Then the motion will be granted as to the part of the answer following the statement of Mr. Guenther?

[697] The MASTER.—Yes.

Mr. TOWNSEND.—"The alleged statement of Mr. Guenther" would be better.

Q. (By Mr. BLAKESLEE.) And they made the improvement, did they? A. Yes.

Q. Do you know of any improvement Mr. Guenther made upon the 14–P closing machine while you were connected with his shops?

Mr. TOWNSEND.—Same objection. It is incompetent, irrelevant, and immaterial. The 14–P

(Testimony of John J. Miller.)

is not at issue, although it is in the testimony; it may have some bearing.

The MASTER.—It may have some materiality. He may answer.

A. I don't know of any improvement that Mr. Guenther made on the machine.

Q. (By Mr. BLAKESLEE.) Do you remember when it was that Mr. Guenther made the statement, "To hell with the improvements! Let somebody else do the experimental work," or words to that effect?

A. That was on the little arrangement I was working on to fasten the cover on the can.

Q. No; when was it he made that statement?

A. Well, that is when we were in Piuma's building.

Q. That is across the street from the L. A. Can Company?

A. No, it is right across the railroad tracks from the L. A. Can Company. We were in Piuma's building at that time. I don't remember the year.

[698] Q. That is in the rear of the L. A. Can Company's place?

A. No, it is right on the San Fernando Road.

Q. Do you mean the brick shop across the street?

A. No, I mean the building that Piuma's Winery is in. That would be 295 San Fernando Boulevard now. It was while we were in that room there. You see, Mr. Guenther rented that room for erection purposes, and had some machinery in there. He had two lathes and a drill press in there, and I

(Testimony of John J. Miller.)

was working over there with some of the other men when that happened.

Q. Well, when was that with respect to the time that he moved across to the brick shop?

A. I don't know. It seems to me it was along about 1917 or 1918; somewhere along there. I couldn't tell you just exactly when it was.

Q. Do you mean that is the time that he made this statement?

A. Oh, no, it was before that. It was shortly after we had gotten into this new place, into Piuma's room.

Q. You mean it was about 1917 when he moved across to the brick shop; is that it?

A. I think it was somewhere about that time.

Q. But it was before that that this statement was made that I have referred to? A. Yes.

Q. Can you state about how long before?

[699] A. Well, it was shortly after we got into that new building.

Q. And the statement was made in this building that had been a winery? A. Yes.

Q. And which you had used for an erection plant?

A. Yes.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Did this genteel expression which you say Mr. Guenther used at that time, "To hell with improvements," refer to your improvement that you had spoken of particularly, or to improvements in general?

(Testimony of John J. Miller.)

A. Well, now, I couldn't say as to whether he meant it in that way, that is, whether he meant improvements in general, or the improvement that I was working on.

Mr. TOWNSEND.—That is all.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Did Mr. Guenther ever make any other statements of that sort that you remember while you were under him?

Mr. TOWNSEND.—That is leading and suggestive and not redirect examination. At best it is only cumulative.

[700] The MASTER.—The objection is overruled.

A. There were times when he didn't feel very friendly towards experimental work there.

The MASTER.—Just state whether he made any other statements. That is the question.

A. Well, I don't remember that he made any other statements in regard to that matter.

Q. (By Mr. BLAKESLEE.) Did he ever say or do anything to your recollection that would encourage improvement in the shop while you were there?

Mr. TOWNSEND.—That is objected to as incompetent, irrelevant, and immaterial, unless there is some connection shown with the matters here in controversy.

The MASTER.—You are trying to establish his

(Testimony of John J. Miller.)

attitude as to adopting somebody else's improvements and not making them himself?

Mr. BLAKESLEE.—Yes.

A. Well, I don't remember of him ever encouraging anybody to make any improvements. There was a time when I spoke to him once about making an improvement on his machine there; that was about five months before I left there. I don't know whether he ever made it or not; I don't suppose he did.

TESTIMONY OF ADRIAN C. MURRAY, FOR PLAINTIFFS.

[701] ADRIAN C. MURRAY, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Your full name is what?

A. Adrian C. Murray.

Q. State your age, residence, and occupation, please.

A. I am thirty-four years old; No. 421 West Palm Drive, Glendale, California; I am trouble man for the Los Angeles Can Company.

Q. Please tell us what the title or term "trouble man" signifies and what work it involves?

A. Well, principally on the closing machines. I I have worked for a number of years in a cannery, and I have been with the Los Angeles Can Company in this position five years, going out among

(Testimony of Adrian C. Murray.)

the canneries, among our customers, and fixing up their closing machines, and if they have any complaints about cans I look after that, and things of that nature.

Q. Do you find occasionally that there are bad cans in the products put out and sold by your company?

A. Oh, yes, once in a while a few get out.

Q. Have you had experience in the shop of the L. A. Can Company or any other shop in making cans?

A. Well, not in actually making cans. I am around the [702] shop a good deal when I am not out on the road, and I talk to the boys about the troubles we have with their cans and so forth.

Q. Are you familiar with the procedure in forming can bodies and putting bottoms in them as conducted in the L. A. Can Company's shop?

A. Yes, sir.

Q. Thoroughly familiar? A. Yes, sir.

Q. (By Mr. TOWNSEND.) Do you run those machines?

A. Why, I have not actually run any, only for a short time to relieve somebody or something like that.

Q. (By Mr. BLAKESLEE.) You make it, do you, a matter of your practice right along to visit the shop and watch that work?

Mr. TOWNSEND.—Don't lead the witness. I object to it as leading.

A. Yes.

(Testimony of Adrian C. Murray.)

The MASTER.—The objection is sustained.

Q. (By Mr. BLAKESLEE.) Now please tell us how frequently you go into the shop of the L. A. Can Company and what you see being done when you go in there.

A. Well, several times every week I walk through the plant and talk to the boys and notice how the machines are running, pick up a few cans occasionally and inspect them.

Q. What machines do you see in operation there?

A. Why, we have the Pacific closing machine; we have some [703] Angelus body-makers; and the flangers; I believe we have some Max Ams; and the slitters, I believe, are Angelus slitters. I believe we have some various makes of slitters. I am not sure about that.

Q. Did you ever do any work in a cannery?

A. Yes, sir.

Q. What did you do there?

A. I went to work first in a cannery when I was about ten years old.

Q. What cannery was that?

A. It was called at that time the California Fruit Canners Association. It is known now as the California Packing Corporation. I worked there several summers as a boy, and then I went to work for Mr. Stetson and I worked for him on the old solder machines, soldering cans by hand, and I finally—the last few years I was in Mr. Stetson's cannery I was in charge of the plant.

Q. Where was Mr. Stetson's cannery and what

(Testimony of Adrian C. Murray.)

was the name of it? A. F. F. Stetson Company.

Q. Where?

A. On the San Fernando Road, in the three hundred block. I think the number was about 325 or 327. It covered probably half the block there.

Q. What products were canned in that cannery?

A. Why, we canned pork and beans, string beans, apricots, [704] peaches, tomatoes, pumpkin, olives,—

Q. Did they have any can closing machines there?

A. Oh, yes.

Q. Did you operate those?

A. Yes, I operated three or four different makes.

Q. What makes did they have there?

A. We had the Angelus, the Pacific, the Max Ams, and one year we had a machine that we brought down—that is when we first began to use sanitary cans—I believe it was known as a Braunswiger machine. We just used it a short time.

Q. What was the type of the Angelus machine?

A. It was commonly called the 14–P.

Q. What do you do in fulfilling your duties as trouble man?

A. For the Los Angeles Can Company now?

Q. Yes.

A. Why, I make the rounds of the canneries as often as I can in the summer-time when they are in operation, and if they get in trouble they call in and I go out and adjust their machines or help them adjust them and help them out in any way I can.

(Testimony of Adrian C. Murray.)

Q. What machines do you help adjust in that capacity?

A. Why, we are using the Angelus and Pacific.

Q. The Angelus what machines?

A. The 14–P and the gallon machine—the 19–P, I believe it is called.

Q. And the Pacific closing machine? A. Yes.

[705] Q. Those are being used, you say, in the plants that you go to? A. Yes.

Q. What troubles do you encounter in going from plant to plant, that is, in the cans themselves or in the performance of the machines for closing the cans?

A. Well, there are various troubles with the machines that might happen. Granting that the cans are all right, with the 14–P machine our main trouble was a small tit on the body seam. That was the most trouble we had with those particular machines.

Mr. TOWNSEND.—Your Honor will appreciate that any attempt to slur the 14–P or show its lack of utility and so forth is entirely outside the issues here, and they are estopped from showing lack of utility—

The MASTER.—I don't think that is the effect of the evidence. Their discrediting of it would only be to show the superiority of their own and not that it is not useful. You may proceed.

Q. (By Mr. BLAKESLEE.) I hand you a specimen can open at the top, which I am informed is a gallon can. Can you point out on this can any

(Testimony of Adrian C. Murray.)

such tit or deformation as you have mentioned? Can you find any such?

A. Yes, on the body seam. That is what I was referring to, that small tit there, which makes an imperfect seam.

Q. Do you find such a tit on that any place?

[706] A. Yes, sir.

The MASTER.—He has indicated one on the bottom.

Q. (By Mr. BLAKESLEE.) Please borrow the Reporter's pen and mark in ink that tit, spelling it T-i-t, adjacent to the place on the can body.

(Witness marks can.)

Q. From the experience you have had in operating machines for closing or making cans, and from your experience and observation in the plant of the L. A. Can Company, can you tell how that tit formation is produced?

A. Well, too much solder on the body seam will cause it, or too much pressure on the base plate that pushes the can up on the chuck, or I have known them to be caused from not enough pressure on the base plate. The tin varies in weight, and if you adjust the machine with pressure for heavy tin plate when you get a sheet of light tin you will probobly have too much pressure there, and some of the cans will tit while others will be perfect.

Q. Now, when such a "tit" is produced in the seam formation, what is the result?

A. They are liable to leak. It is a weak seam. What causes that tit is in the tin curling on the first

(Testimony of Adrian C. Murray.)

operation. It doesn't seem to get up under there good and make a perfect seam.

Q. And have you found cans in the field where you have been sent out as trouble man that had these tits on?

[707] A. Yes, we have had them.

Q. How frequently do you find them in the cans which are manufactured by the Los Angeles Can Company, that is, that have the bottoms put in by the use of the Pacific Closing machine?

A. Very seldom. In fact we don't find them unless there is a great lot of solder on the body seam.

Q. Well, can you give us any idea of how frequently such weak tit formations are found in a given order of cans supplied to any cannery?

The MASTER.—Do you know what proportion you find? Just answer that yes or no. Do you know?

A. I believe I can answer that yes.

Q. (By Mr. TOWNSEND.) Now, what is the foundation for your statement that you could answer that you know what proportion [708] of defective cans would result in a given order of cans?

A. Well, on our can contracts we take the stand that there is nothing perfect, and we are allowed five cans to a thousand, bad cans. If there is not more than five bad cans to a thousand we consider them good cans. And in my experience since we have been using the Pacific machines we are always under that amount.

(Testimony of Adrian C. Murray.)

The MASTER.—I think I will let it stand. He says that is his business.

Mr. TOWNSEND.—He doesn't make the cans, he doesn't receive the cans, he doesn't count them, and he doesn't use them.

Q. (By Mr. BLAKESLEE.) Have you anything to do with the delivery [709] of cans?

A. No, sir; nothing more than that when I am out among the canneries I inquire from time to time what their requirements are going to be so that we can determine how busy we are going to be at the factory.

Q. Do you see any of the cans that are rejected for these weaknesses when you go out to these plants? A. Yes, sir.

Q. Do you know of your own knowledge whether these weak and defective cans are set aside in the canneries and accumulated there? A. Yes, sir.

Q. And do you see them from time to time when they are piled up or accumulated as defective cans?

A. Yes, sir.

Q. And do you ever count them? A. Yes.

Q. And is it within your knowledge what number of cans have been shipped by the L. A. Can Com-- pany to these various canneries where you find these accumulations of defective cans?

Mr. TOWNSEND.—He doesn't ship the cans, so he can't know how many are shipped.

Mr. BLAKESLEE.—I asked him if it was within his knowledge.

(Testimony of Adrian C. Murray.)

The MASTER.—Well, I don't know whether he could answer that question or not.

Q. (By Mr. BLAKESLEE.) Do you know anything about the shipments [710] that go to those canneries where you go out as trouble man?

A. Why, I am kept informed.

Q. Do you see the shipments when they leave the L. A. Can Company?

A. Oh, we load them right into cars, and I am through there most every day and see them going out.

Q. Do you ever check the records to find out how many cans are being shipped from time to time to these different canneries?

Mr. TOWNSEND.—That is leading.

A. Why, nothing more than in figuring how busy we are going to be from one season to another. We kind of talk it over among ourselves as to how much each cannery uses per season.

Q. (By Mr. BLAKESLEE.) Do you ever go to the shipping department of the L. A. Can Company and determine the number of cans that are being shipped to a given cannery?

Mr. TOWNSEND.—Your Honor, that is calling for hearsay evidence.

The MASTER.—Of course it might help him in his knowledge to a certain extent.

A. Yes, sir, I talk to the shipping clerk very frequently about the shipments of cans going out. I go out and make trips around among the canneries, and naturally we are interested in how busy they

(Testimony of Adrian C. Murray.)

are and how many cans they are going to use, and the shipping clerk will ask me what I think a [711] certain cannery is going to do in the next week or for the season, and I tell him to the best of my knowledge.

Q. (By Mr. BLAKESLEE.) When these tits occur on the cans, to what extent, to your knowledge, does it reduce the efficiency of the can or impair its capacity to withstand internal pressure?

A. Why, whenever the cannery superintendents see those tits they immediately raise a kick about it. They know that it is not a perfect can, and while they will not all leak it is a weak can and they are afraid of them; they are afraid that the cans will take air later on and the fruit will spoil.

Q. Have you made any check at any canning plant or plants as to the comparative number of cans rejected for tits and turned out on the Pacific closing machine, that is, in comparison with those turned out on other closing machines?

Mr. TOWNSEND.—Has this man any records that he made?

The MASTER.—He is allowed to state whether he has made any comparisons. Maybe he has not; we don't know.

A. I have never had any complaints about tits on the Pacific machine that could not be traced to poor adjustment on the machine or something that could be rectified.

Q. (By Mr. BLAKESLEE.) Well, have you traced certain complaints to certain closing ma-

(Testimony of Adrian C. Murray.)

chines, and certain complaints to the Pacific closing machines?

A. On the Angelus 19–P I have frequently been unable to adjust the machines to get away from these tits.

[712] Q. (By Mr. TOWNSEND.) Is that on account of poor adjustment, or is it the fault of the machine?

A. Why, it is the faulty construction of the machine, in my estimation.

Q. (By Mr. BLAKESLEE.) Have you ever had any difficulty in adjusting the Pacific closing machine so as to eliminate this tit trouble?

A. No, sir.

Q. Now, have you ever installed any closing or seaming machine in canneries? A. Yes, sir.

Q. What types and kinds and makes of machines?

A. The Max Ams No. 2, the Max Ams 58, 58 D, 98; Pacific machines, Angelus 14–P and 19–P.

Q. Now, as to all of these machines, taking that all under consideration, which, if any, of them require the most attention in adjustment and the most care to keep in proper working condition?

Mr. TOWNSEND.—Now, that is grossly improper. It is calling for the conclusion of the witness, and no records to show such things. Those are matters of record with every shop.

The MASTER.—A man might know of his own knowledge without any records.

[713] The MASTER.—The objection is overruled.

(Testimony of Adrian C. Murray.)

A. Why, I have the most trouble with the Angelus 19–P.

Q. (By Mr. BLAKESLEE.) Which, if any, of the machines do you have the least trouble with its adjustment?

Mr. TOWNSEND.—Same objection.

The MASTER.—Same ruling.

A. The Pacific.

Q. (By Mr. BLAKESLEE.) What makes that particular tit, if you know? (Exhibiting to witness can last referred to in examination.)

A. It is hard to determine exactly, but that tit there looks as though it was caused from not enough tin. Now, it may be it was caused from too much tin. But it is the regulation on the base plate that is the—that is, granting that the relation of the chuck and the rolls is set right;—that is generally the first thing I look at, to check up the relation of the chuck and rolls; and the condition of the rolls and chuck. If they are all right then by adjusting the base plate up or down on the Angelus machine is the only way to help that.

[714] A. No, that one is not caused from solder, I don't think. But that little tit right there (indicating) is the edge of the can lead; not turned up under. All the rest of the way around it is turned up under there to make a good seam, but at that particular point there it is turned down.

Q. That is the tit right here (indicating)?

A. That is it, yes.

Q. And what is that hump (indicating)?

(Testimony of Adrian C. Murray.)

A. Well, that tin not curling up under there is caused by—well, the tin comes in contact—the lead tin comes in contact with the body and doesn't go up under there, and then when the roll comes against it will flatten it down and make the hump there.

Q. Have you ever visited the Golden State Cannery at Pomona, California? A. Yes, sir.

Q. Do you know whether or not they have a 14–P seamer there?

A. At the Pomona plant? No, sir.

Q. There is none there? A. No, sir.

Q. Have you ever been to the Ontario plant of the Golden State? A. Yes, sir.

Q. Have they a 14–P there? A. Yes, sir.

Q. Did you ever see it in operation?

[715] A. Yes, sir.

Q. Did you ever see it in operation on Apricots?

A. Yes, sir.

Q. Did you ever study its rate of operation, the number of cans per minute that were closed?

A. Why, I think about 45 cans a minute.

Q. You have observed that number?

A. Yes, sir.

Q. When was that?

Mr. TOWNSEND.—Now just a minute.

Q. (By Mr. TOWNSEND.) Did you make any notation? A. No. sir.

Q. Did you time it? A. No, sir.

Q. You are just estimating it?

A. From my experience as a cannery man; yes, sir.

(Testimony of Adrian C. Murray.)

[716] Mr. TOWNSEND.—I move to strike out all this testimony as incompetent.

The MASTER.—The motion is denied.

A. Why, I have called there several times a season for the past five years, and they had the Angelus machines in operation all the time.

Q. (By Mr. BLAKESLEE.) Are you accustomed to observe can-closing machines and determine the speed of operation of the same? A. Yes, sir.

Q. Do you from time to time put the watch on them?

Mr. TOWNSEND.—That is leading.

A. Yes, sir.

Q. (By Mr. BLAKESLEE.) Have you found that you were capable of noting the speed of—

The MASTER.—Don't lead him. Ask him what he has found as to his ability.

[717] Mr. BLAKESLEE.—I am asking him if he has found, as a fact, how accurately he could estimate speed by observation.

Mr. TOWNSEND.—Now, that is grossly improper, to have him try to put a valuation on his own abilities to do these things. It is what he has done—the acts themselves.

Q. (By Mr. BLAKESLEE.) What is the answer?

A. Why, I can estimate the speed of a machine I am familiar with, within a very few cans per minute.

Q. Have you checked your ability to do that with the watch? A. Yes, sir.

(Testimony of Adrian C. Murray.)

Mr. TOWNSEND.—That is the same thing, your Honor.

Mr. BLAKESLEE.—We offer in evidence the can marked "Tip" by the witness, as Plaintiff's Exhibit 17.

Q. I show you Defendant's Exhibit "T," a somewhat mutilated can and ask you to note the seam formation on the end which is indented at the edge and state if you have ever [718] seen a closed can in final condition with a seam like that.

A. Yes, that is a finished seam.

Q. (By Mr. BLAKESLEE.) What do you mean by a finished seam?

A. Well, there are two operations commonly used in seaming sanitary cans. The first one rolls the tin and the next one flattens it down.

Q. Do you know that that has had two operations from looking at it? A. Yes.

Q. How can you tell?

A. Well, it is rolled down flat, and if it had only had the first operation it would be a comparatively round roll.

Q. Now, please look at the other end of that can and tell us what formation you find there.

A. That is the first operation.

Q. Have you ever seen cans packed and with such single operation either on the bottom or the top?

A. No, sir. Not and considered finished; not and considered a final seam.

[719] Q. I mean, finally packed and sealed.

(Testimony of Adrian C. Murray.)

A. No.

Q. Do you know of any cannery in which a single double-seaming operation is relied upon to put the top of the can in final sealed condition?

A. No, sir.

Q. Do you know whether that, from your experience, will produce a seam which will be commercially satisfactory?

A. It would not; no, sir.

Q. And why not?

A. Well, it is not rolled down tight; and while you might be able to get a tight seam on some cans, it wouldn't be a good seam; it wouldn't be a reliable seam; and if you run it that tight on the machines I have used, you would wear out your rolls and chucks.

Q. In other words, if you make a practice with the machine of rolling down tight like that first seaming operation; is that you mean?

A. Yes, sir.

Q. Now, why would that damage occur to the chucks, dies, and so forth?

The MASTER.—I think your question was ambiguous there. I don't quite get it. The next to the last question. That is not rolled down tight there in your first operation?

A. What I meant was, it is rolled too tight for a first operation.

[720] Q. (By Mr. BLAKESLEE.) That is, tighter than normal? A. Yes.

Q. (By Mr. TOWNSEND.) You mean it is

(Testimony of Adrian C. Murray.)

tighter than the Pacific do roll it. Is that what you mean? Is it not rolled tighter than the Pacific would roll it?

A. Why, in actual practice I never tried to roll one that tight.

Q. (By Mr. BLAKESLEE.) Can you state whether or not that single-seaming roll is tighter than the first operation of a double-seamer? I mean in this exhibit.

Mr. TOWNSEND.—That is an indefinite question. It doesn't mean anything.

Q. (By Mr. BLAKESLEE.) State whether that single-seaming operation of Exhibit "T" has produced a tighter rolling down than is done in the first operation in double-seaming.

Mr. TOWNSEND.—Same objection, that it is indefinite and calls for a conclusion of the witness.

The MASTER.—The objection is overruled. Do you know the tightness of a roll from looking at it? A. Yes, sir.

The MASTER.—All right.

A. That seam, in my estimation, is rolled too tight for actual practice, in as much as it would wear out the rolls and chucks, and it is of no advantage to roll them that tight in actual practice.

Q. (By Mr. BLAKESLEE.) Did you ever see a can seam, either [721] on top or bottom, rolled as tight as that seam is in the first seaming operation on any machine for commercial purposes in packing?

A. Not for commercial purposes, no.

(Testimony of Adrian C. Murray.)

Q. Either in putting the bottom in or in putting the top in? A. No, sir.

Q. Now, suppose the practice were made in a cannery of rolling the seams as tight as that single double-seaming tight roll has been produced in this Exhibit "T," in the continuous operation of such machine day by day what would be the damaging effect, if any, upon the machine?

Mr. TOWNSEND.—That is objected to on the ground that no proper qualification has been shown, and it is a hypothetical question.

The MASTER.—I think it is cumulative. Hasn't he answered that two or three times?

Mr. BLAKESLEE.—No, as to the total effects. He said it would damage.

The MASTER.—The objection is overruled.

A. On a roll machine, if the rolls were set that tight when there was no can in the machine the rolls would come in contact with the chuck and wear the chuck and the rolls.

Q. How long, from your knowledge of the construction, adjustment and operation of can-sealing machines, would a chuck and roller stand up under such practice of rolling [722] the seam as tight as in Exhibit "T"?

A. Why, I don't think they would stand ten hours of actual operation.

Q. And that would require practically a daily replacement, would it? A. Yes.

Q. (By the MASTER.) Do you mean to say that when the roller was adjusted so as to roll the

(Testimony of Adrian C. Murray.)

seam as tight as it appears on this Exhibit "T," the rollers would not stand up over ten hours?

A. Yes, sir.

Q. By the rollers, are these what you refer to (indicating), in Exhibit "P"? A. Yes, sir.

Q. And the chuck is the portion in the center?

A. Yes, that is the chuck. And that (indicating) is the seaming roll.

Q. How do you tighten this up so as to bring the rollers in closer connection?

A. There is a cam lever that works this cone here. It works from a cam on the back of the machine with an adjustable bracket in the center, and if you let that bracket down it lets that cone go down further and throws the roller in closer to the chuck.

Q. And by adjusting the can against the top of this—

A. The cam is on a cam shaft out here, and there is a [723] cam lever runs across there, with a bearing in the center, that works down with a cross-power on that and throws that down, and that shoves the cone down further and throws the rolls in closer.

Q. (By Mr. TOWNSEND.) Do you know whether or not the Los Angeles Can Company has one or more idle 14–P machines in stock?

A. Yes, we have several.

Q. Do you know whether or not those are ever supplied by the L. A. Can Company to canneries

(Testimony of Adrian C. Murray.)

for use in closing the cans furnished by the L. A. Can Company? A. Yes, sir.

Q. Do you see those 14–P machines so furnished by the L. A. Can Company when they are in operation at the canneries? A. Yes, sir.

Q. And is it part of your duty to attend to troubles that occur in the use of them?

A. Yes, sir.

Q. Did you ever receive complaints regarding the operation of these 14–P machines? A. Yes, sir.

Q. What do those complaints have to do with?

A. Why, we have more complaints about the tit on the body seam that I explained a while ago than any other particular cause.

Q. How does the number of those complaints from the [724] operation of 14–P machines compare with the number of complaints you get as to the operation of the Pacific machines?

Mr. TOWNSEND.—Same objection, that the records would be the best evidence; and there are so many factors, as to the number of machines that are out of one kind as compared with the other, and varying working conditions, and so forth.

The MASTER.—The objection is overruled.

A. We get a great deal more complaints on the Angelus machine than we do on the Pacific.

Q. (By Mr. BLAKESLEE.) How about the number of adjustments that you have to make in the performance of your duties in canneries? Do you have to make those adjustments more frequently on either the Pacific machines or the 14–P machines?

(Testimony of Adrian C. Murray.)

Mr. TOWNSEND.—Same objection.

The MASTER.—Overruled.

A. I have to make quite a good deal more adjustments on the Angelus than I do on the Pacific.

Q. (By Mr. BLAKESLEE.) What is the nature of those adjustments you have to make on the 14–P Angelus?

A. Well, there are various adjustments to be made on the machines from time to time; but we have more trouble—our main trouble is with the tits on the body seams.

Q. (By the MASTER.) Of which do you have the greatest number of machines to look after—the Angelus or the Pacific?

[725] A. We have had more Angelus machines out, but we are gradually replacing them with the Pacific machine. In fact, when I first went on this job for the Los Angeles Can Company we had a great deal more Angelus than we did Pacific; but the customers are calling for Pacific machines and we are gradually replacing them as we can afford to with the Pacific machine.

The MASTER.—That almost does away with the weight of the witness' testimony.

Mr. BLAKESLEE.—I will carry it a little further, then.

Q. Do you know any canning plant in which there is approximately an equal number of Pacific and Angelus machines?

Mr. TOWNSEND.—That is objected to as incompetent, irrelevant and immaterial. The word

(Testimony of Adrian C. Murray.)

"approximate" in that connection means nothing at all. The records would be the best evidence.

The MASTER.—The objection is overruled.

A. I don't believe we have any cannery where there would be approximately the same machines—

Q. (By Mr. BLAKESLEE.) The same number.

A. —the same number of machines in operation.

Q. Now, take a given plant from which you have received complaints requiring adjustment and in which both the Pacific and Angelus 14–P machines are operated can you tell us of any such plant from which you receive complaints requiring such adjustments more as to any one Angelus machine [726] or any one Pacific machine in such plant?

Mr. TOWNSEND.—Unless he specifies the particular plant the question is hypothetical, and we must have some means of rebutting all this talk we are getting here.

The MASTER.—The question asked for the name of the plant.

A. At the San Fernando Canning Company we put in Angelus machines when they first started up, and they ran them one season and had a great deal of trouble, and they asked for the Pacific machines, and we have since installed Pacific machines.

The MASTER.—No, counsel asked you for any plant where they had both machines installed.

A. No; we have some plants where we have an Angelus 19–P in their gallon line, and the rest of the lines would be Pacific—

(Testimony of Adrian C. Murray.)

Q. (By Mr. BLAKESLEE.) What is the name of that plant?

A. The San Fernando Canning Company.

Q. Now, is there any particular machine in that plant that has required more adjustment than any other machine?

A. Yes, the Angelus 19–P requires more adjustment.

Q. Do you know to what extent all the machines there are used—that is, in comparison with each other?

A. Well, in the canneries it is customary to run the small lines, that is, the 2½ and No. 1 cans, a great deal faster than it is the No. 10 can. They don't use as many [727] No. 10 as the small cans.

Q. And which are the No. 10?

A. They are commonly called "gallons."

Q. Do you know any plant in which they are running Angelus machines on the 2½ cans?

A. Yes, sir.

Q. And running them continuously through the season? A. Yes, sir.

Q. Do you know any plant in which they are running the Pacific machines on 2½ cans continuously during the season? A. Yes, sir.

Q. Mention the names of those two plants. First as to the Angelus.

A. Well, we have several. The Golden State Canneries, at Ontario, used Angelus—some of them, last year; and we put in some Pacifics there last year.

(Testimony of Adrian C. Murray.)

Q. Now as to either plant, can you state whether you have received more complaints as to any one machine in that one plant than you have with respect to any one machine in another plant?

Mr. TOWNSEND.—We make the same objection, that it calls for a conclusion and opinion of the witness, and no foundation has been laid to know what the conditions were or hours of operation.

Mr. BLAKESLEE.—I said continuously.

The MASTER.—The objection is overruled.

[728] A. In the canneries where we have installed the Pacific machines, we have never had enough of those to go around and we have always installed them in the faster lines where they required speed, and they gave a great deal less trouble, even at a fast speed, than the Angelus did at the slow speed.

Q. And in those two plants that you mention, did you find in either plant any certain machine of one make that required more attention than any certain machine of the other make in the other plant?

Mr. TOWNSEND.—Same objection.

The MASTER.—Same ruling.

Q. (By Mr. BLAKESLEE.) In other words, in the plant having the Angelus, did you find any one machine as compared with a certain machine in the plant having the Pacific, where there was a difference in the amount of complaints you received and in the adjustments required?

A. Yes; there is always more adjustments on the Angelus machine than on the Pacific.

(Testimony of Adrian C. Murray.)

Cross-examination.

(By Mr. TOWNSEND.)

Q. When did you install these 14–P machines at the San Fernando plant?

A. I think it was in 1919.

Q. How many machines did you install for them?

[729] A. At first there was three—one No. 10 and two of the 2½.

Q. One 19–P and two 14–P? A. Yes.

Q. And then did you put in some others later?

A. I don't believe we did; of the Angelus, you mean?

Q. Yes. A. No, I don't believe we did.

Q. And the L. A. Can Company furnished these Angelus cans to the San Fernando Company in 1919?

A. I think that is the date; I am not sure.

Q. What part of 1919 was it?

A. It was in the spring. They started beginning on apricots.

Q. How long did they continue to use those machines—that is, the 14–P's? As I understand, they are still using the 19–P's.

A. Yes. The 14–P's they used all of that season. I am not sure whether we installed Pacific machines the next season or whether they used the Angelus two seasons.

Q. What other installations of 14–P's or 19–P's have you [730] made in your experience with the L. A. Can Company?

A. Well, we have several customers, and we send

(Testimony of Adrian C. Murray.)

them out—oh, there is a number of them. They have been at the Golden State and at various plants of theirs, and out at Colton, at the California Growers, Riverside, and at the Arlington cannery, the Bonner Fruit Company at Lankershim, the California Sanitary Canning Company in Los Angeles—I could name—

Q. Well, go ahead. We would like to hear how many of them you can remember.

A. Well, there is the Lindsay Ripe Olive Company, at Lindsay; the Consolidated Canneries at Porterville; the Bakersfield Canning Company at Bakersfield; several of these canneries I am naming now have since gone out of business. The McKeon Canning Company in Los Angeles here; the United Tuna Packing Company of Wilmington; the Coast Fishing Company of Wilmington; the Lower California Fisheries at San Diego; the Gifford Olive Company of San Diego; the Golden State Canneries at Cucamonga—I don't know whether I have named that before or not. Well, if I put my mind on it I could call off a lot of them.

Q. It is easier to name the canneries in existence around here that haven't put the 14–P's in, eh?

A. Well, no,—The American Can Company supply possibly half of the canneries in Southern California. We don't supply them. Our customers most all of them, have used the [731] Angelus machine sometime or another.

Q. Now, within the last year or so, can you name

(Testimony of Adrian C. Murray.)

the Angelus 14–P's and 19–P's that you have made even at the risk of repeating of some of this list?

A. Well, we sold two machines to Sutton &—I can't think of the other partner's name, but they are at Long Beach. Packed olives. We sold them last year.

Q. What type of machines were those—14–P's?

A. One was a 14 and one was a 19; and we sold a 19–P to a fellow that has a small olive plant up at Hemet—Moulton, was his name; he has a ranch up there.

Q. When was that?

A. About a month or six weeks ago. That is all that I remember of installing. Now, let's see. Oh, we rented a couple to a fellow named Smith in El Monte that was packing some olives.

Q. When was that?

A. That was last fall, along in October or November.

Q. Do you recall any others within the last season, that is, the season of 1922 and 1923,—or 1922,— and either sale or lease or rent—whatever your plan of handling was?

A. Well, the El Monte Canning Company had the Angelus machines and they failed, and we had taken the machines out and hauled them in to the plant, and then they reincorporated and started up again and we sent the machines back to—I wouldn't say it was the same machines, but we just packed up a couple of machines and sent them back to them.

(Testimony of Adrian C. Murray.)

Q. Was that 14–P?

A. One was 14–P and the other 19–P.

Q. When was that?

A. That was along in the summer. They only packed tomatoes. I think they went out probably in June or July, or maybe August, 1922.

Q. When did you sell the 14–P's to the Coast Fishing Company? Did you sell any to them?

A. Why, those machines were installed down there. We had them under can contract, and we don't make a sardine can—that is, the oval and square cans—and they buy their squares and oval from the American Can Company, and when their contract was up they felt like they wanted to do all their business with one company, and we sold them the machines that were installed at the plant. That was some time last fall; I don't know the exact date, because I didn't handle them,

Q. Now, that is all you remember in 1922 that you rented, leased or sold?

A. Well, there might have been some replacements. If a machine needs a lot of repair work, we have plenty of machines there and we will take and pick out a machine that [733] is in good condition and fix it up; and if the cannery has a machine that is in bad shape we will take it out to his plant and he will take the machine out of his line and put in the better one, and we will haul the old one back. We may have done that a number of times. I don't remember any particular instance where we did it, but we probably have.

(Testimony of Adrian C. Murray.)

Q. Do you remember what transactions of that character, leases or sales of 14–P's, you had in 1921? A. 1921 wasn't—

Mr. BLAKESLEE.—I think we might object to this line, if your Honor please, adopting counsel's own objection, that the witness is not qualified or competent as to lease transactions. I don't think that he is. I asked as to certain machines that were placed at places where he knew they were placed, and came from their shop.

The MASTER.—I won't sustain that objection, but I don't see what the purpose of the examination is.

Mr. TOWNSEND.—He testified on direct examination that he had installed the 14–P's at various places, and I am now tracing these out.

[734] A. 1921 wasn't a very good year and I don't remember of making very many changes; in fact, I don't remember of any particular instance where we made any changes. The canners were all in bad shape in 1921. 1920 was a disastrous season for the canneries, and while we brought lots of machines back from canneries that had failed, I don't remember of installing any.

Q. (By Mr. TOWNSEND.) Most of the canneries during 1921 were running on equipment that they already had, is that it?

A. Yes, that is the idea.

Q. (By the MASTER.) Has the Pacific the gallon can machine?

(Testimony of Adrian C. Murray.)

A. We have a few. We just started making them last year.

[735] Q. (By Mr. TOWNSEND.) How do you adjust the Pacific seaming means?

Q. To get a greater or less pressure, to roll a tighter or looser seam on the first operation.

A. Why, with a cam. You raise or lower a cam, that moves the curling die.

Q. So, in the Pacific, when you want to adjust the tightness or looseness of the seam roll, you adjust a cam there which affects the curling die?

A. Yes, sir.

Q. And in the Angelus, when you want to vary the tightness or looseness of the seam on the first operation, you adjust [736] a lever which controls a cone, which in turn controls the in and out throw of the seaming rollers?

A. That is right.

Q. How many of those curling dies do you employ on the Pacific? A. Four.

Q. When you adjust by means of a cam, does that affect the adjustment of all of the other three?

A. It does on our small machines, yes. On the No. 10 we have individual adjustments.

Q. Referring to this gallon can, Plaintiff's Exhibit 17, which has the tit on it that you have referred to, what is your best explanation for the cause of that? Too much tin, too little tin, too much solder, or too little solder?

A. That particular tit looks as though it was caused from not enough tin. It is hard to explain,

(Testimony of Adrian C. Murray.)

but there is a little difference in the formation of a tit caused from too much tin and one caused from not enough tin.

Q. Explain to us what too little tin or too much tin means.

A. Well, in the double-seaming of the can, if you put more pressure on your base plate it gives you more tin in the seam, that is, more can flange.

[737] Q. You are not able to tell from looking at that can, Exhibit 17, what really caused that difficulty, are you?

A. Not positively, no. I would have to make an examination of the can.

Q. Does it look to you that the soldering machine or the can body maker was at fault there with the amount of solder he had gotten on there?

A. No; I have seen them make good seams with as much or more solder than that.

Q. Has that joint been properly wiped?

A. Well, it is not as good as it could be, but you wouldn't call it bad. I wouldn't call it a bad wiped seam.

Q. Do you also note, adjacent to the point where you marked "tit," what appears to be like a lump of solder on one side of the longitudinal seam and a compression or [738] flattening of the cover roll or flange on the other side?

A. Yes. Is it that particular part that you refer to?

Q. That is the latter one. A. Yes.

Q. The flattening of the roll?

(Testimony of Adrian C. Murray.)

A. Yes. That is caused from solder, but that is a different formation to this one here. This tit I refer to here is a point of the cap flange turned down. While that is up under, it is not up under there perfectly, but it is up under better than that is.

Q. In regard to the vertical adjustment of the machine, has that anything to do with increasing or obviating such a condition as you speak of here?

A. Just what do you mean by that?

Q. The vertical adjustment of the chuck that holds the can while the seaming is being done.

A. The lower chuck or base plate, as we call it?

Q. Yes.

A. Oh, yes. The first thing to do when you have that trouble is to look over the seaming head and check it up and be sure that it is all right, to see that the rolls are not worn and the chuck and rolls are in relation to each other, and then by adjusting the base plate pressure up and down is the way we try to eliminate that.

Q. The adjustment of the base plate of the lower chuck is performed how on an Angelus machine?

[739] A. The shaft that the base plate is on is threaded and it screws on just as though you would screw a nut on. You loosen the screw and screw it down or up, which ever way you want to go.

Q. Do you have an adjustment for the lower chuck or plate on the Pacific? A. Oh, yes.

Q. How is that adjusted?

A. It is practically the same way.

(Testimony of Adrian C. Murray.)

Q. You mean the same way that you have just described on the Angelus?

A. If you want to adjust the base plate, but if you are adjusting for tin pressure you generally take a scale and measure up the height of the base plate to the top of the ring or the curling die, and set that 1/16 of an inch shorter than the can, the actual length of the can, and then there is a spring in the lifted slide, and with an adjusting screw on that so that you can adjust the tension of that spring, which will hold or take care of the cushion on the can.

Q. How do you do in making that similar adjustment on the 14–P?

A. A similar adjustment?

Q. Yes.

A. There is underneath the frame, or the bed plate, I should say, of the machine, a cross collar, with a couple [740] of rubbers between it, and a bar that lifts the base plate, that holds the shaft that lifts the base plate, and you can get some adjustment on those rubbers, but, granting that that adjustment is right, why, we make the adjustment with the base plate.

Q. Then if your pressure is too great or too little on your Pacific curling ring, you have to adjust that too, do you not?

A. You mean to curl a seam tighter or looser?

Q. Yes. A. Oh, yes.

Q. And if you have to make an adjustment of a similar character for a similar purpose on the An-

(Testimony of Adrian C. Murray.)

gelus, you do that by shifting a lever, as you have described? A. Yes, sir.

Q. So, in either instance, you have what are supposed to be adequate means for adapting the can to meet the conditions such as you have pointed out here in this gallon can, Plaintiff's Exhibit 17?

A. Yes, sir.

Q. I believe you are a stockholder, are you not, of the Pacific Closing Machine Company?

A. Yes, sir.

Q. How long have you been such a stockholder?

A. About a year and a half.

Q. Among the machines or machine companies for whom you [741] have made adjustments on 14–P's, did you mention Mr. Ortega's plant here in town?

A. I don't believe I mentioned him. I have been in his plant.

Q. What is the name of his plant?

A. I believe it is known as the Ortega Green Chile Company, but I wouldn't be positive about that.

Q. Haven't you some 14–P's in there, or have had some in there? A. Yes, sir.

Q. Have you some there now? A. Yes, sir.

Q. How recently have you had to do any work or any adjustment or trouble shooting there?

A. Not since he was running last season. He is not running at the present time.

Q. Were you there doing some adjustment work on 14–P's last season? A. Yes, sir.

Q. Can you tell about what month it was?

(Testimony of Adrian C. Murray.)

A. Well, August and September, I would say.

Q. How many machines has he working?

A. He has two upstairs. He has four of our machines and two that he bought of Mr. Guenther.

Q. By "our machines," do you mean Angelus machines that were bought from the L. A. Can Company?

[742] A. They belong to the L. A. Can Company.

Q. The 14–P's?

A. Three 14–P's and one 19–P.

Q. What was the nature of the adjustments that you had to make or repairs that you had to make on the 14–P's for Mr. Ortega last season?

A. They were mostly repairs on— Well, the machines were worn generally, and not in good condition, I don't remember the exact nature, but they were just in bad shape generally, and I went over them to the best of my ability and put them in shape for him.

Q. Do you remember what parts? Was it can head seaming parts, like Exhibit "P," or was it some other part of the apparatus?

A. Yes. I am reasonably sure that I put on new rolls and chucks.

Q. Did you do any work on the cap feed or can feed portion?

A. I think his can feed slides were worn, and I think I put in a new one there, but I wouldn't say positively about that.

(Testimony of Adrian C. Murray.)

Q. Do you know how long any of those machines have been in service?

[743] A. Yes. They have been in service—well, I couldn't say positively, but they are old machines. They have been in service several years.

Q. You have given some testimony on direct examination in regard to this smaller can, Defendant's Exhibit "T," and stated that one end illustrated the completed seaming operation, and the other end represented only the first operation of seaming? A. Yes, sir; that is right.

Q. Have you any comments to make on the end that shows the completed seam, or both operations, and which end is adjacent to the dent in the body and the small perforation?

Mr. BLAKESLEE.—I think the question is indefinite. He might comment in a great many ways.

Q. (By Mr. TOWNSEND.) I will add to it: whether that is a good seam or a bad seam. Is it rolled too tight or not rolled tight enough?

A. It doesn't look anything extra. It is a finished seam. It looks as though the roll was pretty badly worn and it was running with a too loose first operation. I judge [744] that by the width of the finished seam. In order to say whether that seam was good or not, it would be necessary to test it out and cut it open and look at the hook on the tin, to be sure that they were butted up together, the two tins butted up together.

Q. Could you tell by what machine this double-

(Testimony of Adrian C. Murray.)

seam portion or end that we have been talking about was made?

A. Well, I couldn't say without a doubt. I wouldn't want to make a statement as to the machine that was made on. There are so many double-seaming machines that it might be made on, To pick out one particular seam—there are always freak seams, and it would be hard to make a statement as to what particular machine that was made on.

Mr. TOWNSEND.—That is all.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. In the early part of your cross-examination you referred to a number of plants that had been supplied with 14–P machines. Can you state the names of the plants or canneries, if any, in which those machines have been replaced by Pacific closing machines? A. I can name several.

Q. Please name all of those you recollect.

A. The Consolidated Canneries at Porterville.

Q. And the number in each plant?

[745] A. There were two at the Consolidated Canneries at Porterville.

Q. (By Mr. TOWNSEND.) Let me ask the witness to add to his statement something to make clear this idea of replacing one machine by the other. State whether or not any were left at all of the Angelus, how many there were, and how many Pacifics were put in there. I think the ex-

(Testimony of Adrian C. Murray.)

amination is immaterial, but I am not going to interpose an objection to it.

The MASTER,—All right.

A. What is the question, now?

Q. (By Mr. TOWNSEND.) In answering Mr. Blakeslee's question, tell us how many machines there were there of the Angelus type, how many Pacifics you put in and how many Angelus were left there, and what you did do with the Angelus that you took out.

A. At the Consolidated Canneries at Porterville there was one 19–P Angelus and two 14–P's, and we replaced the two 14–P's with Pacifics. The 19–P is still there, although the cannery is not in use now. The machine is idle and the cannery is in the hands of a receiver.

Q. (By Mr. BLAKESLEE.) What became of the 14–P's that were replaced?

A. I don't remember what became of those particular machines. As a rule, though, we have been hauling them in and storing them in an old barn there that we have on the property.

[746] Q. In that connection, how many of those 14–P's that have been recalled or replaced and retired to the barn, are there in that barn to-day, if you know?

Q. (By Mr. TOWNSEND.) Have you counted them yourself, personally?

A. Yes; I made a check on them a short time ago to see how many we had that wasn't in use. I think there was—I believe I made a note of that—

(Testimony of Adrian C. Murray.)

I had a record of it somewhere, but, as I remember it, it was fifty-six that we have idle, the most of them stored in the barn, and several of them in canneries that have taken them out and they are just setting there idle.

Q. (By Mr. BLAKESLEE.) What number of those have been in service and have been retired in the barn and have been replaced by the Pacifics? do you know that?

A. What number have been in service?

Q. How many of the fifty-odd, yes.

A. Oh, they have all been in service. We haven't any but what have been in service.

Q. How many of them have been replaced by Pacifics?

A. It figures about twenty-seven. I have the different canneries here that they were installed in.

Q. Can you answer the preceding question as to the other plants, stating where replacements of the 14–P's took place by the Pacifics, and stating the number of Angelus that remained after the replacements were effected?

[747] A. There was the Lower California Fisheries at San Diego. We replaced one Angelus with one Pacific.

Q. Leaving how many Angelus there?

A. Two, I believe; and the San Fernando Canning Company, we replaced two Angelus with two Pacifics. The Golden State Canneries at Cucamonga, we replaced two Angelus with two Pacifics; and the Golden State Canneries at Ontario, two

(Testimony of Adrian C. Murray.)

Angelus with two Pacifics. The Consolidated Canneries at Porterville—well, that is the one I started off with at first—two Angelus with two Pacifics. California Growers Association, Riverside, three Angelus with three Pacifics. United Tuna Packers, Wilmington, one Angelus with one Pacific. Los Angelus Can Company, eleven Angelus with eight Pacifics. We took out eleven Angelus and in putting in the eight Pacifics we made an addition. We just used one Pacific in place of two Angelus, but we made an addition to our equipment, which called for more machines. The Reedley Canning Company, at Reedley, we replaced one Angelus with one Pacific. The Golden State Canneries, Ontario, —well, these are No. 10's. Those that I named before Reedley were the small machines, the 14–P Angelus, and now these are No. 10's, beginning with the Reedley Canning Company, where we replaced one Angelus 19–P with the gallon Pacific. At the Los Angeles Can Company we replaced two Angelus 19–P with one Pacific. The Golden State Canneries at Ontario, one Angelus with one Pacific. California Growers Association, Ontario, one Angelus [748] with one Pacific. H. G. Prince & Company, Fruitvale, ordered one Pacific gallon to replace Angelus. That has been delivered since this memorandum was made.

Q. I notice you have been referring to some notations in giving your recent answers. Will you tell us what those notations are, those memoranda that you referred to, where you obtained them?

(Testimony of Adrian C. Murray.)

A. That is something that I had the girl that has charge of these double-seamer books look up for me. She—

Q. She prepared the memorandum for you?

A. Yes, sir.

Q. From the records of the Los Angeles Can Company? A. Yes, sir.

Q. Do you know of a single instance in which the Los Angeles Can Company replaced a Pacific with an Angelus machine? A. No.

Q. Do you know why these replacements of Angelus machines by Pacific machines took place?

Mr. TOWNSEND.—That, your Honor, would be a guess.

The MASTER.—Yes or no.

A. Yes.

Q. (By Mr. BLAKESLEE.) Can you state of your own knowledge, based upon your visits to the plants and your observations there, that is, at the canneries, why those replacements took place?

[749] Mr. TOWNSEND.—That calls for hearsay.

The MASTER.—Yes or no.

A. Yes.

Q. (By Mr. BLAKESLEE.) Please state what you know about it.

A. The canners preferred the Pacific machines.

Mr. TOWNSEND.—Your Honor, that should be the end of that. That is a matter of hearsay, what reason the canners had to change.

Q. (By Mr. BLAKESLEE.) State not what

(Testimony of Adrian C. Murray.)

they prefer or think or believe, but what you have observed took place after the replacements?

Mr. TOWNSEND.—That is the same thing, your Honor.

Q. (By Mr. BLAKESLEE.) As to speed of operation or any other factor that you know of.

Mr. TOWNSEND.—The same objection.

The MASTER.—Overruled.

A. The canneries where we have replaced the Angelus machines with Pacifics like them much better on account of the simplicity of operation and the speed at which they can be operated.

Mr. TOWNSEND.—I move the answer be stricken out as calling for hearsay.

The MASTER.—Motion granted.

Q. (By Mr. BLAKESLEE.) State not what they liked or thought, but from your own observation what you know occurred after the replacements with respect to differences [750] in speed and simplicity of operation or any other thing.

Mr. TOWNSEND.—The same objection.

Q. (By Mr. BLAKESLEE.) State what you know, rather than what you believe they thought.

The MASTER.—He shouldn't state what he heard, should he?

Mr. TOWNSEND.—Not what he heard.

The MASTER.—Did you ask him what he heard?

Mr. BLAKESLEE.—No. To state what he knew rather than what he believed the canners thought; what he knew from his observation as to simplicity, speed or any other factor.

(Testimony of Adrian C. Murray.)

A. The Pacific machine is far superior to the Angelus 14 or 19–P in regard to simplicity and speed and operation.

Q. (By Mr. BLAKESLEE.) Please state from your observations of the operations of the Pacific machine what, if any, advantages you attribute in any respect to the continuity of operation of the machines and the performance of one seaming operation on one turret, and of the second operation on another turret, together with the simultaneous feed of the cans and tops to the first turret.

Mr. TOWNSEND.—That calls for the conclusion and opinion of the witness and is objectionable.

The MASTER.—We will receive it as his opinion.

Mr. BLAKESLEE.—I have asked him from his observation as to any factors—

A. The Angelus, both 14 and 19–P, is an intermittent motion machine and causes a good deal more slop or spill than [751] the Pacific does, being a continuous motion machine.

Q. How about speed of delivery of sealed cans from the two machines?

A. In handling fruit or anything that has liquid that might slop, I have never found it to be practical to run an Angelus machine over fifty or sixty cans a minute, while the Pacific machines we recommend them up to a hundred or one hundred and twenty cans per minute.

Q. What materials have you seen packed on the Pacific machines running as high as 120 cans per minute?

(Testimony of Adrian C. Murray.)

A. Apricots and peaches and fish. I don't know whether I have seen tomato machines run that fast or not; I believe I have, though. Yes, I have seen the tomato machines run up to a hundred or a hundred and twenty cans a minute.

Q. (By Mr. TOWNSEND.) In connection with that answer will you please state the size of the cans and at what plants and when?

A. I have seen them in the California Growers' plant at Hemet on 1-pound tall cans, and No. 2½ cans.

Q. And the commodity?

A. Apricots and peaches, and tomatoes at the California Growers at Ontario.

Q. What was the size of the cans? A. 2½.

Q. And where were the fish, and what was the size?

A. That was ½ pound tuna, at the Coast Fish Company at Wilmington.

[752] Q. (By Mr. BLAKESLEE.) Please state whether or not, in packing apricots and peaches, a syrup is used in the can. A. It is.

Q. How close to the top does the syrup machine provide that syrup in the cans?

A. Well, as a rule—there are different syrup machines, but, as a rule, the can comes from the exhaust box level full of syrup, and as a general rule the fruit is sticking above the top of the can, so that throws too much in the can and it has to be squeezed out as the cans goes on to the chuck.

Q. Is that true in using all sorts of closing

(Testimony of Adrian C. Murray.)

machines, that part of the syrup is squeezed out in putting the top on?

A. If you run an intermittent motion machine too fast it will throw it out and sometimes throw too much out, more than should be.

Q. Then in which, if either, type of machine, the intermittent or the continuous, is there more slop or spill of the syrup?

A. There is more spill on the Angelus machine.

Q. Or any intermittent type?

A. Any intermittent type, yes.

Mr. BLAKESLEE.—That is all.

[753] Recross-examination.

(By Mr. TOWNSEND.)

Q. Will you just take that list that you had in your pocket, that you referred to a moment ago, of the can companies where you have replaced Angelus machines by Pacifics, and just read one name at a time? I wasn't able to take the list as you gave it. If you will just give me the company, I will just frame my questions very quickly and we won't be but a moment on it.

A. There was the Lower California Fisheries at San Diego, and the San Fernando Canneries—

Q. Just tell me what you did with that first named cannery.

A. We replaced one Angelus with one Pacific.

Q. How long had that Angelus been in use?

Mr. BLAKESLEE.—If you know.

A. I don't remember about that particular machine.

(Testimony of Adrian C. Murray.)

Q. (By Mr. TOWNSEND.) Do you know what became of it?

A. It is down there yet. We didn't have them ship it back. We didn't need it, and it is just setting there out of the line.

Q. Is it their property or yours?

[754] A. It is ours.

Q. Now take the next cannery and tell me what the age was, and the use of the machine that you replaced. Or, first, how many other Angelus machines remained at that fish cannery after you replaced that one?

A. There are two there; that is, all three of them are there. There was three there, and they are all there yet, but they had two half-pound tuna cans and one one-pound tuna, and they run all of their pack of the half-pounds on this half-pound Pacific machine last year. They didn't use either one of the half-pound Angelus machines. The machines are there yet, but not in use.

Q. Did they use the other or third Angelus that is there?

A. Yes, the 1-pound. They wanted a Pacific, but we didn't feel justified in giving it to them on account of the small amount of 1-pound cans they used.

A. At the San Fernando Cannery, at San Fernando, we replaced two Angelus with two Pacifics. Those Angelus were brought back and fixed up, and I don't know whether they were sent out to some other of the smaller canneries or not. You

(Testimony of Adrian C. Murray.)

see, we put them in the barn there and whenever we need a [755] machine for a small cannery we go out there and pick out what we consider the best one, and sent it out again. Now, just where those machines had been before, I couldn't state.

Q. How long had those two been in use at San Fernando or at any other place, to your knowledge?

A. I don't remember.

Q. How many were left after you replaced those two?

A. We left the 19–P, the No. 10. That was the only one that was left. The next is the Golden State Canneries, Cucamonga, where we replaced two with two Pacifics.

Q. How long had those two Angelus been used?

A. I don't know.

Q. How many were left?

A. There was a No. 10, 19–P.

Q. Go ahead.

A. And the Golden State Canneries, Ontario, we replaced two Angelus with two Pacifics, small ones, and one 19–P Angelus with a No. 10 Pacific.

Q. (By the MASTER.) How old were those Angelus?

A. The No. 10 had been in, as I remember, two seasons. The smaller machines were old machines that wore out, and we had replaced them from time to time, but just the length of time I couldn't say. They were all comparatively new

(Testimony of Adrian C. Murray.)

machines, though, that is, the Angelus that we replaced were comparatively new machines.

Q. (By Mr. BLAKESLEE.) Does that refer to all the replacements that you have told us about?

[756] A. No. That is these at the Golden State Canneries at Ontario.

Q. (By Mr. TOWNSEND.) How many Angelus were left there after the replacement?

A. They have two now that we are to replace this season. Then the Consolidated Canneries of California, at Porterville, where we replaced two Angelus with two Pacifics. Those Angelus went up there new and were used one season and we replaced them.

Q. Were any of the others there left?

A. There is a No. 10 left there, but the cannery is not in operation at the present time and we don't need the machine and we are just leaving it there. The California Growers Association at Riverside, where we replaced three Angelus with three Pacifics. The age of those machines I don't know or I don't remember.

Q. Are there any left there?

A. There is a No. 10 19–P Angelus. The United Tuna Packers, Wilmington; they have since gone into the hands of a receiver and are not in business. The Los Angeles Can Company; we have one 19–P Angelus in the line over there that we use to put on when we put on both ends of the can, on what we call a stud hole or an old style solder can.

Q. That is like this can which I show you here,

(Testimony of Adrian C. Murray.)

marked on one end "15 pound pressure test, no leak on bottom, January 8, 1923." Is that the character of can you refer to?

[757] A. Yes; that is what we call a stud hole or an old style solder can.

Mr. TOWNSEND.—We offer that in evidence as Defendant's Exhibit "Y."

Q. Just shorten it up by saying how many Angelus machines were left at those canneries after the replacements referred to.

A. In most instances we replaced all the small machines and left the No. 10's, because we weren't building a No. 10 until a short time ago.

Q. Is there any exception to that in that list?

A. Well, at the Reedley Canning Company we have replaced one, or when they started we installed three Pacifics and one 19–P Angelus, and we have since replaced the Angelus with a Pacific.

Q. Was an Angelus ever in that plant?

A. One 19–P. They ran it one season. And the Golden State Canneries at Ontario, we replaced one No. 10 Angelus with a Pacific.

Q. Were any other Angelus left there?

[758] A. At the Golden State Canneries, yes. You see these are listed twice here. The Golden State Canneries I called off before, but that was in regard to the small machines, and then the No. 10 machines are down below here, and I am really repeating the firms' names that I have already called. The Golden State Canneries at Ontario, one Angelus 19–P, with a Pacific gallon machine.

(Testimony of Adrian C. Murray.)

There are no Angelus 19–P left there. As I said in a former statement, there are two Angelus 14–P's left there, to be replaced this season. H. G. Prince & Company—they are not a customer of ours. They are can makers themselves, in San Francisco, or Fruitvale, close to San Francisco. They ordered one Pacific gallon machine to replace an Angelus up there.

Q. How many other Angelus machines have you there in the plant?

A. I don't know. I am not familiar with that plant. They are not a customer of ours.

Q. Have you read the whole list?

A. Yes, I think so. I might have skipped some of them, but I don't think I did.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Of these Angelus machines that have been returned, fifty odd machines, that you have stored in the barn, can you state as to whether they are capable of being used still?

[759] A. The majority of them are all right, yes.

Q. Where there are defects, could or could not those defects be remedied, or the worn parts replaced, or such changes made or repairs made as would qualify them for service again?

A. Oh, yes; they could be repaired at a nominal cost.

Q. They are not worn out and obsolete?

(Testimony of Adrian C. Murray.)

A. They are not worn out. As far as obsolete is concerned, the canners are demanding Pacific machines.

Q. I mean by obsolete, they have not been reduced to junk?

A. Well, we would like to sell them at a real small part of their original cost.

Q. I mean, they are still capable of being used if repaired, some of them? A. Yes.

[760] 514 Post Office Building,
Los Angeles, California, Saturday, April 7, 1923,
10 A. M.

TESTIMONY OF A. N. COBERLY, FOR PLAINTIFFS.

A. N. COBERLY, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Q. (By Mr. BLAKESLEE.) State your age, residence, and occupation, Mr. Coberly.

A. I am a machinist; forty-eight years of age; and I reside in Arcadia, California.

Q. How long have you been a machinist?

A. About twenty-five to twenty-seven years.

Q. Were you ever employed by the Los Angeles Can Company of this city? A. Yes, sir.

Q. When did you commence such employment?

A. I commenced in March, 1911.

[761] Q. Are you still connected with the L. A. Can Company? A. Yes, sir.

(Testimony of A. N. Coberly.)

Q. Have you been ever since March, 1911?

A. No. When Mr. Guenther took over, or rather separated from the Can Company, I was in his employ. I don't know just how long that was. I went with him for awhile, and then after spending two or three months in the Navy Yard I came back to the L. A. Can Company; but I don't remember just the time I was away from there.

Q. When did you meet Mr. Guenther?

A. Well, I should think it was in January of 1911.

[762] Q. When you went to work for him where was he located?

A. He was occupying a part of the L. A. Can Company's machine shop or can factory.

Q. Did he afterwards occupy other premises?

A. Yes. He moved across the street on the corner of Humboldt and Avenue 20.

Q. After Guenther went across the street to the brick shop, did you ever visit him?

A. Well, I worked for him over there a year or more after he went over there.

Q. Did you ever go across to his shop at any other time?

A. Oh, yes. I had occasion to go across quite often since I have been with the Can Company.

Q. Did he ever invite you across? A. Yes, sir.

Q. Do you remember any particular occasion that he invited you across when anything transpired with relation to can closing machines?

A. Well, I, having charge of the repairs of the

(Testimony of A. N. Coberly.)

Can Company, was invited across there maybe in regard to those, [763] which I know I have been.

Q. What types of closing machines did you work on or repair for the L. A. Can Company?

A. Well, I worked on the Angelus, what is known as the 14–P and 19–P, and also on the Pacific closing machines and on the Max Ams closing machines.

Q. Those types were all used in the L. A. Can Company shop? A. Yes, sir.

Q. What types of closing machines are used there now?

A. Well, we are using the same types there now.

Q. Is the Pacific type being used?

A. Yes, sir.

A. Well, that includes complete overhauling of the machines, completely overhauling the machines.

Q. Overhauling machines used in the L. A. Can Company?

A. Well, not only there, but you understand that the L. A. Can Company supplies machines to the various canneries, and I also overhaul those and send them out.

[764] Q. For what purposes are those machines supplied to the canneries by the L. A. Can Company?

A. For the purpose of canning fruit.

Q. Name the kinds of machines they supply.

A. They supply the Angelus machine.

Q. Going back to the visits to Guenther across

(Testimony of A. N. Coberly.)

the street in the brick shop, state what recollection you have of any such visit when anything happened or was discussed concerning can closing machines.

A. Well, I was called over there by Mr. Guenther, perhaps called in the office first, in his private office from their main office, and then I was sent for to come over there, and we discussed some blue-prints that he had on his desk that he said he was going to build some of the Pacific machines— [765] they were Pacific drawings— going to build some Pacific machines for the other can company; so he called me in the office, and we talked about them quite a few times.

Q. Let's try to fix the time of that occurrence. Can you specify in that particular?

A. I remember the time of the year. As near as I can recollect it was in 1920.

Q. How do you fix the year as 1920? Was there any other occurrence or incident that helps you in so fixing the year?

A. No, only that it was just at the time that he was figuring on bringing out his new machine, that was all, which was brought out the following year. That is all.

Q. Prior to that time had you ever seen any or known of any can closing machine as being manufactured by Mr. Guenther, other than the 14–P and 19–P types?

A. You mean at that time?

(Testimony of A. N. Coberly.)

Q. Yes; prior to that time of the visit.

A. No.

Q. Had you ever seen any other type of closing machine [766] than the two types mentioned, before Guenther moved across the street to the brick shop? A. No, I hadn't.

Q. I mean any other types as being made by Guenther. A. No, I had not.

Q. Had you any occasion to go through the brick shop of Guenther prior to the time of this visit at the end of 1920? A. Yes, sir.

Q. How frequently?

A. Well, I should judge during the canning season every day.

Q. Had you ever seen any type of can closing machine in the brick shop prior to the incident at the end of 1920, other than the 14–P and 19–P types of closing machines?

A. Yes. He had a machine that I forgot to mention. He called it a semi-automatic machine, which was a hand machine that had been built by him.

A. There was no turret. There were, you might say, a spindle, a one-station machine.

[767] A. Well, one spindle on the machine; placing a can in under the machine one at a time.

A. It was two operations, but it was done by one stroke of the hand lever.

Q. On the same station?

A. On the same station; yes, sir.

(Testimony of A. N. Coberly.)

Q. (By Mr. BLAKESLEE.) How were the cans fed into that hand operated machine?

A. By hand.

Q. Did you observe the operation of that machine in the brick shop of Guenther at any time?

A. Well, not in his shop. I believe the Can Company bought maybe half a dozen of them and that was part of our equipment over there.

Q. You mean the L. A. Can Company?

A. Yes.

Q. Did you at any time carefully note the speed with which cans could have the bottoms seamed in on that hand machine?

A. I never just timed it, but I should think about six or eight or ten, maybe, a minute, by hand.

Q. How did the speed compare with that of the 14–P and 19–P Guenther closing machines?

A. I suppose about at least one-fourth less capacity.

Q. Have you any such single spindle hand operated machines [768] in the L. A. Can Company shop to-day?

A. Well, we still own six machines, but we have rebuilt them entirely.

A. They are still hand operated; yes, sir.

Q. What class of work do they do?

A. Well, mostly in paint manufacturing places, in canning paint, in paint plants.

Q. I understood you to say that these rebuilt hand machines [769] were used in the L. A. Can Company shop; is that correct?

(Testimony of A. N. Coberly.)

A. No, I don't believe we have them now. They have been used in there, but not at the present time.

Q. When you used them there did you use them to put bottoms in on cans after they were rebuilt?

A. Yes.

Q. To put in bottoms? A. Yes.

Q. Do you know why they were used when they were so much slower than the 14–P and 19–P machines?

A. I think the reason of that is you cannot—paint slopping so about they have to set each can in individually and bring the can up to the top or up against the top, to keep it from splashing, and then it doesn't start to revolve until it has come in contact with the upper lid, which stops the splashing; and then the rental or lease is a good deal less than it was on the Angelus or Pacific machines.

Q. What did they do? Did they lease these machines to paint factories? A. Yes, sir.

Q. Aside from this hand operated type of closing machine and the 14–P type and the 19–P type, did you at any time in your visits to the brick shop of Guenther ever observe any other type of closing machine either being constructed or finished or in use in that brick shop? [770] A. Yes.

Q. What other types?

A. I don't know what he calls his new type of machine, I have never heard, but it is a continuous motion machine. He explained it to me. I don't know how he designates it.

(Testimony of A. N. Coberly.)

Q. When did you first hear anything about that new form of continuous machine?

Mr. TOWNSEND.—May I make a suggestion here? Apparently a lot of time is being wasted to find out when Mr. Guenther began building his 24–P. Now, if it will expedite matters we will give you the date when he began building, and when it was completed and when it was operated, and cut out a lot of this stuff.

Mr. BLAKESLEE.—We wouldn't accept your date at all, and we are prepared to follow this matter by proofs without any tender on your part being accepted of that sort. We don't want it.

Mr. TOWNSEND.—I consider your imputation discourteous, to say the least.

Mr. BLAKESLEE.—Very well, sir. I am doing my duty as an attorney and not acting here in a personal capacity at all, so you may take it as you wish.

Mr. TOWNSEND.—The Master, at least, knows we make our offers in good faith and intend to offer them in conformity with the truth.

The MASTER.—There is no question about that, but there [771] might be a difference of opinion.

Mr. TOWNSEND.—There can be no difference as to facts.

Mr. BLAKESLEE.—We are after facts here, and we are proving them, and you may prove such facts as you can prove.

Mr. TOWNSEND.—It is in line with the attitude

of the plaintiffs, to wash their dirty linen and throw mud.

The MASTER.—If agreeable with counsel, I would like to have those dates fixed.

Mr. TOWNSEND.—It is the simplest thing in the world. Here we have gone on for eight or ten days and have gotten nowhere at all.

The MASTER.—It is quite possible that you may agree as to dates; I don't know.

Mr. BLAKESLEE.—I don't see why these repeated remarks should emanate from counsel about "washing dirty linen and throwing mud," and the contention that we are trying to blackmail his client, which to me is a piece of mental aberration that is beyond conception from any reasonable person, and I don't think those remarks should be indulged in. We are attempting here to prove conditions and things that existed at certain times, and if counsel wants to prove dates, and he can prove them, he may. If counsel wishes to make a statement on the record which he will abide by, as to when this 24–P machine of Guenther was completed, he may make his statement, but we will not accept it, and we intend to follow our proofs in these matters, under the control and [772] direction of the Master, in an orderly way.

The MASTER.—Do you wish to make a statement on the record?

Mr. TOWNSEND.—What is the use, Mr. Master, when an attitude of mind is entertained toward our side that is shown here?

The MASTER.—Very well. Let's proceed, then.

(Testimony of A. N. Coberly.)

Mr. TOWNSEND.—We offer to stipulate as to what the actual facts are, to cut out a lot of this miscellaneous innuendo and gum-shoe matter that is going on with no good to either side.

Mr. BLAKESLEE.—We think we will be able to show where the gum-shoeing is when we get through.

The MASTER.—Proceed.

Mr. BLAKESLEE.—What is the last question?

(Last question read.)

A. That was on—

Mr. TOWNSEND.—That sounds very much, your Honor, like hearsay.

Mr. BLAKESLEE.—We will withdraw the question. We will show counsel we are going to keep our mental balance on this side, and equilibrium.

The MASTER.—Proceed.

Mr. BLAKESLEE.—Question withdrawn.

Q. When did it first come to your knowledge that any such new type of continuous machine was under way under direction of Mr. Guenther or in his brick shop?

A. Well, I couldn't—I remember he called me over there [773] and showed me the machine, but as nearly as I can recall it was in the spring of 1921. That is the best that I could say.

Q. What did you see when you went over there in the spring of 1921?

A. Well, the first I seen of his new machine was the turrets lying on the floor, before they were machined; and while I said nothing about it I thought he was building a new machine; and then later on

(Testimony of A. N. Coberly.)

he called me over there and showed me a new machine, which I knew in some way or other that he was building—I don't know how or why I knew it.

Q. How long was it after the incident you have referred to, namely, the time when he showed you these blue-prints, which you have said was in the holiday season, as you will remember, of 1920,—how long after that did you see these turrets?

A. Well, that would only be from memory, and I should think it was about six months later. I would like to make a statement. I spoke about the spring. I said I saw some turrets lying on the floor in the early spring, in his shop, and it was about six months later that I saw the machine.

Q. When you saw this machine the first time was it in operation?

A. Well, he started up and ran a few cans through it for [774] me.

A. Well, it was what I would call a two-turret machine, a continuous motion machine.

A. Well, of course the cans were fed in there—we set them on a little incline and they slid down on a little incline into the machine. It was a gravity feed, that one there was, because that was not fitted up for a cannery.

A. Well, he had a magazine that there was a can passed under this magazine, and the caps were pushed out on to the cans, which were revolved around this turret.

A. They were fed into the forward part or the

(Testimony of A. N. Coberly.)

first turret of the machine,—or the front of the machine perhaps I should have said.

Q. From what part of the machine were the cans with the [775] caps discharged?

A. Well, from the back end or the second turret of the machine.

Q. And, what, if any, means did you note for transference of the can and cap from one turret to the other?

A. Well, he had a continuous transfer there, and I couldn't tell you just how it was constructed, because I didn't look into that closely.

Q. Did you note what sort of movement it had?

A. Well, a continuous movement.

Q. How did it move; what was its action and motion? A. Revolving.

Q. Now, prior to that time, to wit, as you fix it, about six months after the end of 1920, had you ever seen such completed machine in the brick shop of Mr. Guenther during your numerous visits there?

A. Well, this machine that I saw was in a frame building attached to the main shop. No, sir, I did not.

Q. Had you ever seen any such machine in the main part of the brick shop? A. No, sir.

Q. Now, the time that inspection of the finished machine you made about six months after the expiration of 1920? A. Yes.

Q. Well, what means have you for fixing that time?

A. The only means I have of fixing it was that

(Testimony of A. N. Coberly.)

it was [776] shortly after seeing this machine that was placed in the—I was told by a party that saw the machine operate that it was operating in the Pomona cannery; so, of course, the fruit season comes on in June or July.

Q. You saw a machine like that operating in the Pomona cannery?

A. No; I heard it was operating in the cannery. That is the only way I can fix that, that it was six months later.

Q. During that season of 1921?

A. 1921; yes, sir.

Q. Have you seen one of those machines of that continuous type, such as you say you saw in 1921 back of the brick shop, in operation in a cannery, yourself? A. No, sir.

Q. Have you ever seen a catalog of the defendant here, the Angelus Sanitary Can Machine Company, showing its machines (counsel examining Exhibit "W")? A. Yes, sir.

[777] Q. Have you ever seen a catalog of the Angelus Sanitary Can Machine Company showing its present-day closing machines?

Mr. TOWNSEND.—Now, he doesn't know. He has never seen one of the present-day working machines, so he couldn't tell from that catalog whether it was a present-day working machine or not. It would be only hearsay.

A. I never saw a catalog of his new machine.

Q. (By Mr. BLAKESLEE.) I show you Plaintiffs' Exhibit 8, and call attention to page 78, the

(Testimony of A. N. Coberly.)

portion thereof with the caption, "Angelus No. 14–P," and ask you to state what, if any, resemblance appears between the showing of this cut and the machine that you say you saw operated in the wooden structure back of the brick shop of Guenther along in the middle part of 1921.

Mr. TOWNSEND.—That is objected to as calling for a conclusion of the witness and usurping the function of the Court in making comparison.

The MASTER.—The objection is overruled.

Q. (By Mr. BLAKESLEE.) I asked you if there is any resemblance. A. Yes.

Q. In what respects do you see resemblance?

Mr. TOWNSEND.—Same objection.

The MASTER.—Same ruling.

A. It is identical with the exception that I think he [778] had a gravity feed on here where he has the—

The MASTER.—Now, I don't think the answer is a fair one, because he ought to point out the parts, in what way it was the same.

Q. (By Mr. BLAKESLEE.) Will you further qualify it and just discuss the various parts you see there and state in what respects you see identity or the contrary?

A. Outside of this runway here or feed leading into the machine—

Q. Which is at the right-hand side of the drawing?

A. Yes,—the machine is the same that I saw in operation in his factory.

(Testimony of A. N. Coberly.)

Q. Do you see the two turrets there you spoke of?

A. Yes, sir.

Q. Please mark part of each of those turrets in pencil with a lead line and mark them "1–T" for the first turret you have referred to and "2–T" for the second turret.

(Witness marks exhibit.)

Mr. BLAKESLEE.—"1st T" and "2d T" they are marked.

Q. Can you also mark the point you have referred to as a rotating part for transferring the cans from the first to the second turret? Do you see that there, or any part of it?

A. No, I can't see the transfer in there.

Q. You can't make it out from the cut?

A. No.

Q. How did you come to see this continuous double-turret [779] machine in the summer or middle of 1921 back of the brick shop? What led up to your going there to see it?

A. Well, I was in Mr. Guenther's private office, and he had taken me in to show me the machine, and I asked him if he would care if Mr. Murray come over to see it.

Q. Mr. A. C. Murray?

A. Mr. A. C. Murray. He said no, and I went back and got Mr. Murray, and we went over and looked at the machine.

Q. Was anything said at that time, to your recollection, about the blue-prints which you have testi-

(Testimony of A. N. Coberly.)

fied Mr. Guenther showed you about the end of 1920 at the brick shop? A. No.

Q. Now, have you any recollection as to the number of blue-prints or approximately the number that Mr. Guenther showed you at the end of 1920 at his shop?

A. Well, yes. He spoke that there was—as if there were about a hundred. He said a hundred blue-prints, and made the remark of there being so many. Now, there might have been [780] a little more or less, but from what he said I would think there was about a hundred of them.

Q. Did he tell you how they came into his hands?

A. Yes, sir.

Q. What did he say?

A. He said they were delivered to him by Mr. Stetson.

Q. Did he say when they were delivered?

A. No, sir.

Q. (By Mr. TOWNSEND.) Did he say for what purpose? A. Yes, sir.

Q. (By Mr. BLAKESLEE.) Did he have all of these blue-prints mixed together on that occasion?

A. Why, no; he seemed to have them in three separate piles lying on his desk.

Q. What did he say, if anything, about the blue-prints of the respective piles?

A. Well, he said that they had—made the remark that the blue-prints were in thousandths of an inch, where he didn't think that was necessary, and he

(Testimony of A. N. Coberly.)

said it was finer work than needed to be done on a machine of that kind.

[781] Q. Was anything said by Mr. Guenther as to his ability to use these blue-prints in constructing a machine—whether he could use them or not?

A. Well, he said he was to use them in building the machine, yes.

Q. That he was going to use them, you mean?

A. Going to use them, yes.

Q. Did he make any criticism of the blue-prints in any respect—that is, against their usability?

A. Yes, I believe that he did say there were some of them that he didn't think was—that he could improve on them anyhow. I don't remember what they were.

Q. Now, in speaking of these three piles did he say why they were separated into such three piles?

A. No, sir.

Q. Did you look over the blue-prints at that time?

A. Well, I did in—he and I went over them together, in one pile particularly; but I think one pile we did not; and a few of the third pile, we looked at a few of them.

Q. Did you make any suggestions to Mr. Guenther during your inspection of these blue-prints?

A. Yes.

Q. What did you say?

A. I believe he asked me what I considered the weakest part of the Pacific machine, and I told him that the two turrets not being bridged at the top.

(Testimony of A. N. Coberly.)

[782] Q. And what did you suggest in that respect, if anything?

A. Well, I suggested that if I was going to build that machine I would bridge it across the top.

Q. For what purpose?

A. To make it more rigid.

Q. To make the entire machine more of a unit in strength? A. Yes, to strengthen it up.

Q. At that time were you familiar with blue-prints and working drawings? A. Yes, sir.

Q. What use had you made of them in shop practice?

A. Well, in working to them—to the blue-prints. I had done it for years.

Q. You had done it for years, then?

A. Yes, sir.

Q. In the shop? A. Yes, sir.

Q. Were you ever foreman of the Los Angeles Can Company?

A. I am at the present time.

Q. When did you become foreman?

A. I have been foreman about five years.

Q. Then you were foreman of the L. A. Can Company—or were you not?—at the time these blue-prints were discussed? A. Yes, sir, I was.

Q. And as such foreman, please state what were your duties in following blue-prints or distributing them throughout [783] the shop to the various machine tools and their operators.

A. I didn't understand the question.

(Testimony of A. N. Coberly.)

Q. That is, what handling of blue-prints did you do as foreman?

A. Well, I kept what blue-prints we had in our place. I keep them, and if we are working on that particular job I distribute them to the workmen.

Q. And was it your practice to do that at the time you went over and saw these three piles of blue-prints? A. Yes, sir.

Q. Now, did you ever see those blue-prints at any other time at the shop of Mr. Guenther?

A. I saw them on different occasions over there.

Q. How many times?

A. Perhaps half a dozen times.

Q. Did you discuss them with Mr. Guenther at any other time? A. I don't think so.

Q. Did you at any time see them in use on the premises of Mr. Guenther across the street, during any of these visits? A. No, sir.

[784] Q. During those several visits at the end of 1920 did you go into the machine shop and the frame structure at the rear of it?

A. Yes, sir.

Q. Did you see any such two-turret continuous motion machine in construction on any such occasion? A. No.

Q. When did you first see any construction work on such a two-turret machine at Guenther's shop?

A. Well, I couldn't state. It was in the spring of 1921 that I saw the two turrets in there, in the

(Testimony of A. N. Coberly.)

rough, and later [785] on I saw them partly machined.

Q. And that was the first that you saw of any construction work on such a machine?

A. Yes, sir.

Q. I call your attention to a group of blue-prints in evidence here as Plaintiffs' Exhibit 11 and ask you if you ever saw such a batch of blue-prints bether's hands for the purposes substantially stated by

A. Yes, I have seen these.

Q. When did you see them before?

Mr. TOWNSEND.—Now again, in order to attempt to shorten the record, in spite of the rebuff with which I have been met a few moments ago, I offer to stipulate that blue-prints substantially like these groups of blue-prints, Plaintiffs' Exhibits 11, 12, and 13, were placed in Mr. Guenther's hands for the purposes substantially stated by the witness, and we will endeavor to supply the date when they were left with Mr. Guenther and when they were returned. I don't know whether these exact blue-prints were the ones, but if counsel says they were the same ones and Mr. Stetson says they were the same ones, I think there will be no question about that. In other words, the fact that this witness saw blue-prints substantially like these, or these identical ones there some time in the fall of 1920 in Mr. Guenther's shop—we are prepared to accept that statement.

Mr. BLAKESLEE.—We cannot enter into any such indefinite [786] stipulation as that, ob-

(Testimony of A. N. Coberly.)

viously, which states that they were delivered for the purpose to which this witness has testified. He testified merely to the purpose Mr. Guenther said they were delivered for, and we will show that that was not the true purpose or was not, at least, the only purpose. Neither can we enter into a stipulation which is contingent upon the furnishing later on, maybe, of some other dates. We will prove this matter in our own way, and counsel can have his opportunity—

The MASTER.—Well, let it not take too long.

A. I saw similar blue-print's to these in Mr. Guenther's office.

Q. Does the similarity attach to the general size of these prints as well as the contents?

A. Yes, sir.

Q. You mean those that you saw about the end of 1920? A. Yes, sir.

Q. Similarly, I show you a group of blue-prints in evidence here as Plaintiffs' Exhibit 12, and ask you if you have ever seen such blue-prints before, or any of them.

A. Is it necessary for me to go through all these?

Q. Make a general examination and state if you recollect any of them, or recollect them as a group.

A. These are the same prints that I saw, or the same drawings that I saw, over to Mr. Guenther's.

Q. Part of the same drawings that you saw at the end of [787] 1920 in the brick shop?

A. Yes, sir.

Q. Similarly, I show you another group of blue-

(Testimony of A. N. Coberly.)

prints, in evidence as Plaintiffs' Exhibit 13, and similarly ask you if you ever saw them, or any of them, before, and, if so, when.

A. Well, I saw some of these in our own shop and I saw them at Mr. Guenther's shop and saw them in the Pacific Closing Machine shop.

Q. When did you see those in Mr. Guenther's shop?

A. I would say in December, 1920, and from that on maybe into 1921, for a month or two.

Q. They were some of those you have referred to in your testimony that you saw on previous occasions? A. Yes, sir.

Q. And these Exhibits 11 and 12, are they some of those you saw on the several occasions at the end of 1920 and the beginning of 1921 in the shop of Mr. Guenther? A. Yes, sir.

Cross-examination.

(By Mr. TOWNSEND.)

Q. I observed, Mr. Coberly, that just before you took the stand, and while you were sitting in the back of the room for some minutes previous to your coming to the stand and [788] being sworn, you were reading from a sheaf of yellow notes which counsel has before him and from which he has apparently interrogated you, and it appearing as though you were reading over something on those yellow sheets. Is that correct?

A. Yes, sir.

Q. Was that an outline of substantially what you have testified to here to-day?

(Testimony of A. N. Coberly.)

A. To a certain extent, yes.

Q. Did you prepare those notes yourself?

A. No, sir.

Q. You did not write them out? A. No, sir.

Q. You have mentioned that you went to work for Mr. Guenther about March, 1911. Is that correct?

A. I think at the Can Company in 1911.

Q. Under the direction of Mr. Guenther. Is that what you meant? A. Yes, sir.

Q. And in what work were you engaged?

A. Machinist.

Q. Building what?

A. The Double-seamer closing machine.

Q. Were those closing machines you were working on at that time known as the 14–P, or what you later came to know as the 14–P double-seamer?

A. And the 19–P.

[789] A. I think that I left there in May or June, 1917. May, I think it was.

Q. That would make it practically six years you were with Mr. Guenther.

A. Well, it might be that.

Q. From March, 1911, to the spring of 1917 would be approximately six years. A. Yes, sir.

Q. That is what I understood your testimony. Am I correct? A. Yes, that is correct.

[792] Q. If it should appear that these blueprints were returned to the original parties, the Pacific Company, and put in their safe as early as December 1, 1920, as Mr. Wilson has testified,

(Testimony of A. N. Coberly.)

would you want to correct your testimony and say you couldn't have seen them later than December 1, 1920?

Mr. BLAKESLEE.—I think that is argumentative, but I don't care. If the witness can explain, let him go ahead.

A. What is the question?

(Question read.)

A. Well, I might be mistaken in that date. That was just from memory. If he had testified positively they were returned [793] in 1920, I would have to accept that.

Q. (By Mr. TOWNSEND.) I think we can accept that testimony for the present purposes. I would say that Mr. Wilson has testified that these blue-prints in these papers or wrappers, and with the notation "12/1/20," were put in the safe of the Pacific Company on that date, and that notation was made by him. So assuming that to be a fact, wouldn't your visit have been earlier than December 1, 1920?

A. Yes, that being the fact it would have been earlier, yes, sir.

Q. I wanted to just call your attention to what the record shows in that matter. What was the reason of Mr. Guenther calling you over to the shop to talk over these blue-prints?

A. I couldn't say.

Q. I mean as he explained to you. What did he tell you he wanted you for?

A. He told me that he was going to build some

(Testimony of A. N. Coberly.)

machines for the L. A. Can Company, some Pacific machines.

Q. And did he want some help or instructions or information from you?

A. He just wanted to talk over with me whether it was necessary, or whether I thought it was necessary, for certain parts to be machined down as fine as the drawings showed for them to be.

Q. Was anything else discussed about assembling, and so forth?

[794] A. Yes. We went all over the machine, but I can't remember—or I mean all over the blue-prints, but I can't remember what was said.

Q. You don't recall any assembled views or plan views among those blue-prints, do you, at that time?

A. The only thing I recall was that he asked me what I considered the weakest part of the Pacific machine.

Q. Was a blue-print of the assembly or plan or elevation that you say was there included in the bunches of blue-prints that you are looking at, which you have identified here this morning as being the blue-prints before you then?

A. There was no assembled plan, no.

[795] Q. How did you illustrate to him, if you did illustrate, the weakness of the bridging of the turrets?

A. It came up by speaking of the upper bearing on the Pacific machine, and I proposed that

(Testimony of A. N. Coberly.)

it be brought up above the turret instead of between the turrets where it now is.

Q. How could you tell that defect, or tell of that defect, when you didn't have an assembled view showing the weakness that you referred to?

A. Because I am familiar with the machine.

Q. And you were just discussing the machine as it then existed, in general? A. Yes, sir.

Q. And that to your mind constituted a weakness that should be corrected in producing these machines in commercial quantities?

[796] A. Well, that was the one defect I would have picked out on the machine, in my opinion.

Q. You stated that you were over in Mr. Guenther's shop in the spring of 1921, when you saw some turrets under construction. Did Mr. Guenther explain to you what they were then?

A. No, sir.

Q. Was it your understanding that those same turrets eventually went into that new continuous machine of Mr. Guenther's? A. Yes, sir.

Q. Where were those turrets lying at the time, at what place? A. On the floor.

Q. And were other workmen around there?

A. Yes, sir.

Q. Do you know how many workmen were about the shop at the time?

[797] A. Well, maybe a dozen.

Q. And when you saw the machine two or three months later, or a month or so later, on the invita-

(Testimony of A. N. Coberly.)

tion of Mr. Guenther, where was the machine set up?

A. That was in the frame building adjoining the brick machine shop.

Q. Is that where the machine had been moved off of the floor, do you know?

A. I don't know, I am sure.

Q. Was it connected up to power driving means?

A. Yes, sir.

Q. Was there other machinery in there?

A. Machine tools.

Q. And other workmen in and out of that place?

A. Yes, sir.

Q. Did I understand you to say that that was the time you asked the privilege of inviting Mr. Murray over to inspect the machine? A. Yes, sir.

Q. And Mr. Murray came over the same day?

A. I think it was the same day. I am not positive.

Q. At the time that Mr. Guenther showed you this machine, did he put you under any injunction of secrecy about what he [798] was doing?

A. No, sir.

Q. He didn't seem to be keeping it under cover in any way, did he? A. No, sir.

Q. And there was nothing to indicate, when you were there early in the spring of 1921 and saw the turrets, that he was using any secrecy about it, was there? A. No, sir.

Q. Did I understand you to say you had not seen a new Guenther continuous machine since that time

(Testimony of A. N. Coberly.)

that you were shown it in that old shop, at the time you and Mr. Murray were invited over there?

A. That is correct.

[799] Q. Did you observe the seaming means on the Guenther machine that you saw then, this new machine, just prior to July, 1921, when you and Mr. Murray were invited over to see it? A. Yes.

Q. What was the character of the seaming means used on the first operation of rolling the seam?

A. Well, he used a head similar to this one here.

Q. Exhibit "P"?

A. Yes. And it revolved around a turret—four of them.

Q. What was the second seaming operating means?

A. He used a compressing roll on the second operation similar to the Pacific closing machine.

Q. And it was also similar to the compression rollers that you were familiar with on the old 14–P that you used to build there for Mr. Guenther?

A. No, I can't say that it was.

Q. Just look at this blue-print, Defendants' Exhibit "A," attached to the Guenther affidavit, and I will ask you if the [800] compression rollers that you observe in connection with the second operation seaming station bear any resemblance to the compression roller you saw on that new machine of Guenther's at that time, or the Pacific second operation seaming roller ?

A. Well, this second operation here is similar to the old 14–P.

(Testimony of A. N. Coberly.)

[802] Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Mr. Coberly, did you visit my office to discuss the testimony you would give in this case?

A. Well, I was asked to go to your office.

Q. You came there, did you? A. Yes, sir.

Q. And we discussed the facts that you were going to testify about? A. Yes, sir.

[803] Q. (By Mr. BLAKESLEE.) Do you remember whether I made notes at the time of your visit? A. No, I do not remember.

Q. (By Mr. BLAKESLEE.) You have spoken of a holiday period when a cigar was handed you by Mr. Guenther. Are you certain in your mind whether that was the Christmas or New Year holiday or the Thanksgiving holiday?

A. No, I am not positive.

[804] Q. Might it have been the Thanksgiving holiday time of that year?

A. Yes, it could have been; but I wouldn't say. I was under the impression that it was in December.

Q. Are you certain that you saw the blue-prints again at Mr. Guenther's office at any time in 1921?

A. Well, I was pretty certain that I had, but I must be mistaken.

Q. Have you any reason, or have you had any cause to feel any personal unfriendliness or antagonism to Mr. Guenther? A. No, sir, I have not.

(Testimony of A. N. Coberly.)

[805] Recross-examination.

(By Mr. TOWNSEND.)

Q. I suppose you have always entertained a high regard and respect for Mr. Guenther?

A. Mr. Guenther has always treated me fine.

Q. And for his integrity? A. Yes, sir.

TESTIMONY OF F. F. STETSON, FOR PLAINTIFFS.

[806] F. F. STETSON, one of the plaintiffs, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) Your name, age, and occupation, please, Mr. Stetson.

A. F. F. Stetson; age, sixty-three; occupation, can manufacturer. [807]

Q. Residence? A. 389 San Fernando Road.

Q. Los Angeles? A. Los Angeles, yes, sir.

Q. How long have you been a can manufacturer, Mr. Stetson? A. Since 1905.

A. At all times in Los Angeles, yes, sir.

A. Yes. During the period up to 1916 or 1917 I also operated a fruit cannery.

Q. You are president of the L. A. Can Company, a corporation of California, having its factory in this city, are you? A. Yes, sir.

Q. How long has that factory been in operation?

A. I think we started manufacturing in 1905. The factory has been changed very greatly, but it is on the place yet.

(Testimony of F. F. Stetson.)

Q. For what uses are cans manufactured in that factory to-day?

A. Canning of fruits and fish and oil cans, and paint cans, and about a hundred other purposes. Miscellaneous cans such as are used in a market like this, square cans, [808] round cans, and everything.

Q. What is your total can output a year now?

A. Well, the past year was close to forty-five millions. That means packers' cans, however. We don't keep a number of the miscellaneous cans. That is not reckoned by a number, in the total, I mean.

A. In making the packers' cans, the first machine we use is a slitter. The slitter is used to cut the bodies on which the cans are made into rectangular bodies of a size suitable for the cans. The next machine we use is a body machine. That is used to form the body from this blank which has been cut on the slitters. The next machine is the flanger, which makes the flange on both ends of the body. Next comes the double-seaming machine which puts the end on one end of the body. The next machine is the tester, which clasps the can between an iron base plate and a rubber plate, and tests the can by the admission of air into the interior. The can is then finished and goes to the car.

Q. What is the internal air pressure at which you test cans, as you have stated?

A. The smaller cans, like up to the 2½ pound

(Testimony of F. F. Stetson.)

are [809] tested at 15 pounds pressure, and gallon cans are tested at 5 to 7 pounds.

Q. You have spoken of double-seaming machines for cans. What double-seaming machines have you used in your factory?

A. Well, we have used on occasions, rare occasions, the Max Ams machine, and also an Angelus 14–P, the 19–P, and the Pacific Closing Machine Company's smaller size, generally called the 2½ size, and the gallon size. We began making cans, however, on the machine made by the defendant which we called the first Guenther machine.

Q. How long since you purchased or acquired a Guenther machine?

A. I think the first Guenther machine, not the 14–P but the one before that, I think was made in 1910; it is possible it was 1909.

Q. And those were used for double seaming in your factory? A. Yes, sir.

Q. When did you purchase or acquire the last Guenther or Angelus Company machine?

A. I think it was in 1920.

Q. What machines have you purchased since then? A. Pacific Closing machines.

[810] Q. Mr. Stetson, please tell us somewhat as to your personal connection with the can manufacturing business the last eighteen years, that is, what you have done or observed in connection with the practical end of the business, how closely you have kept in touch with it.

A. Well, up to 1916 and 1917, up to the time

(Testimony of F. F. Stetson.)

that I quit or ceased packing fruit, I did not pay very close attention to the manufacture of tin cans, but since then I have given most of my attention, in fact all of my attention, to the can plant. At that time, say 1916 or 1917, and for a long time before that, we were using the 14–P and the 19–P Angelus machine, but in the years 1914 and 1915, we began making the Pacific double-seamer and gradually increased our use of that machine as it proved its worth, so that from that time on, or from 1914 and 1915, we have been gradually displacing the Angelus double-seamer with the Pacific double-seamer. [811]

Q. What has been your experience as to the practical end of the use of these machines and other machines in the manufacture of cans in your factory? How closely have you kept informed or in touch with these matters?

A. I have kept closely in touch with the double-seaming part of the business for the last five years, and in our cannery before that I had both kinds of machines, even before I began to pay particular attention to the can factory.

Q. What kinds of double-seaming machines did you use in your factory?

A. Both kinds. I had all three kinds. I had the Max Ams, but it is hardly worth considering that because it is not a practical machine for a California cannery, or a can factory, either. We have a dozen of them about the house, but they are not a practical machine to use. But in the fruit

(Testimony of F. F. Stetson.)

cannery we used the 14–P for several years, and while it does very fair work it is not the equal of the Pacific machine, either in speed or ease of operation—

The MASTER.—Wait a minute. He asked you to tell what your experience had been in handling these.

Q. (By Mr. BLAKESLEE.) I mean what you have done in connection with the practical end of can making or canning business.

A. I can't qualify as a can maker. I am a manufacturer.

Q. In your manfacturing business what has been your experience [812] in the shop and in following and directing the manufacturing end?

A. Well, if you mean by that whether I personally adjust the machines, I do not.

Q. No, I mean any relation at all. What has been your experience?

A. Well, as superintendent I watch the machines. I know what they are doing. I know whether they were doing good work. I know whether we get a large number of leaks or a small number.

Q. Have you paid attention to the cans as they were turned out? A. Yes, sir.

Q. Have you had anything to do with the purchase of stock tin for the can manufacture?

A. Yes, sir.

Q. Have you inspected the stock sheet tin as it came in? A. Yes.

(Testimony of F. F. Stetson.)

Q. To determine its satisfactory quality or to the contrary? A. Yes.

Q. And have you yourself given any attention to reports of trouble, dissatisfaction, improper output, faulty construction, and so forth? A. Yes.

Q. Has or has not it been your custom, particularly since you have quit the canning business, to go into the machine part of your plant and follow operations there, and, if so, to what extent?

Mr. TOWNSEND.—That is leading.

The MASTER.—He may state what he does.

A. I pay more attention to the factory and to the outside field work than I do to the office or bookkeeping end of it or the sales department, or anything like that. It is the manufacturing and the fruit canners that I take the most interest in.

A. Well, I don't pay much attention to the repair of the machines.

Q. What?

A. I don't pay any particular attention to the repair of the machines.

Q. How frequently have you gone into the shop to observe what was going on there?

[814] A. Oh, when I am home I am in there sometimes a dozen times a day.

A. Well, the reports as to the manufacturing go to the superintendent, Mr. Spencer, not to me.

Q. Do you ever have any discussions with him as to those things? A. Oh, yes.

Q. When you were a canner did you give any personal attention to the operation of the double-

(Testimony of F. F. Stetson.)

seaming machines, either in operating them or observing their operation, or making recommendations or suggestions?

A. Not very much. The manager of a cannery attends to the buying and selling and a general oversight of the cannery and not so much to the detail.

Q. How frequently did you go into the mechanical department where the canning was going on?

[815] A. Oh, many times a day.

Q. Many times a day? A. Yes.

Q. Did you or did you not keep in touch with what the machines were doing?

A. Yes, sir, certainly.

Q. And you know what operations they performed? A. Yes.

Mr. TOWNSEND.—That is leading, and the witness has already answered that, as the manager of the cannery, he attends to the buying and selling and not much attention to the details.

Mr. BLAKESLEE.—I am asking what he did.

The MASTER.—Overruled.

Q. (By Mr. BLAKESLEE.) Did you pay any attention to the cans in your cannery after they were closed by double-seaming, to determine the perfection of the job? A. Yes, sir.

Q. From your experience both in your cannery and in your can shop, please compare the double-seamers you have referred to, the Max Ams, the 14–P, and 19–P, and Pacific, as to efficiency, speed,

(Testimony of F. F. Stetson.)

economy, durability, and any other features you have to tell us about?

Mr. TOWNSEND.—I object to the question as the witness himself has shown that he is not qualified to answer that in the way in which the question purports it should be answered [816] and detailed, as a matter of experience. The witness has not operated the machines. He has not tested the cans and it is not shown that he timed them or knows anything about the timing of them, and if he has records, those would be the best evidence, provided he made the records himself.

The MASTER.—Overruled.

A. The Max Ams machine, as I stated a short time ago, is a slow machine and is hardly practical for a modern cannery, or a can plant, either. It does excellent work when you get the can to the seaming device, or whatever you call it, but it has a very inferior feeding arrangement. We don't consider the Max Ams a practical machine except for small canneries who desire to make quick changes from one sized can to another. That feature of the Max Ams has been very well developed, and you can change from one size to another, I think, in not over a half hour, while these other larger machines are generally made for one size, and it takes several hours to make the change, so the Max Ams is not considered a very valuable machine. But coming to the 14–P, we used those a good many years. It is a good, rugged machine, but it has an intermittent motion in the feeding of the can before

(Testimony of F. F. Stetson.)

it reaches the first seaming operation, which causes some slop, and it makes a good many what we call tits, as they were spoken of yesterday. The end does not fold under the body flange perfectly. The speed of the 14–P is generally around fifty or sixty, possibly less.

[817] Q. (By Mr. BLAKESLEE.) Per minute?

A. Yes. That is for the 2½ size, and the gallon size is a much slower machine. I don't remember how fast that goes. The Pacific closing machine is a machine of a different type. It is a continuous process machine, that is, the can does not stop at all from the time it starts to go in, and it is, I might say, a very elastic machine, that is, it takes cans that are not perfect in a more perfect way, that is, it makes a tight can out of a can that is not as nearly perfect as some other types require.

Q. (By Mr. BLAKESLEE.) In that connection, Mr. Stetson, you didn't mention the speed of the Max Ams machine.

A. Well, I don't remember it, but thirty to forty, something like that.

Q. Per minute? A. Yes.

Q. Further in that connection, I show you Defendants' [818] Exhibit "Y," and ask you if you know by whom that can was made, the body of that can? A. Yes.

Q. Who made it?

A. The Los Angeles Can Company.

Q. Please state how that can body compares with

(Testimony of F. F. Stetson.)

the perfect can or best can as your company turns it out. A. One end of this can—

A. One end of the body is very, very bad.

Q. Which end is that? The end nearest the hole or the end nearest the closed end?

A. The end opposite the hole, the closed end.

Q. Why is it bad?

A. Because it has a large ridge of solder a short distance from the seam.

[819] A. I didn't get the date, but one morning early I went into the shop before I came over here, and I selected the body myself because it was a bad one.

Q. Was that done this year? A. Oh, yes.

Q. Did you make any test of that can to determine its air tightness at the closed end?

A. Yes. I personally took the can over to what we call the foot tester, such as was described by one of our men yesterday. The can is clamped into a device and pushed down under the water, and the air admitted to the can, and it stood 15 pounds pressure without showing any bubbles.

Q. And what did that mean?

A. That means that it is an excellent can. I did that, if I may say so, to prove or test whether the machine had done a good job on this awfully poor body.

Mr. TOWNSEND.—He hasn't stated what machine he did this work on.

[820] Mr. BLAKESLEE.—I will ask him.

(Testimony of F. F. Stetson.)

Q. How high an air pressure internal test is given in the ordinary testing of your can products?

A. Gallon cans, 7 pounds—5 to 7.

Q. Upon what machine was that closed end cap put on? A. This was put on on a Pacific.

Q. (By Mr. TOWNSEND.) Which end was put on by the Pacific?

A. The bottom was put on by the Pacific.

Q. The one that shows the notation?

Mr. BLAKESLEE.—I said the continuous cap—

Mr. TOWNSEND.—The end that bears the Defendants' Exhibit "Y"? A. Yes.

Q. (By Mr. BLAKESLEE.) That, I understand, was run through a Pacific machine and subjected to both the seaming operations, was it?

A. I beg pardon?

Q. It was subjected to both seaming operations of a Pacific machine, was it? A. This end here?

Q. No; the end with the exhibit letter on. I mean it was given both the first and second seaming operations, was it? A. Oh, yes; surely.

[821] Q. How many Pacific closing machines have you in the factory now?

A. I think there are nine. I am not certain. There are eight lines, and one line has two double-seamers. I think only one has two double-seamers.

[822] Q. (By Mr. BLAKESLEE.) The question is, did he know of its use? Did you know of the use of a Pacific machine in any other factory before you installed it in yours?

A. Well, as a matter of fact, I think the machine

(Testimony of F. F. Stetson.)

went for a short time into the cannery. The first machine that was built I think was tried out for a short time in the cannery.

Q. (By Mr. BLAKESLEE.) And did you know of its use there? A. Oh, yes.

Q. Then you determined, did you, to put it into the L. A. Can Company shop? A. Yes.

Mr. TOWNSEND.—I object to that as leading.

Q. (By Mr. BLAKESLEE.) Why did you determine to do so?

A. It proved so thoroughly reliable in the first test in the cannery that we wanted to try it out in can making.

Q. What cannery was that where the first use was made of which you knew?

A. The F. F. Stetson & Company canneries.

A. Adjoining the Los Angeles Can Company factory or can shop.

Q. What is the speed of operation of the Pacific double-seamer, or double-seamers now in use in the L. A. Can Company's [823] shop?

Mr. TOWNSEND.—Unless the witness knows from his own knowledge from timing it, and not from hearsay, that would be incompetent. Do you know of your own knowledge?

A. I have counted them many times, but I didn't keep any record of the date or hour. I have counted them time and time again. In the can factory they run anywhere from 135 to 155.

Q. (By Mr. BLAKESLEE.) That is, double-seaming the bottoms into the cans?

(Testimony of F. F. Stetson.)

A. Let me add also that one season we ran it at 175, but the body machines are only capable of making 135 or 145 cans per minute, and it is simply not good sense to run the double-seamer much faster than the body machine, because you are wearing it out for no purpose.

Q. To what extent has it been necessary to make repairs and replacements in the nine Pacific double-seamers now in the L. A. Can Company factory?

A. They are very elastic, if I may use that word. They require very little repair work.

Q. Did you ever attempt to rely upon one of the two seaming operations of a Pacific machine in double-seaming the bottoms into cans in your factory? A. No.

Q. From your knowledge, observation, and experience as a manufacturer, would you so use a Pacific machine? [824] A. No.

Q. Why not?

A. Well, a Pacific double-seamer, and every other double-seamer, is made with two different seaming rolls, and we believe that it is not only good policy but it is almost necessary in order to make a perfect can to make the two seams. It may be possible to make one or two cans, or a few cans, at the first operation; but to depend upon that single operation for a lot of cans would be foolish.

Q. Why would it be foolish?

A. Well, because you would have too many leaks. It may be possible when a machine is in absolutely perfect condition and you get a body that is abso-

(Testimony of F. F. Stetson.)

lutely perfect to do that sort of thing, but you can't do it in the practical running of a can factory.

Q. What would be the effect, if any, upon the double-seaming mechanism if you used one such seaming operation only for finally seaming the bottom in?

Mr. TOWNSEND.—I understand your question is limited to the Pacific, do I, Mr. Blakeslee?

Mr. BLAKESLEE.—Yes.

A. I don't know.

Q. Would it stand up for any length of time?

A. You can't make a tight seam, or we never try to make a tight seam on the Pacific with one operation.

Q. What would be the effect in wear and tear on the machine?

[825] A. I think the Pacific is so constructed that it would run one operation for a long time without harming the machine; but you can't get perfect cans in that way.

Q. Are you acquainted with the construction and mode of operation of the Angelus 24–P machine?

A. Well, I haven't examined it closely enough to say that I know the machine intimately.

Q. Have you seen it operated?

A. I have seen it operated, yes.

Q. Are you familiar with the construction of the parts of that machine which roll down the seam in both first and second stations? A. The tool.

Q. The P–24?

A. I am acquainted with the tool that immediately

(Testimony of F. F. Stetson.)

performs the operation, but the mechanical devices that operate it I am not so well posted on.

Q. From your experience and observation and knowledge, what would be the effect upon the P–24 machine in the seam-rolling part or seam-forming part, if one of the seam-forming mechanisms were used to form and roll down the seam completely?

A. I think the adjustment of a machine, or adjustment of a double-seaming roll tight enough to make that, I think would result in the roll coming in contact with the chuck whenever there chanced to be no can within the machine. Whenever there is a can in there the tin itself will prevent [826] the roll from coming in contact with the chuck; but whenever there was nothing in the chuck and the roll would come together with the result that the roll and the chuck both would be worn quickly.

Q. In the operation of the machines does it occur that such operation is continued at times without the tin between the roller and the chuck—in other words, without a can in position to be seamed? A. Yes.

The MASTER.—They don't run a machine when it is idle, do they, without a can?

A. The 14–P does run constantly whether a can is in it or not. May I explain that?

The MASTER.—Yes.

A. (Continuing.) You see, in the 14–P the can is fed on an endless chain into the machine and the pushing device pushes them into the machine one at a time. Whenever the cans from the steam box, as we call it—the exhaust box—doesn't come fast

(Testimony of F. F. Stetson.)

enough they simply stop the feeding chain, and not the machine, so the machine is spinning constantly whether a can is in there or not, and the double-seamer must [827] of necessity, in order to keep up with the line,—we speed it up considerably faster than the regular delivery of the cans by that line, and the machine is bound to be running idle quite a good deal. That is the 14–P. As to the 24–P, I haven't examined that.

Q. (By Mr. BLAKESLEE.) You have an automatic device that stops it if it doesn't feed a can now, have you not?

A. The 24–P—maybe so; I don't know. But even without that the caps do not feed, and there is more or less idle running or idling, because the caps may get caught, so that it is almost impossible to prevent running some without the cans.

Mr. TOWNSEND.—Mr. Blakeslee, will you make it clear that when a machine is running idly as he has just described it, without any cans passing through, that he would have us understand that the rollers on the seaming head contact with the chuck plate? Will you just clear it up?

The WITNESS.—On the 14–P, as I understand it, the seaming device is going constantly. The cans are fed in on an endless chain, and whenever the cans cease to come fast enough for the machine the feeding chain is stopped, not the whole machine.

Q. (By Mr. TOWNSEND.) At that time the rollers are not running on the plate of the chuck, as you said might be the situation if the machine was

(Testimony of F. F. Stetson.)

set up as tight as shown on the can Defendants' Exhibit "T"?

[828] A. Well, I think it is.

Q. Do you mean under all circumstances that is the normal condition of the machine?

A. That is my impression.

The MASTER.—Well, he has shown that he does not know.

A. I didn't qualify, in the first place, as an expert. I am in the factory a great deal; and, as I said a little while ago about these tits, I don't have to see a tit made in the factory; I can go into the warehouse and take a little nail and pick out that leak and find if it is making a tit on it or not. If it is, I know it was made in the factory the day before, and that the double-seamer made it.

Mr. TOWNSEND.—I move to strike out the voluntary statement of the witness as not responsive.

The MASTER.—The motion is denied.

Q. (By Mr. BLAKESLEE.) In comparing the operation of the various double-seaming machines you have had in your L. A. Can [829] Company factory which, if any, of the machines have you found produced more tits in the seaming operations on the bottoms of the cans?

Mr. TOWNSEND.—I will have to renew the same objection.

Mr. BLAKESLEE.—I want to know out of which machines came the cans with the most tits.

The MASTER.—He may state what he knows.

(Testimony of F. F. Stetson.)

A. We have only one 19–P in the house, and we know it comes from that one machine.

Q. (By Mr. BLAKESLEE.) Most tits come from that machine? A. The 19–P, yes.

Q. How does the comparison stand between the cans put out double-seamed at the bottom by the 14–P's and the Pacifics?

A. The 14–P makes far less tits. There are some, but very, very much less than the 19–P.

Q. How with respect to the number of tits made by the Pacific?

A. By the Pacific they are almost unknown.

Q. Almost devoid of tit production?

A. To illustrate, I will say that the way I got this, I was hunting for one of those things and didn't find any until I went over into the factory and got that one that was [830] made last year.

Q. Are you referring to Exhibit 17 (exhibiting)?

A. Yes.

Q. Do you know what machine that was double-seamed on?

A. We have two 14–P's making cans, and that was made on one of the two. We had only two; and we had no Pacifics.

Mr. TOWNSEND.—If your Honor please, talking about this plaintiffs' exhibit, a gallon can, it manifestly could not be made on a 14–P.

The WITNESS.—I beg pardon. I didn't understand that. I thought he was inquiring about gallons.

(Testimony of F. F. Stetson.)

Q. (By Mr. BLAKESLEE.) This gallon can here, what machine was it made on?

A. The 19–P.

Mr. TOWNSEND.—There is confusion in the record with reference to the Exhibit "Y."

The MASTER.—Yes.

Mr. BLAKESLEE.—There is no confusion.

Q. (By the MASTER.) What machine was this made on? A. The 19–P.

Q. (By Mr. TOWNSEND.) Did you see it made? A. No.

[832] The WITNESS.—The Pacific makes almost none of those defects.

The MASTER.—I don't see why you had so much difficulty, then, in finding a gallon can with a tit on it.

The WITNESS.—Because this year all of the gallon cans we make are made on the Pacific; so on the cans made this year I couldn't find any tits. I had to go to last year's stock to find one.

Mr. BLAKESLEE.—I am glad you asked that question.

Q. Now, what percentage of leak-proof cans, if any, do you guarantee in your contracts for delivery of cans to canneries?

A. I think we guarantee that we will reimburse the cannery for—

Mr. TOWNSEND.—That is a self-serving statement, as to what they guarantee. Coming here and using sales talk and conversation to sell a machine is not evidence in this suit.

(Testimony of F. F. Stetson.)

The MASTER.—He is president of this company.

Q. (By the MASTER.) Do you know what your guarantee is? A. 995 good ones—

Q. I say, do you know?

A. Oh, I beg pardon. I have seen it. I think it is 995 out of 1000. I wouldn't say for sure. I think it is.

[833] Q. (By Mr. BLAKESLEE.) Do you know of your own knowledge that settlements have been made where cans were rejected over and beyond five out of a thousand in number because of defects in leakage? A. Yes.

Q. (By Mr. BLAKESLEE.) Have such settlements been made? A. Yes.

Q. Now, where such settlements were made do you know what machine the defective cans were made on?

A. The only case I can remember of is about two years ago, and we can't tell what they were made on. There is some on the 14–P machines, but the chances are that they were made on the Pacific.

Q. And what percentage of cans that year were turned out on Pacific as compared with the 14–P's?

A. Nearly all of them. We have been replacing the 14–P now ever since we started to build them. Every year we have taken out a 14–P or two and replaced them with the Pacific; so that it is impossible to get a record of these things. It has got to be an estimate.

Q. How many 14–P's have you in operation in the Can Company now?

(Testimony of F. F. Stetson.)

[834] A. We have one 14–P, put in for a special job, on an olive can. It is something that we only make about a hundred thousand, say, in a year, consequently it isn't worth while, in a little job like that, to make a Pacific seamer for it. We had a little 14–P lying around, and we fitted one for this special job. But there is no other 14–P's in the can factory.

Q. How many 19–P's?

A. There is one 19–P that is left in line for the same purpose. We had two 19–P's and replaced one with a Pacific. The machine that did this job (referring to Defendants' Exhibit "Y") was left in for this purpose. We wanted to put two ends on the can. The can is put into the Pacific, and this thing is put on, and then a man picks them up and sends them through a 19–P to complete the can.

Q. And to put on the end that has the hole in it?

A. Yes. That is the only 19–P we have in the factory, the one that is left in there for special jobs like that.

Q. (By Mr. TOWNSEND.) To clearly understand in regard to this gallon can: Defendants' Exhibit "Y"—the bottom of this can was put on by the Pacific and the top having the opening was put on by an Angelus 19–P? A. Yes.

[835] Q. (By Mr. BLAKESLEE.) How many 14–P machines has the L. A. Company in its possession to-day?

A. Why, I think there are eighty.

(Testimony of F. F. Stetson.)

A. There are nearly a hundred. It may be in the eighties, but nearly a hundred of them.

A. Oh, there are quite a good many scattered about the country, set back out of line; and there are a few in line at Ontario and Cucamonga, and there are some fifty of them set aside in an old barn we use as a warehouse.

Q. And what has been the history of those machines that are in the barn?

A. Oh, they have been out, and quite a good many of them we replaced by Pacifics. Some of them came from factories that were started during the war and had to close down.

Q. Now, do I understand that you supply your customers running canneries with machines to double-seam the tops in when the cans are closed finally? A. Yes.

Q. What machines are you furnishing for that purpose now?

A. If we can get some smaller cannery that is packing an [836] article that doesn't slop any, or much, we give him a 14–P. If the man requires speed, or a machine that slops less, we give him a Pacific.

Q. Do you sell or lease them to the canneries?

A. Lease them.

Q. What do you lease the 14–P's for?

A. I think $50 a year.

Q. What do you lease the Pacifics for?

A. $100.

(Testimony of F. F. Stetson.)

Q. What is the selling price of the Pacific machine, if you know?

A. I think the present price is $2,000.

Q. Did you ever sell any double-seamers to the Coast Fishing Company? A. Yes.

Q. What were they?

A. The Coast Fishing Company had eight Angelus P machines and one—let's see—that would be 14–P—and one Pacific machine. We sold the eight 14–P's for $1600 and the one Pacific for $1400.

Q. $1600 was the total sales price of the eight 14–P's? A. Yes.

Q. (By the MASTER.) Did you say $50 a year rent for a Pacific—a $2,000 machine?

Mr. BLAKESLEE.—$100 rent, and $50 per year for a 14–P; and the selling price of the Pacific was how much?

[837] A. The selling price of the Pacific at present is $2,000. We were selling for $1,850 then, I think.

The MASTER.—It would take twenty years to get the price out of it by renting it at that rate.

The WITNESS.—The secret of that, your Honor, is that the can companies who have a good closing machine think the closing machine brings them business. The American Can Company started that practice years ago when they secured the patent to the so-called Johnson machine, which at that time was a very superior machine, and in order to secure customers they furnished them with Johnson machines at a nominal rental; and because of the

(Testimony of F. F. Stetson.)

fact that the American Can Company started the plan we folks have to follow. We reckon that we lose on those machines at least $300 a year, and we have to make that $300 out of a can sale. It is not a money-making proposition, your Honor.

Q. (By Mr. BLAKESLEE.) Now, in putting in the bottoms in cans made in the L. A. Can Company what sort of sealing medium or preparation, if any, do you use?

A. Why, we have used the rubber compound.

[838] Do you know what kind of sealing medium is used with the caps for the Angelus 24–P machine?

A. No. It depends on whose cans they use. If they bought our cans, or if the customer had a 14–P or 24–P and used our cans, we would furnish these. If they used an American can they either get a cap with a paper liner or one with a rubber compound in larger quantity. They have adopted the policy of putting in ever so much more compound than we do.

Q. Do you furnish the caps for closing the cans in the canneries with this compound in the caps?

A. Yes.

[839] Q. (By Mr. BLAKESLEE.) Do you know Mr. Guenther, the defendant in this case?

A. Yes.

Q. How long have you known him?

A. Oh, since 1909, I think; 1909 or 1910.

Q. How did you come to meet him?

A. He came to our shop, as I remember it, and represented himself as a sanitary can-maker, a man

(Testimony of F. F. Stetson.)

who had invented some machinery and knew the process of making a sanitary can.

A. A sanitary can is an open top can like this, sealed without solder. The old style can was sealed with solder. The open top or sanitary can is not sealed with solder.

Q. Now, when you met him, or thereafter, did you enter into business relations with him, and if so, what?

A. Yes; he represented that he had invented a double-seam machine and flanging machine, and we arranged with him to build one of each of those machines for us.

Q. Were there other double-seaming machines and flanging machines in use in can factories at that time?

A. The double-seaming operation really is an old one.

Q. Was it old at that time?

[840] A. Yes. It was not applied to the sealing of cans in California canneries very generally until about that time, but the seaming process is really an old one. This Max Ams machine of which we have been speaking has been on the market for many, many years.

Q. Now, did Mr. Guenther proceed to build one of these machines?

A. He built one of the double-seaming machines and one of the flanging machines.

Q. Where did he build them?

A. I think in the Johnson Machine Works, next

(Testimony of F. F. Stetson.)

to the S. P. Railroad on North Main. I think that is where it was.

Q. Was it installed in the L. A. Can Company's shop? A. Yes.

Q. And used there?

A. I was in the cannery, but I was in the factory a good deal, too.

Q. And it was used there, was it? A. Yes.

Q. What did Mr. Guenther do next?

A. After using that machine in the shop I think one season or part of one season the question arose as to what we could do to supply our customers with sealing machines. The double-seamer that we had made, that Mr. Guenther made for us, was of such a character that it was not suitable for use in the cannery, so the question came up immediately what [841] can we do to supply our customers, as was customary in those days, and still is, and we determined that we had to have a different machine, and Mr. Guenther and our other mechanics were instructed to see if they could get up a machine that was more suitable for the canners than the one we had, and they worked that out—Mr. Guenther, with the help of our superintendent and our leading mechanics, worked out a machine which is now known as the 14–P. It has had some changes made since, but it was practically the same. There has been no change in the main body of the machine.

Q. Did he do that work in the L. A. Can Company's shop?

A. As to the building of the machine, I am not

(Testimony of F. F. Stetson.)

certain, but the plan of it, the drawings and so forth, were made in our shop.

Q. How was he paid for that work?

A. He was employed at a salary of $150 a month, I believe.

Q. By the L. A. Can Company?

A. By the L. A. Can Company, yes.

Q. And how long was he busy about that matter?

A. We made another arrangement, I think, the following year—

Q. (By Mr. TOWNSEND.) What year was that?

A. In 1910 or 1911. In the second arrangement I think we leased the plant to him.

Q. (By Mr. BLAKESLEE.) How much of the plant?

A. Oh, we had a few machine tools—oh, I think about three lathes and a shaper and a drill press and those things. [842] We leased those machines to him and made a little different arrangements, which is a matter of record on our minutes.

Q. And then what did he do with those machine tools he rented from you?

A. After this rental proposition we arranged to sell the tools to him, taking in payment finished machines.

Q. Finished 14–P machines?

A. Finished 14–P's; and we also had a 19–P developed about that time; just the year I don't know. But they have to come together, and in all probability it was the same year; a gallon machine.

(Testimony of F. F. Stetson.)

Q. How long did he supply you with 14–P's and 19–P's under that arrangement?

A. In 1913 we made a different arrangement. I think 1913 was the year in which we sold the business to him.

Q. What do you mean by the business?

A. Well, the manufacturing. That is, these tools that we had agreed to put in in the second contract; in the last contract we sold the machines to him, taking finished machines in payment.

Q. And did that include any part of your plant for making cans? A. The can plant?

Q. Yes. A. No.

Q. Certain machine tools that you had in the plant?

[843] A. Machine tools and the jigs and special—

Q. Now, how long did he continue on the premises of the L. A. Can Company using those machine tools that you sold him in that manner?

A. Oh, a few years. I don't remember exactly.

Q. Well, what did he do?

A. Then he moved out of the place. The machine shop became so congested that we asked him to move out, and he went diagonally across the street to the brick building on the other side of San Fernando Boulevard.

Q. That was at about what time?

A. Oh, I think it was around 1917. The dates I haven't got fixed in my mind.

Q. About how long did he stay over in the brick shop?

(Testimony of F. F. Stetson.)

A. I think three or four years.

Q. And then moved to his present premises?

A. Yes.

Q. Now, when he was over in the brick shop did you or did the L. A. Can Company have any dealings with him regarding 14–P and 19–P machines?

A. Oh, yes, we kept buying from him; and other machines, too—body machines—and—

Q. Now when did you first see blue-prints of the Pacific machine, if you remember?

A. Oh, I think we began making the machine in 1914.

Q. How soon did you commence putting the Pacific machine [844] into the L. A. Can Company's shop?

A. I think the first machine that was made was put in there.

Q. And were others put in from that time on, from year to year?

A. Yes. We increased our capacity and used every machine we could make for many years.

[845] Q. (By Mr. BLAKESLEE.) Now, commencing with the first Pacific machine that you put in the L. A. Can Company's shop, where were those machines made—by what concern?

The MASTER.—I thought he said the first Pacific machine was put into the cannery.

Mr. BLAKESLEE.—The very first one in 1914, I think he said.

The MASTER.—That it was put into the cannery and not the can shop.

(Testimony of F. F. Stetson.)

The WITNESS.—Well, it was put in there for a month or two to finish the season and then was immediately moved over to the can factory.

(Last question by Mr. Blakeslee read.)

A. We have manufactured under three different names. The first was the Sumner-Wilson-Stetson, and the next step was the Stetson Machine Company, and finally the Pacific Closing Machine Company. In all these different institutions we had the same members, except when we formed the Pacific Closing Machine Company we took in two of my office people. It is practically a closed corporation with the same interests throughout. The first machine was made by Sumner-Wilson-Stetson.

[846] Q. (By Mr. BLAKESLEE.) Were those different concerns located where the Pacific Closing Machine Company is to-day?

A. No; we began making the machines in a little room next to the can factory. That was the first factory. Then when the Can Company needed that space we moved across the street and established this new factory that we are now using.

Q. While Mr. Guenther was across the street in the brick shop did you at any time submit any blueprints of a Pacific double-seaming closing machine to Mr. Guenther? A. Yes.

Q. Do you remember when you did that?

A. Not exactly. I can get at it very closely, though, from the fact that Mr. Wilson had been east, working for the Bliss Company, and he came back from the east in the latter part of July and

(Testimony of F. F. Stetson.)

he was present when I went over and got the set of blue-prints. It must have been very soon after the last of July, probably, or early in August.

Q. Can you recollect what year that was?

A. Why, in 1920, I suppose.

Q. Now, you went over to the Pacific Closing Machine Company and got the blue-prints there?

A. Yes.

Q. Who delivered them to you?

A. Whether it was Mr. Wilson personally or the draftsman I don't remember. Some of the office force.

Q. And you delivered them to Mr. Guenther?

[847] A. Not to Mr. Guenther. He wasn't there that morning. I delivered them to a man who I supposed was his bookkeeper in the office there.

Q. What was the occasion and purpose of your so delivering those prints to Mr. Guenther's shop?

A. We asked him to figure on the cost of building some for the Los Angeles Can Company.

Q. Did he submit any figures? A. No.

Q. Did he make any machines pursuant to such request? A. No.

Q. Now, why was it that you asked Mr. Guenther to figure on such manufacture for you?

A. Our managing secretary—or our secretary was the manager, and he always contended that our company—no, I beg pardon—the Pacific Closing Machine Company or the Stetson Company were not building machines as cheaply and selling them to me as cheaply as they ought to, and he just told me that

(Testimony of F. F. Stetson.)

he thought we ought to see if we could do any better, and, being President of the corporation, I thought it my duty to see whether it could be done any cheaper rather than to insist upon having my company do it.

Q. Did you actually ask Mr. Guenther to build any machine for you?

[848] A. I did not, no. I asked him for figures.

Q. And you never got the figures?

A. I never got them?

Q. Do you know how long Mr. Guenther had those blue-prints at his shop?

A. No; but to the best of my recollection we got them back in December.

Q. Of the same year?

A. Of the same year, yes.

Q. Do you know where those blue-prints are now?

A. No; but I think they were brought over here.

Q. I call your attention to Plaintiffs' Exhibits 11, 12, and 13, being three groups of blue-prints in evidence here, and ask you what, if anything, you know about those blue-prints.

A. (Examining same.) Oh, they are similar. Not being a machinist, I can't read a blue-print; but I can see that they all have to do with the Pacific or a similar double-seamer.

Q. How do those blue-prints, as you recollect, compare in size and shape with the blue-prints that you took to Mr. Guenther in 1920?

A. Very close. We took over three sizes.

Q. Then what can you say as to these three exhib-

(Testimony of F. F. Stetson.)

its, Nos. 11, 12, and 13, in connection with the fact of your delivering three sets of blue-prints to Guenther in 1920?

A. They resemble them very greatly.

Mr. TOWNSEND.—We again offer to stipulate that blue-prints [849] substantially like Plaintiffs' Exhibits 11, 12, and 13 were delivered to Mr. Guenther's shop or place of business by Mr. Stetson in the latter part of 1920; and are willing to stipulate the date they were delivered; we will stipulate that Mr. Stetson took a receipt; and we will make such other stipulations as we think will shorten up the record.

Q. (By the MASTER.) Did you take a receipt for them? A. I took a receipt for them.

Q. Have you that receipt?

A. No, not that I know of. I haven't looked for it. I know I took one, but when the prints came back I lost all interest in the matter.

Q. What dates do you fix?

Mr. TOWNSEND.—It is a question of how far this inquiry is going to go if we stipulate. We will stipulate when we began work on the machines.

The MASTER.—When did they get over there to Guenther's shop?

Mr. TOWNSEND.—They were delivered on August 16, 1920.

The MASTER.—And got back when.

Mr. TOWNSEND.—I don't know that we have any definite, exact date. I believe we would be ready to accept the date of approximately December 1, 1920, or earlier.

The MASTER.—They would not want to accept your "or earlier."

Mr. TOWNSEND.—Well, it was manifestly not later; and if it was earlier we reserve the privilege of finding that out exactly if we can.

The MASTER.—Can't you accept that stipulation?

Mr. BLAKESLEE.—Inasmuch as our proofs are practically concluded in this matter, with the exception of one more witness, I think it would be better to have the record made up and then counsel can either attempt to meet it, for the purpose of qualification or establishing a variance, if he thinks it is necessary or desirable, or he can stipulate and end the matter. Our proofs are almost complete on it now.

The MASTER.—Well, proceed.

Mr. TOWNSEND.—I think the offer to stipulate forecloses further inquiry into this matter.

Mr. BLAKESLEE.—I wouldn't wish to do that, because we have a further important witness in this connection. That is just why I don't want to stipulate now. We have a further witness who will deal more in detail with the circumstances of our charge of wilful infringement here.

Mr. TOWNSEND.—I will ask on the record, then, who that witness is.

Mr. BLAKESLEE.—I do not know that we are obliged to divulge his name at present.

[851] Mr. TOWNSEND.—There has been so much secretiveness about all this that we would

(Testimony of F. F. Stetson.)

like to expedite things and get along and bring everything out into the open sunlight.

Mr. BLAKESLEE.—I don't know how to bring it out in the sunlight any better than to proceed to put it on record.

Q. (By Mr. BLAKESLEE.) When did it first come to your knowledge that Mr. Guenther or his interests had produced a 24–P Angelus double-seaming machine?

Mr. TOWNSEND.—I am again willing to stipulate when we began the manufacture and when that machine was completed and when it was first operated, or anything else that will help to shorten the record.

The MASTER.—You can't stipulate when he found it out, though.

Mr. TOWNSEND.—Very well.

Mr. BLAKESLEE.—Mr. Townsend can state if he wants to, for the purpose of binding himself, what those dates were, but we cannot stipulate something that is not satisfactory to us.

[852] (Last question read.)

A. I can't say. I began to hear rumors early in the spring of 1921 that there was a double-seamer machine similar to ours being made, and I saw it along in the summer at the frame building across the way—adjoining the brick building you know. He had two buildings. I saw it just for a few minutes.

Mr. TOWNSEND.—I move to strike out all that portion of the answer preceding the statement that

(Testimony of F. F. Stetson.)

he saw it at a certain place and time, the other being mere hearsay and gossip.

The MASTER.—It simply shows what led up to his knowledge of it.

Mr. TOWNSEND.—But it is a mere statement of idle gossip, and hearsay, and grossly improper.

The MASTER.—The motion is denied.

Q. (By Mr. BLAKESLEE.) Do you know whether more than one such Angelus 24–P machine was built over at the brick shop in Guenther's place? A. No.

Q. And when was it he left those premises, again?

A. Oh, I can't fix that date. It has been four or five years ago—four years ago.

The MASTER.—What premises?

Mr. BLAKESLEE.—The brick shop across the street.

[853] Q. How long after you saw the Angelus 24–P machine over there in the middle of 1921 was it that Mr. Guenther left that shop, if you remember? A. No, I don't remember.

Q. Did you personally ever encounter any of the 24–P machines in a cannery after that?

A. Yes.

Q. When and where was that?

A. I went out to the Pomona on the 28th of September. I looked that up in my diary, so I know it was the 28th of September; I know pretty close.

Q. What year?

(Testimony of F. F. Stetson.)

A. 1921; and saw the machine in operation on peaches—canning peaches.

Q. (By the MASTER.) Which do you can first —apricots. A. Apricots, yes.

Q. (By Mr. BLAKESLEE.) Was that cannery a customer of the [854] L. A. Can Company?

A. No, not at that time.

Q. Has it since become such?

A. Yes, we have a contract with them at this time.

Q. Do you know whether the 24–P is till in use at that cannery? A. I think not.

Q. (By the MASTER.) What is the name of the cannery?

A. The Pomona Cannery of the Golden State Canning Company.

Q. (By Mr. BLAKESLEE.) Has that cannery any Pacific double-seamers? A. Yes.

Q. Furnished through the L. A. Can Company?

A. They bought that machine two years ago.

Q. (By the MASTER.) From whom?

A. From the Pacific Closing Machine Company. In that one case the machine was bought and not leased.

[855] Q. Can you state of your own knowledge, Mr. Stetson, whether refusal was made to any person within your knowledge of the right of inspection or viewing of the first 24–P machine constructed over on the premises of Mr. Guenther?

Mr. TOWNSEND.—That question is leading. Why doesn't he ask what was done in an effort to

(Testimony of F. F. Stetson.)

see it? A refusal might be made to some improper person.

Mr. BLAKESLEE.—I asked him of his own knowledge.

Mr. TOWNSEND.—That is too general.

The MASTER.—It is preliminary.

Mr. BLAKESLEE.—It calls for yes or no.

The MASTER.—Yes or no.

A. I don't remember.

Q. How did you come to see it over there?

A. Why, we went over one morning, and when I say "we" I am not certain who the other man was, but one other man from our office, I think Mr. Williams, went over rather early, and Mr. Guenther didn't happen to be there, and the machine was in the back room and we went in and looked at it, and that is the only time we ever saw the machine, I think, until that time we went to Pomona.

[856] Q. Do you remember how many turrets there were on that machine? A. Two turrets.

Q. What else in general do you remember about that machine?

A. Oh, each turret has four spindles. It has a feeding disk very similar to the Pacific and a spacing device that is not rubber. It is a metallic device with springs in it to take the place of the rubber separating device that we have on the Pacific.

Q. For feeding what?

A. The spacing of the cans, spacing them. And

(Testimony of F. F. Stetson.)

then a transfer device from the one turret to the other, which has very similar parts. It has three pockets instead of two, I think.

Q. How does the transfer device move?

A. A little revolving device on an upright shaft.

Q. (By the MASTER.) Does it have a platform? A. It has a platform, yes.

Q. (By Mr. BLAKESLEE.) Where were the cans and caps fed to the machine, at what part of it?

A. Slightly before the can and the cap were put into the turret.

Q. Into the same turret? Were they both fed to the same turret? A. The first turret.

[857] Q. Did you see that machine in operation at that time? A. No.

Q. Was it on a power line at that time, and belted up?

A. I am not certain. It wasn't operating, I know.

[858] 507 Bankitaly International Building, Los Angeles, California, Tuesday, April 17, 1923, 11 A. M.

(Appearances as previously noted.)

F. F. STETSON recalled.

Direct Examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Mr. Stetson, in testifying at the last session, in your answer to the last question on page 826 of the transcript.

(Testimony of F. F. Stetson.)

A. Oh, as I stated a few lines afterward, I said I would look at the machine. I find out that I was mistaken in that. It was five years before this since I had run a machine. I [859] used to take the boys' places and run a machine; but that is not the operation of the machine, and I perhaps should not have attempted to—

A. Oh, the feeding device runs all the time, and the machine is stopped. Now, there are times when it is idle just the same. It is impossible that it should not be so, because it catches,—and there are times when the machine runs idle, and at such times if the roll is set too tight it does wear to some extent.

A. Oh, to say that the roll will touch with the chuck all the time, I think, is hardly a fair statement. It is only when the machine is running idle, when the double roll does come in contact with the chuck, if it is set too tight. I remember this particular machine operating; when I was a cannery operator I had to pay for these rolls, and I was very much interested in knowing, if a roll wore out in a day, what was the matter and what to do about it. But the adjustment was too close. So as a cannery operator I got [860] just as much insight into this thing as I did in operating the machine or seeing the machine.

The MASTER.—Do I understand those rolls wore out very often? A. Yes.

Q. And do they wear out as quickly as in one day?

(Testimony of F. F. Stetson.)

A. Well, I would have to depend upon what my men told me, but I asked one man what the result would be, and he said he had seen them wear out in an hour.

Mr. TOWNSEND.—I move to strike that answer out as hearsay.

The MASTER.—It will be stricken out.

Q. (By Mr. BLAKESLEE.) You have personally, I understand you to say, operated in years gone by a 14–P machine?

A. Oh, at times, yes.

Q. At the L. A. Can Company's shop?

A. No; that would be in my own cannery.

Q. I believe you mentioned in your previous testimony a certain incident regarding a 14–P machine furnished by the L. A. Can Company to the Golden State Canning Company. Are you prepared to state now what was the result of that operation?

A. That was the first machine we built—

[861] A. The first machine that we built, now known as the 14–P, was sent out to the Golden State Canneries at Ontario for trying out during the summer, and as Mr. Guenther was employed as our expert, if anything was the matter he was sent out to Ontario to adjust the machine. He was out there quite a good many times. We supposed that the machine was operating satisfactorily, but when the season was over and they began to ship out the goods they found that there were a great many swells—swollen cans caused by leaks.

(Testimony of F. F. Stetson.)

They would ferment and swell up, and we call them swells for short. He looked over the pile of goods—

Mr. TOWNSEND.—Now, just a moment. We think we should know that this witness was present.

Mr. BLAKESLEE.—Was this of your own knowledge?

[862] A. Only from correspondence.

Mr. TOWNSEND.—Then it calls for hearsay.

The MASTER.—Yes.

Q. (By Mr. BLAKESLEE.) Can you furnish any correspondence regarding the operation of that machine? (Counsel producing letters.)

A. These letters came from our old files.

Mr. BLAKESLEE.—The witness submits a letter bearing the letterhead of the Golden State Canning Company, dated November 29, 1910, addressed to Los Angeles Can Company, signed by Golden State Canning Company, L. E. McCann; also a letter on the same letterhead bearing date December 9, 1910, addressed to the Los Angeles Can Company, and similarly signed; a bill or statement to the Los Angeles Can Company on the billhead of the Golden State Canning Company, bearing no date; an apparent carbon copy of a letter dated January 13, 1911, to the Golden State Canning Company, bearing the signature of the Los Angeles Can Company; also a letter on the letterhead of the Golden State Canning Company dated January 27, 1911, addressed to Los Angeles Can Com-

(Testimony of F. F. Stetson.)

pany and signed as were the previously mentioned letters from that company.

Q. What do you know about this correspondence, Mr. Stetson?

[863] A. We brought it from our files, and it shows—

The MASTER.—Never mind what it shows.

Mr. BLAKESLEE.—Did you conduct the correspondence or any part of it?

A. No. Our secretary, Mr. Irvin, since deceased.

A. I don't look after them. The secretary and the stenographer get them for me if I want them.

Q. They are under your control as president of the company, are they?

A. Yes, I guess so.

Q. Did you know of this correspondence—did you have anything to do with it at the time?

A. Yes.

Q. Did you have anything to do with the direction of the matters in this correspondence?

A. Yes; the allowance.

Q. You refer to the bills here?

[864] A. Yes.

Q. Did you allow that bill as the president of the company?

A. It was allowed as a credit on the next year's contract.

Q. Did you allow that bill yourself? A. Yes.

Mr. BLAKESLEE.—I think the witness has proven enough connection with the matter to be permitted to testify.

(Testimony of F. F. Stetson.)

The MASTER.—You are offering it simply to show a loss that was paid by the company?

Mr. BLAKESLEE.—A loss that was paid by the company under Mr. Stetson's direction for the improper operation or the operation causing such loss with the 14–P machine which was built by Mr. Guenther, the first one built. That is the purpose of the offer we are going to make; and we offer this correspondence, with the statement showing a total of $5,201.21, as Plaintiff's Exhibit 18, in one group.

Mr. TOWNSEND.—We object to the receipt of these letters in evidence as mere hearsay, and no proper foundation laid; and as incompetent, irrelevant and immaterial.

Mr. BLAKESLEE.—The witness shows that he had general direction of this transaction and made the allowance.

The MASTER.—They will be received merely for the purpose of showing that there was a claim made, and as corroboration of the allowance, but I don't intend to read the letters, and I think the objection is good otherwise.

Mr. BLAKESLEE.—And they will be allowed as to the payment [865] and allowance of that sum?

The MASTER.—Merely for that purpose.

Mr. TOWNSEND.—Well, we are not sure as to the payment of this sum.

[866] The WITNESS.—I would say also by see-

(Testimony of F. F. Stetson.)

ing the entry in the ledger showing under the head of allowances that same amount.

Q. (By Mr. BLAKESLEE.) You have briefly inspected that entry? A. I have; yes, sir.

Q. Was it the amount of this statement here?

A. Yes, sir.

Mr. BLAKESLEE.—$5,201.21 is the amount of the statement.

Q. What, to your knowledge, were the reasons for this allowance so far as your knowledge goes?

Mr. TOWNSEND.—He is only depending on hearsay, your Honor,—what someone told him.

A. The bill states—

Q. (By Mr. BLAKESLEE.) Did that matter come under your attention for an adjustment personally at the time the allowance was made?

A. It came before the Board, yes.

Q. And you sat as President of the Board?

A. Yes.

Q. And at that time did the Board pass upon the items of this statement?

[867] A. Well, to say a Board, that is really not a correct expression. There are three of us in the factory that always pass upon those matters.

Q. And did those three persons pass on these matters? A. Yes, sir.

Q. And they were allowed by the corporation?

A. Yes, sir.

Q. Please state what, according to your recollection, were the grounds urged for the allowance at

(Testimony of F. F. Stetson.)

that meeting of the three persons having the matter to decide.

Mr. TOWNSEND.—Now that calls for hearsay again, either from what he has been told or a recapitulation of what the paper states.

The MASTER.—It would as to the actual facts, but as to their reason for allowing the claim—

A. Whenever a can swells, the—

Q. (By Mr. BLAKESLEE.) What were those reasons, to your knowledge?

[868] A. Cans swell, and our contract calls for us to pay for all leaks or losses arising from defective cans above five in every hundred.

Q. (By Mr. TOWNSEND.) Did you see those swollen cans yourself? A. No.

Mr. TOWNSEND.—Then, your Honor, it is pure hearsay.

The MASTER.—We are not accepting the evidence for the purpose of showing that the cans were swollen, but that was the reason actuating them for allowing the claim.

Q. (By Mr. BLAKESLEE.) Do you know that that was a 14–P machine that the swelled cans were closed on in that factory? A. Yes.

Q. Now, what is the cause of the cans swelling?

A. Ordinarily, but not always, they swell because of small leaks which admit atmospheric air to the inside of the can.

Q. What does that do to the fruit or the contents?

[869] A. The contents sour or ferment, causing the can to swell.

(Testimony of F. F. Stetson.)

Q. At other and later times did you have any similar adjustments to make regarding such losses ensuing upon the use of the 14–P machines?

A. In other canneries?

Q. Yes.

A. I don't remember that we ever had any serious losses, except one—no, I don't remember any serious losses that we had after that year.

Q. Were there losses that you made allowances on? A. We had some losses, yes.

Q. For the use of the 14–P machine?

A. Both the 14–P and the Pacific.

Q. For losses from swelling cans?

A. Claims of that kind; yes, sir.

Q. For how long a period of time have there been no such claims and allowances on the Pacific machine?

A. Well, we adjusted a claim two years ago. That is the last one I remember.

Q. How large was that?

A. I think about six or eight hundred dollars.

Q. Did you ever have any other adjustments in an amount greater than six or eight hundred dollars since this [870] Golden State Cannery incident?

A. Yes, before that. I think I ought to state in this connection that these claims are not always perfectly valid. Sometimes a man will trump up charges, you know. He has had some losses. So when you allow a claim it doesn't always mean that the cans were defective. You simply allow a claim in some instances to keep the man good natured and

(Testimony of F. F. Stetson.)

one of your customers. You have to use policy all the time to keep your men satisfied.

Q. Did you do that in the instance of the Golden State cannery when you allowed them over $5,000?

A. The Golden State reported those as actual swells and losses, and we allowed them because we thought they were swells and losses. But I was thinking about this other business up at San Jose where we were dealing with some of the most conscienceless claims that ever were made, and he certainly claimed everything under the heavens that he could think of.

Q. How big a claim did he make?

A. His claim at that time was over a thousand dollars—I forget just what it was—and we didn't believe it was right at all, but he was a good customer, and in that instance we just simply split the difference or something of that sort. It is a common thing, you know, for a man, when he has losses, to say it is the fault of the cans. That is one of the things we have to fight against all the time.

[871] Q. Have you ever honored and settled any claim to your knowledge as large as that of the Golden State Canning Company claim—any other?

A. I don't think so.

Q. You don't recollect any? A. No.

TESTIMONY OF EDWARD HARRIS, FOR COMPLAINANTS.

[872] EDWARD HARRIS, called as a witness on behalf of the complainants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Please state your name.

A. Edward Harris.

Q. Your age, residence, and occupation, Mr. Harris, please?

A. Age 45; pattern-maker by trade; 624 Clendon Way, Alhambra.

Q. Are you acquainted with Mr. Guenther, the defendant in this case? A. Yes, sir.

A. I went to work there in 1920.

A. On the San Fernando Road.

Q. In the brick shop? A. Yes, sir.

[873] A. I was making patterns for him.

Mr. TOWNSEND.—I presume the purpose of calling this witness is to testify to his having made patterns for the 24–P, and I again state that I am willing to stipulate what our records show as to when that pattern work was begun. That will expedite matters.

Mr. BLAKESLEE.—I don't see how we can stipulate to something we don't know about.

Mr. TOWNSEND.—I have endeavored to give you the best evidence, but go ahead.

Q. Did you ever make any patterns for any parts

(Testimony of Edward Harris.)

of a machine for closing cans—a double-seaming machine? A. Yes, sir.

Q. When did you first make such patterns for parts of can closing machines?

[874] A. I am not able to say, exactly, but they were made during the time I worked there, inside of a year.

Q. When did you leave there?

A. I can't tell exactly, but it was in the fall of 1921, I think.

Q. Are you acquainted with the 24–P type of can closing machine made by the Angelus Sanitary Can Company with which Mr. Guenther is connected?

A. I wouldn't say as to that number, because I think all his machines have a P number on them. That is, the can closing machines.

Q. Did you ever see a machine constructed in that brick shop while you were there, having a continuous can and cap feed, with two turrets?

A. Yes, sir.

Q. Do you know when work was started on that machine? A. Not exactly, no.

A. Well, I went there in November, 1920, and started [875] immediately to make patterns, but I don't remember whether it was for this particular machine or not.

Q. Do you remember making any patterns for that first machine? A. Yes, sir.

Q. For what parts did you make such patterns, if you remember?

(Testimony of Edward Harris.)

A. I think I made most of the patterns for the whole machine.

A. Well, I can't say when the machine was completed, but after I had the patterns all made I was through there then; they were finished.

A. If I remember correctly, it was about in September. It must have been along about September, 1921.

Q. When you left there?

A. Yes, sir. And I afterwards worked there again.

A. Oh, a couple of months after that.

[876] A. Well, I was doing lots of repair work on these patterns, and things like that. It was a couple of months after I went back there.

The MASTER.—What kind of a thing is a pattern?

A. Why, it is a model, you might say, made of wood, and it is afterwards used to get a casting off of.

Q. How do they get the casting off of it?

A. They put this pattern in sand and tamp it, and then pull the pattern out and fill the depression with metal.

Q. That is for the cast iron parts?

A. Yes, or steel, or brass, or whatever it may be.

Q. (By Mr. BLAKESLEE.) I show you Plaintiffs' Exhibit No. 8, a magazine called "Canning Age," and call your attention to the machine depicted there with the heading "Angelus No. 24–P," and ask you if that is the type of machine you refer

(Testimony of Edward Harris.)

to as having been built there the first time you were working for Mr. Guenther.

A. It looks very similar to the one.

Q. Do you recognize parts there for which you made patterns?

A. I recognize parts here where we made patterns—I [877] couldn't say exactly, but very similar to it. It might be the same thing.

Q. So far as you know it might be the same thing? A. Yes.

Q. Now what is your recollection again as to when you first started work on patterns there for a machine like that?

A. Well, it was not long after I went to work there we started to make patterns for this new machine.

Q. How long?

A. I can't say for sure, because when I first went there there was other work to do, repairs on other patterns that we had, and one thing and another. It was inside of two months, I would say, from the time that I went to work there that I started on this machine.

Q. That was two months after the time you went to work there in November, 1920? A. Yes.

Q. And you saw that machine assembled there, did you? A. Part of it, yes.

Mr. BLAKESLEE.—That is all.

(Testimony of Edward Harris.)

Cross-examination.

(By Mr. TOWNSEND.)

Q. Did Mr. Guenther tell you of any of his work that he kept secret? A. No, sir.

[878] Q. Was there any secrecy displayed, as far as you could see, around there in that building, as to the 14–P? A. Not a bit.

Q. In the matter of the making of your patterns I don't suppose there was any secrecy? A. No.

TESTIMONY OF F. F. STETSON, FOR PLAINTIFFS (RECALLED).

[879] F. F. STETSON recalled.

Direct Examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Mr. Stetson, have you seen the machine which was operated at the shop of the Pacific Closing Machine Company last January and before the Special Master in this case, the Pacific machine?

A. Yes, I saw that.

Q. How does that machine in its construction compare with the machine that you have been making and selling in the last few years?

Mr. TOWNSEND.—We object to that on the ground that no proper foundation has been laid. This man has expressly disclaimed being a mechanic or having knowledge of mechanical details. Now to make a self-serving statement of comparison,—it is for the Court to draw such conclusion as it desires between the machine itself and the patent here in suit.

(Testimony of F. F. Stetson.)

Mr. BLAKESLEE.—I didn't mention the patents.

[880] A. Very similar.

Q. (By the MASTER.) Was that a stock machine? A. It was a stock machine; yes, sir.

Q. And how have the machines you have been making and selling in the last five years compared with that stock machine?

Mr. TOWNSEND.—That is objected to as calling for a conclusion of the witness.

The MASTER.—Why not ask him if there have been any variations?

Q. (By Mr. BLAKESLEE.) Do you know of any variations? A. Very slight ones.

A. The Troyer-Fox or Fox-Troyer is quite a popular machine. The Max Ams, such as I spoke of a few days ago, was one that we used in our own factory and was not the latest machine that company turned out; not the late one, I don't think, but I am not acquainted with it.

[881] Q. Did you count the blue-prints which you returned to the Pacific Closing Machine Company, namely, the blue-prints of Exhibits 11, 12, and 13?

A. I did not count the blue-prints. I took them over and counted them when they went over and took a receipt, but when they came back they were taken to the office and I wasn't present, and they were counted by the draftsmen.

(Testimony of F. F. Stetson.)

Cross-examination.

(By Mr. TOWNSEND.)

Q. Is the Fox-Troyer machine a no-can-no-cap feed machine?

A. I am not well enough acquainted with the machine to say.

Q. Is that a continuous machine or an intermittent machine? A. An intermittent.

[882] Q. Do you know any continuous machines on the market besides your own?

A. The Continental Can Company have one. I saw the first one that was made back in the Canners' Convention in the East. I do not know whether they are building that machine now or not. I haven't seen any American machines—this is stating what someone else said—but I have heard that the American Can Company is making a continuous machine. I have never seen it, so I don't know of my own knowledge that they do.

Q. You have never seen any of the American Can Company's continuous machines? Am I to understand that? A. Not that I remember of.

Q. Going back several years, do you recall having investigated the types of machines that they were putting on the market that were continuous?

A. I don't remember.

Q. What were the Continental Can Company machines that you saw?

A. A single-turret, one-turret machine.

Q. How may spindles were there on that machine? A. I don't remember. I think four.

(Testimony of F. F. Stetson.)

[883] Q. Did you see the machine in operation?

A. I don't think so.

Q. How did you know it was a continuous machine?

A. I talked to the inventor and he told me. I remember he told me. "That is my baby."

Q. Do you remember when this was that you saw this machine?

A. No. That was a good many years ago and I don't remember.

A. I have no way to fix it only simply to guess at it.

Q. Was it before the United States went into the war, or [884] afterwards?

A. I think before.

Q. Do you know when that was that we went into the war?

A. No, I don't want to say when we started in the war.

Q. This is no laughing matter, Mr. Stetson, My questions are propounded with a serious purpose. I will ask the Master to suggest that you answer them to the best of your ability. We don't expect the impossible of anyone but we do expect your serious concentration on this thing and the best answer you can give.

Mr. BLAKESLEE.—We object to that on the ground that, according to the weight of the witness's testimony, it was all subsequent to the patents in suit and therefore it is immaterial as to whether there was any other continuous machine. It may be

(Testimony of F. F. Stetson.)

an infringement on the patent in suit, and that is not in issue here.

Q. (By Mr. TOWNSEND.) I asked him if he knew when the United States went into the war.

A. I don't remember exactly, no.

Q. Do you remember when the Armistice was signed? [885] A. No.

Q. Do you know what year it was signed?

A. No.

Q. Do you know when the Great War started in Europe?

A. I was here all the time and read about it, but it is just like this: These dates get very, very much confused in my mind and there are very few of them that I remember. Perhaps it is because as the head of a concern these details are not in my charge at all. If something comes up it goes into the hands of one department or the other, and I don't keep them in my mind at all. I am sorry, but it is so. Sometimes I have a little corroboration, like this paper here, which showed that that machine we were debating the other day was made in 1909 and was tried out in 1910.

Q. And yet you can't remember when the Great War, in which the whole world was involved, started? A. No.

[886] The MASTER.—I think you have established your point, Mr. Townsend, that he doesn't remember dates.

(Testimony of F. F. Stetson.)

A. In the operation of double-seaming with a roll the roll must be adjusted very closely to the plate in order to make a perfect operation. Consequently, if the adjustment is not perfect, why, the roll comes in contact with the plate.

Q. Now, are you speaking of a roll on a seaming head such as is shown by Defendants' Exhibit "P"? A. Yes.

Q. How would you effect the adjustment or proper relationship of the seaming roll of that Exhibit "P" to the chuck plate that you referred to, in which you say the rolls would contact with and cause wear if the adjustment wasn't properly attended to, and this wear taking place while the machine was running idle and no cans going through it?

[887] Mr. BLAKESLEE.—I don't think the witness qualified as an adjuster of machinery. He testified to certain facts as to what went on in his shop.

The MASTER.—If he doesn't know he can say so. How do you adjust that so that the rolls are a proper distance from the plate?

A. By the lever back here, this lever connected in here and coming back. As I said before, these questions of the operation of the machine, that is, the finer adjustments of the machine, should not be put up to me because I am not a double-seaming man.

Q. (By Mr. TOWNSEND.) In other words, when you are talking about what might or might

(Testimony of F. F. Stetson.)

not be the action of the Guenther seaming rolls on the Guenther chuck plate, as shown in this Exhibit "P," that is entirely outside of your province?

A. The adjustment of those devices are outside of my province.

Q. And what would take place is something that you don't know anything about?

A. I know about it because I ran that kind of a machine when I was in the factory. I had one of these machines when I was running a cannery, and if a roll was cut I immediately inquired, "Why is this so?" and the report would be that the operator adjusted it too closely and wore it out.

Mr. TOWNSEND.—Well, we won't continue the subject further on a matter of hearsay.

[888] The MASTER.—I think it would be evident if it was adjusted too tight that it would wear out, as there is no lubrication there.

Q. (By Mr. TOWNSEND.) Did you ever see a worn out curling die such as you use on the Pacific?

A. No. Well, I have seen the die laying around, yes. What I mean by "No" is I haven't examined it closely.

Q. You have seen discarded dies that have served their term of usefulness? A. Yes, sir.

Q. And you have seen a good many of them, haven't you?

[889] Q. But you are familiar with the fact that you have to replace the curling dies in the Pacific from time to time? A. Yes, sir.

(Testimony of F. F. Stetson.)

Q. You emphasized that "Yes, sir." Now, what feeling is behind that?

A. That is one thing that is absolutely impossible to be any question about because it is a tool that is taking hundreds of thousands and millions of cans and it must wear a little with every single operation. Consequently there is no doubt about it whatever. And when I say, "Yes, sir," I mean to emphasize it, that they do wear and have got to wear.

[890] A. This information that I get must come from some other people, ordinarily.

The MASTER.—There is no question, Mr. Stetson.

Q. (By Mr. TOWNSEND.) Do I understand that the first 14–P that was built was sent out to the Golden State Cannery Company at Ontario some time prior to the first of this bunch of letters that your counsel referred to, and I believe the first being dated November 29, 1910?

Mr. BLAKESLEE.—Exhibit 18.

A. Yes, sir.

A. To the best of my knowledge and belief the machine was sent out early in the year and operated during the season, but I can't be certain about it.

A. It begins on apricots from the middle of June until the first of July.

Q. So this first 14–P must have been built and completed and put in operation you would say somewhere prior to the middle of June, 1910?

(Testimony of F. F. Stetson.)

A. Yes.

Q. After this apparently disastrous season of experience, with the 14–P, did the Golden State Canneries Company buy [891] more 14–P's?

A. They didn't buy that one. We furnish machines to our customers on a rental basis.

Q. Following your suggestion, did they ever use any other 14–P's after that? A. Yes, sir.

Q. Did they use one the next year?

A. I don't know how many they put in but they have used them since.

Q. They have used them since? A. Yes, sir.

Q. How many have they used in the aggregate, approximately, would you state?

A. Well, the Golden State Canneries in the beginning was a single cannery; since that time they have added other canneries to their line, until I know they have two that are equipped with the 14–P's. How many machines there were in each cannery I don't remember. I think there were four or five.

Q. Are they using any 14–P's to-day in any of their canneries?

A. I think there are some left still in the Ontario and Cucamonga plants.

Q. Are they also using some 19–P's?

A. Some 19–P's. I think there is a 19–P used at Cucamonga, and at the Ontario plant they put in one Pacific [892] gallon, and I think they still have a 14–P there.

Q. After you paid this considerable sum of

(Testimony of F. F. Stetson.)

$5,000 or so in 1910, you apparently went on buying and renting 14–P's, did you not?

A. Yes, sir.

Q. How long did you continue that practice?

A. We bought machines as late as 1920.

Q. From Mr. Guenther? A. Yes, sir.

Q. Do you remember how many machines in that period from 1910 to 1920 you bought from Mr. Guenther, 14–P's or 19–P's, or both?

A. I can't remember exactly. I think it was over 80.

Q. Over 80. A. Yes, sir.

Q. Wasn't it considerably over a hundred?

A. I don't remember.

Q. Mr. Guenther's books would show that, wouldn't they? A. Oh, yes, indeed.

[893] Q. (By Mr. TOWNSEND.) You say you paid a sum of considerable size for a claim on a Pacific machine at San Jose. Where was that machine located, in what cannery?

A. The California Co-operative Cannery, I think is the title or firm name.

Q. (By Mr. TOWNSEND.) What was the amount of the claim?

A. I don't remember, and it can't be determined, because there were so many conditions about the thing that I don't think we could find a record of it anywhere.

Q. Did you pay it?

A. We allowed part of it, but it has never been settled yet.

(Testimony of F. F. Stetson.)

Q. You have a record of what you paid, have you not?

A. Well, I doubt it. It is one of these claims where there [894] are so many different items connected with it.

Q. Well, we recognize you may have had differences of opinion in regard to it, but that doesn't alter the fact that a fixed and definite sum was demanded of you, wasn't it?

A. They demanded a sum.

Q. Was that demand made in writing?

A. I don't remember.

Q. Did you have any correspondence about it?

A. I never saw any.

Q. Did you look for it? A. No.

Q. Have you instructed anyone to look for it?

A. No, sir.

A. As I said before, that is the most complicated question that I think ever came before the Los Angeles Can Company. They had four or five of our machines—

The MASTER.—Just explain what you did in making an adjustment. [895]

A. Mr. Master, they had up there some six or seven of our machines, which were put up there because they were originally a customer of ours. San Jose has an American Can Company plant, and we, before the end of the season, found that we couldn't furnish them cans, and we asked the American Can Company to take care of them, and they did the last part of the season, but these peo-

(Testimony of F. F. Stetson.)

ple kept the machines. They had six or seven of those machines up there.

Q. (By Mr. TOWNSEND.) What kind of machines?

A. Pacific double-seamers. And when the claim came in it was several thousand dollars. Then came the consideration of these double-seamers and the rentals and the amount of swelled ones that he had, and all those things were so intricately mixed that when we finally settled it they said, "Well, we will take so many machines at a certain price," which was rather a fictitious price, and the matter was left in that way, that they would pay so much for the machines. And, as I said a while ago, the machines are not paid for yet. Now, how in the world we could ever get a definite answer to those questions I don't know. It would take an expert.

Q. What was that amount?

[896] A. I don't remember now.

Q. Was it five, ten, fifteen or twenty thousand dollars?

A. Oh, no, it wasn't as big as that. It might reasonably be $5,000, but no more than that.

Q. You think it might have been up to $5,000.

A. It could have been.

Q. How many machines did they have? Five or six or how many?

A. I think they had seven there.

Q. Pacific machines?

A. I think they had seven.

(Testimony of F. F. Stetson.)

Q. In the settlement what did you do?

A. We agreed to take back two of them and they kept five.

Q. They kept five? A. Yes.

[897] Q. That was in payment of this claim?

A. No. They were to pay us for the five machines a certain amount of money.

A. I am telling a secret that perhaps some of the members wouldn't want me to tell, and I don't like to say.

Q. In other words, you don't want to go into the details of that transaction?

A. I don't like to.

[898] Q. Are there any other losses that come to your mind that you have paid by reason of the use of Pacific machines?

A. We had a claim at the Visalia plant of this same company two years ago.

Q. How long ago?

A. Well, let's see; it wasn't this last season because that claim wouldn't have been settled. It was during the winter of 1922 that we attempted to adjust that.

Q. Was that on cans that had been either made in your factory or sealed in their plant, or what?

A. Made in our factory and sealed in their plant.

[899] Q. What was the amount of that claim that you had to adjust at Visalia?

A. If I remember correctly, that was six or eight hundred dollars.

(Testimony of F. F. Stetson.)

Q. And how many machines were involved or were they using there?

A. I think they only have three or four seamers there.

[901] Q. In regard to this adjustment, payment of which you say was made, the $5,000 to the Golden State Canneries Company at Ontaria, back in 1910 and 1911, on account of the use of the first 14–P that was made, do you recall that Mr. Guenther stated to you and the other officers of the L. A. Can Company that the trouble there was due to faulty processing or faulty cooking by reason of the fact that the double-seamer worked so much faster then the cooker or the processor that they tried to crowd the cooker or processor up to the can capacity, and that the product in those cans was not sufficiently cooked or processed, and that was the cause of the swells and other things that occurred at that time?

A. No, I do not.

Q. What do you remember about that particular matter, whether Mr. Guenther or somebody else called your attention to that being the reason.

A. I don't remember that it was ever given to me as a reason.

[902] Q. Do you remember anything about it?

A. Only that the claim came in at the end of the year and we had to allow it, or we thought we had to allow it, and we did allow it.

Q. (By the MASTER.) What did Mr. Guenther say about it? A. At that time?

(Testimony of F. F. Stetson.)

Q. Yes.

A. At that time, Mr. Master, I was more in the fruit cannery business and these things didn't come to me quickly. When it came to an adjustment of course I had to help to pass on it, but these little details in the early days didn't reach my ears as they have lately.

Q. I notice in this letter of November 29, 1910, from the [903] Golden State Canning Company to the Los Angeles Can Company, forming part of Plaintiffs' Exhibit 18, Mr. L. E. McCann writing from the Golden State Canning Company says, on page 1: "While we were running, to the eye everything looked all right, but we did not pay a great deal of attention to try to find the small leaks through our heaviest pack, as Mr. Guenther was here during that time and we left it all with him. Later we found, by testing the cans, that we got a great many leaks in both the factory end and your own. Lately we kept the machine adjusted so we could close the tops perfectly here." What is meant where it says, "We got a great many leaks in both the factory end and your own"? What does "your own" mean?

[904] The MASTER. — Objection sustained. you may answer.

A. I don't know.

Q. Don't argue the question. Who made the cans that were used by the Golden State Canning Company in that pack?

(Testimony of F. F. Stetson.)

A. The Los Angeles Can Company made the cans.

Q. And on what machine did you make them?

A. The only machine we had in the house to make 2½ cans, if I am not mistaken, was the first machine made by Mr. Guenther previous to the 14–P. That was one machine that he made before the 14–P was designed, and I think that is the only machine we had in the house that was capable of making cans.

Q. Had you by that time discarded soldered cans?

A. That was the first year that we tried—I am not certain whether we discarded them or not, but that is the first year we tried the sanitary cans.

[905] Q. Were those cans, as far as you recollect, sanitary cans? A. Certainly.

Q. And you think the bottoms on those cans were put on by the first Guenther machine that was built prior to his designing the 14–P?

A. I think so.

Q. Do you know anything about where he says, "Lately we kept the machine adjusted so we could close the tops perfectly here"? Do you know what he referred to?

A. That is the end that the canner puts on. It is called the top.

Q. That was put on by the 14–P, was it?

A. It was put on by the 14–P.

Q. In the same letter Mr. McCann writes:

(Testimony of F. F. Stetson.)

"Mr. Laws, of the American Can Company, was also out here last week and the writer had quite a long talk with him, and though we did not breathe a word about what we had lost, we gained the information that the American Can Company had lost hundreds of thousands of dollars the first year they put the machine out. We also found out that in addition to the tester they used when making the cans, they use a foot tester which tests the cans in still water practically the same as ours, and by this means a man tests one in about every thirty-five or forty as he tests one right after the other as fast as possible while they are passing along, so if there is the [906] least thing wrong with the can-making machine they catch it. And after all of that care, he says they had cars"—I guess it should be "cans"—"rejected right in Los Angeles this year by the California Fruit Canners Association because they showed up too many leaks when tested before using the cans. He was quite anxious to find out how we came out this year." And at the end of the letter he says: "On account of our heavy loss as said above, we are as yet undecided what we will do in regard to the sanitary machine for next season. We are going to investigate thoroughly the Johnson machine and see what luck they have with their cans. We have already been through the Royal Packing Company and find they have no loss at all to speak of. They use the Max Ams seamer." Now, do

(Testimony of F. F. Stetson.)

you know what machine was referred to by the "Johnson machine"?

Mr. BLAKESLEE.—This is a statement made by another person and not germane to the matter of this claim of five thousand-odd dollars at all.

The MASTER.—Sustained. He may answer.

[907] A. The Johnson machine referred to there, I think, must be the Johnson machine that was furnished by the American Can Company at that time.

Q. (By Mr. TOWNSEND.) Is that the Johnson four-spindle continuous machine?

A. I presume so.

Q. Do you know who this Royal Packing Company is that is referred to? A. Yes.

Q. Where are they located?

A. They have a plant down toward the Southern Industries Company on a back street. I can't tell you where it is, but down in that Mateo section.

Q. In the same letter, of November 29, 1910, appears the following: "Mr. Carter, of the Berger-Carter Company, San Francisco, told us, in speaking of the Max Ams and talking of this machine, that we could not tell what kind of work the machine did when we were running but by this time we could tell whether we lost much in swells or not. He stated that all the sanitary machines had made trouble when they were first put out." What Sanitary machines were on the market at that time; do you know?

A. No, I don't; but the Max Ams is one of the oldest machines there is in the industry.

(Testimony of F. F. Stetson.)

[908] Q. The Johnson machine was a sanitary machine, wasn't it?

A. The Johnson machine was a recent invention and bought by the American Can Company to supply to their customers.

Q. Recent in 1910, you mean? A. Yes.

Q. And that was the American Can Company's Sanitary machine? A. Yes, sir.

Q. And what other sanitary machines were there on the market that you know of, if any?

A. The only one I remember is one made up in Rutland, Vermont, which I think was called the Stewartson. It advertised, "The can stands still." The can stood still and the seaming-head revolved around the can.

Q. That was a sanitary can machine?

A. A sanitary single-spindle machine. I don't remember any others.

Q. In connection with what has been offered as a copy of the Los Angeles Can Company's letter to the Golden State Canning Company, "Ontario, Cal.," dated "Jan. 30/11," settlement of this claim appears to be made as follows, and tell me whether or not it is correct: "We will allow the claim as presented, deducting from your next year's business, or in other words, we will duplicate the number of 2½ cans representing the amount as charged, delivering same to you during next season's pack. We are making some improvements [909] on the capping machine, which we consider will be beneficial. Hoping this proposition will be satisfactory and that

(Testimony of F. F. Stetson.)

we may hear from you with reference to the same at your earliest convenience, we are," and so forth. Was that settlement made that way?

A. Settlement was made by allowing him the cans for the next season to the value of the claim that he made.

Q. So, as a matter of fact, you never paid any cash. A. We never paid any cash.

Q. And the L. A. Can Company was making cans at that time and selling them to the trade?

A. Yes.

Q. And on what machines did you make these cans that you made good this claim on?

A. I don't know whether we had any more 14–P's at that time or not, but we used no machines in the early part of our business but 14–P's, and our Max Ams in some of the canneries.

Q. But in the making of the cans that were supplied to the Golden State Cannery in adjustment of this claim, what machines were those cans made on in your factory?

A. Either the 14–P or the one that preceded it.

Q. That is, the previous Guenther machine?

A. Yes.

Q. And were those cans then furnished during the following year received in satisfactory payment?

[910] A. Yes.

Q. What was Mr. McCann's position with the Golden State Canning Company?

A. I think he was the proprietor.

Q. It appears at the head of this letter of Novem-

(Testimony of F. F. Stetson.)

ber 29, 1910, that L. E. McCann was secretary and L. F. Lobinger was president.

A. Well, I was mistaken, then.

Q. Was Mr. Will Schaefer known to you as the superintendent of the Ontario plant? A. Yes.

Q. I show you a letter dated November 21, 1912, from Golden State Canning Company, Ontario, California, addressed to the Los Angeles Can Company, Los Angeles, California, signed, "Golden State Canning Company, Per Will J. Schaefer, Supt.," and ask you if you recognize that as the Mr. Schaefer that you referred to.

A. I don't see what I have got to recognize about it.

[911] Q. You know the Los Angeles Can Company, the addressee there? A. Yes.

Q. That is your company, isn't it?

A. That is my company.

Q. And the Golden State Canning Company of Ontario, California, is the company that is referred to on this letter-head of November 29, 1910?

A. Yes, sir.

Q. Part of Plaintiffs' Exhibit 18. A. Yes, sir.

Q. And you knew that in 1912 Mr. Will J. Schaefer was superintendent there?

A. I know Schaefer and I know he has been working down there, but the exact time I couldn't fix.

Q. Do you recall getting letters of this sort about that time with respect to the promoting of the sales and use of the Angelus 14–P's?

(Testimony of F. F. Stetson.)

[912] A. Yes.

Mr. TOWNSEND.—I offer this letter in evidence dated November 21, 1912, and ask that it be copied into the record at this time and be marked Defendants' Exhibit "Z."

Mr. BLAKESLEE.—We object on the ground it is merely self-serving. It isn't a proper method of proof of any alleged—

Mr. TOWNSEND.—It is admissions against interest.

Mr. BLAKESLEE.—But that is not written by this witness nor the plaintiff, and neither the witness nor the plaintiff are in position to make an admission against interest by that letter. It is by a third party, and an attempt to testify by letter.

The MASTER.—Sustained. It may be admitted subject to the objection.

(The letter so offered is in the following words and figures:)

DEFENDANTS' EXHIBIT "Z."

LETTERHEAD OF GOLDEN STATE CANNING COMPANY.

Ontario, California, Nov. 21, 1912.

Los Angeles Can Co.,
Los Angeles, Cal.

Gentlemen:

Complying with the request of your Mr. Guenther, relative to an expression of the durability and general merits of the ANGELES SANITARY CLOSING MACHINES, we are pleased to say that we

(Testimony of F. F. Stetson.)

have been using these machines for the past three years and they have proven themselves a splendid success. The cost of maintenance is merely nominal, we having run as high as a million cans without changing a roller.

As now equipped with the automatic cap feeder, we consider it superior to any closing machine that has come to our notice.

Very truly yours,

GOLDEN STATE CANNING COMPANY.

Per WILL J. SCHAEFER, Supt.

WJS.L.

[913] Q. (By Mr. TOWNSEND.) I show you a letter dated February 16, 1910, on the letterhead of the Los Angeles Can Company, addressed to H. J. Guenther, President, Guenther Solderless Can Machine Co., signed by "Los Angeles Can Co., by E. S. Irvin." Do you recognize Mr. Irvin's signature?

A. Yes; I think that is Mr. Irvin's signature.

Mr. TOWNSEND.—In order to save the matter of proof, have you any reason to question the authenticity of that letter?

The WITNESS.—No.

Mr. TOWNSEND.—I offer it in evidence as Defendants' Exhibit "A–1" and ask that it be copied into the record at this time. (Objection.)

[914] The MASTER.—It will be received as Exhibit "A–1," and the objection will be overruled.

(The document so offered is in the words and figures following:)

(Testimony of F. F. Stetson.)

DEFENDANTS' EXHIBIT "A–1."

LETTERHEAD OF LOS ANGELES CAN CO.

Los Angeles, Cal., Feb. 16, 1910.

H. J. Guenther, President,

Guenther Solderless Can Machine Co.

Dear Sir:

We are pleased to advise you that since the installation of a set of your Solderless Can Making Machines last season, we have made tests on various sized cans, and while we have not made any great number as yet of any particular size, have demonstrated to our satisfaction that the machines will do all that you claim for them, both as to efficiency in work and speed.

Wishing you success in your venture, we beg to remain,

Very truly yours,

LOS ANGELES CAN CO.

By E. S. IRVIN, Secy.

Q. (By Mr. TOWNSEND.) I show you another letter on the [915] letterhead of the Los Angeles Can Company, dated August 24, 1915, similarly signed by Mr. Irvin. Do you recognize Mr. Irvin's signature there? A. Yes.

Q. Have you any reason to question the authenticity of that letter? A. No.

Mr. TOWNSEND.—This is offered as Defendants' Exhibit "B–1."

Q. I show you a third letter of similar character on the letterhead of the Los Angeles Can Company, dated November 12, 1917, similarly signed as the others, and ask you if you recognize Mr. Irvin's

(Testimony of F. F. Stetson.)

signature, or if you have any reason to doubt its authenticity?

A. I have no reason to doubt it, no, sir.

Mr. TOWNSEND.—This is offered as Defendants' Exhibit "C–1"

Q. Did you ever know a G. H. Waters, of Pomona? A. Yes.

Q. Who was he?

A. G. H. Waters was the proprietor of a cannery at Pomona.

Q. Did he ever use any Angelus machines?

A. Yes, sir.

Q. Do you remember how early?

A. He was one of the first men to use the Angelus 14–P. I think Mr. McCann had the first one and Mr. Waters followed very soon afterwards, possibly with the next machine.

Q. Do you recall the results of his operation of the 14–P [916] and the number used and how many years he used them?

A. No. I can make an estimate, if that is what you want.

Q. Well, your best recollection.

A. I think he had two 14–P's and one 19–P, and used them for quite a good many years, possibly as much as at least five years.

Q. Do you recall what his results of operation were, his losses, if any?

A. I think the machine sealed the cans very satisfactorily. I don't think he made any claims.

Q. I show you a letter dated December 4, 1912,

(Testimony of F. F. Stetson.)

on the letterhead of the Los Angeles Can Company, and addressed to Mr. G. H. Waters, Pomona, Cal., and signed by "Los Angeles Can Company, E. S. Irvin," and ask you if that is the Mr. Waters you referred to in your previous answers to my questions.

A. I think there is no doubt about it.

Q. And do you recognize Mr. Irvin's signature there? A. Yes.

Q. Have you any reason to question the authenticity of that letter? A. Not a bit, no.

[917] Q. Do you know whether you got replies, or your company got replies, at that time from your customers you wrote to?

A. No, I don't know personally.

Q. What do you know from your official position in the Company?

A. Well, we were getting recommendations for the machine just as generally as we could at that time.

Q. And you were sending questions out and getting these answers back? A. Yes.

Q. And you were using that for advertising purposes, were you? A. Yes.

A. I know of one machine that made as good a record as [918] this.

Q. Just tell us what that one machine's record was.

A. I think Mr. Ortega had a machine which ran almost a season, if not a full season, without changing a roll. He changed them once here, but that

(Testimony of F. F. Stetson.)

ran a season without changing a roll. I didn't see it, though.

Q. That was a 14–P that Ortega had, was it?

A. Yes.

[919] The MASTER.—It seems to me we are getting a lot of cumulative evidence here. Isn't it agreed that the 14–P was a very satisfactory machine, apparently?

Mr. BLAKESLEE.—We admit that it was used extensively, that the L. A. Can Company used them and they put them out. The evidence shows that.

[921] Q. (By Mr. TOWNSEND.) You have stated on direct examination, at R. 837, that you sell your Pacific machines for $2,000 and rent them for $100 a year. What is your cost of upkeep on those machines per year, repairs, replacements, and so forth? Do you know? A. No.

A. I know one machine put in out at Pomona, they fitted it all up ready for the second season's business for less than $25.

Q. What did you mean when you said, at page 837, that "we reckon that we lose on those machines at least $300 a year, and we have to make that $300 out of our can sale"?

[922] A. Well, shall I go into the matter?

The MASTER.—Go right ahead. He has opened it up.

A. Very well. If a machine costs $2,000 you have to reckon at least 6 per cent, which would be $120. If you reckon on a machine lasting for ten years, that is, in ten years we will say it is junk, you have

(Testimony of F. F. Stetson.)

lost $200 a year in the natural depreciation of the machine, and that is $320. They are taxed for, or put in for taxes, I think at about $500, possibly $1000. We reckon the cost of insurance and taxation to be at least $25. Then there is the necessary charge for oversight. Mr. Murray goes out and inspects the machines on the road, and, unless they send in and ask for him to come out and adjust the machine, that is something we have to charge to overhead, and that is really a charge against the machines. He gets somewhere less than $200 a month, I think—or about $200. And there are about 85 machines out, and that would be pretty nearly $30 there, so there is $375.

Q. (By Mr. TOWNSEND.) You haven't figured anything for actual replacements in that, have you?

A. No, I haven't. All these things are just simply estimates. Here I have got here this machine lasting ten years. If a man puts that into a spinach cannery or a tomato cannery and don't take care of it, why, the cost of upkeep may be at least $100 a year, so that is only an estimate and that is probably low. As you suggested, that doesn't include [923] anything for the annual upkeep of the machine, so I think myself you can reckon on probably $25 to $50 a year for that, $25 at the least. That is $400, and we get $100, which is $300 which is our actual loss on the machine.

Q. How many cans do you have to sell to have a profit over and above this loss that you have here;

(Testimony of F. F. Stetson.)

in other words, how many cans have you got to sell to get a profit to offset the loss on your machine?

A. I don't know sir.

Q. Would you have us understand that, according to your [924] statements here, it would be more profitable to you if you didn't have the double-seamer and sold the cans only?

Mr. BLAKESLEE.—We object to that as not material, as argumentative, and not remotely connected with any issue here.

The MASTER.—Sustained. He may answer.

A. Very much so.

Q. Do you mean to say it would be more profitable to just sell cans rather than rent the machines out?

Mr. BLAKESLEE.—The same objection,

A. Yes. As I have showed you, it costs us $300 a year to furnish the machine.

Q. (By Mr. TOWNSEND.) You and Mr. Murray both referred to the fact that by reason of the subsequent failure of a number of canneries that started up during the war you had been obliged to take machines off of their hands. Were those machines in all instances 14–P's or 19–P's or were some of them Pacific machines?

A. Some of them were Pacifics.

Q. Do you remember how many Pacific machines you had to take back under those conditions?

A. No. When you speak about taking them back, they haven't come back yet. Take for instance, if I may explain, the Sanger cannery at Sanger, Cali-

(Testimony of F. F. Stetson.)

fornia: They had three or four machines in there, our machines, but they weren't brought [925] back. They were left in their because we had no place to put them; and the same applies to Reedley; they had three or four machines in there, but they didn't come back. They were our machines originally, and are still our machines. The Reedley plant was leased or sold to another party, and he kept the machines.

Q. I wasn't speaking of their physical return to Los Angeles necessarily, but the return of title to you. A. Well, we never lost the title.

Q. These machines, then, were returned, say, into your possession?

The MASTER.—What do you want to get at, Mr. Townsend?

Mr. TOWNSEND.—I am getting at this: that he said a lot of canneries failed and they took a lot of machines off of their hands, and I want to know if those were all Angelus machines or were there some Pacific machines.

The MASTER.—You can answer that, Mr. Stetson.

Mr. TOWNSEND.—He has been quibbling around here about it and he understands what I mean.

A. I did not understand what you mean. Those machines up there I am speaking of were Pacific machines, except one or two canneries had a 19–P to seal gallons on.

(Testimony of F. F. Stetson.)

A. Well, we rent them to these people for so much a year.

[926] Q. (By Mr. TOWNSEND.) What were the conditions in the can industry prevailing through the war period when there was very great excitement? Just give us the conditions under which you labored at that time in the canneries.

(Objection.)

The MASTER.—Overruled. He may answer.

A. We were working in the can factory to the limit. We made more cans than we ever made before, and were simply doing everything we could to make cans to satisfy our customers. And the machinery business was in the same condition. We tried to make Pacifics. We made all the Pacific machines we could and when the demand came in from the canners we had to buy 14–P's to make up for what we lacked.

Q. (By Mr. TOWNSEND.) This activity was largely the result of [927] encouragement the Government gave the food production at that time, wasn't it? A. Yes.

Q. And new canneries starting made the additional demands on the canners as well as on the can machinery men? A. Yes, surely.

Q. And during that period you were an extensive user of the 14–P's, were you not? A. Yes, sir.

Q. In 1920 when you quit dealing with Mr. Guenther and buying 14–P's, how many 14–P's did you have in operation?

(Testimony of F. F. Stetson.)

A. As I remember it, it was 85. We had somewhere about 85 to 100 machines.

Q. How many 19–P's did you have then?

A. As I remember it we bought 35 19–P's.

Q. How many Pacifics did you have at that time?

A. We have made—

Q. No, how many did you have in your factory, the L. A. Can factory, in May, 1920, when you ceased further purchases from Mr. Guenther of Angelus machines?

[928] A Nine.

Q. You had nine Pacifics in the Los Angelus Can Company shop at that time?

A. Yes, in the Los Angeles Can Company factory in 1920.

Q. Can you give any reason why, if the Pacific was such a high speed machine as you say it is, that you didn't use it more extensively during this rush and demand for cans?

A. We couldn't make them fast enough.

Q. That is the best answer you could give, is it?

A. Yes, sir.

The MASTER.—When you say "them," do you refer to the can-seaming machine? Not the cans?

A. The can-seam machine.

Q. (By Mr. TOWNSEND.) You couldn't make the machines fast enough to get them into the canneries, is that it?

A. We began, you know, before the war, with a very small production, and when that tremendous

(Testimony of F. F. Stetson.)

rush came on we [929] couldn't begin to keep up.

Q. How long does it take to make one of those machines?

A. Well, it depends, of course, of the force. We have about twelve or fourteen mechanics in the house, and I think we can make 50 machines—well, I believe Mr. Wilson could answer that better than I could.

Q. (By Mr. BLAKESLEE.) 50 machines in what period of time? A. In one year.

Q. (By Mr. TOWNSEND.) And that is the output of the Pacific?

A. That would be the output of the factory. We might have to increase the force, though.

Q. (By the MASTER.) That is, with 14 men you could do that?

A. Well, that is what we could do if we tried to do it. We haven't been able to do it until lately, though. We increased the size of our plant a couple of years ago and since then we have doubled up on our plant.

Q. (By Mr. TOWNSEND.) In all the years preceding your breaking of relations with Mr. Guenther in May, 1920, and ceasing to buy Angelus machines, how many Pacific machines, so-called Pacific, or their ancestral prototype, the Wilson machine, had there been built?

A. I don't know. I know how many we have built now, but how many we had at that date I don't remember.

(Testimony of F. F. Stetson.)

[930] Q. Well, you hadn't built a great many in 1920, had you?

A. Oh, yes. I have a list that was given me by one of our young ladies which I can give, if that is allowable.

A. I am not able to state.

Q. Looking at this gallon can, Defendants' Exhibit "Y," you stated that that was a pretty bad can to work on. A. I think so.

Q. Which end of that can body is the poorest end?

A. Well, we consider this the one, with the solder on it, is the poorest end.

Q. The poorest end near the bottom? A. Yes.

Q. I understood you to say that that particular can had the bottom put on it in the L. A. Can plant by a Pacific machine and then was turned over and run through a 14–P to put the top on, the top being the portion with the hole in it?

A. Yes, sir. [931] The Angelus will not keep up with the other one. * * *

[932] Q. When you tested this Defendants' Exhibit "Y" for pressure, did you make any mark where the bubbles showed?

A. It didn't show any bubbles.

Q. Oh, it didn't show any bubbles? A. No.

Q. The top held and the bottom held?

A. I don't know whether the top was on when I tested it or not. I think it was, however.

Q. When you stated that on your first meeting Mr. Guenther in 1909, or thereabouts, Guenther

(Testimony of F. F. Stetson.)

came to your shop representing himself as a sanitary can maker, and that he represented he had invented double-seaming and flanging machines, does that mean that there was any misrepresentation on Mr. Guenther's part? A. No.

Q. You didn't intend to convey any hidden meaning when you spoke about his representations to you at that time? A. No.

Q. Did you investigate the truth of his representations?

A. I think Mr. Spencer went up north where he had been working and looked at the machines. That is how I knew about it. He went up there and looked at them.

Q. And what was Mr. Spencer's report to you?

A. Mr. Spencer recommended that we try two of the machines, one double-seamer and one flanger.

[933] Q. You satisfied yourself that he did have some patents, did you not? A. Yes.

Q You referred to the fact that in 1909 Mr. Guenther sold a double-seamer and also a flanging machine for the L. A. Can Company. Do you recall that he also designed and built for the L. A. Can Company a can head lining machine which put the compound in the can head so that when the end was double-seamed on the can it formed a tight packing? A. Yes.

Q. What were the circumstances that led to your enlisting Mr. Guenther's services at that time?

A. We had been making up to that time an old style solder can and we could see that the sanitary

(Testimony of F. F. Stetson.)

can was coming into use in the California canneries, so when he came and offered his services we thought it was a good chance to get into the business with someone who knew, so we hired him to start us in the sanitary can business.

[934] Q. Did you ever have any other sanitary can manufacturing expert employed with you at that time? A. No.

Q. When did you first know that Mr. Guenther had patented the machine which you handled for a number if years as the 14–P? You know that 1912 patent, don't you?

A. I recall the patent, yes, but the date I can't fix exactly.

Q. I beg your pardon?

A. I can't fix the dates exactly. He went up one year and applied for the patents, but I don't remember when it was.

Q. That was on the 14–P.

A. The 14–P, yes.

[935] Q. Under what name or style did Mr. Guenther manufacture these 14–P's and 19–P's?

A. I think under the Angelus Sanitary Can Machine Company.

Q. That is, the present defendant company?

A. Yes, I think so.

Q. Do you remember when that was incorporated?

A. No. He made the first one in 1909, or it was 1910 or 1911, somewhere in there.

(Testimony of F. F. Stetson.)

Q. You were one of the original incorporators, were you not?

A. The Can Company had an interest in it, yes.

Q. What do you mean by that?

A. The Can Company when that corporation was formed I think was given forty-nine per cent of the stock.

Q. And the other fifty-one per cent to Mr. Guenther? A. Yes, as I remember it.

[936] Do you remember when Mr. Wilson entered the employ of Mr. Guenther? A. No.

Q. Do you remember when he left?

A. No, I don't remember.

Q. Do you remember the reason why he left?

A. He left in order to build the first Pacific sealer.

Q. Did you have any part in Mr. Wilson's leaving that employment? A. I don't think so.

Q. Didn't you tell Mr. Guenther that you wanted Mr. Wilson [937] for some purpose?

A. I don't remember.

A. We leased to Mr. Guenther the machine tools necesary to make the machines, and he made for us a certain number, and we gave him the right to sell others if he found buyers, that he could sell other machines that he built in this factory on this leased machinery. While we made a fixed arrangement about the number of machines that we could have, we never paid any particular attention to that. If we wanted machines we asked him to

(Testimony of F. F. Stetson.)

build them and there was never any attempt made to live up to the exact letter of that agreement.

Q. In other words, he built all of the machines you wanted; he was to supply all of the machines to you that you wanted, and he was free to sell to the public?

A. Outside of the State of California. I think he was not to sell in the State of California south of Fresno, I think it was. He was not to sell machines in our territory.

Q. Those undertakings were embodied in a written agreement, were they? A. Yes.

Q. That agreement, of course, would be the best evidence [938] of the understandings?

A. Yes. The only agreement I saw was just the minutes in the book. We have been unable to find those papers, but on the minutes there was a synopsis, pretty complete, perhaps, of the agreement we made with Mr. Guenther.

[939] Q. You say this first double seamer that Guenther built for you in 1909 when he first came down here, and before designing the 14–P, was not suitable for cannery purposes, and the question was how you were to supply your customers. Explain that a little more in detail.

A. That first machine was rather complicated. The can disappeared inside and it came out all right if it was a good can, and if it wasn't it was all jammed up. A thing like that won't do in a cannery. You don't want peaches, for instance, flying in every direction inside of the machine,

(Testimony of F. F. Stetson.)

so we told him to build a machine more open and more easily gotten at, and he, with the help of our mechanics and Mr. Spencer and everyone around the shop pretty near, devised that 14–P.

Q. Did you contribute anything to the device?

A. I think so. We were talking about that pretty generally, I being a cannery man, and I think Mr. McCann made his suggestions, and our chief machinist said that he advised with Mr. Guenther very frequently about it.

Q. That is what they were there for, wasn't it?

[940] A. That is what they were there for.

Q. You never made a claim to be the inventor of the 14–P, did you? A. Me? No, sir.

Q. Getting back to that first machine, wasn't it a fact that machine was all right for factory use for putting bottoms on cans but wasn't suitable for cannery purposes in handling filled cans?

A. It did pretty fair work but we had more loss on that machine than we did on the 14–P. It made more poor cans.

Q. (By Mr. TOWNSEND.) The first Guenther machine anterior to the 14–P.

A. We kept it several years, but finally we scrapped it. We thought it wasted more tin than it was worth.

Q. When did you scrap it, do you know?

A. I don't remember.

[941] Mr. TOWNSEND.—I will ask counsel if it is his contention that his present can cap feed

(Testimony of F. F. Stetson.)

was within the terms of any claims of any patents in suit?

Mr. BLAKESLEE.—The can cap feed of plaintiffs' machines?

Mr. TOWNSEND.—Yes, such as we saw on the Pacific the day we visited the plaintiffs' plant on the initial session, accompanied by the Master.

Mr. BLAKESLEE.—Certainly, that is our present position, yes.

Mr. TOWNSEND.—That is within the claims of the patent?

Mr. BLAKESLEE.—Yes, that it is one of the claims of the patent. I say that without prejudice. I don't know that the inquiry is in order right now, but our present position is that it comes within the claims. We will argue that matter later, but for the present we stand on Claim 1 as it reads, or its equivalents, of the patent Plaintiffs' Exhibit No. 2, 125,406.

[943] Q. Well, you would not hesitate to pay a commission to a man to take a machine if you could place that machine, would you?

Mr. BLAKESLEE.—I think that is improper.

The MASTER.—Yes.

Q. (By Mr. TOWNSEND.) Referring to the bundles of blue-prints the Pacific offered here in evidence as Plaintiffs' Exhibits 11, 12, and 13, you stated that you got those blue-prints from the Pacific Company and delivered them to Mr. Guenther with a request to figure on the cost of build-

(Testimony of F. F. Stetson.)

ing. Did you have to have a special set made up for that purpose?

A. No. I am not certain of that, either. I say I don't know?

Q. Have you any independent recollection as to when that [944] delivery of those blue-prints took place?

A. It was shortly after Mr. Wilson returned from the east, which was in the last part of July, 1920, as I remember it. Shortly after that, some two or three weeks, possibly.

Q. Do you recall how long a period Mr. Guenther was figuring on those blue-prints and machines for you?

A. No, but I remember it was several months. That is all I know about it.

Q. You stated that you made this submission of these blue-prints to Mr. Guenther at the request of the manager of the Los Angeles Can Company as a matter of duty, since this manager thought that Mr. Guenther could do it cheaper. Who was the manager? A. Mr. Irvin.

Q. That is the same Mr. E. S. Irvin whose signature you have identified on these letters?

A. Yes.

Q. How did you arrange this matter with Mr. Guenther? Just what was done and what was said?

[945] A. I think very likely Mr. Irvin did most of the talking. I didn't have very much to say about it.

(Testimony of F. F. Stetson.)

Q. Did Mr. Irvin accompany you?

A. He did not, no.

Q. Do you mean that Mr. Irvin made the arrangements in advance, and then you took the prints over? A. I think so.

Q. Did Mr. Irvin tell you what arrangements he had made with Mr. Guenther?

A. No. I don't remember.

Q. What is your best recollection of the circumstances other than as you have related them already?

A. That is all I remember, that Mr. Irvin thought that the machines could be built cheaper by Mr. Guenther, and consequently I took the blue-prints over there to let him figure on them.

Q. How many machines were there to be figured on?

A. I don't know that he named any number at all.

Q. How did you expect him to figure on the building of some machines without specifying how many machines there were to be?

A. That was a matter to be taken up later. He would make a price on one machine or ten machines or twenty machines.

Q. As a matter of fact don't you recall that the matter was taken up with Mr. Guenther to bid on the building of thirty machines?

[946] A. No.

Q. You don't remember that? A. I do not.

Q. Do you recall any inquiry being made of

(Testimony of F. F. Stetson.)

Mr. Guenther as to whether he intended to build his high speed machine? A. No.

Q. Were you present at any time or do you recall being present when any such inquiry was made of Mr. Guenther?

A. Of Mr. Guenther's high speed machine?

Q. Are you listening to my questions?

A. Yes, I am listening to them, but I don't understand them.

(Last three questions and answers read.)

A. I never knew anything about his high speed machine for months after that.

Q. You mean you never heard that Mr. Guenther was going to build a high speed two-turret machine?

A. I never heard that up to that time; no, sir.

Q. You never heard that he was going to build a continuous double-heading machine of the high speed type?

A. No, sir, I never heard of it at that time.

Q. At that time? A. That is what I said.

Q. You don't recall that Mr. Guenther was specifically [947] asked before these blue-prints were given to him if he was going to build his high speed continuous machine? A. No, sir.

Q. You don't recall that? A. I do not.

Q. And you don't recall that Mr. Guenther told you that he was going to do so, or told some of the members of your company that he intended to build such a machine?

(Testimony of F. F. Stetson.)

A. I never heard of it from any source at that time.

Q. And in spite of that matter which you say you don't remember, you took those blue-prints to Mr. Guenther to bid on thirty machines. Is there anything in that that refreshes your recollection?

A. If I had known that Mr. Guenther had a fast double-seamer in preparation, or that he thought of it, the last thing that I would have done would be to take those double-seaming blue-prints over to him.

Q. Just what was he asked to do?

A. To figure on some machines—Pacific seamers.

Q. How many machines? A. I don't know.

Q. Was there any specification submitted with these blue-prints? A. No, sir.

Q. In figuring on these machines was it not understood that if his bid was satisfactory he was to build the machines?

[948] A. I didn't have any understanding with him. I don't know what he had with Mr. Irvin.

Q. Do I understand that you asked Guenther to figure but you didn't ask him to build these machines if his figures were satisfactory?

A. I did not; no, sir.

Q. Well, did the company do it?

A. I don't know.

Q. Just what do you want to have understood from the testimony you have given on direct examination that you left these blue-prints with Mr.

(Testimony of F. F. Stetson.)

Guenther to figure on them but not to build on them?

A. Well, building them was a subsequent proposition. If he made a decent kind of a price, then we could talk about building them after that.

Q. Did you have any arrangement for compensation for Mr. Guenther's time for doing this figuring? A. No.

[949] Q. Why did you want Mr. Guenther to figure on these machines at all?

A. The directors of the L. A. Can Company, Mr. Irvin in particular, thought that Mr. Guenther could build machines cheaper than we were selling them to the Can Company, so we asked him to see whether he could do it.

Q. (By Mr. TOWNSEND.) That was because you recognized Mr. Guenther as an expert in double-seaming?

A. Mr. Irvin was a very particular admirer of Mr. Guenther, and consequently he put a good many things in Mr. Guenther's way that the rest of us might not have done.

Mr. TOWNSEND.—Now let us have the question again and let us make another try at it.

(Last question read.)

The MASTER.—I think that answers the question.

Q. (By Mr. TOWNSEND.) Did Mr. Irvin dominate the Can Company at that time?

A. No, not particularly. He was the manager

(Testimony of F. F. Stetson.)

and secretary, [950] and did that kind of work, especially with Mr. Guenther.

Q. Were any of the other directors of the same opinion with Mr. Irvin as to Mr. Guenther's ability to figure on double seamers?

A. I don't know.

Q. What was the alternative for the L. A. Can Company to having Guenther build these machines?

A. Why, the Pacific Closing Machine Company.

Q. In other words, if Guenther didn't build them the Pacific Closing Machine Company would?

A. Yes.

Q. And supply them to the Can Company?

A. Yes.

Q. I understand that at that time you still controlled or had a controlling interest in the Pacific Closing Machine Company. A. Yes, sir.

[951] Q. (By the MASTER.) How did you happen to date those blue-prints?

A. Oh, that was done by the draftman. I didn't receive them. Mr. Guenther's man, as I understand it, brought them to the office, and the draftsman received them and counted them and put the date on.

Q. (By Mr. TOWNSEND.) Who was the draftsman that made that notation on the outside of the wrapping paper—"12/1/20?"

A. I think his name was Elderkin.

Q. Elderkin had been a former employ of Mr. Guenther, had he not, before he came to you?

A. I don't know.

(Testimony of F. F. Stetson.)

Q. Don't you know that fact, Mr. Stetson?

A. No.

Q. Had Mr. Elderkin ever told you that he had been in Mr. Guenther's employ?

[952] A. I never was very friendly with Mr. Elderkin. I knew him well, but have talked with him very, very little.

Q. Hadn't you heard from any other source that he had been one of Mr. Guenther's draftsmen?

A. I don't know. I begin to feel now as though I had heard of it, but as to being certain of it, I am not. We employ a hundred people—two hundred people—and I don't keep track of them in that way.

[953] Q. Then your answer to my previous question, as to who put that notation on, that it was Mr. Elderkin, was based upon the hearsay that you have heretofore received in this Court?

A. Yes.

Q. (By Mr. TOWNSEND.) Did you have any conversation with Mr. Guenther during the period that these blue-prints were in his possession, in regard to the bidding or estimating on the building of a machine according to those blue-prints?

A. I don't think so.

[954] Q. You didn't see Mr. Guenther around the shop where the Pacific machine was set up?

Q. We are talking about the year 1920 now.

A. No, I don't remember any specific instance of Guenther being in the can factory. He was in there dozens of times. He built the body machines,

(Testimony of F. F. Stetson.)

and it was a common thing for him to come in and look around.

Q. He had seen a Pacific machine, had he not, long before he saw these blue-prints?

A. Oh, yes.

Q. Do you recall when he first saw what you now term a Pacific machine? A. No.

Q. It would go back several years, would it not? A. Certainly.

Q. Do you recall his ever having made parts for a machine such as you now term the Pacific machine, then known as the Wilson machine?

A. I think he did some machine work for the Pacific Closing Machine Company. I don't remember what it was, but I think he had tools that we had not, and I think he did some work for us.

[955] Q. Do some work for whom?

A. Well, whether for the Pacific Closing Machine Company or for the Stetson Machine Company I don't know.

Q. The Pacific Closing Machine Company was a comparatively recent organization, was it not?

A. Yes, sir.

Q. Do you recall the date of its incorporation?

A. Well, let's see. We have had two annual meetings: one would be in 1922 and the other in 1923. The company was incorporated in the year 1921, probably about the middle of the year.

Q. Mr. Wilson has testified that Mr. Guenther has done some planer work?

A. Oh, yes, I remember that.

(Testimony of F. F. Stetson.)

Q. On one of the old machines. A. Yes.

Q. That is the bed plates, the main base plate of the [956] machine. He did do some planer work, considerable work, on those machines. We had no planer. We have no planer yet.

Q. You recall that because you were financing Wilson at that time, were you not? A. Yes.

Q. Do you know why Mr. Guenther ceased doing planer work or any work for you and Wilson or the Stetson Machine Company on the Wilson machine?

A. I think that planer work was let out to another party because he would do it cheaper.

Q. Don't you recall that he declined to do any further work on the machine for fear of getting into trouble with the Continental Can Company?

A. No.

Q. Did you ever hear of the Dugan patent?

A. Yes.

Q. No. 848,296, dated March 26, 1907.

A. I don't know the number of it at all.

Q. Was the Dugan patent controlled by the Continental Company? A. They claim it is.

Q. And that Guenther refused to do any more work because you had been notified that the Wilson machine was an infringement of this Dugan patent?

A. I don't remember that.

Q. Do you mean to say that you don't remember that instance [957] of why he quit or don't remember the instance of getting the notice of infringement?

(Testimony of F. F. Stetson.)

A. I don't remember that that is the reason why he quit.

Q. But you do recall being notified by the Continental Can Company that they considered you were infringing the Dugan patent? A. Yes.

Q. Don't you recall that many years earlier, and before the Wilson machine was ever started, Guenther told you and your associates any time you wanted a high speed machine he would build them for you? A. I don't remember.

Q. Have you any recollection at all on the subject? A. No.

Q. What is your earliest recollection of Guenther's indications along that line?

A. When I heard that he had a machine built.

Q. That is after you had given him these blueprints?

A. That is after I had given him the blueprints.

Q. As far as you can recall now you can't remember his statements substantially as I have stated? A. No.

Q. On direct examination you testified to an early morning visit to Mr. Guenther's plant across the street before Mr. Guenther had gotten down there. Where was the machine located with reference to the entrance to the plant or to the [958] office?

A. It was right in the rear of the office in the frame building on the corner of San Fernando Road and Barranca Street, I think it is.

(Testimony of F. F. Stetson.)

Q. Was the machine covered up? A. No.

Q. Was it hidden or attempted to be hidden from view?

A. No. Excuse me. It was not at that time, but there was a curtain in the window afterwards.

Q. So that people coming along the street couldn't look in? A. Yes.

Q. Did you ask for Mr. Guenther, or did you ask to see [959] the machine, or what?

A. I don't remember.

Q. What were you told?

A. I don't remember that.

Q. Did you ask to see the machine?

A. I don't remember now.

Q. Or did you just walk in and help yourself?

A. I walked in and helped myself, I reckon.

Q. As far as you can recall you were not denied the opportunity to see the machine, were you?

A. No.

Q. When was that? What date do you fix for that early morning call?

A. It was in the spring of 1921.

Q. Had you previously talked to Mr. Guenther about the machine?

A. I don't know; I don't remember.

Q. Did Mr. Guenther ever personally show you the machine? A. I don't think so.

Q. You are not certain about it?

A. I am not certain. I don't remember.

Q. Did you ever ask Mr. Guenther to see the machine? A. I don't know.

(Testimony of F. F. Stetson.)

Q. Do you mean you don't know, or what does that mean? [960] A. I don't remember.

Q. Are you sure you ever saw the machine at all? A. I am; yes.

Q. When and where prior to the beginning of this suit, and how many times?

A. The only time I remember—or the two times—was the time under discussion a few minutes ago, in that building, and I afterwards went out to Pomona and saw it in the cannery there in operation. I don't remember ever seeing the machine other than those two times.

Q. (By Mr. BLAKESLEE.) You mean the first machine?

A. The 24–P, as it is called.

Q. The first 24–P you mean? A. Yes.

Q. (By Mr. TOWNSEND.) Do you remember meeting Mr. Guenther at Pomona at that time?

A. I have forgotten; but I think he came in while we were around.

Q. Who else was present?

A. Wilson, for one; and I don't remember the other two.

Q. Were there only four of you out there?

A. I think there were four. We all went out in one machine; possibly five.

Q. Do you remember calling at a later time on Mr. Guenther and asking to see the machine?

A. I don't remember; no.

[961] Q. Do you remember that you wanted to bring a friend around to see the machine, but stated

(Testimony of F. F. Stetson.)

that the friend didn't want to buy it, and you admitted it was your lawyer?

A. I don't remember.

Q. You don't remember later that when the machine was reassembled Mr. Guenther called you up and told you that you and your lawyer were perfectly welcome to come, but that Mr. Guenther didn't care to have any of your mechanics coming over and taking advantage of his work?

A. No, I don't remember.

Q. You don't remember that Guenther said that he would like to have you and your lawyer come over and know what your lawyer thought about it?

A. No.

Q. Who was your lawyer at that time?

A. Mr. E. A. Miller.

Q. What interest did the Los Angeles Can Company have or does it have that gave rise to Mr. Irvin suggesting to you to have Guenther bid on the building of these Pacific machines at the time you took the blue-prints to him?

A. What interest they had in these machines?

[962] Q. What interest did they have in the patent?

A. The Can Company has the rights to the patents—I can't give you the numbers of them—for the State of California. They are interested in the patents to that extent that they have the exclusive right to the use of the machine in the State of California.

Q. There have been two documents referred to

(Testimony of F. F. Stetson.)

here in the record, and offered in evidence, whereby you have been assigned certain rights in the State of California exclusively. A. Yes.

Q. And you assigned those rights, in turn, to the Los Angeles Can Company?

A. We supposed so, but we haven't been able to find the papers. I don't know.

Q. But for all intents and purposes the Los Angeles Can Company stands in your shoes with respect to the patents to which you have the exclusive rights in California; is that right? A. Yes.

Mr. BLAKESLEE.—We object to that testimony to the extent that it attempts to determine the nature of that interest, and we assume that the Master will not put any interpretation upon the testimony that leads to any definite status, whether by grant, assignment, or license, in the testimony of the witness, on the ground that it calls for a conclusion.

[963] Q. (By Mr. TOWNSEND.) Did you think it perfectly proper for you and Mr. Williams, or whoever it was that went over with you, to inspect the Guenther machine early in the morning there before Guenther got down, to go into the back of Guenther's plant and inspect the machine in his absence?

A. Oh, well, there might be some question about that; but we had so much business with Mr. Guenther we considered ourselves on pretty close terms and a little different from an absolute stranger. We gave Mr. Guenther hundreds of thousands of

(Testimony of F. F. Stetson.)

dollars worth of work—probably a hundred thousand dollars would be a small fraction, I would say, of what we paid Mr. Guenther—and I didn't consider we were unfair—or whatever word you could use—in going in there and seeing the machine.

Q. And I understand you didn't make any protest to him when you saw it?

A. To Mr. Guenther?

Q. Yes.

A. He was not there. I don't understand that question.

Q. Well, what did you go over there for?

A. Went over to see the machine.

Q. After you saw it, what did you do?

A. Went home.

Q. And let it rest there until you brought the suit?

A. I don't remember saying any more about it.

Mr. TOWNSEND.—That is all.

[964] Redirect Examination.

(By Mr. BLAKESLEE.)

Q. The Mr. Irvin that you refer to, I believe, as secretary of your company, is he living at present?

A. No, he has since died.

Q. When? A. In February, 1921.

Q. Do you know whether a suit has been brought by anybody against the Pacific Closing Machine Company or any of your interests for infringement of this Dugan patent mentioned by counsel?

A. No, no suit.

Q. Did you ever hear any protest or receive

(Testimony of F. F. Stetson.)

any notice regarding that patent after the one you referred to first? A. No, only one notice.

Q. Now, are you prepared to state to what extent Larson's complaints, up north, were out of proportion to your usual customers' in respect to demands for replacements or consideration for alleged troubles? What I mean is, explain to what extent he was so extremely conscienceless.

[965] A. Mr. Larson's cannery there at Visalia used less than two million cans, and he made claims against the Los Angeles Can Company for more losses than all the rest of the customers of the Can Company put together. He had two million cans and he had more claims against the Can Company than those using forty million.

Q. (By the MASTER.) This was the Pacific closing machine? A. Yes.

Q. (By Mr. BLAKESLEE.) Why did you stand for his conscienceless demands under those circumstances?

Mr. TOWNSEND.—That is not proper redirect examination.

Mr. BLAKESLEE.—The imputation has been attempted to be made here that there was something very bad with the machine, and I am simply trying to show it was due more to psychology than to mechanics.

The MASTER.—I think the witness has brought that out.

[966] Q. (By Mr. BLAKESLEE.) Please state what are the necessities of the can business

(Testimony of F. F. Stetson.)

in holding customers where demands are made for replacements.

A. That is one of the disagreeable things about the can-making business, that the users of cans can make claims—even claims that they swell or leak or they claim the can company is at fault, and it is not confined to our company. Every can company has that experience. It is just a common thing. It is the most disagreeable part of the can-making business. It is a fact that the canners can and do make claims for losses even though the can may not be at fault.

Mr. TOWNSEND.—I move that the answer referring to other canneries be stricken out as manifestly hearsay.

[967] The MASTER.—It will be stricken out.

Q. (By Mr. BLAKESLEE.) And in that regard what are the facts as to your making such adjustments irrespective of whether you consider the machines for closing the cans to be at fault or not?

A. Oh, we consider it policy. If a man's business is worth four or five thousand dollars to us and he makes a claim of two or three or four hundred, or even more than that, why, if we cannot make him fairly or pleasantly agree to withdraw the claim we pay it as a matter of policy.

Q. What other factors, if any, enter into the causing of complaints and demands of this sort for allowances, that is, other than the machines themselves?

(Testimony of F. F. Stetson.)

A. Well, the Los Angeles Can Company got a claim within two weeks from the same visalia plant for so many hours work straightening out cans. Now, when cans are shipped loosely by car, as they are, where some of the cans are bound to be bent out of shape, they very carefully kept the hours used in straightening them up and billed it to us. That is the only bill, I think, I ever got since I have been in business, of that character, and that is why I gave Mr. Larson the recommendation I did, an hour or two ago, because he just simply gets up every claim that he can think of.

[968] A. Yes. We have another case *right* there at Visalia of the same kind. He had some one-pound tall cans, like these here, and I went up there myself, and he says, "The flanges are bent over." "Well," I says, "it is light tin." And he found in that car or two of cans about two thousand of those cans that were made out of tin that was so light that when the can was put into the flanger the rubber pressed the cans over. Well, that was part of the claim, and we had to allow that. That is nothing unfair at all.

[968-a] DEFENDANTS' EXHIBIT "B-1."

LETTERHEAD OF LOS ANGELES CAN COMPANY.

Los Angeles, Cal., Aug. 24, 1915.

Angelus Sanitary Can Machine Co.,
310 North Avenue 19,
Los Angeles, Cal.

Gentlemen:

As per your request we write you with reference to the Angelus Closing Machines we have in use, both at our factory and with our customers.

Would advise you that we have about sixty machines in operation at various places and they are giving us no trouble whatever. They are very rapid, handling large quantities of cans per day in a very efficient manner. As an instance of their durability we would cite you to the first machine you made, which we still have in line.

This machine was operated the first year in a cannery, having all sorts of usage. The last two or three years we have had it in line doing the bulk of the work. We estimate that it has closed approximately twenty-three million cans, with no repairs of consequence. Recently we had it in the shop to be overhauled and found that the shafts and bearings had been worn but very little. Every Angelus Machine which we have placed in our own

factory and with customers has performed in the same satisfactory and economical manner.

Very truly yours,
LOS ANGELES CAN CO.,
By E. S. IRVIN,
Secy.

ESI–M.

[968–b] DEFENDANTS' EXHIBIT "C–1."

LETTERHEAD OF THE LOS ANGELES CAN CO.

Los Angeles, Cal., Nov. 12, 1917.

Angelus San. Can Machine Co.,
Los Angeles, Cal.

Gentlemen:

We placed an order with you to-day for 2 Body Machines, 2 Slitters and a Flanger, which we trust you will give your very best attention. We will give you specifications on a number of Angelus Closing Machines later, as we will use quite a number additional the coming season.

In passing we wish to congratulate you on the splendid success that your machines are having. We have over 75 of them in operation, which includes the first one that was manufactured. It has worked almost continuously during the past seasons and has caused no trouble to speak about. Our customers are equally well pleased with their workings, both as to accuracy and speed.

Wishing you continued success in all your lines, we remain,

Very truly yours,
LOS ANGELES CAN CO.,
By E. S. IRVIN,
Secy.

ESI–M.

DEFENDANTS' EXHIBIT "D–1."

LETTERHEAD OF LOS ANGELES CAN CO.

Los Angeles, Cal., Dec. 4, 1912.

Mr. G. H. Waters,
Pomona, Cal.

Dear Sir:

We would like, if you can consistently do so, to write us answering approximately the following questions. We wish this information for advertising the Angelus Machines.

No. 1—Cans sealed.
No. 2—Cost of repair.
No. 3—Rolls changed.
No. 4—Chucks changed.
[968–c] No. 5—Adjustments—how often.
No. 6—Advantages over other machines of your experience.
No. 7—Cost to operate per thousand cans and speed.

Thanking you in advance for this favor, we remain,

Very truly yours,
LOS ANGELES CAN CO.,
By E. S. IRVIN, Secy.

DEFENDANTS' EXHIBIT "E–1" FOR IDENTIFICATION.

LETTERHEAD OF E. C. ORTEGA.

Los Angeles, Cal., Nov. 4, 1912.

TO ALL WHOM IT MAY CONCERN:

This is to certify that I have used the Angelus Double Seamer furnished me by the Los Angeles Can Company of Los Angeles, Calif., during the season of 1911 and the present season of 1912. To date, I have seamed about 2,000,000 8 oz. cans, and am pleased to say that the machine has given entire satisfaction, and has not once got out of adjustment, and we have changed the rollers just once during this time. I have been continually running 65 cans per minute on this machine.

I have also in use, the same machine adjusted to the 2½ Standard cans, and have run 300,000 cans on this machine this season with the same success and satisfaction.

I therefore recommend the Angelus Double Seamer to all persons who may be in need of a machine of this kind.

Yours very truly,

E. C. ORTEGA.

ECO–B.

(Testimony of F. F. Stetson.)

[969] 811 Washington Building,
Los Angeles, California, Wednesday, April 18, 1923,
10 A. M.

[971] F. F. STETSON recalled.

Redirect Examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Referring to Mr. Irvin, the deceased secretary of the L. A. Can Company, do you know what his attitude was toward the Pacific Closing Machine and Messrs. Sumner and Wilson, or the inventors of the same?

Mr. TOWNSEND.—Your Honor, that is not a proper question to ask regarding the attitude of a deceased person. It is far worse than asking for a conversation with a deceased person.

The MASTER.—That only calls for yes or no.

A. Yes.

Q. (By Mr. BLAKESLEE.) Please state what that attitude was as known by you in Mr. Irvin's performance of his official duties as secretary of your company.

Mr. TOWNSEND.—The same objection.

The MASTER.—The objection will be overruled.

A. Mr. Irvin always favored the Angelus Can Machine Company, or Mr. Guenther, against the Pacific Closing Machine [972] Company. He seemed to have a jealousy or something of the Pacific Closing Machine Company and it seemed to temper all his decisions or work between the—

Mr. TOWNSEND.—Your Honor, you can see

(Testimony of F. F. Stetson.)

what we are getting into. It is an attempted analysis of the psychology of another man and that man is dead.

The MASTER.—All right, that is enough of an answer.

Q. (By Mr. BLAKESLEE.) In a similar manner, what was his attitude in the performance of his official acts towards Messrs. Sumner and Wilson?

Mr. TOWNSEND.—The same objection—as calling for an expression of opinion.

The MASTER.—I think we have had enough on that.

Mr. BLAKESLEE.—He has not mentioned Sumner and Wilson.

The MASTER.—Well, they are a part of the Pacific Closing Machine Company.

A. He seemed to work against them.

Mr. TOWNSEND.—There again—"he seemed"—it means nothing. It calls for an expression of opinion.

A. Well, he worked against them.

Q. (By Mr. BLAKESLEE.) What did he do, if you know, as to the introduction of Pacific Closing Machines in the L. A. Can shop?

Mr. TOWNSEND.—I object to that as irrelevant. It is not redirect examination and it has no bearing on the issues of the case.

[973] Mr. BLAKESLEE.—It might show an attempt to suppress the development of the Pacific machine.

(Testimony of F. F. Stetson.)

The MASTER.—I think that is a proper question.

A. He would not urge the introduction of the Pacific seamers after we had proven that they were saving money.

Q. (By Mr. BLAKESLEE.) Did he or did he not oppose their introduction?

Mr. TOWNSEND.—The same objection.

The MASTER.—Overruled.

A. He opposed them.

Q. (By Mr. BLAKESLEE.) You say that he was friendly to the Angelus Sanitary Can Machine Company and Mr. Guenther? A. Yes.

Q. Do you know the reason of such friendliness?

A. I do not.

Q. Referring to the several letters introduced here yesterday and signed by Mr. Irvin, and the certificate signed by Mr. Ortega, I note that the latest of these papers bears date in 1917. Please state what you know as to the production conditions pertaining to the Pacific Closing machine up to the end of 1917.

A. We started building the machines in a very small way and couldn't produce more than I think about six, I think, [974] the first year, and then we would add a machine or two and produce a few more, and, consequently, when the great demand came about that time, why, we didn't have machines enough to supply our customers.

Q. Did your production increase year by year?

A. Yes, sir.

(Testimony of F. F. Stetson.)

Mr. BLAKESLEE.—Machines, referring to the Pacific machines.

Q. What was the production of Pacific machines in 1917?

Mr. TOWNSEND.—If this witness is going to testify on facts, or if he has records, they are the best evidence.

A. Personally, I have no records.

Q. (By Mr. BLAKESLEE.) Can you state approximately? A. In 1917?

Q. Yes, in 1917.

Mr. TOWNSEND.—He has answered already he has no recollection.

A. Approximately I would say twelve.

Q. (By Mr. BLAKESLEE.) Do you know what became of those machines? I mean how were they disposed of.

A. The Los Angeles Can Company took the greater part of them.

Q. And did it need more of them that year?

A. Yes.

[975] A. We bought that year to the best of my recollection over twenty Angelus machines more than we could make of the Pacific. We had to buy that many Angelus machines.

A. To furnish to its customers, yes.

[976] Q. What, if any, recommendations did the L. A. Can Company make to its can customers, to wit, the canneries, as to the supply to them of closing machines?

A. We recommended Pacific closing machines.

(Testimony of F. F. Stetson.)

Q. And when you could obtain them—

Mr. TOWNSEND.—Just a minute. What was that date?

Mr. BLAKESLEE.—1917.

Q. And when you could obtain them were those furnished to the customers instead of the 14–P's?

Mr. TOWNSEND.—That is objected to as leading.

The MASTER.—The objection is sustained. You may answer.

A. Yes.

Q. (By Mr. BLAKESLEE.) Can you state upon which type of machine, the Pacifics or the 14–P's and 19–P's, if either, the greater number of adjustments or settlements were made for claims for swollen cans of other cannery troubles?

Mr. TOWNSEND.—The records are the best evidence, and this witness has already testified to his lack of recollection of matters of this sort and that he didn't keep the books.

The MASTER.—Overruled. What you know, Mr. Stetson.

A. I can't answer that question because the 14–P's and the Pacifics, you know, were so intermixed in the canneries [977] and in the can factory we would have to check up too closely to get an answer to that.

Q. When you went to Mr. Guenther in the summer of 1920 with the blue-prints, Exhibits 11, 12, and 13, was the L. A. Can Company receiving as

(Testimony of F. F. Stetson.)

many Pacific machines as it desired to receive to furnish to its cannery customers? A. No.

Q. Is it to-day? A. Yes.

Q. How long has it been? A. Oh, two years.

Q. Since the beginning of the season of 1921?

A. I think we had a surplus of machines along the latter part—yes, it was in 1921 when we had the surplus.

Q. Are you buying any 14–P's or 19–P's now?

A. No.

Q. When did you last buy them?

A. In 1920 I think was our last purchase.

Q. Please state whether or not at any time since the L. A. Can Company procured the first Pacific machine the L. A. Can [978] Company purchased a 14–P or 19–P machine to furnish to its cannery customers when it could procure a Pacific machine for that purpose?

Mr. TOWNSEND.—That is objected to as calling for a conclusion about when they could procure them, as to dates and so forth. If he will state when he got his first Pacific and what deliveries were made after that, that is the best answer.

Mr. BLAKESLEE.—I am asking him for the fact whether they did deliver to a customer at any time when they could receive them.

The MASTER.—That is pretty close to the line but I will let him answer.

A. I think not.

Q. (By Mr. BLAKESLEE.) Do you know of any such instance at any time?

(Testimony of F. F. Stetson.)

A. I do not, no.

Recross-examination.

[979] Q. (By Mr. TOWNSEND.) You did deliver the 14–P's and 19–P's after you got your first Pacifics? A. Yes.

Q. So I suppose that your answer is in the negative to practically the same question asked you by your counsel and that you would like your answer in that regard amended?

Mr. BLAKESLEE.—We object to that as indefinite. No question or answer is specified and it is merely an attempt to besmirch the testimony of the witness without calling for any facts.

The MASTER.—Sustained. Just what is the fact is what we want.

Mr. TOWNSEND.—The fact I am getting at, Mr. Stetson, is that the same question practically asked by your counsel just before he closed a moment ago was that you delivered no 14–P's or 19–P's after you got your first Pacific. Now you tell me you did deliver them. Which answer is correct?

Mr. BLAKESLEE.—That isn't the record in any respect.

Mr. TOWNSEND.—I will ask that the last three questions of [980] the redirect examination be read because I am anxious to have the record of the correct testimony.

The MASTER.—Yes.

(The reporter read the following: "Q. Please state whether or not at any time since the L. A. Can Company procured the first Pacific machine the

(Testimony of F. F. Stetson.)

L. A. Can Company purchased a 14–P or 19–P machine to furnish to its cannery customers when it could procure a Pacific machine for that purpose? A. I think not. Q. Do you know of any such instance at any time? A. I do not, no.")

The MASTER.—Now, your question is quite different.

Q. (By Mr. TOWNSEND.) Well, the matter of fact is that you did continue to buy Angelus machines and furnish them to your customers after you had had the first Pacific, isn't that so?

A. Yes, we did.

Q. And after you had built a number of Pacific machines? A. Yes.

[981] A. Oh, we built all of fifty before—we bought Angelus can machines after we built at least fifty Pacific machines.

A. The last Angelus machine I testified was bought in 1920, so we bought machines in 1920 after we had been making the Pacific Closing machines for quite a good many years.

Q. You stated that in 1917 "we recommended Pacifics." To whom did that refer?

A. By "we"?

Q. Yes, "we."

A. The Los Angeles Can Company.

Q. The Pacific Company wasn't in existence at that time, was it? A. No.

Q. And your organization was known as what?

A. I think the Stetson Machine Company in those days, but I am not certain when the change was

(Testimony of F. F. Stetson.)

made from the Sumner-Wilson-Stetson Company to the Stetson Machine Company.

Q. Did you have any Pacifics out among mechanics at that time? A. Yes.

Q. Where?

A. At Ontario, Hemet,—they were the most important places.

[982] Q. What was the name of the cannery at Ontario that had a Pacific in 1917?

A. It is a question in my mind whether that big cannery was built at that time. The California Growers Association of Hemet received the first machines, and the cannery at Ontario installed the machines as soon as it was built, and I am not sure whether it was built that year or not.

Q. As a matter of fact, in 1917 you were not putting your Pacific machine into commercial use, were you, because you had not then gotten it to a point where it was a practical machine? Isn't that a fact?

A. Every machine that we ever built went into commercial use immediately.

Q. What do you mean by "commercial use"?

A. Either making cans or sealing cans in the cannery.

Q. You put it to use? A. Yes.

Q. But was that machine in your mind, as a practical man, a practical machine?

A. It was, indeed; yes, sir.

Q. Was it a satisfactory machine? A. It was.

Q. As a matter of fact, didn't you have so much

(Testimony of F. F. Stetson.)

trouble until practically 1920 that you never could put a machine out and have it stick? A. No, sir.

[983] Q. Haven't you had more complaints from leaky cans and spoiled goods from the use of the Pacific machines than you ever had in all your time by the use of the 14–P's? A. No.

Q. Isn't it a fact that your seaming ring fails to make tight joints in greater proportion than any machine that you ever had put out under the Angelus brand?

A. It makes better cans than I ever saw made in any other way.

Q. And in 1917 isn't it a fact that you were still in the experimental stage trying to get a machine of the Pacific type that would be a salable commodity? A. No, sir.

Q. Wasn't it a fact that in 1920 the reason Mr. Irvin went to Mr. Guenther was that he wanted Mr. Guenther to put his inventive genius on your machine and try and make it work?

A. I can't answer for Mr. Irvin's thoughts.

Q. Isn't it a fact that Mr. Vernon Campbell would not buy a Pacific machine unless Guenther could build it and make it properly?

A. No. Nonsense. No.

Q. It isn't nonsense. I want your answer.

A. No.

Q. Do you know, or simply is it a fact that you don't know what I am inquiring about?

[984] A. I know these machines went out to the different canneries and they gave better satis-

(Testimony of F. F. Stetson.)

faction than any machine we ever put out, every one of them. Once in a while you might get a machine that would develop some little irregularity or something, but the machines have given excellent satisfaction ever since they have been introduced to the trade and they have given excellent satisfaction in the Los Angeles Can Company.

Q. Is that expression of opinion due to the fact that as the controlling spirit and owner in large part of the Pacific Closing Machine Company, as manufacturer, that your interests lie in the promotion of the sale of those machines? A. No, sir.

Q. And it is based entirely on disinterested motives?

A. I am interested in the Los Angeles Can Company and we put that machine out as the best machine we have been able to get, and we have been doing it ever since we started.

Q. I put these questions to you to see just how fairly you can answer them in regard to the difficulties that I understand you met with in the early days and until comparatively recently with the Pacific machine. Can you give me any fair statement of some of those difficulties?

[985] A. Well the first cap feed was not perfect but it was as good a cap feed as had been used before that time. That was one defect. And we changed the cap feed a little afterwards. And other little changes were made as time went on. When we found a machine developed a little bit of a defect or wouldn't do the work quite as well

(Testimony of F. F. Stetson.)

as we thought it might, we tried to put on little improvements, which is common to every machine we ever get in the house.

Q. (By Mr. TOWNSEND.) That is what I am trying to get at, Mr. Stetson. What were some of these other little defects you had to remedy?

A. Oh, I don't remember.

Q. Well, you remember the cap feed and you say there were other defects. Now what were those?

Q. (By the MASTER.) Did you have any trouble with the can feed?

[986] A. The can feed, yes. When the first machines were put out the lines in the canneries were generally slow lines. They began, when they put in automatic cookers, to put in small ones, and it didn't take any great speed to keep up with the cooker, but as the seasons advanced, new cookers were put in and a higher speed was needed; and we changed the can feed slightly in order to take care of the higher speed without slop or without spill. That is the only thing that has been gradually worked into better condition.

Q. (By Mr. TOWNSEND.) What was this trouble of slop and spill you speak of?

A. Oh, in going into the turret there is a slight slop from the can when it is filled too full. Now in the modern—

Q. No; just go back to the reasons you had to make some changes there to take care of that.

A. Well, I will go back and tell you that, if you will wait. In the old days they had very imperfect

(Testimony of F. F. Stetson.)

syrupers. In packing peaches or apricots they were packed away up here above the tops of the cans and the syrup was put in and the can was tipped like this in order to get it down so far that when the fruit was pushed down the syrup would not be wasted. But now, as the industry has advanced, or the machine builders advanced their methods or processes, they have a machine now that clamps the peaches down into the cans like this and the syrup is admitted when the fruit is down; consequently of late years there is no slop hardly in the can [987] because when the fruit is pushed down the syrup comes out of the can, and as it goes into the double-seamer the syrup is down here a quarter of an inch or more in the can. So in the first days, as I say, the slop was due almost entirely to the lack of, or largely to the lack of, a good filler.

Q. (By the MASTER.) But, Mr. Stetson, he is asking about the machine. What were your troubles with the machine? You were getting a new device on the market and must have had some trouble with it, from my experience in that sort of things. Now, what were they?

A. Well, that little shop we encountered in the early days was a disadvantage.

Q. (By Mr. TOWNSEND.) In what way?

A. It slopped.

Q. Well, what feature of the machine created the slop or was in the way of avoiding slop or whatever you want to call it?

(Testimony of F. F. Stetson.)

A. Well, that is a question, not being a machine man, whether I better answer that.

A. There were some changes made on the machine. The feed was arranged slightly different so that the can was increased [988] in speed, so that when it struck the turret there wasn't hardly any spill.

Q. (By Mr. TOWNSEND.) One thing you did was take off your rubber wheel on that disk, wasn't it? A. I don't remember that.

Q. What were these changes? The Master asked you what the changes were.

A. I have told you two.

Q. Well, what were they?

A. The first one I said we changed the cap feed and the second one we changed the machine so that the can was put into the turret at a little higher speed than it was in the beginning.

Q. And you did away with that rubber wheel and put on another disk with those rubber fingers?

A. I don't remember the rubber wheel.

Q. You don't remember of ever having used the rubber wheel?

A. I don't remember.

The MASTER.—What are you referring to: the rubber wheel in the middle of the disk?

Mr. TOWNSEND.—The rubber wheel which is marked 22 in the patent in suit, 1,301,348, forming part of Plaintiffs' Exhibit 1.

The MASTER.—Q. Is that the wheel you refer to, Mr. Stetson?

(Testimony of F. F. Stetson.)

A. I don't remember that.

[989] Q. (By Mr. TOWNSEND.) You don't remember ever having used that rubber wheel?

A. I don't remember it, no.

Q. Now go back to the cap feed. You say you had some difficulty with that. Do you recall what the difficulty was, and do you recognize the cap feed as shown in Figure 20 of patent 1,203,295 in suit, forming part of Exhibit 3?

A. No. All I remember about that is what I got from the testimony here. I don't know.

Q. You do, as a practical man, though, having to do with that early machine and the early machines you spoke of, know that you did have trouble with your cap feed?

A. In the canneries; not in the can factory, or not so much in the can factory.

Q. But you did have some trouble?

A. There is no cap feed or anything else in the machinery line that is perfect.

Q. Do you remember what was done to try and remedy that and how long a time it took?

[990] A. No.

Q. I don't suppose that a double-seamer, particularly a seamer running at a considerable speed, is of much use unless you have got an efficient cap feed, is it? A. No.

Q. Would it be of any use unless you had an efficient cap feed?

A. I wouldn't consider it a practical machine, no, if you didn't have a fairly efficient cap feed.

(Testimony of F. F. Stetson.)

Q. You remember the cap feed shown in the patent 1,250,406 in suit, forming part of Plaintiffs' Exhibit 2? Do you remember the difficulties you had with that? A. No.

Q. Do you remember the difficulties that led to dispensing with the form of cap feed shown in both of those two patents in suit referred to and the adoption of your present form of cap feed?

A. I don't know what the difficulty was, no.

Q. Do you recall when you adopted this kick-in proposition that you are now using on your Pacific?

A. No.

Q. Where the cap is kicked into a pocket on the star wheel. A. I don't remember.

Q. I suppose you considered that as soon as you got your type of machine such as we all inspected on the initial days of this trial, with the present form of can delivery and [991] can cap delivery, that at last you got a practical machine?

Mr. BLAKESLEE.—I object to that as argumentative and calling for an argumentative answer.

A. Read that question, please.

(Question read.)

Mr. BLAKESLEE.—Furthermore the witness has testified that the machines always worked and that they put them out in preference to the 14–P's whenever they could get them. Therefore the question is not even fairly argumentative. He says, "At last you have got a practical machine."

The MASTER.—Did he answer?

The WITNESS.—No, I haven't answered yet.

(Testimony of F. F. Stetson.)

I have always considered, Mr. Townsend, that we had the best double-seamer there was out ever since we got that machine on the market, and I never considered anything else, and I am not willing to give out that it wasn't the best machine now or any other time.

Q. (By Mr. TOWNSEND.) You stated that you began building machines in a very small way.

A. Yes.

Q. What machine was that?

A. The first Pacific machine.

Q. What do you mean by you started building in a very small way?

A. Why, the first machine was built, I think, by Wilson alone. That was in a small way, one man building a machine. [992] Does that answer it?

Q. Well, that is all right as far as you have gone.

Q. (By the MASTER.) That was your first machine. Now what did you do after that?

Q. (By Mr. TOWNSEND.) There were six years intervening, apparently, or seven years, before you incorporated the Pacific Company.

A. I don't know when he began to get help, but after we built a very few then we had a man come in to help run the lathe, and that made two men, and so we added as time went on until now I think we have about fourteen in the shop.

Q. That was such a good machine in 1914 and why didn't you just ask Mr. Guenther to build them for you instead of going on building 14–P's for you?

(Testimony of F. F. Stetson.)

A. Mr. Guenther had his own machine and we didn't want to depend upon him to develop that machine. If there were any changes that were to be made we liked to be interested in them. Little changes to be made on the machine we liked the inventors to be interested all the time.

Q. Was there anything to prevent their having been interested as you wished, by having Guenther do that work at that time, if you had asked him to do it?

A. Oh, Guenther had his own machine and I don't think it would have been good sense to ask a man to try to develop a rival machine.

Q. You asked him six years later in 1920 to do so.

[993] A. And I told you why I asked him.

Q. Wasn't Mr. Irvin connected with the L. A. Can Company as early as 1914? A. Yes.

Q. And yet with the facilities that Mr. Guenther had you didn't see fit to call upon him to see if he could build these machines in quantity for you?

A. We did not, no.

Q. And yet during those years you were recommending the Pacific, and as early as 1917 you said, and supplying Angelus? A. Yes.

Q. Why was that?

A. We couldn't make them fast enough.

Q. You say you couldn't make them fast enough?

A. No.

Q. Is it because you didn't try to make them fast enough or you didn't ask Mr. Guenther to supply them for you instead of Angelus? I would like to

(Testimony of F. F. Stetson.)

know just why you didn't go to [994] the natural source of supply and have your Pacifics made by Guenther.

A. Well, we preferred our own source, that was all.

Q. Why was it, in the light of your relations with Guenther in 1914, and when he was supplying the machines to you, that you went off downtown here to Smith-Booth-Usher's to have this machine built?

A. We weren't on very especially good terms with Mr. Guenther at the time.

Q. Please don't treat these questions flippantly.

Mr. TOWNSEND.—I think the Master will express himself if I offend the bounds in the slightest way. I am handling a hostile witness here and it is manifest that he treats these questions in a flippant manner when he should be serious in his attention to what we are trying to bring out.

Mr. BLAKESLEE.—We again object. The answers of the witness come quickly and to the point, and I don't think [995] there is any indication of any flippancy, and it is unfair.

Q. (By Mr. TOWNSEND.) Who was there that wasn't on good terms with Mr. Guenther?

A. Sumner and Wilson.

Q. Had Mr. Sumner ever worked for Mr. Wilson? A. I don't know.

Q. Well, you know he hadn't; you know he had always worked for the L. A. Can Company, don't you?

(Testimony of F. F. Stetson.)

A. Mr. Sumner is an elderly man and I know that he worked for us in the Can Company those years; but to say he never worked for Guenther, how can I say that?

[996] The MASTER.—I don't see that we are getting anywhere unless you want to prove the amount of antagonism against him. The only material point is that they didn't feel friendly—that he didn't feel friendly toward Guenther.

[997] Q. Mr. Stetson, you stated that "we weren't at that time on especially good terms with Mr. Guenther." Did that refer to the officials of the L. A. Can Company?

A. No. It refers to the inventors of the machines particularly, and myself. It did not apply to the L. A. Can Company.

Q. Have you been at all times on especially friendly terms with Mr. Guenther?

A. Especially friendly, no. If you put the word "especially" in there I cannot say that Mr. Guenther is my especial friend.

Q. The Can Company was the party most vitally interested at that time in the procuring of an efficient double-seamer, wasn't it—referring to the period of 1914 when you went down to Smith-Booth-Usher's?

A. They were interested in getting as good a double-seamer [998] as possible, yes.

Q. And wasn't it to the L. A. Can Company's interest to have the best double-seamer obtainable?

A. They didn't build it at all.

(Testimony of F. F. Stetson.)

Q. I beg pardon?

A. They didn't build it at that time.

Q. You didn't answer my question.

(Question read.)

A. Yes.

Q. And wasn't it to the best interests of the L. A. Can Company to obtain the best double-seamer from the best source open to them at that time?

A. Yes.

Q. And what did you consider the best source of obtaining double-seamers in the city of Los Angeles at that time?

A. The man who invented the machine I considered the best source.

[999] Q. (By Mr. TOWNSEND.) In 1914 whom did you personally consider the most competent authority on sanitary can double-seaming maines in the city of Los Angeles?

Mr. BLAKESLEE.—I think that is absolutely immaterial. I don't think there is any possibility of this witness answering that from a technical standpoint as the word "authority" is apparently used. It doesn't call for a statement of fact and it is not a fair question, and calls for mere generalities.

Mr. TOWNSEND.—The Master can see the point.

The MASTER.—I won't make any remarks on it. I will sustain the objection and let the witness answer.

A. I don't remember. At that time we had de-

(Testimony of F. F. Stetson.)

veloped double-seaming men of our own, and while they were not inventors and they were not draftsmen, yet as machine operators I consider that we had men in our own shop that were better than Mr. Guenther.

Q. (By Mr. TOWNSEND.) In what shop was that? A. The L. A. Can shop.

Q. Can you mention the names of some of those men at that time?

A. I think Sumner himself was a more practical double-seamer man than Mr. Guenther at that time.

Q. Who else?

A. Now I make a difference between a practical double-seamer man and a man who can sit down to a drafting-board [1001] and design a machine. Mr. Guenther, in designing, I would say would be the best man; but when it comes to the practical operation of a double-seamer in a cannery or can plant, Mr. Sumner I think was a far better man than Mr. Guenther.

Q. (By Mr. TOWNSEND.) And in that respect is your answer that Mr. Guenther was the best equipped man in Los Angeles at that time, or who?

Mr. BLAKESLEE.—We make the objection again that it is absolutely immaterial. There may have been other people that were more so that the witness didn't know. The only question [1002] involved here is the question of the machines produced by the parties, the 14–P and 19–P and 24–P by Guenther and the Pacific machine by Sumner and Wilson. That is the only question here.

(Testimony of F. F. Stetson.)

The MASTER.—Sustained. What do you answer, Mr. Stetson?

A. Well, just as I said before, if it is just simply the designing or sitting down to a board and putting a machine on paper, I think Mr. Guenther was the best man that I knew of at that time; but if it comes to inventing a machine, from what has happened since, Mr. Wilson is a better man than Mr. Guenther.

Q. (By Mr. TOWNSEND.) We mentioned Mr. E. A. Miller yesterday—the attorney. A. Yes.

Q. Mr. Miller is not a patent attorney, is he?

A. I think not.

Q. Well, you know he isn't, that he is a general practitioner, don't you?

A. I know he doesn't advertise himself as a patent attorney.

Q. And he has been, or was for a number of years, the general counsel for the L. A. Can Company? A. Yes.

Q. And your own personal counsel? A. Yes.

Q. I show you a letter dated November 5, 1921, on the [1003] letterhead of Miller & McComas, and ask you if you recognize the signature of Mr. E. A. Miller.

A. I think that is his signature.

Mr. BLAKESLEE.—I think that is immaterial. This is a notice of infringement, your Honor.

Mr. TOWNSEND.—I offer this letter in evi-

(Testimony of F. F. Stetson.)

dence as Defendants' Exhibit "F–1," and ask that it be copied into the record.

The MASTER.—How is this material?

Mr. BLAKESLEE.—It is a notice of infringement.

Q. (By Mr. TOWNSEND.) Do you recall seeing my reply, dated November 9, 1921, as attorney for the Angelus Sanitary Can Machine Company, Incorporated, a copy of which I now show you?

Mr. BLAKESLEE.—Now, we do object to that question as [1004] absolutely immaterial, what reply was made by counsel. The reply that counts here is the answer in the case, and any such letter as that is stuffing the record.

Mr. TOWNSEND.—The materiality bears on the question of good faith and so forth, of which we have had so much in the record, and which we are forced, even against our will, to meet.

The MASTER.—I don't see how you can prove it by the letter. The objection is sustained. The letter will be received for the record.

(The first letter offered, marked Defendants' Exhibit "F–1," is in the words and figures following:)

DEFENDANTS' EXHIBIT "F-1."

LETTERHEAD OF MILLER & McCOMAS.

Los Angeles, Cal., November 5, 1921.

Angelus Sanitary Can Machine Co.
282 San Fernando Blvd.,
Los Angeles, Calif.

Gentlemen:

I am instructed on behalf of my clients, Franklin F. Stetson, Arthur D. Sumner, and Ray O. Wilson, of Los Angeles, California, to notify you of the due issuance of U. S. Letters Patent Nos. 1124554, 1203295, 1250406, 1301348, bearing dates respectively Jan. 12, 1915, October 31, 1916, December 18, 1917, April 22, 1919, and that you are directly or contributorily infringing same in and by the manufacture or sale or both of that machine designated as Angelus No. 20-P. Demand is hereby made that you cease and refrain from further infringement of said Letters Patent, and respect the monopoly granted and conserved thereby, and account to my clients through me for past damages and profits flowing from and incident to said infringements.

Unless you comply with the notices and demands herein and hereby given and made, within five days from date, and so signify to me in writing, my said clients will be [1005] forced to resort to legal procedure by suit for infringement, for damages and profits, for injunction, and for such other and

further relief as the United States Court may order.

Very truly yours,

E. A. MILLER.

EAM:NJ.

Mr. TOWNSEND.—And I will ask that my reply thereto be copied into the record at this time, and inasmuch as the original of this letter is in the hands of the plaintiffs, if they object to this being a carbon copy, we will call upon them to produce the original.

Mr. BLAKESLEE.—We refuse and we object to the whole procedure.

The MASTER.—Well, you make no objection as to its being a carbon, do you?

Mr. BLAKESLEE.—No. But we object to its offer as a mere attempt to justify what we complained of in the suit, in our bill.

The MASTER.—It will be received and marked Defendants' Exhibit "G–1" for Identification. I think it may be received so as to show that they answered the letter. The contents of it I will not receive.

Mr. TOWNSEND.—The contents are material on the whole subject.

(The document marked Defendants' Exhibit "G–1" for Identification is in the words and figures following:)

DEFENDANTS' EXHIBIT "G–1."

November 9th, 1921.
File No. 1030.

E. A. Miller, Esq.,
c/o Miller & McComas,
419–423 Homer Laughlin Bldg.,
Los Angeles, California.

[1006] Dear Sir:

Re Stetson, Sumner and Wilson Patents.

Your letter of November 5th, 1921, addressed to Angelus Sanitary Can Machine Co., has been referred to me for attention.

I note the peremptory tone of your demand that my client should, within five days from the date of your letter, examine those several patents or have them examined and give you their reply. Manifestly, it will not be possible to take any appropriate action within the time limit you have set, and if your letter is simply a formal notice of your claim of infringement prior to beginning suit, there will be nothing for us to do but await the attach and thresh matters out afterwards in court.

From the Official Gazettes it would seem that these patents were not only complex in their mechanical constructions but there are a vast number of claims contained in the four patents and I note that you have not pointed out in your notice any particular claims of any particular patent which you or your clients may think infringed.

If you will indicate your views as to the particu-

(Testimony of F. F. Stetson.)

lars wherein you think the Angelus Sanitary Can Machine Co. has infringed or may infringe and the specific claims of your patents thought to be encroached upon our examination will be greately aided and a conclusion more rapidly arrived at than by an attempted omnibus consideration of all the claims of all the patents.

Meanwhile, I am ordering copies of your clients' patents from Washington with respective file histories and the related prior art. By the time I have received these you no doubt will have had an opportunity to communicate to me the particulars of infringement.

In the meantime I have only to state that the Angelus Company has never had any intention of or thought that they were 'directly or contributorily infringing,' to use your own expression, anyone's patents.

Yours very truly,

CHAS. E. TOWNSEND,

Attorney for Angelus Sanitary Can Machine Co., Inc.

CET:C.

Mr. TOWNSEND.—Now, I want to follow up the matter by this question:

Q. In the light of this letter of counsel for defendant, Exhibit "G-1," dated November 9, 1921, have you any explanation [1007] to offer why suit was filed within less than a month from the date of that letter?

Mr. BLAKESLEE.—We object to that as im-

(Testimony of F. F. Stetson.)

material why he should make an explanation of why he brought suit. The proofs speak for themselves.

Mr. TOWNSEND.—Does the witness want to make any explanation?

Mr. BLAKESLEE.—We object to the question as immaterial entirely and not re-recross-examination.

The MASTER.—I will let him answer.

A. I don't remember.

A. I didn't have very much to do with preparing this suit. Mr. Wilson attended to most of it, almost all of it.

Q. (By the MASTER.) Don't you know why he brought it?

A. Yes; for infringement of the patent. Repeat the question once more and see if I understand it.

(Question read.)

Q. (By Mr. TOWNSEND.) And I will add further to it: And before there could be rendered any further reply to Mr. Miller's notice of November 5th.

Mr. BLAKESLEE.—I think that is all argumentative. It is immaterial and just dragging out this record. The suit speaks for the motives and acts of the parties. A man has a right [1008] to bring a suit without any notice. The courts have repeatedly held that the filing of the bill is a notice.

(Testimony of F. F. Stetson.)

The MASTER.—It seems to me it is immaterial, but I will let him answer.

A. Why, as I remember it, we were fearful that we would be guilty of laches, if that is what you call it, if we didn't file a suit immediately. I was quite exercised, I remember distinctly, as to how soon we should file this suit or begin action in order to protect ourselves absolutely. I thought we were delaying it, and I had no idea we were rushing it.

[1009] Q. (By Mr. TOWNSEND.) Was it your understanding, or are we to understand from your testimony, that there was anything improper in Mr. Guenther's patenting the 14–P?

Mr. BLAKESLEE.—That is immaterial.

A. Why, I don't think so.

Mr. TOWNSEND.—There has been an imputation that these machines were gotten up by someone else, or others in the factory there, and that Mr. Guenther wasn't entitled to them as a patentee. Did you wish to convey such an impression?

Mr. BLAKESLEE.—The 14–P is not in issue here, and we can't attack its validity in this suit.

Mr. TOWNSEND.—Well, it is attacking the character of an honest man, is the issue I am contending for. Is that a smiling matter, Mr. Stetson?

Mr. BLAKESLEE.—We think this whole procedure has gone far enough.

The MASTER.—I don't see where you are getting to, Mr. Townsend.

(Testimony of F. F. Stetson.)

Mr. TOWNSEND.—Well, we have to meet this imputation. They have stated that this is a case of aggravated infringement, that Guenther stole this thing, and is going to rely on some case that has been decided; that that is one of the grounds for granting equitable relief, whatever the theory [1010] is. We are going to show that every one of these charges and insinuations and remarks that have been made are untrue as far as affecting the character of Mr. Guenther.

The MASTER.—I didn't catch any implication to the effect that Mr. Guenther wasn't entitled to his patent of the 14–P or the prior machine.

Mr. TOWNSEND.—As you read the record—

The MASTER.—But there are some statements to the effect that his machinists and other men in the place helped him. That doesn't deprive him of his right to his patent, however.

Mr. BLAKESLEE.—Mr. Stetson testified yesterday he laid no claim to any part of that machine.

The MASTER.—What is the question?

(Question reads as follows: "There has been an imputation that these machines were gotten up by someone else, or others in the factory there, and that Mr. Guenther wasn't entitled to them as a patentee. Did you wish to convey such an impression?")

Mr. BLAKESLEE.—We object to that question—

The MASTER.—What do you answer to that,

(Testimony of F. F. Stetson.)

Mr. Witness? You can answer that yes or no. Did you intend that imputation?

A. No.

Q. (By Mr. TOWNSEND.) I show you what purports to be an agreement dated the 26th day of April, 1910, by and between H. L. Guenther, of Los Angeles, the first party, and the Los Angeles Can Company, the second party, and ask you if you [1011] recognize the signatures to that paper?

(Objection.)

Mr. BLAKESLEE.—We would like to ask counsel to state what the purpose is of producing this agreement between the Can Company and Guenther? It is going back to 1910, prior to the dates of these patents, or their application, as a part of re-recross-examination of this witness. We wish to be not captious but we are irritated at the way this is stringing out on these immaterial matters in re-recross-examination.

Mr. TOWNSEND.—This may be understood to be a part of cross-examination, if you want to call it that; but these contracts were only obtained by me this morning, and they are offered now merely as ancillary to the direct examination where these relations were gone into, and by a sketchy explanation suitable to their own purpose they told of these early relations, while here is the written contract. And I have another one which will also bear out just exactly what the relations were. Now we might as well get down to brass tacks and the

(Testimony of F. F. Stetson.)

beginning of things, and that is why I want to put these in.

Mr. BLAKESLEE.—But why does he try to tie it on to cross-examination at this late date?

Mr. TOWNSEND.—Well, Mr. Guenther is very deaf and it would be a very slow process and take considerable time to call him concerning these matters.

The MASTER.—I will allow them on that explanation at [1012] this time, but not as a part of your cross-examination.

Mr. BLAKESLEE.—We object to their being marked for anything more than identification, and we don't think Mr. Guenther's deafness should be made an excuse in this suit. We don't believe it is a genuine and sincere excuse.

Mr. TOWNSEND.—Would you prefer that they go in as a part of our case? I think, though, they should go in here as a refutation and impeachment, to a certain extent, of this witness' direct examination.

The MASTER.—Of course I can't tell until I see them. (Examines same.) I will let them go in now.

The WITNESS.—I recognize that as my signature, yes, and Mr. Irvin's also.

Mr. BLAKESLEE.—We fail to see anything in them that bears on the issue offered, as a possible foundation for impeachment or even contradiction to the present witness.

Mr. TOWNSEND.—I offer this as Defendants'

Exhibit "H–1," and ask that it be copied into the record at this time. And may it be stipulated that photostat copies of same may be substituted so that the original may be returned to the proper parties.

The MASTER.—What do you need a photostat copy for if you are going to put them in the record?

Mr. TOWNSEND.—Well, I agree with you; and that we may retain the original, subject to inspection at any time.

[1013] Mr. BLAKESLEE.—If counsel wishes them copied at his own expense under the stipulation, why, it is all right; but we object to its offer as entirely immaterial on this cross-examination.

The MASTER.—Overruled.

(The document offered and marked Defendants' Exhibit "H–1" is in words and figures following:)

DEFENDANTS' EXHIBIT "H–1."

THIS AGREEMENT, made and entered into this 26th day of April, 1910, by and between H. L. Guenther, of Los Angeles, California, party of the first part, and the Los Angeles Can Company, a Corporation, of the State of California, party of the second part,

WITNESSETH:

THAT, WHEREAS, the party of the first part has been and is now making plans and drawings and working on the invention of a certain machine to be known as "PACKERS' DOUBLE-SEAM CAN CLOSING MACHINE," and

THAT, WHEREAS, the party of the second part desires to have one or more of said machines constructed for the use of its patrons,

NOW, THEREFORE, it is agreed by and between the respective parties hereto, as follows:

1st. That the party of the first part will immediately proceed to construct, build, and make one of said machines for the party of the second part; that the party of the second part shall promptly furnish, for the use of the party of the first part, all material and labor necessary for the construction of said machine; that the party of the first part shall build said machine in a workmanlike manner and to the best of his ability.

2nd. That the party of the first part shall build for the party of the second part, as many of said machines as the party of the second part may request the party of the first part to build, which number shall not exceed six (6) machines; that the party of the second part shall furnish all material and labor for each of said machines and the party of the first part shall build and make said machines in accordance with the terms and conditions mentioned in paragraph one hereof.

3rd. That the party of the second part shall pay to the party of the first part One Hundred Fifty Dollars ($150.00) per month, payable monthly as a salary for his services while building said machine.

4th. That the parties of the second part shall have no [1014] right, title, or interest in any of the plans, specifications or drawings which have

heretofore been made or which may hereafter be made by the party of the first part, or in any of the patents which may have heretofore been obtained or which may hereafter be obtained by the party of the first part for any of said machines or any part of said machines or any other machine which has heretofore been constructed or patented by the party of the first part.

5th. It is mutually understood and agreed by and between the parties hereto that the services for which the party of the first part is hereby employed to perform for the party of the second part, is that of preparing the plans, specifications and drawings for said machines and of superintending the building, constructing and making of said machines:

IT IS FURTHER AGREED by and between the parties hereto that the party of the second part shall have the privilege of designating said machine by any other name or by any modifications of the name hereinbefore designated as the name by which said machine shall be known.

IT IS MUTUALLY AGREED by and between the parties hereto that the consideration for this contract shall be, and is, the mutual promises of the respective parties hereto.

IN WITNESS WHEREOF the party of the first part has hereunto set his hand and seal and the party of the second part has caused its corporate name and seal to be hereto affixed by its president

(Testimony of F. F. Stetson.)

and secretary first duly authorized by a resolution of its Board of Directors.

H. L. GUENTHER, (Seal)
LOS ANGELES CAN COMPANY,
By F. F. STETSON,
President.
[Corporate Seal] By E. S. IRVIN,
Secretary.

[1020] Further Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Mr. Stetson, at any time when the L. A. Can Company purchased or secured for its use or for delivering to a can customer or cannery, do you know of a single instance when any Pacific type of closing machine had to be discarded or set aside because it didn't give satisfactory service?

A. No.

Q. If such had been the case would it have come to your knowledge? A. I think so.

Q. What was the Pacific type of closing machine called prior to the organization of the Pacific Closing Machine Company?

A. It was called a good many things: the Sumner & Wilson, the Wilson Machine, and Stetson Machine.

Q. Then when you have referred to the Pacific closing machine, or that type of machine, as to any occurrence prior to the organization of the Pacific Closing Machine Company, did you refer to the same type of machine? A. Yes, sir.

(Testimony of F. F. Stetson.)

Q. Did you have trouble prior to 1920 in the canneries with cans slopping over when closed on other machines than the Pacific type? A. Yes.

Q. Do you have that trouble to-day with machines other than [1021] the Pacific type? A. Yes.

Q. Did you have any more trouble as to cans slopping over in the use of the Pacific type at any time than you had concurrently with other types of machines?

Mr. TOWNSEND.—That calls for a conclusion and opinion.

Mr. BLAKESLEE.—It calls for actual facts.

Mr. TOWNSEND.—This witness has testified over and over again that he doesn't know.

The MASTER.—Overruled.

A. No.

Q. (By Mr. BLAKESLEE.) How about the cap feed? Did that at any time during your use by the L. A. Can Company or supply to canneries give you any amount of trouble that required setting the machine aside— A. No.

Q. —Or discontinuing its use?

Q. (By Mr. BLAKESLEE.) Please compare, then, the use of the Pacific type closing machine, either in the L. A. Can Company or at canneries supplied with such type by the L. A. Can Company, as to the effectiveness of the cap feed from the very beginning of the use of the Pacific machine?

Mr. TOWNSEND.—That is objected to for lack of qualification. The man has disqualified himself

(Testimony of F. F. Stetson.)

time and again to [1022] answer such a question as that.

The MASTER.—Overruled.

A. The cap feed on the Pacific Closing machine has always been fairly satisfactory. It worked in the canneries with a fair degree of efficiency, I think quite as much efficiency as we got from the 14–P or the 19–P.

Q. (By Mr. BLAKESLEE.) Did it to your knowledge at any time reduce the speed of operation of the Pacific machine to that of the 14–P machine?

Mr. TOWNSEND.—Objected to as leading.

A. No.

Mr. TOWNSEND.—Will you please instruct the witness not to answer until an objection is made?

The MASTER.—Yes. Wait until counsel objects, Mr. Stetson. Sustained.

Q. (By Mr. BLAKESLEE.) What can you state as to any occurrences due to any trouble with the cap feed on the Pacific Closing Machine, going back to the beginning of its use by you, or by the L. A. Can Company and its customers, tending to reduce the speed of the machine as a whole?

Mr. TOWNSEND.—That is objected to as leading, the latter part of it; and it is further objected to unless the dates and circumstances are given and place.

Mr. BLAKESLEE.—It doesn't call for any time.

The MASTER.—Overruled.

(Question read.)

(Testimony of F. F. Stetson.)

[1023] A. I don't think any defects of the cap feeds ever reduced the speed of the machine at all.

A. We have never slowed up the Pacific closing machine on account of the can feed either.

Q. Do you know of any such slowing up having occurred in any cannery furnished with Pacific type machines by the L. A. Can Company? A. No.

Mr. TOWNSEND.—Objected to as leading; and, furthermore, it calls for a comparison which this man is not qualified to testify to.

The MASTER.—Sustained, as leading.

Q. (By Mr. BLAKESLEE.) Comparing the Pacific type of machine from the very first use of it with the 14–P and 19–P machines, both in the L. A. Can Company and in the canneries supplied [1024] by it, and bearing in mind any mechanical troubles or defects that may have cropped out in the operation of the Pacific machines, please state which type, the Pacific or the 14–P and 19–P, if either, gave, to your knowledge and observation, superior service.

The MASTER.—I don't know anybody better qualified to talk about the relative merits of the machine than the man who has used them in the factory and is manufacturing them and putting them out to the trade.

Mr. TOWNSEND.—That, your Honor, is entirely another matter, but here it calls for a self-serving statement.

The MASTER.—Well, that goes to the matter of

(Testimony of F. F. Stetson.)

his reliability and the weight of his testimony, but not his competency.

[1025] A. The Pacific machine has given better service since its first introduction.

Q. (By Mr. BLAKESLEE.) Please state, in the same manner, the facts with regard to the very first Pacific type of machine, to wit, the one that was first used in the Stetson cannery, in comparison with the 14–P and 19–P machines.

Mr. TOWNSEND.—The same objection as to competency, and also it is indefinite as to time.

The MASTER.—Overruled.

A. The very first machine was not as finished and complete as the subsequent ones. We had a different feed. The can feed on that one had to be changed, so I hardly feel like making a comparison of that one machine, the first machine we built.

Q. Did it operate in the Stetson cannery?

A. It operated, yes.

Mr. TOWNSEND.—That is leading.

Q. (By Mr. BLAKESLEE.) For how long a time? A. I don't know.

Q. Do you remember approximately what speed it operated at? A. I do not now, no.

The MASTER.—Which machine is this?

Mr. BLAKESLEE.—The very first machine, the one made in Smith-Booth-Usher's, and used in the Stetson cannery.

Q. Please tell us about what it did with respect to [1026] closing cans in your cannery.

A. It closed cans so satisfactorily that we imme-

(Testimony of F. F. Stetson.)

diately proceeded to build other machines for our use.

Q. Other Pacific type machines?

A. Other Pacific type machines for our use in the can factory and also out in the canneries.

Q. Do you know whether any changes have been made in the Pacific type of closing machine since the advent of the 24–P machine, in other words, since you first knew of its having been constructed?

A. I don't know of any.

Q. Do you know of any changes?

A. I don't know of any.

Mr. BLAKESLEE.—That is all.

Mr. TOWNSEND.—I will request the witness, please, to have at our two o'clock session to-day a complete list of the number of 14–P and 19–P machines delivered to the L. A. Can Company up to January 1, 1913.

[1028] Further Recross-examination.

(By Mr. TOWNSEND.)

Q. Mr. Stetson, have you that list of Angelus machines for the years 1910, 1911, and 1912?

A. 1910, I think, does not appear on the records.

[1029] A. 14–P machines made in 1911, 12. 14–P machines made [1030] in 1912, 6. 19–P machines made in 1912, 4.

Q. In other words, 22 Angelus machines, according to your records for 1911 and 1912?

A. 1911 and 1912.

Q. (By Mr. TOWNSEND.) And you took all that output, didn't you?

(Testimony of F. F. Stetson.)

A. I understand we did, yes, sir.

Q. At that time? A. Yes.

Q. (By Mr. BLAKESLEE.) You have produced another memorandum here as to Pacific Closing machines. Please state where you obtained that memorandum.

[1031] A. This was also given me by the young lady who has charge of the records of the closing machines at the Los Angeles Can Company's office.

Q. What does that memorandum disclose as to the number of Pacific type closing machines made and furnished to the Los Angeles Can Company during the years in question?

A. In 1916, 7 machines were delivered to the Los Angeles Can Company. In 1916, 11 machines were delivered to the Can Company—

Q. Are you duplicating those years?

A. I beg your pardon. It should be 1917, 7 machines were delivered, and 1917, 11 machines were delivered. 1918, 8 machines were delivered. 1919, 8 machines were delivered. 1920, 14 machines were delivered; and I see there is one on the next page, and that is changed to 15. 1921, 4 machines were delivered. In 1922, 6 machines were delivered. Making a total of 69 machines delivered from 1916 to 1922, inclusive.

Q. How many of these Pacific type machines has the Pacific Closing Machine Company under construction now?

A. I don't know. There are a few in course of construction.

(Testimony of F. F. Stetson.)

Q. Do you know whether the Pacific Closing Machine Company shop is running to capacity now?

A. No, it is not.

[1032] Q. Has it been during the past year?

A. No, sir.

Q. Have you orders on your books for Pacific closing machines now? A. Some, yes.

Q. Do you know how many?

A. My recollection is five or six.

Q. Are those for the L. A. Can Company?

A. For the L. A. Can Company customers—yes, for the L. A. Can Company.

Q. Have you openings among your customers for the coming season for Pacific type closing machines further than those you have in stock, or demands for them?

Mr. TOWNSEND.—That is objected to as uncertain at least, and incompetent, irrelevant, and immaterial.

The MASTER.—Overruled.

A. What is the question again?

(Question read.)

A. No.

Q. (By Mr. BLAKESLEE.) During how long a period of time past has the Pacific Closing Machine Company been able to provide the Los Angeles Can Company with the Pacific type closing machines, if required? A. Only two seasons, I think.

Q. Has it, during those seasons, given you the machines that you requisitioned?

[1033] A. These last two seasons, yes.

(Testimony of F. F. Stetson.)

Q. It has?

A. Yes; except in the gallons. That refers to the 2½. The gallon machine is a new machine and we are still building them to capacity. We have no surplus of those machines.

Q. During 1920, or at any time previous to that year, when you wanted more Pacific type machines, as at the time, for instance, when you went to Mr. Guenther with the blue-prints in 1920, was the Pacific Closing Machine Company, or its predecessors, equipped to turn out the machines that you wanted?

A. No.

Q. Was the plant in the same premises that it occupies now? A. Yes.

Q. Were all of those premises included within the plant? A. I hardly understand that.

Q. Well, is the plant the same size, or larger or smaller than it was in 1920?

A. It has just about doubled.

Q. When did you double it?

A. I think that was the fall of 1920.

Q. Do I understand that this list you have given us of the machines of the Pacific type furnished during the respective years was for the L. A. Can Company's use only?

[1034] A. Only the L. A. Can Company's use.

Q. It does not include machines sold and furnished to customers outside of the channels of the L. A. Can Company? A. No.

TESTIMONY OF BOYD W. HOCKER, FOR PLAINTIFFS.

[1035] BOYD W. HOCKER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) Please state your age, residence, and occupation, Mr. Hocker.

A. I will be fifty-four next month; I live at 258 Jefferson Street, Pomona, California; by occupation I have been superintendent of canneries for twenty-two years. At present I am not in that capacity; I am not doing anything.

Q. When were you last a superintendent of canneries? A. In 1920.

Q. And where was that? A. At Porterville.

Q. What company?

A. It was the Consolidated Canners of California.

Q. As superintendent of such canneries, did you or did you not have under your supervision and control the operation of can closing machinery?

A. Yes, sir.

Q. What sort of can closing machines have you had in the plants where you were superintendent?

[1036] A. I presume you mean the sanitary closing machines?

Q. Yes; double-seaming closing machines.

Q. Well, we have had the Max Ams, and then the Angelus, and then I used the Johnson, and the Can Co. and the Pacific.

(Testimony of Boyd W. Hocker.)

Q. The Can Co. was made by the American Can Company? A. I believe so, yes.

Q. You meant by Angelus which type of closing machine?

A. Well, sir, I wouldn't know what to say. It was a double-seamer.

A. It was not continuous.

Q. Was it the 14–P type, as you remember it?

A. I couldn't say just what they called it.

Q. Did it have a single turret or rotating part upon which the seaming operations were performed?

A. The single turret, yes, and then went to another.

Q. There were two turrets, were there?

A. Two operations. I don't know whether it was two turrets or not.

Q. And the turret stopped its movement each time a can and cap were fed to it? A. Yes, sir.

Q. You don't know whether that was the 14–P type so-called? A. No, I do not.

Q. When did you first have experience with that type, and where?

[1037] A. At Pomona, but I couldn't give you the date, whether it was 1912 or 1913, somewhere along there. I don't remember the date.

Q. At what cannery?

A. The G. H. Waters Canning Company.

Q. How long did you have a closing machine of that type there under your superintendence?

A. Well, sir, if it was 1912 that we first got them,

(Testimony of Boyd W. Hocker.)

we had them for three years, but I can't give you the date we first used them.

Q. Was it more than one season? A. Yes, sir.

A. At Pomona, in what is now called the Golden State cannery. It was then the Pomona Valley Canning Company.

Q. When and where did you use the Pacific double-seamer or closer?

A. At Porterville, in 1919 and 1920. They also used an Angelus there, the No. 10 machine, those two years.

[1038] Q. Did you have any trouble with the operation of any of these double-seamer closing machines you have told us about—any kind of trouble?

A. Oh, yes, we had more or less trouble.

Q. Mention some of the kinds of troubles?

A. Well, to be exact or explicit with you, I did not operate the machines myself, only as being superintendent; but some of the troubles were—or the main trouble was in rolling the seam and keeping it from leaking.

A. With the Can Co. I considered we had lots of trouble, and with the Angelus we had a good deal of trouble. The Johnson machine we would have trouble with if we tried to speed it up; but if it run slow it did very nice work.

Mr. TOWNSEND.—You didn't let the witness finish his answer there. He didn't mention the Pacific.

Q. Was it a stop and start, like the Angelus?

(Testimony of Boyd W. Hocker.)

A. I don't believe it does.

[1039] Q. Does it move continuously?

A. I think so.

Q. How many turrets does it have?

A. Let's see. I don't believe I can tell you just how that thing does operate now. I know we used it there three or four years.

Q. How about the Pacific type machine that you say you had where you were superntendent? What about trouble in the use of that machine?—the Pacific.

A. The two seasons that we used it I considered that we had less trouble with it than any machine I ever used.

Q. And have you ever used any machine since that you have had any less trouble with?

A. No. I haven't had charge of a cannery since 1920.

Q. And your last experience was with the Pacific?

A. Yes, in 1920.

Q. Can you mention again a little further some of the troubles you had with these various machines a little more in detail?

A. I don't believe that I could go into detail. As I say, not having direct operation of the machines, I could hardly say.

[1040] A. I knew there were troubles, but just what those little troubles were I couldn't say, outside of the seaming. Mechanically there might have been some small troubles I never knew anything about.

(Testimony of Boyd W. Hocker.)

Q. Did you ever have any swollen cans?

A. Yes, sir.

Q. What machines were they closed on?

A. We have had them on all the machines, I think.

Q. During your superintendence of these plants, did you or did you not observe the operation of these machines from time to time? A. Oh, yes.

Q. How frequently?

A. Oh, every day, as far as that is concerned.

Q. Are you prepared to state in particularity or in detail in what respects you had less trouble with the Pacific closing machine than with any other machines you mentioned?

A. It made a better seam or made a tighter can closing. We had less leaks, in other words.

Q. Less leaks in the cans closed by the Pacific?

A. Yes. That is the thing I was looking for.

Q. And you remember that distinctly, do you?

A. Very distinctly. I never saw a machine that made less leaks, that is, I never had charge of one. I might have seen them but not ran them.

[1041] Q. Do you remember any machine you ever saw that you knew closed cans with less leaks than the Pacific type? A. I do not.

Q. Do you know anything about the necessity of changing rolls on these double-seaming machines from time to time during their operation? Does such necessity ever occur? A. Yes, sir.

Q. With what types of machines?

(Testimony of Boyd W. Hocker.)

A. Well, we changed them on all types of machines, as I remember.

Q. Is there any one type or types that required more changes of rolls for rolling seams than other types?

A. I couldn't answer that question. I know I always kept an extra amount of rolls on hand.

Q. Why is that replacement necessary?

A. Well, I don't know, unless it would be the wear on them, or something like that.

Q. Are you prepared to state in approximate percentages the difference between the amount of trouble encountered in the use of the Pacific seamers and the use of the other types you have mentioned?

Mr. TOWNSEND.—That is objected to unless some proportional amount of work or common basis of comparison is shown and working conditions.

Q. (By Mr. BLAKESLEE.) For the same amount of use, or during the period the machines were running together, so that [1042] you had a definite time period to calculate on.

Mr. TOWNSEND.—That is further objected to that the witness says that he wasn't operating these machines personally, and he was only depending on reports from others, and it is a matter of hearsay.

Mr. BLAKESLEE.—Subsequently he stated he observed them every day.

The MASTER.—Can you answer that question?

A. Well, it would be rather hard, as I had only had the Pacific machines two seasons, and the other machines I had run for longer seasons. I think

(Testimony of Boyd W. Hocker.)

that I ran the Angelus for three or four seasons in the factory, and the Can Co. I probably only ran one season, and the Johnson I ran for four seasons.

Q. (By Mr. BLAKESLEE.) Compare a season of the use of the Pacific with a season of the use of any other of the types and state what the relation between the Pacific and such other ones was, as to the amount of trouble you had which required attention.

Mr. TOWNSEND.—The same objection.

Q. (By Mr. BLAKESLEE.) Or the amount of damage or loss of cans or output.

Mr. TOWNSEND.—The same objection.

The MASTER.—He may answer, if he knows.

A. I don't believe I could give you an answer on that of any certain per cent. I know that we had a better pack [1043] of cans in 1919 and 1920 with less leaks than any year that I ever run. Whether we packed the same amount or not I don't know, or I don't remember. I know it couldn't be the same.

Q. (By Mr. BLAKESLEE.) Were the packs the same materials?

A. Oh, yes, peaches and apricots.

Q. And the seasons were approximately the same length? A. Approximately.

Q. And was the operation during each season with each of these types of machine carried on right through the season? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. (By the MASTER.) You say you don't

(Testimony of Boyd W. Hocker.)

know whether you packed any more. Did you pack less, or the same as you had the previous seasons?

A. Well, I can't remember just what our packs were those seasons. Some of the seasons we packed more than others. Of course, in the early stages of the game when we were using the Angelus machines, we did not pack as heavy as we did in 1919 and 1920 and along there. During the war times we packed all we could and as fast as we could.

[1044] Q. (By Mr. BLAKESLEE.) Have you any recollection as to the relative speeds of operation in canning apricots and peaches with these several types of machines?

Mr. TOWNSEND.—First ask if the witness has any records of those things.

A. No, I haven't.

Q. (By Mr. BLAKESLEE.) Which, if any, of the types afforded you a greater speed than the others?

A. The Wilson machine—or the Pacific, as they call it.

Q. That gave you the greatest speed possible?

A. The greatest speed of any machine I had ever run, yes.

Q. And they were run at greater speeds than the other machines? A. Yes, sir, we did.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Are you acquainted with Mr. Guenther, the defendant? A. I am.

Q. How long have you known Mr. Guenther?

(Testimony of Boyd W. Hocker.)

[1045] A. Well, I have known him since 1912, or when they first put that machine out. I can't call to mind the date.

Q. Can you tell what satisfaction that machine gave with respect to other machines that had been used, and I mean not only the first season but other subsequent seasons, and other Angelus machines that you bought and used while you were there? How did the Angelus compare with other machines you had been using that time?

A. Why, it was the best thing we ever had up to that time.

Q. And did it compare favorably for upkeep, economy of upkeep?

A. I can't say as to that. I think we had quite a little breakage along those lines on the early machines, which was quite expensive.

[1046] A. Why it was practically the first sanitary closing machine that we had used, except the Max Ams, a little, slow machine called the Max Ams, and this Angelus was the first machine I had ever used of a sanitary closing machine. We had been soldering cans before that.

Q. How many machines did you use there in the Waters' plant, the greatest number of Angelus machines at any time that you remember?

A. I believe three.

Q. And for how many years were you using those?

A. Well, as I say, I can't remember just the first year that they came out. We may not have used three the first year, but during the time from when

(Testimony of Boyd W. Hocker.)

they first came out to 1915 we did use three machines, two 2½'s and one No. 10. Probably three years we used them, although I wouldn't be positive, or three seasons.

Q. Do you remember when you went to work for Mr. Waters?

A. I went to work for him the 29th day of June, 1901, [1047] on a Saturday afternoon.

Q. That is earlier than the date I have here of December 4, 1912. I show you a letter here addressed to Mr. Waters by the L. A. Can Company, dated December 4, 1912, which is in evidence as Defendants' Exhibit "D–1," and ask you if the notations on there refresh your memory in any way with regard to the operation of the Angelus machine that you had there at that time and the success you met with.

Mr. BLAKESLEE.—I don't think any foundation is laid for this witness to have any knowledge about this letter.

Mr. TOWNSEND.—Well, that is what I am asking him about.

Mr. BLAKESLEE.—It isn't shown he was connected with the letter in any manner. I think the only question that would be competent would be as to whether he made the notations.

A. Do you mean these notations on here?

Q. (By Mr. TOWNSEND.) Yes. Does that letter and the notations on there recall to your mind anything in connection with the operation of the Angelus machines that you had there at that time?

(Testimony of Boyd W. Hocker.)

Mr. BLAKESLEE.—The same objection.

Q. (By the MASTER.) Is that your writing, Mr. Hocker?

A. I don't believe it is my writing. It may be, though. It looks something like it, too.

[1048] Q. (By Mr. TOWNSEND.) This refers to the sealing of one million and fifty thousand cans and changing of the rolls once and changing of the chucks once up to the date of December 4, 1912. Would that refresh your memory as to the actual facts of the work performed on the Angelus machine that you had there, or Angelus machines, and the replacements necessary at that time?

Mr. BLAKESLEE.—We object to that as improperly assuming, even on cross-examination, facts, the introduction of which there is no foundation laid for, and as to which no proof has been given.

Mr. TOWNSEND.—This is cross-examination and this is a [1049] question to find out what the witness knows.

Mr. BLAKESLEE.—I don't object to counsel asking whether such and such things occurred, but to assume that these notations establish the fact, and in that way to attempt to instruct the witness, is not proper.

The MASTER.—I will overrule the objection. What do you say to that?

A. Well, about the only thing it brings to my mind definitely, gentlemen, is that that is about the amount of cans that we ran; but as to changing the rolls I couldn't say. I couldn't remember as to that.

(Testimony of Boyd W. Hocker.)

I don't know how often we changed them. I have it in my mind that we changed them oftener than that, but I may be mistaken, and I couldn't say. That is something like the amount of cans that we ran, though.

[1050] Q. Where next did you work where they had Angelus machines, double-seaming machines?

A. At Porterville, I guess, was the next.

Q. How long did you continue at the Waters' plant?

A. I was there until 1915. Then I was four years with the Pomona Valley Cannery, which is now the Golden State. We did not use the Angelus machines there.

Q. What machines did you use there?

A. We used the Johnson and American Can Company's machines.

Q. Were those continuous double-seamers, either of them?

A. Yes, the Can Co. was, or I suppose you would call it continuous.

Q. And the Johnson, was that a continuous double-seamer? A. Yes.

Mr. BLAKESLEE.—I think the question is indefinite.

Q. (By the MASTER.) What do you understand by "continuous"?

A. Well, the cans just feed in and feed on out. It stopped on its operation, as I remember, but then they continued right along.

[1051] Q. How long did you stay at Pomona?

(Testimony of Boyd W. Hocker.)

A. Four years.

Q. Until when? A. Until March, 1919.

Q. Then you went to Porterville? A. Yes, sir.

Q. What machines did you find in operation there, or did you put in operation that season?

A. We installed two of the Pacific and one of the Angelus machines. The Angelus was a No. 10, and the Pacifics were 2½.

[1052] Q. You wouldn't attempt to compare the speed of a gallon-can machine with the speed of a 2½-can machine, would you? A. No, sir.

[1053] Q. So up at Porterville you were running one Angelus gallon-can machine and two small can Pacifics? A. Yes.

Q. Did you run all three machines continuously during the season?

A. Practically so, yes. Of course there would be intermissions, perhaps, and sometimes we wouldn't have fruit enough to keep them all going, but they was there to run every day and did run every day during the season.

[1054] Q. Those Pacifics were both new machines, were they, when they came there?

A. I don't know. I don't think they were. I think they had been used. I am not sure about that, though.

Q. Were those machines purchased or rented?

A. They were rented.

Q. Rented from the L. A. Can Company?

A. Yes, sir.

Q. From whom did you get your cans?

(Testimony of Boyd W. Hocker.)

A. The L. A. Can Company.

Q. They furnished the cans and furnished the machines? A. Yes, sir.

Q. Were the machines taken care of by the Pacific people? Did the Pacific people service them, that is, the L. A. Can Company service them?

A. I don't think so. I don't know.

Q. Do you know Mr. Murray, their service man or trouble-shooter.

[1055] A. Yes, sir, I know him.

Q. Did he ever visit you at Porterville?

A. Yes, sir.

[1056] A. There was one or two parts broken during the season, as I remember.

Q. What were those?

A. I can't tell you what they were now.

Q. Were they curling dies?

A. I wouldn't know what they were. There was a cast piece, it seems to me like, that was broken, and I had to order a new one.

Q. Wasn't that the cast ring-like affair used on forming the first seaming operation?

A. I couldn't remember now. I don't know.

[1057] A. The company went bankrupt.

Q. Was it turned over to the L. A. Can Company?

A. And other fellows and myself. I got mine but they didn't.

A. Yes; in 1920. Well, in 1921 I guess it was they were declared bankrupt.

A. Well, the Johnson machine, if operated slow enough, did fine work; but it would make no speed—

(Testimony of Boyd W. Hocker.)

nothing like the Guenther machine or the Angelus. As I remember it, we ran [1058] from forty to sixty cans a minute through the Guenther machine or the Angelus, and the Johnson machine did not do good work above about thirty or thirty-five cans per minute. The Guenther machine or the Angelus machine did better work around forty or fifty cans a minute.

Q. In other words, you couldn't attribute all your leakages in any one instance, or all of your successes in any one instance, to the machine, because that would be modified more or less by the quality of the cans?

A. Yes; and the shape of the can, and the machine as well.

Q. Do you recall what the quality of the cans was furnished you in 1919 and 1920 by the L. A. Can Company, compared with the quality of cans that you were receiving back in [1059] 1912, 1913, 1914, and 1915, when you were operating the Angelus? Did the quality of the cans improve as time went on? A. I think they have, yes, sir.

Q. In other words, you were getting a very much better can in 1919, very probably—is that so—than you were in 1914?

A. Perhaps. I should think we were. They have improved on them all along, and I would consider them as a whole lot better.

Q. And naturally you ought to have fewer leaks on a better can in 1919 than you would in 1915 or 1914 on a poorer can? That is quite true, isn't it?

(Testimony of Boyd W. Hocker.)

A. I should think so, yes.

Q. And you might attribute some of the better results that you got in 1919 and 1920 to that factor, is that true? A. Yes, sir.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. As a matter of fact, was there any appreciable difference between the cans in 1912, 1913, and 1914, and the cans of 1919 and 1920, that you remember distinctly, or any preference over the later cans, or do you simply say that because you think maybe they improved them?

A. That is about the only reason that I would know, yes.

Q. Do you remember any respects in which the cans were [1060] better in the later years?

A. I remember this much: that at times we got a better tin than we did at other times. It might have occurred all in the one season, though. We might this week have gotten better cans than we did the week before, and heavier tin, consequently the roll would be much better; but that occurred, as I remember it, every year.

Q. Every year?

A. Yes; it may have occurred every year.

Q. Do you or do you not remember any particular respect in which cans were better in 1919 and 1920 than in 1912 and 1913? A. Not necessarily, no.

Q. Did you use the Pacific machines for the same sized cans that you used others of the machines that you mentioned? A. For the same sized can?

(Testimony of Boyd W. Hocker.)

Q. Yes.

A. For the 2½ cans the Pacific machine was the only size that I used.

Q. Did you use others of the types of machines you mentioned for the 2½ pound cans?

A. Yes, sir.

Q. Which ones?

A. We used the Johnson and the Angelus and the Can Co.

Q. The 14–P Angelus?

A. I suppose that is the one.

[1061] Q. The one we have been discussing?

A. Yes, that is the one.

Q. How did the speed of operation which you found possible to obtain with the Pacific type on the 2½ pound cans compare with the speed you were able to get on the Angelus?

A. Well, we run it about double, I should think.

Q. With the same sized can? A. Yes, sir.

Mr. BLAKESLEE.—That is all.

The WITNESS.—As high as 120 cans a minute.

Q. 120 cans a minute?

A. I think that is about the highest that we ran.

Q. (By Mr. BLAKESLEE.) What do they set the 14–P Angelus at as a rule?

A. Well, I believe we have—or the most I have run them [1062] I believe was 60 cans a minute.

TESTIMONY OF P. N. ELDERKIN, FOR PLAINTIFFS.

[1063] P. N. ELDERKIN, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) State your age, residence, and occupation, please, Mr. Elderkin.

A. My age is 35 last month; my residence is Eagle Rock City, California. My occupation is an engineer.

Q. Have you had any training in engineering?

A. Yes, sir.

Q. What university or college?

A. Wisconsin, '15.

Q. You are with the Crowell-Packer Company in the manufacturing of devices? A. Yes, sir.

Q. When did you go with that company?

A. August 12 last.

Q. Were you ever connected with the Pacific Closing Machine [1064] Company of this city?

A. Yes, sir.

Q. When?

A. From the fall, about September 22, 1919, until August 12 last.

Q. Do you mean August of 1922? A. Yes, sir.

Q. Were you ever connected with the Angelus Sanitary Can Machine Company, the defendant in this case? A. Yes, sir.

Q. When were you with them?

(Testimony of P. N. Elderkin.)

A. From the fall, about the same date, September 22 of 1919 until the following March, 1920.

Q. And then you went with the Pacific Company in September of 1920 following? A. Yes, sir.

A. Well, September 22, or about that date, in 1919 I went to work for the Angelus Sanitary Can Machine Company. I left them in the following March, which would be in 1920. Then [1065] in the fall of 1920 I went to work for the Pacific Closing Machine Company, and I left them August 12 last in 1922.

Q. Then there was a period between March, 1920, and September, 1920, when you were not with either company? A. Yes, sir.

Q. What was the nature of the work you did with Mr. Guenther's concern? A. Drafting.

Q. Have you ever seen the double-seamer closing machine made and sold by the Angelus Sanitary Can Machine Company and known as the 24–P type?

A. Yes, sir.

Q. Are you familiar with its construction?

A. As near as I might be from the time that I saw it.

Q. When did you see it?

A. I saw the machine in operation at Pomona.

Q. When?

A. I believe it was a year ago last fall.

Q. The fall of 1921?

[1066] A. No. They were canning apricots, so it must have been earlier.

Q. It was in 1921 in the season, was it?

(Testimony of P. N. Elderkin.)

A. I believe so.

Q. Did you study its construction and operation then? A. Yes, sir.

Q. During the time that you were with Mr. Guenther's company, from the summer of 1919 to the spring of 1920, did you ever see or work upon any drawings for such a machine as the 24–P Angelus machine, or any parts of it?

A. Not as a machine, but as a part, yes; that is, parts which were similar.

Q. For what machine were they intended, do you know? A. The 14–P.

Q. Did you ever see or work upon any drawing during that period for any part of the 24–P as you understand its construction? A. No, sir.

Q. Did you ever hear Mr. Guenther, during that period, or anyone in his place of business, or associated with him in that business, describe or refer to any such proposed 24–P machine, or the construction thereof?

Mr. TOWNSEND.—That is objected to as incompetent, irrelevant, and immaterial, and as calling for negative testimony, and in nowise binding on the defendants.

The MASTER.—Overruled.

[1067] A. I don't believe so.

Q. (By Mr. BLAKESLEE.) Have you any recollection of any such thing? A. No, sir.

Q. During that period were you acquainted with the construction of the Pacific type closing machine?

A. While I was with the Angelus Company?

(Testimony of P. N. Elderkin.)

Q. Yes.

A. Oh, not very well. I knew of the machine.

Q. You had seen it, had you, when you went to work there?

A. I saw it during the time that I was working there.

Q. At any time that you were working with the Angelus Company and Mr. Guenther, did you ever hear Mr. Guenther state to anyone, or to yourself, that he was planning the construction himself of a machine of that type, the type of the Pacific?

Mr. TOWNSEND.—The same objection.

The MASTER.—The same ruling.

A. Well, there may have been some talk of a machine which would be different from the 14–P. My recollection of it would be very vague, though. I am not sure of it.

Q. You don't remember any detail of any such proposed machine being discussed? A. No, sir.

Q. During the time you were so connected with the Angelus Company and Mr. Guenther, did Mr. Guenther in your hearing [1068] ever make any statement that he claimed to have devised or schemed out or invented the Pacific closing machine—type of machine—or any part or member of it?

Mr. TOWNSEND.—That is objected to as grossly leading and no claim has ever been made that Mr. Guenther designed the Pacific machine.

Mr. BLAKESLEE.—That all goes to the sequence of events in the construction of the two machines.

Mr. TOWNSEND.—I am inclined to think that

(Testimony of P. N. Elderkin.)

counsel in his question has inadvertently used the word "Pacific."

The MASTER.—Let's hear that question.

Mr. TOWNSEND.—I only call attention to it because your question is grossly improper as framed.

Mr. BLAKESLEE.—Read the question.

(Question read.)

The MASTER.—The objection is overruled. Do you understand the question?

The WITNESS.—Yes.

A. No, sir.

Q. (By Mr. BLAKESLEE.) Now, between the time that you left the Angelus Company and went with the Pacific Company did you have any correspondence with Mr. Guenther regarding your returning to work with him? A. Yes, sir.

Q. When did that occur?

A. As nearly as I may recall, it was around the first of [1069] August; in July or August.

Q. What did that lead to, if anything?

A. Why, the communication was ostensibly along the line of my going to work for Mr. Guenther again. As far as that is concerned, it led to nothing.

Q. You had a conversation with him?

A. Yes, sir.

Q. About the time you got the letter?

A. Shortly after.

Q. And please state what that conversation was, or its substance, if you cannot remember the exact words.

(Testimony of P. N. Elderkin.)

A. I had previously been discharged from the company, and the letter was with regard to my going to work for them again. The work was to be drafting and designing. Now, Mr. Blakeslee, if it would be permissible I would rather answer questions or—

A. Well, we talked of my going back to work for him, and what the nature of the work was to be, and he wanted to know if I would like to go back to work, I believe, and the conditions had been such that I told him I was not sure that I would like to go back to work for him, and I suppose that—he may have asked what they were—at least I recall having [1070] stated to him that the conditions had not been satisfactory to me as well as to them at the previous time I had worked for them. Well, the upshot of it was that we didn't come to any agreement.

Q. Now, this, you say, was about July or August, 1920, that this talk took place?

A. As near as I can recall.

Q. Did Mr. Guenther state anything on that occasion as to the nature of the work which he had in mind in connection with employing you?

A. He stated that he had some work—some rather important work—to carry on, perhaps.

Q. Did you state anything to Mr. Guenther as to the reason why you might not feel satisfied in returning to him; and if so, what?

A. Well, there had been some labor troubles there, and a strike threatened, and the conditions

(Testimony of P. N. Elderkin.)

in the plant were not satisfactory to all of the employees, as they had often talked about, of course, among themselves, and they didn't seem to be getting anywhere.

Q. What opinion did you maintain at that time as to the attitude toward Mr. Guenther in his shop?

Mr. TOWNSEND.—I don't think that is material at all. We have allowed this examination to wander on quite a ways about matters which had no bearing on the case at all.

The MASTER.—What he said I think would be material.

[1071] A. Well, there was a good deal of adverse opinion among the men toward Mr. Guenther himself.

Mr. TOWNSEND.—I move to strike out the answer as a statement or summary of gossip and hearsay, and grossly improper. It has nothing to do with the question of invention.

The MASTER.—It is not responsive to the question and it will be stricken out.

Q. (By Mr. BLAKESLEE.) What was your attitude at that time toward Mr. Guenther in his shop?

Mr. TOWNSEND.—That is wholly immaterial. We are willing to admit that he is hostile, if you want to bring that out.

The MASTER.—I don't see the materiality of it.

Q. (By Mr. BLAKESLEE.) Now, during this conversation with Mr. Guenther in the summer of

(Testimony of P. N. Elderkin.)

1920, was any discussion had between you regarding any type or form of can-closing machine?

A. Yes, sir.

Q. Now, what was said in those respects?

A. Mr. Guenther had a stack of blue-prints on his desk, and from the stack he took one of them. It was a print of the Pacific closing machine's—one of the parts of the Pacific closing machine. We talked, and he asked me with regard to my opinion of the strength of the part as regards the stresses it would undergo in the operation of the machine.

Q. Did he ask you any questions regarding your views as to the proper strength for such a machine?

A. Not as a whole, but as far as that part was concerned, yes.

[1072] A. The print in question was taken from a stack of prints, and the rest of them I didn't see.

Q. Do you remember what that particular blue-print showed or not, referred to—what part of the Pacific machines?

A. It was what was called the compression roll bracket.

A. It carried the second operation double-seam roll and actuated it.

Q. When you did so return you became familiar, did you, with similar prints and with the Pacific closing machine? [1073] A. Yes, sir.

Q. When you went with the Pacific Closing Machine Company did you make any comparison of that print shown you by Mr. Guenther, as you

(Testimony of P. N. Elderkin.)

recall it, and any print of parts of the Pacific closing machine? Did you compare your recollections of that print with the print that you found at the plant of the Pacific Closing Machine Company?

A. Not to my knowledge. I recognized the print when I saw it again.

Q. Did you see the same print again when you went with the Pacific Company?

A. Not necessarily the same print, but one exactly like it, taken from the same tracing.

Q. I show you Plaintiffs' Exhibits 11, 12 and 13, and ask you if you recollect ever seeing such three groups of blue-prints before, or either group of the same?

A. Well, I can't recognize them without seeing some of the drawings.

Q. Take a look.

(Witness examining blue-prints.)

Mr. TOWNSEND.—It seems apparent what the line of this examination is, and in order to save time and avoid waste and expense I will again offer to stipulate when those blue-prints or substantial duplicates of them were given to Mr. Guenther.

The MASTER.—Your stipulation does not cover the date.

[1074] Mr. TOWNSEND.—Well, I have received such discourteous answers heretofore as to not accepting my statements as proof I can't do

(Testimony of P. N. Elderkin.)

more than offer to state what the facts are and avoid unnecessary examination.

Mr. BLAKESLEE.—I don't believe the offer should be coupled with a charge of discourtesy. I don't see that it will lead us to any stipulation. If counsel means his offer—

The MASTER.—What is the date? Perhaps counsel will agree to it.

Mr. TOWNSEND.—I have stated that date on the record once before, and I have been rebuffed. I want to show, in good faith, that I stand by it in spite of the disregard with which those offers have been received.

The MASTER.—I don't recollect any date.

Mr. BLAKESLEE.—I don't recollect it. I think we should proceed with our proof in the regular way.

A. I do recognize that.

Q. All three groups, or which?

A. Yes, sir, all of them.

Q. When did you ever see those groups before?

A. In the files of the plant of the Pacific Closing Machine Company.

Q. And when?

A. During the two years that I was working for them.

Q. Did you ever see them at any other time, or any of them?

A. At least one of them that I spoke of with regard to [1075] our conversation with Mr. Guenther.

(Testimony of P. N. Elderkin.)

Q. That one print you spoke of?

A. Yes, sir; although I didn't weed out that one print and find it absolutely.

Q. Which stack here of these three, as to size, do you recall such a print was in in the summer of 1920, when you saw it at Mr. Guenther's shop?

A. I believe it is on a 9 by 12.

Q. You mean in this group Exhibit 13?

A. I believe it is. Either that or the smaller one. Not on the larger.

Q. But you remember seeing these same three groups in the shop of the Pacific Closing Machine Company after you went there in 1920, do you?

A. Yes, sir.

Q. Now, did Mr. Guenther or did he not say anything to you during the conversation with him at his shop in the summer of 1920, which in any way connected up in your mind these prints of Exhibits 11, 12 and 13, or any one of them, with the matter which you say he stated to you was one he contemplated, being a matter of some importance?

[1076] Q. What, if anything, afterwards transpired which led you to connect up Mr. Guenther's statement of the summer of 1920 with these blueprints with regard to the important matter he spoke to you about?

Mr. TOWNSEND.—Same objection.

The MASTER.—He is asking for what happened. He may answer.

(Testimony of P. N. Elderkin.)

[1077] Mr. TOWNSEND.—Counsel has put on here a party who bears malice to Mr. Guenther, and under those conditions you can get any kind of suspicion, rumor, or idle gossip.

The MASTER.—He is not asking for suspicion, rumor, or idle gossip. We have a right to know what transpired. The objection is overruled.

(Last question read.)

A. After Mr. Guenther had brought out a machine 24–P and the talk circulated around that there may have been an infringement and—

Mr. TOWNSEND.—I move to strike that all out as gossip and hearsay.

Mr. BLAKESLEE.—He has not come to the event yet; he has fixed the time.

The MASTER.—The motion is denied. Proceed.

Mr. TOWNSEND.—Will the Master not caution the witness to keep away from hearsay and gossip?

The MASTER.—He is not giving any hearsay. Read the answer.

(Last answer read.)

Mr. TOWNSEND.—"And the talk circulated around," etc.

The MASTER.—Go ahead.

A. After the machine had been brought out and there was this talk going around, and the fact that Mr. Guenther had had a set of these prints in his possession, naturally, on talking it over with my own employers, it occurred to me that perhaps

(Testimony of P. N. Elderkin.)

there had been something in connection between the [1078] possession of the prints by Mr. Guenther and the bringing out of the 24–P.

Mr. TOWNSEND.—I move to strike out the answer as far as it relates to hearsay, and the rest of it as an expression of opinion.

The MASTER.—As to the hearsay, the motion is denied. It is granted as to the expression of opinion. The ultimate facts he is stating is opinion, and is a matter for the Master to discover.

Q. (By Mr. BLAKESLEE.) Now, after you connected yourself with the Pacific Closing Machine Company did the question of possible infringement of their patents by Guenther and his company come up in the Pacific Company's shop?

Mr. TOWNSEND.—Whether it came up in the shop or whether it came up with this individual is the main thing.

Q. (By Mr. BLAKESLEE.) In any discussion in which you joined.

The MASTER.—What is the materiality of that?

Mr. TOWNSEND.—That is not notice to the defendant.

Mr. BLAKESLEE.—Well, it is possibly connecting up these prints with the transaction. That is all I aim to bring out.

The MASTER.—I don't think that helps any, but he may answer.

(Last question read.)

A. It was often talked of.

Q. (By Mr. BLAKESLEE.) Now, in an Ange-

(Testimony of P. N. Elderkin.)

lus P–24 machine constructed since the summer of 1920, have you or have you not [1079] seen the construction depicted in that particular blus-print which was before you and Mr. Guenther at the time you discussed it with him at this shop?

A. A part identical with the one I saw?

Q. In the blue-print.

A. Not identical; no, sir.

Q. Have you seen any such part comparing with such showing, and if so in what respects, stating the structure that you have seen.

Mr. TOWNSEND.—Your Honor, the comparison is to made by the Court. If counsel will offer the blue-print and the part the Court can make a comparison; but it calls for a self-serving statement and conclusion, and it is grossly improper testimony, and indefinite.

Mr. BLAKESLEE.—He stated that he saw a roller bracket.

The MASTER.—Ask him if he saw a roller bracket.

Q. (By Mr. BLAKESLEE.) Have you seen a roller bracket in Defendants' Exhibit "P–24" machine, and if so state the construction of it as you recollect it?

Mr. TOWNSEND.—That is objected to as leading.

A. A modification of it; yes, sir.

Mr. TOWNSEND.—I move to strike out the answer as the expression of a conclusion.

(Testimony of P. N. Elderkin.)

The MASTER.—Not altogether. He knows what the parts are.

Q. (By Mr. BLAKESLEE.) Can you remember the general construction of it; and if so, state?

[1080] A. Well, the roller that the 24–P had on it was what we called a rubber cushioned bracket. As a matter of fact the bracket that I saw, and of which you ask me about the blue-print, was obsoleted by the Pacific Company and another one was substituted which had a rubber cushion in it. Now, the 24–P had such a one with the rubber cushion in it. The general action of the part was the same in both machines.

Q. Did each one support a roller?

A. Yes; supported two rollers. One was a cam roller and the other was a double-seam roller.

Mr. TOWNSEND.—There is no patent here of plaintiffs covering any such bracket, so I don't see its materiality.

Mr. BLAKESLEE.—It is tieing up the construction of these prints with a later machine.

Q. (By the MASTER.) What did you say it was—a cam roller?

A. A cam follower roller.

Q. (By Mr. BLAKESLEE.) And the other was what? A. A double-seam roller.

Q. And the same bracket was used in the 24–P machine for both rollers? A. Yes, sir.

Q. (By the MASTER.) What do you mean by the cam roller; is that the first or second operation?

(Testimony of P. N. Elderkin.)

A. The second operation. I could explain it to you.

Q. Yes, explain it a little more.

A. The turret proper which carried the can about —the [1081] axis of the turret itself, not the can axis—carried a can around its periphery, and the can itself was revolving about its own axis—a double motion. The bracket was supported from the turret itself and was free to oscillate about a pin which was stationary to the bracket—relative motion not considered. On one end of this bracket there was a cam roller or a follower, and the double-seam roller was caused to oscillate back and forth over against the seam on the can by the action of a stationary cam and the roller rolling on it.

Q. As the turret progressed the cam operated so as—

A. As the turret progressed the follower went over the rises of the cam and gave an oscillating motion about the stationary pin which would fence the double-seam roller over against the can and away.

Q. (By Mr. TOWNSEND.) Where was that rubber cushion you refer to?

A. It was interposed between the double-seam roller and the cam roller or follower.

Q. In the compression bracket?

A. Call it that if you will; yes, sir.

Mr. TOWNSEND.—Excuse me for interrupting you, Mr. Blakeslee.

(Testimony of P. N. Elderkin.)

Q. (By Mr. BLAKESLEE.) Now, on the occasion of this summer visit to Mr. Guenther in 1920, did Mr. Guenther make any statement as to the source at which these prints were produced [1082] or who they came from or what they related to?

A. I believe he did.

Q. What, if anything, did he say?

A. As I recall, he told me that the L. A. Can Company had made a proposal to him to build some of these Pacific closing machines. I have that recollection.

Q. Did he refer to these as prints of the Pacific closing machine? A. I suppose he did.

Q. When you went with the Pacific Closing Machine Company that fall did it come within the scope of your services there to use blue-prints like these Exhibits 11, 12 and 13?

A. Why, my duties were to draw up and make such blue-prints.

Q. For the Pacific Closing Machine Company?

A. Yes.

Q. And you became familiar, did you, thoroughly, with blue-prints like these exhibits?

A. Yes, sir.

Q. Do you bear any personal malice toward Mr. Guenther? A. No, sir.

[1083] Q. (By Mr. BLAKESLEE.) Did you have anything to do with the Pacific Closing Machine Company with the working up of the design or tracings of the gallon Pacific closing machine?

A. Yes, sir.

(Testimony of P. N. Elderkin.)

Q. What did you do in that respect?

A. Why, I made all of the drawings for the gallon Pacific closing machine—all that were made up to the time I left there.

Q. Do you remember when you first saw these exhibits 11, 12, and 13 at the Pacific Closing Machine Company?

A. I saw them on the first day that I worked for them.

Q. I mean these exact three groups of prints that are here in front of us.

A. Well, you see, Mr. Blakeslee, it would be hard to say that I could identify each and every one. As I take it, that set is a set of the prints which would be complete of [1084] the Pacific closing machine as it was built at the time I went with them.

Q. Well, do you remember any such three sets of prints coming into the shop of the Pacific Closing Machine Company when you were there, coming from Mr. Guenther?

Mr. TOWNSEND.—That is leading.

A. The question is a difficult one for me to answer. Whether I could say affirmatively by suggestion or not, I have a vague recollection of the prints coming back from Mr. Guenther.

Q. (By Mr. BLAKESLEE.) I call your attention to some blue-pencil notations on the brown paper sheet marked Plaintiffs' Exhibit 11 and ask you if you know whose writing and figuring that is.

A. I do not.

Q. It is not yours, is it? A. No, sir.

(Testimony of P. N. Elderkin.)

[1085] Cross-examination.

(By Mr. TOWNSEND.)

Q. While you were in the employ of Mr. Guenther were you familiar with the 14–P construction?

A. Yes, sir.

Q. What was the form of double-seaming means used in the 14–P?

A. Two rolls revolving about the can in the first; one roll brought up a revolving can in the second.

Q. In the second operation what did you call that revolving roll that was brought up against the can?

A. The compression roll.

Q. How did the compression roll and *it* support-means compare with the compression roll and supporting means you saw at a time subsequent in the 24–P?

[1086] A. Well, the support, the pivot, of the compression-roll bracket or lever in the 14–P was stationary, absolutely, and was actuated through levers and rods to a revolving can; in the 24–P the pivot and the levers and the roll itself all revolved about the axis of the turret, in the second operation. In other words, you have a case in 14–P of where a can was standing in one position in regard to its location on the machine and the work being done on it. Now, in the 24–P the can and roll all were moving at the same time.

Q. Aside from the fact that that compression-roller naturally is movable with the second turret in 24–P, is that the only difference that you noted

(Testimony of P. N. Elderkin.)

over the compression-roller and its lever mounting in the 14–P?

A. Well, there were several parts in the 14–P which were linkages and connections that brought the movement from the cam to the compression-roll bracket or lever.

Q. Now, just take the lever and the compression roller and its bracket, were those, in themselves, any different in the 24–P from what they were in the 14–P? A. Yes, sir.

Q. In what respect?

A. The rubber cushion was inserted directly in the 24–P, that is, was closely coupled, the bracket itself being a very small part in the 24–P, whereas in the 14–P the whole mechanism was spread out and much bigger.

Q. How was the rubber cushion positioned in the 14–P?

[1087] A. Well, it was inserted in one of the links.

Q. But in both you had a rubber cushion performing the same function? A. Essentially so.

Q. In other words, the rubber cushion was for the same purpose in the 24–P as in the 14–P?

A. Yes, sir.

Q. How early did your familiarity with the 14–P and its use of the rubber cushion date back to?

The MASTER.—Just a minute. I don't know whether it makes any difference or not, but I don't know what you are talking about.

(Testimony of P. N. Elderkin.)

Mr. TOWNSEND.—In the direct examination I think, if you will read the whole record you will find the reference to the 24–P having a rubber cushion, and he said that bore certain similarity to a rubber cushion they had in the Pacific. Now, I am showing that we always had a rubber cushion on the compression roll lever bracket. That is the connection.

Q. Now, in adapting that compression roll on the 14–P to a 24–P was that compression arrangement any different than would naturally follow as a result of good engineering in adapting a 24–P compression roller and bracket and cushion to its new environment in the 24–P? A. No, sir.

Q. In other words, adapting that cushion and its connection was a natural development in evolution?

[1088]. A. It may have been so.

Q. Well, speaking as an engineer you would say that it would have to evolve in substantially that way from its prototype in the 14–P?

A. In the condensation or in the closer coupling of the parts of course it would be necessary to do as you say.

[1089] Mr. TOWNSEND.—Now, that blue-print is the one we have frequently referred to here in evidence, being attached to the Guenther affidavit in the bill of particulars of the defendant. That is of the 14–P machine.

Q. You recognize that blue-print as the blue-print of the 14–P machine? A. That one?

Q. Yes. A. No, sir; not as a 14–P machine.

(Testimony of P. N. Elderkin.)

Q. What machine do you recognize it as? Would you say that was not a 14–P?

A. I will retract. Yes, sir, it is.

Q. You wish your answer, then, to be corrected, that that is a blue-print of the 14–P machine?

A. Yes, sir.

Mr. BLAKESLEE.—Does the witness mean in each detail as he examines it, or general in resemblance?

The WITNESS.—My mistake was in, at first glance, supposing this to be a turret. It is a turret, but it is the turret on the 14–P.

Q. (By Mr. BLAKESLEE.) You mean you recognize all of the details of the 14–P, or in general resemblance? A. In general resemblance.

Q. (By Mr. TOWNSEND.) You thought that was the first turret [1090] of the 24–P machine when you first glanced at it, did you? A. No—

Q. I mean looking at the side elevation, the lower figure. A. Yes.

Q. Yes.

A. Well, when you first spoke of the second operation, of course I started to look at this. I recognized the first operation head here, and since he had spoken of the compression roll bracket I started to look over here for the second and I didn't see any bracket. It is cut off here, the second operation spindle.

Q. Now, when you saw the 24–P later did you recognize the first operation bracket and seaming-

(Testimony of P. N. Elderkin.)

rollers that you had become previously familiar with in connection with the 14–P?

A. I recognize the first operation itself as being very similar to the one operation head on the 14–P.

Q. And that the can in its first operation stood still and the rollers spun around the can?

A. Yes, sir.

Q. That is what you had previously noted in regard to the 14–P? A. Yes, sir.

Q. And in the old 14–P you had noticed the second operation was performed while the can revolved and the compression roller was moved in to contact with the seam, to roll down [1091] the seam?

A. The can was revolving about its own axis and also about the axis of the turret; yes, sir.

Q. And you noticed that the revolution of the can upon its own axis in the 14–P took place while the double-seaming roller moved into and out of contact with the can seam to roll down the seam?

A. Yes, sir.

Q. And in both machines you noticed that there were transfer means to take the can from the first operation to the second? A. Yes, sir.

Q. And I suppose in connection with the old 14–P as you knew it there was a no-can-no-cap feed?

A. Yes.

Q. Now, you stated that when you went to work for the Pacific Closing Machine Company—which I understand was in September, 1920—

A. Yes, sir.

(Testimony of P. N. Elderkin.)

Q. —that on the very first day you saw blueprints like Exhibits 11, 12, and 13?

A. The files were full of them; yes, sir.

Q. Was your expert engineering experience exercised and made available by the Pacific Company in the development of the Pacific machine after you went there?

[1092] A. Certainly.

A. The Pacific Closing Machine Company employed me as a draftsman and designer, and those were the duties which I undertook when I went there; I was the only draftsman there. In other words, I made all of the drawings—all of the layouts—and did all of the work of that nature.

Q. Did you make any of the drawings appearing in Exhibits 11, 12, and 13, if you know?

A. No, I think those were practically all made before I went with the Pacific Closing Machine Company.

Q. Did you make any of the assemblies of the machine after you went to work for the Pacific—plans and elevations? A. Yes, sir.

Q. You were called upon to lay out some plans and elevations for making the Pacific machine; is that right?

A. Well, I wouldn't go so far as to say that the drawings that I made were for the building of the machine. Now, as I recall it, there were a few details, elevations, plans, and assemblies that you speak of, which would naturally be [1093] assembly work, made up for perhaps the Bliss Company,

(Testimony of P. N. Elderkin.)

maybe with little modifications in the machine. Not the machine as a whole.

Q. You don't recall Mr. Guenther showing you any assemblies or assembly drawings, plans, or elevations of the Pacific machine at the time you visited him in the summer of 1920?

A. No, sir, I do not.

Q. Now, just tell us a little more about what he said he had those blue-prints for and the purpose for which he had received them.

A. As I think I stated for Mr. Blakeslee, my recollection is rather vague; but I have the impression that Mr. Guenther told me that he had those prints in his possession figuring on them for the purpose of constructing some of the Pacific machines.

Q. Did he tell you how many he had been asked to figure on building? A. I don't recall it.

Q. Do you remember the number thirty?

A. No.

[1095] Q. Can you recall how long after you visited Mr. Guenther in the summer of 1920 before you went to work for the Pacific?

A. The lapse of time between my visit to Mr. Guenther and my going to work for the Pacific?

Q. Yes.

A. It must have been three months. As I recall, it was about the first of August I visited Mr. Guenther—oh, say two months, or less than two.

Q. You are quite sure you saw these blue-prints

(Testimony of P. N. Elderkin.)

in Mr. Guenther's possession as early as August 1, 1920?

A. The exact date of my visit to Mr. Guenther is not very definite in my mind. It is a guess.

Q. Well, that is what I thought. No doubt you have endeavored to give your best recollection. Now, should it appear that these blue-prints were not given to Mr. Guenther until August 17, 1920, would that refresh your recollection as to the time that you must have called on him?

A. I should say, then, that it must have been after that time that I called on him.

Q. Was it before you went to work for the Pacific? A. Yes, sir.

Q. So that it would be between the time that he got the blue-prints and the time that you went to work for the Pacific? A. Necessarily.

[1096] Q. And the date you went to work for the Pacific was what?

A. September 22, 1920, I think I said it was.

Q. (By Mr. TOWNSEND.) As engineer would you be able to estimate the construction of a machine such as the Pacific is in the absence of a specification of parts and weights and other matters, and in the absence of elevations and plans or assembly views? A. Roughly so.

Mr. BLAKESLEE.—Do you mean estimate the cost or what? A. I take it you mean the cost.

Q. (By Mr. TOWNSEND.) Cost. The building. Yes.

A. Roughly so. Not closely.

(Testimony of P. N. Elderkin.)

Q. Well, could you design or build a machine from the ground up in the absence of such specifications, particularly [1097] of weights and dimensions and descriptions t ahutsually go with specifications, and in the absence of assemblies; or would you attempt it, perhaps would be a better way to express it?

A. Well, the only thing that would be necessary for a man absolutely unfamiliar with a machine, having nothing but the detailed drawings to go by—he would be considerably hampered without some assemblies if he was not familiar with the machine.

[1098] A. Not in a design. Had I been in Mr. Guenther's place, with a set of blue-prints before me, I would assume that the problems of design had been worked out, such as the strength of the parts and their relations and weight and so forth.

Q. (By Mr. TOWNSEND.) That being so, would you not seek information from the source so as to aid you? A. Certainly.

Q. And how would you proceed?

A. I would go to the people or the designers that made the prints and ask them. If there was any question about the strength of a part came up, a question in my mind, I would see them about it.

Q. Were you able to fix or have you fixed the date when you saw the 24–P at Pomona canning apricots? I don't remember your having given the approximate month and year.

A. Well, it must have been along in June if they were [1099] canning apricots.

(Testimony of P. N. Elderkin.)

Q. That would be in 1921? A. I believe so.

Q. Who accompanied you on that visit of inspection?

A. Mr. Wilson, Mr. Stetson, Mr. Sumner—I believe that is all.

Q. Did you see Mr. Guenther out there at that time? A. Mr. Guenther was there, yes, sir.

Q. He was observing the operation of the machine? A. His own machine; yes, sir.

Q. How long a time did you spend in observing the operation of the 24–P at that time?

A. All one afternoon.

Q. You were around there all the afternoon, were you?

A. It must have been some hours that we were in the plant.

Q. Were you all the time out of sight of the 24–P?

A. Oh, no, sir.

Q. Well, what amount of the time did you put in in the inspection of the 24–P itself?

A. Just a few minutes.

Q. Then you passed on to look at some of the other machines? A. Yes, sir.

Q. You spoke about having been discharged from the employ of the Angelus Can Machine Company?

[1100] A. Yes, sir.

Q. Did I understand you to say so?

A. Yes, sir.

Q. Do you recall that that was while Mr. Guenther was East? A. It was, sir.

(Testimony of P. N. Elderkin.)

Q. And that your discharge was through and by Mr. Keefer. A. Yes, sir.

[1101] Q. Was it at this interview with Mr. Guenther in the summer of 1920 in response to a letter you say you had received from him that you declined to go back into his employ? A. Yes, sir.

Q. Do you recall that Mr. Guenther explained that he regretted Mr. Keefer's attitude in discharging you in his absence?

A. Yes, he stated that he had nothing personally to do with it.

Q. And you were rather bitter against him and told him you would not work for him, didn't you?

A. Why, I suppose my attitude was something along that line; yes, sir.

Q. And then didn't you come back a few days later and [1102] ask for a job and Mr. Guenther told you that he regretted tht he had already filled the position?

A. It may have been. I believe it was. As I talked to him later about it, yes.

Q. That you voluntarily then thought it over and came back and asked for a job—

A. Yes, I believe I did.

Q. And Mr. Guenther expressed regret and said he had already got somebody in your place?

A. Yes, sir.

Mr. TOWNSEND.—The books of the Angelus Company show that Mr. Elderkin went to work for Mr. Guenther in September, [1103] 1919, and quit March 20, 1920.

(Testimony of W. S. Mudd.)

Mr. BLAKESLEE.—The books of the Pacific Company show he went to work on September 22, 1920, so if counsel wants those books we will bring them in.

[1104] 811 Washington Building,
Los Angeles, California, Thursday, April 19, 1923,
10 A. M.

TESTIMONY OF W. S. MUDD, FOR PLAINTIFFS.

W. S. MUDD, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) Mr. Mudd, please state your age, residence, and occupation.

A. I am sixty-nine years old. I am President and General Manager of the Golden State Canneries, who are packers of fruits and vegetables.

Q. You are at the present time President of the Golden State Canneries? A. Yes, sir.

Q. Where are those canneries located?

A. In Kingsburg, Van Nuys, Pomona, Ontario, Cucamonga, [1105] and Hemet.

Q. What products do your canneries put up?

A. Apricots, peaches, plums, cherries, tomatoes, and olives, principally.

Q. From what concern or concerns do you procure your cans?

A. From the American Can Company and from the L. A. Can Company of Los Angeles.

(Testimony of W. S. Mudd.)

Q. How long have you been President of the Golden State canneries?

A. From its inception; in 1919 we organized the Golden State canneries.

Q. Had you previous to that time been in the canning business?

A. I began in 1910 and have been in that business every year since.

Q. In California? A. Yes, sir.

Q. From what sources had you obtained your cans prior to 1919?

A. From the American Can Company.

[1106] Q. Have you ever noticed any difference in quality or structure, or pertaining to superiority, as between the cans of the American Can Company and the L. A. Can Company?

A. Well, only in one way, and that is as to the gasket, but they are both making the same gasket now. We used what they call the paper gasket in the American Can Company's can, which was unsatisfactory. Otherwise it is all right.

Q. From your experience and observation has the quality of cans varied during the last ten or fifteen years, such cans as you have purchased and used in your interests?

A. Yes; the cans are not so good as they were previous to 1917. In 1917 and 1918 and 1919 the cans were not so good as they were previous to the war.

A. Well, we are not having any trouble. I think

(Testimony of W. S. Mudd.)

so. I think they are getting now to where they were previous to the war.

[1107] Q. Who was it in Southern California that first furnished caps for closing cans with the compound in, if you know?

[1108] A. The first that furnished to us was the American Can Company, 1910 to 1914, inclusive. We were using the American Can Company cans then.

A. In 1915, and we got paper gaskets altogether then. It was changed from the compound to the paper.

A. I think in 1919 we got some. I objected very strenuously to the paper gaskets and in 1919 I think we got the American Can Company to furnish a part of our output with compound and part in paper. And in 1920 I think we had to go back to the paper gaskets because we couldn't get enough of the compound from the American Can Company; but in 1922 we refused to take anything else.

[1109] Q. (By Mr. BLAKESLEE.) And what year, again, did the L. A. Can Company commence to furnish you cans and caps with the compound in the caps? A. In 1919.

A. I have a traveling superintendent and I visit the canneries myself, and all complaints come to me both from the plants and from goods shipped, our deliveries. All the complaints come to me, so I know pretty well what we are doing and the satisfaction that our goods give.

(Testimony of W. S. Mudd.)

Q. How frequently do you visit the canneries so as to inspect and witness the canning operations?

A. I have no regular time. I rely principally upon my men that I have; reports that I get from my foreman and [1110] superintendents and from our traveling superintendent.

Q. Do you visit all your plants from time to time and go into the rooms where the canning operations are carried on? A. I do.

Q. Has that been your custom since 1919?

A. Yes, sir.

Q. And in your previous canning experience did you make it a practice, or did you not, to visit your canneries and watch the canning operations?

A. From 1910 to 1918, inclusive, I was in the cannery. I was superintendent of a plant myself each year.

A. I started at Hemet and remained there from 1910 until 1917.

A. In 1917 I bought for our company the plant at Kingsburg and I remained with that plant during the season of 1917 and 1918.

Q. While you were superintendent of these various plants, [1111] did you or did you not keep in direct touch with the canning operations in the canning rooms? A. I did.

Q. Did you become familiar with the can closing machines used in those plants during all those years in all of those places?

A. I did; that is, in the work. I never operated

(Testimony of W. S. Mudd.)

one myself, but then I have had it done, and I was familiar with the work that was being done.

Q. Did you, as superintendent, keep those can closing machines under your observance during the times you were superintendent? A. I did.

Q. And when anything went wrong with any of the canning operations did you know of it?

A. I did.

Q. And made whatever recommendations for any changes that were necessary?

A. I ordered any changes that were necessary.

Q. What can closing machines of the double-seam type have been used in any of the plants that you have told us about?

A. We started in with the Max Ams at Hemet; then the Johnson double-seamers and the Can Co.; and then when we took over the Golden State Canning Company at Ontario we began using the L. A. machine.

[1112] Q. That is known as the Pacific closing machine, is it? A. I think so.

Q. Have you ever at any time, in any of the plants you have mentioned, used the Guenther or Angelus Sanitary Can Machine Company's machines of any of the types?

A. Mr. Guenther set up one in our cannery at Pomona I think a couple of years ago.

Q. That was a double-turret continuous operation machine, was it?

A. I think so. I didn't pay much attention to it while it was there.

(Testimony of W. S. Mudd.)

Q. Was it in perfect running condition when it was first operated? Did it operate satisfactorily?

A. That I don't know because I was not out there and I didn't get any report from it, because it was put in there for trial and was being operated by the owners, and it was of no consequence to me as far as I was individually concerned, and I didn't get any reports on it.

[1113] Q. Did you ever have, in any of your canneries, any further machines of that kind, I mean furnished by the Guenther interests? A. No, sir.

Q. How about any other types of Guenther machines for closing cans? Did you ever use those in any of the plants that you have told us of?

A. Not that I know of.

Q. Did you ever use what is known as the 14–P or the 19–P double-seam can closing machine, that is, the types for closing the 2½ pound can and the gallon can?

A. Well, whatever they were that was in those plants when we bought the plants, whatever types they were we continued to use them.

Q. Do you remember those types furnished by the Guenther interests, the 2½ pound and gallon-can types?

A. No; I didn't go into that because I haven't stayed in the canneries since we had those. They were used by our men but I am not familiar with what they are.

Q. Prior to 1919 were there used in the shops of

(Testimony of W. S. Mudd.)

which you were superintendent any Guenther closing machines for 2½ pound or gallon cans?

A. Not to my knowledge.

Q. You don't remember any machines of that sort known as the 14–P and 19–P types.

[1114] A. No; we had nothing of that kind.

Q. How many machines, if you know, of the Pacific type, furnished through the L. A. Can Company, are in use in your various canneries to-day?

A. We have one 2½ at Pomona which we have operated for two years, and then we have one or two at Cucamonga of the 2½ type, and we have a No. 10 at Ontario. That is as much as I could say about it now, that is, I couldn't say how many we had at Cucamonga. Mr. Stetson perhaps has the record of it, and we have records of it in the office.

Q. When did you put the first of these Pacifics in any of these canneries?

A. Two years ago at Pomona.

Q. Have they all been used each season since they were put in? A. They have.

Q. What can you state as to the efficiency and serviceability and satisfaction and quality, or the contrary, of these Pacific double-seamers so used in your plants?

A. We have had one two years at Pomona and it has given entire satisfaction, and the machines at Cucamonga have given such satisfaction that we never had a complaint.

Q. (By Mr. TOWNSEND.) How long has that Cucamonga machine [1115] been in?

(Testimony of W. S. Mudd.)

A. Since last year.

Q. Was it a new machine last year?

A. All the machines, I think, that we have at Cucamonga are new. The first one I think was put in last year. Yes, I know they were. They didn't run the year before.

Q. (By Mr. BLAKESLEE.) Have you had any complaints from any of the Pacific machines or with regard to the work?

A. The No. 10 machine was put in last year, we had a little trouble in starting that machine, I don't know just what it was; but I have never had any serious complaint at all.

Q. Was that trouble remedied?

A. Yes, sir, I think it was.

Q. Have you ever had any complaints as to the closed cans and their products, the cans having been closed on these Pacific machines?

A. Not a particle.

Q. Have you ever called upon the L. A. Can Company for any allowances, deductions, or settlements, due to the faulty work of the Pacific machines in any respect?

A. Not that I know of, and I think I would have known it if we had.

Q. Any such complaints would come to you, would they? A. They would.

[1116] Q. Do you know the speed of operation of the Pacific machines in your various plants, of speeds at which they have been operated there, approximately?

(Testimony of W. S. Mudd.)

A. No; I could not give you a definite answer to that. From 60 a minute up for the 2½, but I don't know just how high they have gone.

Q. How does the speed which you have obtained from the Pacific machines in your plants compare with the speeds you have obtained from the Max Ams, the Can Co., and the Johnson machines?

A. Why, it has been much better.

Q. A much higher speed?

A. Yes; it has been a much higher speed on the 2½'s.

Q. In other words, you have had 2½ pound can double-seaming machines of the Can Co., Johnson, and Max Ams, as well as the Pacifics?

A. Yes, sir.

Q. And the relative speed you have mentioned in favor of the Pacific has been on machines for closing the same sized cans?

A. Yes, sir. We run them at a higher rate of speed.

Q. What do you attribute, if anything, to the continuous operation of the Pacific machines in regard to this higher speed?

Mr. TOWNSEND.—That is objected to as leading.

The MASTER.—Overruled.

[1117] Q. Well, the Pacific closing machine has two spindles and one seaming operation.

Mr. TOWNSEND.—Don't tell the witness what the things are. Let us know what comparison he is

(Testimony of W. S. Mudd.)

making and let him tell, if he desires, the machine he is going to make his comparison with.

The MASTER.—Why do they run any faster—

Mr. TOWNSEND.—Run any faster than what?

Q. (By Mr. BLAKESLEE.) To what factor do you attribute the higher speeds you have obtained with the Pacific machines than you have obtained with the Max Ams, Johnson, and Can Co.?

Mr. TOWNSEND.—I object to that until he describes the type of Can Co. and Max Ams and Johnson machine so we know what the character of that machine is.

Mr. BLAKESLEE.—He said they were 2½ pound can machines.

Mr. TOWNSEND.—But that means nothing.

The MASTER.—If the witness does not know, he can say so.

Mr. TOWNSEND.—But it is what the record shows so the reviewing court can tell. If the witness is using one type [1118] of machine for comparison, that might mean something else to another man.

The MASTER.—Do you understand the question, Mr. Mudd?

A. Well, I don't like to get into the full description of the machine because I may get tangled up, but I know the reason why I would rather have the machine, if that is what you want to know.

A. With the Pacific machine it is taken on to the turret while it is still moving. The turret does not stop and start and slop out your syrup. It takes it

(Testimony of W. S. Mudd.)

on quietly and seals it when your can is perfectly full, and it makes one operation and changes over on to the next turret and makes the second operation, so you have time between the two to see whether your first operation is correct, and, if it is, all you have to do is to correct your second one and then you have got a perfect seal. But the other machines we have had make both operations at once and we have more trouble in getting a complete seal with the other machines that were used than with the Pacific.

Q. (By the MASTER.) How do you mean they make both operations at once?

A. They turn down what they call the first roll and it turns this over once, and if that is correct, the first one, then it goes on to the second roll, into the second operation, and then all you have to do is to correct your second operation, [1119] is my understanding, and you have got a complete seal.

Q. (By Mr. BLAKESLEE.) Do you refer now to the Pacific machine? A. Yes.

Q. (By the MASTER.) You said on the other machine you rolled them both at the same time.

A. Both at once. It is what is called a single roll. The first and second operation are done at the same time.

A. It is all done at once. The first one, as I understand—or you have the first operation and you make the first roll, and then when it goes on to the second turret it makes the second roll.

Q. But does it move from the first turret to any

(Testimony of W. S. Mudd.)

other turret in the Johnson and Can Co. and Max Ams?

A. No, it stays on the same turret. There are two, the first and second roll. The first roll is here and the second one is here, and they both operate at once.

A. Done on the same turret at the same time and the same operation.

[1120] Q. And in the Johnson, Can Co., and Max Ams machines are the cans and caps fed on the run, so to speak, while the turret is rotating?

A. No. The can stops and it is raised up. It is stopped and lifted up and the can set down. It does on the Johnson. The turret stops on the Johnson. It puts one can out and another in, while on the Pacific it moves continuously.

Q. Prior to the use by you of the Pacific machines, do you recollect any machine coming under your observation or use in your plants in which the cans and caps were fed during continuous rotation or non-stop rotation of the turret?

A. Nothing but the Pacific that I recollect.

Q. What, if any, troubles did you have or encounter or have to deal with at any time, either prior to 1919 or after you became President of the Golden State canneries, in the use of the Johnson, Max Ams and Can Co. machines?

A. The trouble with the Johnson, or the Max Ams I only used one year and that was 1910—that was a hand machine. [1121] In the Johnson with that turret moving and stopping, when it moved quickly

(Testimony of W. S. Mudd.)

and stopped suddenly it would slop out the syrup and you wouldn't have a full can. Your can would not be full when it was sealed.

A. I have never used the Can Co. very much. I think that the boys liked the Can Co. very well. I haven't had any complaint of the 2½ Can Co. but I had a great deal of complaint with the No. 10 Can Co. Whether they have got that remedied in the last year or two I don't know.

Q. In the use of the Johnson, Can Co. and Max Ams machines, did any faulty double-seaming result to your knowledge, imperfect seaming?

A. Oh, yes.

Q. Resulting in leakages? A. Yes, sir.

A. That is owing a good deal to the men you have taking care of your machine.

A. We had quite a good deal of complaint while we were using the paper gaskets. That was the principal complaint [1122] we had.

Q. Did you have any better men running the Pacific machines, or have you any better men running them, than you had running the Can Co., Johnson, and Max Ams?

A. No, sir. We had the very best men we could get. Well, I said "No, sir," there. I mean this: We have the same men running the Pacific that we had running the Can Co. because we had them both in the same building at Pomona.

A. Well, I might answer it this way: I was considerably interested in the Pacific machine when we put it in, and I watched it pretty closely be-

(Testimony of W. S. Mudd.)

cause we wanted to try it out, and the boys told me that they hardly knew they had one in the house.

Mr. TOWNSEND.—I object to that, your Honor, as hearsay.

A. I went and asked them. Shall I proceed?

The MASTER.—Yes, proceed.

A. I stood right by and watched the machine and asked what success they were having.

Mr. TOWNSEND.—Please caution him about hearsay.

The MASTER.—Don't tell what somebody else told you but [1123] tell what you saw.

A. I asked the man who was running the machine.

Mr. TOWNSEND.—That is what we object to as hearsay.

The MASTER.—That is part of the *res gestae.* Overruled. Proceed.

A. I was watching the machine run and asked them what success they were having with it, and he said they hardly knew they had one in the house, they had so little trouble with it; that they hardly knew they had a Pacific machine in the house, and I was looking at the machine running at the time.

Q. (By Mr. BLAKESLEE.) How about any spoilage or faulty packing, leaks, or anything of that sort, as to any of these machines you have told us about? Did any occur in the use of [1124] any of the machines, and, if so, which?

(Objection.)

(Testimony of W. S. Mudd.)

The MASTER.—I think that is a proper question.

A. I will answer it this way: We had all Pacific machines at Cucamonga, and we had the least spoilage at Cucamonga of any plant we have had, or that we operated last year.

Q. (By Mr. BLAKESLEE.) Have you had any spoilage, waste, or faulty packs from the Max Ams, Johnson, or Can Co. machine use? A. Oh, yes.

Q. (By the MASTER.) Were you using the paper gaskets last year at all?

A. I shook my head no.

Q. (By Mr. BLAKESLEE.) Did you have any spoilage, waste, or bad packing last year?

[1125] A. We always have some. You can't put up a perfect pack. But sometimes you will have more at one plant than you will at another.

The MASTER.—He said at Cucamonga, where he had Pacific machines exclusively, he had less trouble than he had had at any other plant.

Q. (By Mr. BLAKESLEE.) That is your testimony, Mr. Mudd? A. That is.

Q. When you put the Pacific machines in any of your plants were any other machines replaced by them?

A. There was at Pomona. We had the Can Co. and perhaps [1126] the Johnson in the same plant. We only had one Pacific at Pomona year before last. That was in 1912.

Q. Well, what machines were replaced by the Pacific?

(Testimony of W. S. Mudd.)

A. The Can Co.—this one at Pomona—and at Cucamonga it was the L. A. people's machines that were there.

Q. What machine was that that was replaced?

A. The L. A. people's machine, at Cucamonga; and at Ontario—both. At those two plants. And we got our cans from two sources, from the American Can Company and from the L. A. people. For Hemet, Pomona, and Van Nuys and Kingsburg the cans came from the American Can Company. At Ontario and Cucamonga, and when we ran the Colton plant, they all came from the L. A. people. We didn't run the Cucamonga plant in 1921, but ran it in 1922, and I think we equipped it with new machines, all furnished us by the L. A. people.

A. Pacific machines. That is my understanding, except the No. 10. The No. 10 was the old fashioned machine that was already there..

Q. In which, if any, of those plants did a substitution of a Pacific take place for any other machine; in other words, when you put a Pacific in was any other machine set out of the line?

A. Only the L. A. people's machine.

Q. Now, what machine was that?

A. I am not familiar enough with it. It is of no benefit [1127] to me to familiarize myself with whether it is a style P or a style B, or what it might be. I know it belongs to the L. A. people, and if there is a complaint it comes up to me and I take it back to the people and they make it good.

(Testimony of W. S. Mudd.)

Q. Who do you mean by the L. A. people?

A. The Los Angeles Can Company.

Q. A machine that they had furnished?

A. Yes, a machine that they had furnished.

Q. Do you know anything with regard to any adjustments that were required to be made to the Pacific machines after they were installed?

A. Well, we ran the machine bought at Pomona all of the season, I think, without any repairs to amount to anything. It seems to me that somebody ran a monkey wrench through it the first day or two it was started, though; but of course that was no fault of the machine. That was corrected, [1128] but we did nothing more to the machine until we closed the season. In cleaning up and repairing for the last year the parts cost us between seven and eight dollars to put the machine in perfect condition for another year.

Q. How would you call that? Ordinary repairs from operation or due to any faulty construction?

A. It was just the natural wear.

Q. Wear and tear?

A. Yes, wear and tear of smaller parts.

Q. What has been your experience as to the requirement of adjustments or replacing or substitution of parts in the Johnson Can Co., and Max Ams machines during your contact with them?

A. It has been pretty serious in some cases. We have paid as high as—well, without the figures I wouldn't like to say, but from a hundred to two

(Testimony of W. S. Mudd.)

hundred dollars to ship a machine back and have it put in condition for the next year.

Q. Were there any breakdowns or troubles during the season with any of those other machines?

A. Yes. We kept an expert with our machines all the time. We hired an expert and kept him the entire season for each cannery.

Q. Do you know how much, if any, time such experts had to put in on any of the Pacific machines?

A. They didn't come to me; that is, I had no troubles from the Pacific machines.

[1129] Q. Do you know, Mr. Murray, the trouble-shooter or expert for the L. A. Can Company machines?

A. I know of him; I have heard the boys speak of him.

Q. Did you ever have him come to any of your canneries to make repairs or replacements?

A. He has been there, I think; but I never saw him. He has been there but not very often; at least I haven't had any complaints.

Q. Do you mean no complaints of the machines, or no complaints concerning Mr. Murray?

A. I mean no complaints of the machines, that is, of no consequence at all. Of course there is no machine made but what you have to adjust it.

Q. What figure would you give as the outside expenditures made by your interests for any repairs or replacements or anything of the sort on the Pacific machines since you have operated them?

(Testimony of W. S. Mudd.)

A. I haven't the figures on only one, and that was operated one season—that was the season of 1921—we overhauled [1130] the Pacific machine and it came to me that there was an expense of about between seven and eight dollars for new parts; and to put them on and put the machine in perfect condition for 1922 was altogether about sixteen dollars, and we had no trouble in 1922 with the machine.

Q. Are you going to install any new double-seamers in any of your canneries for this coming season? A. Yes, sir.

Q. Of what make and type?

A. Wilson, or Pacific.

Q. How many do you plan to install?

Q. (By Mr. BLAKESLEE.) How many new seamers have you need for in your plant this coming season?

Mr. TOWNSEND.—The same objection.

[1131] The MASTER.—Overruled.

A. We made an adjustment on buying our cans this year. I will answer it that way. And we changed the Pomona plant from the American Can Company to the Los Angeles Can Company, and we are installing all Pacific machines, except the one that we have there now—that is, we own one Pacific machine at Pomona, and we will put in whatever we need for this coming year of Pacifics.

Q. (By Mr. BLAKESLEE.) Will those machines replace any other machines when you put them in? A. They will.

(Testimony of W. S. Mudd.)

Q. What types?

A. The American Can Company's machines. I couldn't offhand tell you whether they are all Johnsons or some of them Johnsons and some of them Can Cos.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Mr. Mudd, wherever you quit buying the cans from the American Can Company they take out their machines, do they not? A. Yes, sir.

Q. So in changing your source of supply of cans to another company you then have to get a different machine than the Can Company had in there before? [1132] A. Yes, we do.

Q. In other words, my understanding is that the Can Company only permits the use of their machines where you buy cans from the can company, the American Can Company; that is, they lease the machines but do not sell them? Is that understanding correct?

A. No. We can buy the machine if we want it. We bought a Pacific machine and put it in at Pomona when we were using the American Can Company's cans, and had their machines leased other than this one. But where we buy from a company we use their machines, and our change was influenced a great deal by the machines we were getting; when we changed from one can company to another we did that a good deal on account of the machine that we were getting; on ac-

(Testimony of W. S. Mudd.)

count of liking the Pacific machine better than the other, we preferred to buy the cans there too.

Q. So when you gave up buying the American cans from the American Can Company at Pomona, they took out that machine you had leased?

A. They did.

Q. And as you were going to buy cans from the Los Angeles Can Company you were able to make a satisfactory deal on the purchase of the Pacific; is that right, too? Do I understand that?

A. We take those on contract, I think; that is, we lease them.

[1133] Q. Oh, you lease these Pacific machines?

A. Except one. We bought one outright before we began to buy cans for Pomona. We bought a Pacific machine outright. We took it on trial to see whether we liked it or not and we liked it so we paid for it, and we ran that for two years on the American Can Company's cans. This year we will still run the machine as ours, and may lease the balance, that is, lease the other machines from the Los Angeles Can Company.

Q. Where do you have your headquarters?

A. In the San Fernando Building, Los Angeles, on the fifth floor, room 529.

Q. As president are you at your office there most of the time, or are you continually traveling?

A. No; I am most of the time in my office.

Q. How often do you visit Kingsburg?

A. Oh, two or three times during the season.

(Testimony of W. S. Mudd.)

Q. And what machines have you got at Kingsburg?

A. We have the American Can Company's machines.

Q. All the American Can Company?

A. Yes, sir.

Q. Those exclusively; is that right?

[1134] A. Yes, sir; and we use the Americans there.

Q. At Van Nuys how often do you visit the plant?

A. I have no stated time. I visit that plant off and on the year around. I am over there perhaps every two weeks while they are running—perhaps.

Q. And what machines have you got there?

A. We have the American.

Q. Are those all American machines there?

A. Yes, sir; and all American cans.

Q. And at Hemet how many machines have you and what kinds?

A. We have all the American—all American Company's machines and American cans.

Q. Now, at Ontario, what machines have you there and how many?

A. We have I think now mostly Pacifics, or at least we have all the Los Angeles Can Company's machines that they have furnished us.

Q. Do they rent you any other kinds of machines than [1134a] Pacific machines?

A. Yes, sir. The first machine they had before we got the Pacific—what do you call that machine?

(Testimony of W. S. Mudd.)

Q. Is that the Angelus?

A. The Angelus machine, I think—

Q. You have some of those there at Ontario?

A. I think so.

Q. Do you know how many you have? A. No.

Q. Well, take all the machines in that plant, do you recall how many there were? And, if you can, give the different types.

A. We had the Pacific No. 10, and that is the only No. 10 there was in that factory, and then the other machines there were of the old type, if I recollect right, last year.

Q. What name do you call the old type?

A. Well that is the Angelus.

Q. Have you any other Pacifics except the No. 10 at Ontario?

A. I don't know. I hardly think we had last year. I wouldn't say for certain that we did or did not, though.

Q. Now, take Cucamonga. I understand you have one or two Pacifics there. A. Yes.

[1135] Q. Do you recall whether it is one or two?

A. I don't know that I ever knew. I fitted up our plant up there with the L. A. people's machines, but I didn't burden my memory with just how many we had of each kind.

Q. Do you know whether they have got any others than these one or two Pacifics, or L. A. machines, at Cucamonga?

A. No. I couldn't designate just the number of

(Testimony of W. S. Mudd.)

machines. I think they have maybe one of the Angelus, but I couldn't say whether they have or not. They may have and they may not.

Q. They may have an Angelus at Cucamonga and they may have one of those Pacifics at Cucamonga, is that right?

A. Yes. They have Pacifics, but whether they have one or two I couldn't say.

Q. What is the usual per cent of guarantee of perfect cans per thousand, or, differently stated, the allowance of imperfect cans per thousand allowed by the different manufacturers of cans and machines?

A. We have to give them credit for their mistakes to the extent of five cans to the thousand.

Q. Does that apply to both the American Can Company and the L. A. Can Company?

A. Yes, sir.

Q. And anyone furnishing a machine has got to guarantee that the product will run as well as that? Does that also [1136] pertain?

A. Only to the cans we buy. Before we can get any damage or any credit we have got to throw out five cans out of each thousand and then all over that of bad cans that we get they make good.

A. We have no guarantee at all, as far as the machines are concerned. They furnish us the machine and we take it for good or for bad. Of course if it is bad they send a man to fix it. If it is not right when it comes we of course can turn it down; but any loss by the machine they don't make good.

(Testimony of W. S. Mudd.)

Q. The manufacturer has to service your machine?

A. Yes.

Q. Did I understand you to say that you had never seen a continuous machine in which caps and cans were concurrently fed in continuously, until you saw the Pacific? If I am wrong, correct me.

A. No, I don't hardly think you did; but I haven't paid much attention to it, unless it be the Can Co. I think the [1137] Can Co. stopped while the lid is being fed on it. I wouldn't go into that, though, because it isn't my part of the work.

Q. You weren't familiar with the four-spindle high speed continuous machine that the American Can Company had, and has had for many years, were you?

A. No; I never used it; I never used the machine.

Q. (By Mr. TOWNSEND.) Did you know that they had a high speed four-spindle machine, continuous?

A. I did. I heard they did, and I saw it run in different plants, just casually.

Q. And in that machine cans and caps were fed in continuously when the machine was in operation?

A. I suppose it was; but I didn't go into the details and mechanism of the machine, as I was not using it.

Mr. BLAKESLEE.—We object unless the time is fixed as to this, because it certainly would have to be anterior to 1913.

[1138] Mr. TOWNSEND.—Well, I am speaking previous to Mr. Mudd's purchasing a Pacific.

(Testimony of W. S. Mudd.)

or using a Pacific. That is what we are talking about.

The MASTER.—Ask him a question.

Q. (By Mr. TOWNSEND.) Were you familiar, prior to your purchase of the Pacific, with the Continental high speed continuous machine in which cans and caps were fed in, and the movement was continuous and not intermittent?

A. I wasn't familiar with it. I never saw it run.

Mr. BLAKESLEE.—The same objection unless the time is fixed.

Q. (By Mr. TOWNSEND.) Had you heard about it?

Mr. BLAKESLEE.—I will object to that as hearsay purely.

Mr. TOWNSEND.—That is a matter of trade information.

Mr. BLAKESLEE.—If he merely heard of it it doesn't prove anything. It might have been a project instead of an accomplishment.

The MASTER.—Sustained. You may answer, Mr. Mudd. Had you heard of such a machine?

A. As the Continental? Why, I think I have seen the advertisement.

Q. (By Mr. TOWNSEND.) You don't recall how long ago? A. No. I wasn't interested.

[1139] Q. Did I understand, Mr. Mudd that the cause of a good deal of the trouble that you may have had with the Can Co. and Johnson machine was due to the men or their efficiency and the use of paper gaskets; is that correct? A. No, I didn't say that.

Q. I just wanted to know what you meant

(Testimony of W. S. Mudd.)

A. It was with the paper gaskets, but the Johnson machine and the Can Co. both we keep experts to keep them in condition while we were operating them.

Q. Are those same experts available for other work on any double-seamers you have there?

A. Yes, sir; but we have only had one, and that is at Pomona. We only had one Pacific machine at Pomona, and we had the expert.

A. He took care of that, too. He was taking care of the others, and he took care of that one, too.

A. We had an expert at each cannery.

Q. And his duty is to keep all of the double-seamers, irrespective of make, in good shape?

[1140] A. Yes, sir.

Q. And keep them in running order during the season? A. In running order; yes, sir.

Q. I understood you to say in putting in your first Pacific machine that you were considerably interested in the Pacific. Just tell us why. Was that through friendship with Mr. Stetson?

A. For business purposes.

A. Our competitors had been using these machines right along in the same town and they were having excellent success with them, while we were having considerable trouble, and we were trying to cure some of our troubles, and if this machine worked to suit us I intended to buy it. And then it had an influence in making our contracts with the can companies, which unfortunately we have to make for five years, and when we get tied up for

(Testimony of W. S. Mudd.)

five years we have to stay with that company as long as that contract runs. In making our contracts this last year for another five years we wanted to be pretty sure that we were tying up with the right parties.

Q. So, in making a new contract you made that for cans for the next five years with the L. A. Can Company?

[1141] A. We changed from the American Can Company to the L. A. Can Company. There are six plants, and three of them we get all of the cans for from the American, and the other three we get all for from the L. A. people. We do not mix them.

Q. And you were able to make a satisfactory arrangement with the L. A. Can Company for cans and at the same time take on their machines?

A. We did.

Q. When did you say that this information came to you and you were considerably interested? That was two years ago?

A. No, sir; it was three, four or five years ago; for the last three, four or five years; ever since they got these new machines at Hemet. Our competitors at Hemet got this Wilson machine and were running it, and we were watching it there.

Q. But it wasn't until two years ago that you yourself put them into your plants?

A. Yes, it was two years ago—the first one we put in.

Q. The very first ones you put in?

[1142] A. Yes, sir.

(Testimony of W. S. Mudd.)

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Can you state, Mr. Mudd, what the size of your pack in cans was, that is, of the Golden State canneries, for the season of 1922?

A. I think it was about eight hundred thousand cases we put up in 1922.

Q. How many cans to a case do they run?

A. That is on a basis of 24 cans, 2½.

Q. That would be something over three million cans, or I mean something over twenty million.

A. Yes; whatever it is.

Q. These Angelus closing machines you speak of, did I understand they were of the single turret type, that is, both seaming operations performed on one turret?

A. I think not, but I don't know. I couldn't answer that question.

[1144] AFTERNOON SESSION—2 o'clock.

TESTIMONY OF RAY O. WILSON, FOR PLAINTIFFS (RECALLED).

RAY O. WILSON, recalled.

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Mr. Wilson, will you please refer to the three patents in suit, of Exhibits 1, 2, and 3 of the plaintiffs, and referring to same, and each of same, please state or recapitulate what features of the showings in the drawings have been changed or departed

(Testimony of Ray O. Wilson.)

from, and how, to put the machine into the form in which it was in the summer of 1920.

Mr. TOWNSEND.—The objection to that is that it calls for a comparison between drawings and a machine, if it exists, that is not in evidence. If it exists the machine should be produced, at least for the inspection of the master, and he himself could make that comparison.

Mr. BLAKESLEE.—The object, I may say, is to couple up with the testimony as to utility the machine in commercial form at the time stated, and to show what the departures from the drawing construction were in such machine. I judge that the Master would want a recapitulation as to that in connection with the question of utility, it being our object to show that as far as the general combinations, particularly [1145] of the main patent, Exhibit 3, are concerned, the changes in nowise affect the general combinations.

Mr. BLAKESLEE.—I will say, to put the commercial Pacific machine in the form in which it was in the summer of 1920.

Mr. TOWNSEND.—That becomes leading when he speaks about the commercial Pacific machine of 1920. If the comparison was to be made with the machine he saw recently, a Pacific, and a present-day type, I wouldn't have any objection to a brief capitulation; but to take a machine which none of us can see or cross-examine on, or find any omissions on, is not proper.

Mr. BLAKESLEE.—Let me add to the question:

(Testimony of Ray O. Wilson.)

Q. And first state whether the commercial machine of the summer of 1920 was the same as the commercial machine of [1146] plaintiffs inspected by the Master and offered in evidence in January at the Pacific Closing Machine Company shop.

Mr. TOWNSEND.—That becomes leading and calls for a conclusion.

Mr. BLAKESLEE.—He can say whether they are the same or not, and then describe the changes. My reason for fixing the time of 1920 is that, as far as our proofs are concerned, the summer of 1920 was anterior to any activity by the defendant in the production of the 24–P machine.

The MASTER.—I understand your reason for your date. You haven't any 1920 machines available, I presume, to make a comparison with?

Q. (By Mr. BLAKESLEE.) Have you a 1920 machine?

A. We have in the canneries, but I may say they are identically the same as the machine inspected by the Master.

Mr. BLAKESLEE.—Let me add further to the question and request that the witness state during what year each change was made, if possible.

Mr. BLAKESLEE.—And start with the first change and follow down through the years in the order in which they were made.

[1147] (By the MASTER.) For instance, your rubber wheel there would be an illustration. When did you change that?

(Testimony of Ray O. Wilson.)

A. In 1917, I am pretty sure, we changed the rubber wheel number 22.

The MASTER.—Is that patent 1,301,348?

A. Yes.

Mr. BLAKESLEE.—He is now taking up patent number one.

A. We didn't change the location of the rubber wheel, but we cut it up in four segments, making four lugs, and we also placed a disk adjacent to this disk for feeding the cans onto this disk No. 10.

Mr. BLAKESLEE.—He is telling what he did in 1917.

Mr. TOWNSEND.—Oh, I see. It was in 1917 that was done?

A. Yes. We placed another disk alongside that overlapped [1148] this disk No. 10 for feeding the cans on to the runway or exhaust box they had, and we cut the rubber wheel number 22 up into four lugs and changed the accelerating guides to a little different shape.

Q. (By the MASTER.) When you cut that rubber wheel up into the four parts is that the same as it is to-day on your feeding disk?

A. Approximately the same, a little smaller, that is all.

Q. (By Mr. BLAKESLEE.) By guides, do you mean these eccentric guides numbers 19 and 20?

A. Yes. And in either 1918 or 1919 we changed it to the present type of feed; that is, we took the rubber disk away from the center of disk 10 and placed it over on our auxiliary disk.

(Testimony of Ray O. Wilson.)

Q. (By Mr. TOWNSEND.) Pardon me again. Not the rubber disk but the four rubber lugs?

A. Yes. Then we again changed the shape of the guides numbered 19 and 20, also changing the pushers. We cut them off.

Q. Pushers number what?

A. Pushers number 30, cutting them off and making them all the same height, and they come up under the auxiliary disk behind the can, and we placed a star wheel on top of [1149] disk 10 to act as an additional help in locating the can. That is all the change we made on our can feed.

Q. Did those changes ultimately result in putting the Pacific machine into the form and condition which appears in the specimen offered in evidence in January and which the Master inspected in operation? A. Yes; exactly.

Q. (By the MASTER.) Did you use that rubber wheel up to 1917?

A. Yes; we used the rubber disk number 22 during the year of 1916, and in some cases I guess some of them rau up to 1919, into the season of 1919. We changed quite a few of them.

[1150] Q. Did you put out Pacific type closing machines before the year 1917? A. Yes, sir.

Q. (By Mr. BLAKESLEE.) How many did you construct and furnish to users for 1917?

Mr. TOWNSEND.—I object to it as not calling for the best evidence and repetition.

(Testimony of Ray O. Wilson.)

The MASTER.—Overruled.

A. The machines that we actually installed in 1916 were five in the Ontario plant and two or three in the Hemet plant. How many we built that year I don't recall.

A. In 1915, I think we built two and placed them in the L. A. Can Company.

A. The ones that I spoke of were put in canneries for closing cans.

[1151] Q. Do you know whether they were used for that purpose? A. Yes.

Q. Do you know to what extent they were used, and, if so, state?

A. They were used all that season in the California Growers' Association.

Q. And after that season do you know?

A. Yes, sir.

Q. Did you witness the operation of them?

A. I did.

[1152] A. They ran through all of that season of 1916 and are still in the plants.

Q. (By Mr. BLAKESLEE.) What was the nature of their service or efficiency?

A. They had the machines running at 130 cans a minute, and one of them ran part of the season at 150 cans a minute on squat cans, as we call them.

Q. What year was that? A. 1916.

A. I said yes. I was called out there quite a few times during that first season, and I gave all the

(Testimony of Ray O. Wilson.)

service and all the repairs on the machines myself personally.

Q. What kind of service and repairs did you have to give [1153] them?

A. Frozen up bearings and stripped gears. It was a new plant, all new hands, new cookers and exhaust boxes, and at the beginning of the season they had considerable trouble all through the plant.

A. I know they had considerable trouble with their exhaust boxes and cookers because they were a new design and were made right there in that plant, and they were weak in spots and caused considerable trouble.

Q. Did you have to take out any of those Pacific type machines in 1916 and replace them with any others? A. No.

Q. Or were they replaced that year by any other type of can closing machine? A. No.

Q. Do you know whether they operated right through the season or not? A. They did, yes.

Q. Please state how those machines, so installed prior to 1917 and operated as you have testified, compared in construction with the drawings of patent 1,301,348, the patent of Plaintiffs' Exhibit 1.

[1154] A. They were the same as that with the exception of the error in the patent drawings that I showed you the other day.

Q. (By Mr. BLAKESLEE.) Such, for instance, as the bevelling [1155] of part 31? A. Yes.

(Testimony of Ray O. Wilson.)

Q. Which was made beveled on one face where it should have been, and later was, cut straight, is that correct? A. Yes.

Q. (By the MASTER.) Did you have the rubber wheel in there? A. Yes; the same thing.

Q. Your star wheel then went in when?

A. It went in either in 1917 or 1918. I can't recall which.

[1157] A. Late in the year 1918, or early in 1919, we changed to our present cap feed, which was on the exhibit.

Q. (By Mr. BLAKESLEE.) On the one that the Master saw at your shop?

A. Yes; excepting the mechanism which operates that. Late in 1919 we changed the operating mechanism of that present feed.

Q. To the present feed?

A. Yes; to the present feed.

Q. Does that constitute the total of the changes made from the showing of the drawings of this patent No. 2? A. Yes.

Q. (By the MASTER.) Just what was that change? You spoke of some pusher that went in there, or kicker.

Mr. BLAKESLEE.—That little catch thing for throwing it out at the bottom. Wasn't that it, the one on the present machine?

A. Yes. The operating mechanism of it pulls the knife and pusher into the can feed turret to throw a cap.

(Testimony of Ray O. Wilson.)

Q. (By the MASTER.) How is the can top fed in with this drawing?

A. The can is fed in from the feed into the recess, into the number 10. As it comes around it works on a wiper number 46. We call it can wiper number 46—and pushes arm number 43 out, which in turn operates knife 41, and fastened to [1158] knife 41 are two toggle links that retract knives number 28 and 26 from under the stack of caps, allowing the stack of caps to drop. Then underneath we have cam number 62 which works on cam roller number 64, I should judge it is, and pushes arm number 55 outwardly, which in turn works on arm number 38 and closes up and brings together all three knives number 26, 27, and 28, lifting the caps.

Q. And there is no pusher there?

A. Then the lug number 12, or finger number 12 on top of the star wheel, comes around and removes the bottom cap.

Q. The finger then takes the cap off instead of your pusher? A. Yes.

Q. Well, they still have the finger on there, as I recollect.

A. No. The cap is now pushed into the disk number 10.

Q. (By Mr. BLAKESLEE.) Well, the defendants' has a finger has it not?

A. Yes; which operates the same as number 12.

Q. Prior to 1919 you testified that certain Pacific type machines were made and sold and used, in other answers given this afternoon. In addition to

(Testimony of Ray O. Wilson.)

those that you mentioned were any further machines made and placed and used, that is, prior to those changes made with respect to this patent 1,250,406?

Mr. TOWNSEND.—The same objection, not calling for the [1159] best evidence, if they have records.

The MASTER.—Overruled.

A. Yes.

Q. (By Mr. BLAKESLEE.) How many further machines, in addition to those of 1916 and before?

Mr. TOWNSEND.—The same objection.

The MASTER.—Overruled.

A. There were between twenty-five and thirty machines that were made and used with this style of cap feed.

Q. (By Mr. BLAKESLEE.) Those other machines were used before 1919, or I think you said the end of 1919, didn't you, when this first change was made as to the cap feed? A. Yes.

[1160] The MASTER.—Were there any other changes in those early machines?

Mr. BLAKESLEE.—He stated that was all as to the cap feed.

Q. Is that not correct, Mr. Wilson? A. Yes.

[1161] A. On all those twenty-five or thirty machines this cap feed was fitted on, that is, they were put out with this cap feed on.

Q. (By Mr. BLAKESLEE.) Did you observe machines with that cap feed illustrated in the drawings of the patent in use in canneries, or the L. A. Can Company? A. Yes.

(Testimony of Ray O. Wilson.)

Q. And what did you see as to the operation of such machines?

[1162] A. We have several of these machines out at present with this exact feed on them. One is in the plant of the L. A. Can Company and has been operating there for I should judge from 1916, and it works very good.

Q. (By Mr. BLAKESLEE.) That doesn't answer the question, Mr. Wilson. How about the others that you saw operated? What did you see in the line of operation and service and efficiency with that cap feed of the patent on? How did they work?

Mr. TOWNSEND.—The same objection. There is a failure to state the time and place.

The MASTER.—Overruled.

A. I have seen them working in the San Fernando Can Company at San Fernando, also in the California Sanitary Cannery, and I think those feeds are still operating to-day and work very satisfactorily.

Q. (By Mr. BLAKESLEE.) Did they work through one or more seasons that you know of at those places?

A. There has been no machine put out with this style of cap feed on since the latter part of 1918, so it is evident that the machines are still working with that cap feed on up to the present time.

Q. Do you know that? A. Yes.

TESTIMONY OF FRANK B. CRANE, FOR PLAINTIFFS.

[1164] FRANK B. CRANE, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) Please state your age, residence, and occupation, Mr. Crane.

A. I am forty-seven years old; occupation, superintendent of the California Sanitary Cannery; I live at 2234 Cambridge Street, Los Angeles.

Q. How long have you been superintendent, Mr. Crane? A. Three years.

Q. Prior to that had you been in other canning plants?

A. I was with the California Packing Corporation for about nine years, and with the Marysville Fruit Packing Company.

[1165] Q. What cans do you use?

A. We use the Los Angeles can.

Q. What, if any, machines do you use for closing the cans,—double-seamers?

A. We have got the Angelus machine.

A. Yes; we have one gallon and one 2½.

A. We have got two of the Wilson Pacific closing machines.

Q. When did you put in the Pacific machine?

A. It was in there when I came; two of them were. I have got another one now to put in.

(Testimony of Frank B. Crane.)

Q. Have you Angelus machines of the P–14 or single-turret [1166] type, rotating turret type, that close the same sized cans as the Pacific closes?

A. Yes, sir.

Q. How long have you been using those Angelus machines?

A. They have been in the factory there for at least seven years, as I understand.

[1167] Q. How frequently are you in the shop where the can closing operations go on?

A. Oh, forty or fifty times a day.

Q. Do you watch the operation of those machines?

A. Yes, quite often.

Q. If any trouble occurs in connection with such operation do the reports of the trouble come to you?

A. Well, any serious trouble.

Q. Are you throughly familiar with the operation of both of those machines?

A. Pretty familiar, yes, sir.

Q. What do you know as to the speed of operation of the Angelus and Pacific machines?

A. Well, the Pacific is a much faster machine. You can turn out more cans per minute on a Pacific than you can on an Angelus.

[1168] Q. How do these machines in use compare as to the work they do, the character of the work of seaming?

A. Well, they both do good work as far as that is concerned. It is just according to the adjusting of the rolls the work either machine will do.

(Testimony of Frank B. Crane.)

Q. Supposing the rolls are adjusted too tight, what occurs?

A. You will crack your tin on top if they are too tight. If you squeeze it too tight it will crack around the top or the edge.

Q. Will anything occur to the rolls themselves if you do that, if you tighten them up too much?

A. If you tighten them up too much they won't run at all.

Q. Well, suppose they are tightened up a little less than too much, will anything happen to the rolls?

[1169] A. Well, I don't know as it would hurt the roll any. It might make it lopsided.

Q. Have you had to replace rolls at any time?

A. Oh, yes, we have to replace them quite often.

Q. On which machine? A. Well, all machines.

Q. All your machines? A. Yes, sir.

Q. Have you ever been in any other cannery where the Pacific was run at a higher speed?

A. Yes, I was.

Q. Where was that? A, At Ontario.

Q. That was the same type of Pacific closing machine? A. The same thing.

Q. What speed did you operate there?

A. I think they were going there at that time 120 or better; I have forgotten now just what it was, but I know it was at least 120.

Q. (By Mr. TOWNSEND.) Did you count them or did you just take the word of some operator that that was the speed?

(Testimony of Frank B. Crane.)

A. I didn't count the cans, no.

Q. You just took the word of some operator that that was the speed they were working at?

A. I took the word of the superintendent there, yes.

Mr. TOWNSEND.—I object and move it be stricken out as [1170] hearsay.

The MASTER.—Motion granted.

Q. (By Mr. BLAKESLEE.) Did you observe the machines there at Ontario when they were running? A. Yes, sir, I did.

Q. Did you at any time estimate the speed at which they were running, yourself?

A. I estimated they were going about that, yes.

Q. Are you used to estimating the speed at which closing machines are operated? A. Yes.

Q. Have you ever checked your observations to see if they were correct by the watch? A. Yes; sure.

Q. What is your best statement as to the speed at which the Pacific machines operated as you saw them operate at Ontario?

Mr. TOWNSEND.—Well, except this is going to call for a guess, it is certainly not the best evidence.

The MASTER.—Overruled.

A. 120 a minute.

Q. (By Mr. BLAKESLEE.) Are you willing to testify under oath that they ran over 100 a minute?

A. Yes, sir, I am.

[1171] Q. Have you seen Angelus machines operated at other plants?

(Testimony of Frank B. Crane.)

A. I don't believe I did, only in Colton. When I was in Colton we had the Angelus machine there.

Q. What type of machine was that? A single-turret machine?

A. A single-turret machine. Yes.

Q. What speed did they operate in closing cans?

A. Well, we had ours going there at 52 or 54, somewheres along in there.

Q. What was your position there?

A. Superintendent.

Q. And you observed the machines, did you, right along during the season? A. Sir?

Q. You observed the machines, did you, in operation right through the season?

A. Oh, yes; I was around them all the time.

Q. How about the quality of the cans you obtain from the L. A. Can Company? How does that quality compare with the can obtained in previous years?

[1172] Mr. BLAKESLEE.—Well, it has to do with the operation of the machines and counsel brought it out himself on cross-examination.

Mr. TOWNSEND.—Very properly; and that took care of itself at that time.

Mr. BLAKESLEE.—And this will at this time.

The MASTER.—Objection overruled.

A. Do you mean the grade of the can?

A. I have handled them for the last fifteen years and I don't see that there is much difference in them.

A. No. I have had the least trouble with the Pa-

(Testimony of Frank B. Crane.)

cific machine of any machine I ever knew or handled.

Q. When did your first acquaintance with the machine occur where you were superintendent?

A. Three years ago.

Q. You have had less trouble with it than any other closing machine that you have have had experience with? A. Yes, sir.

[1173] Q. (By Mr. BLAKESLEE.) And that answer of less trouble with the Pacific applies in comparing it with all other closing machines, is that true? A. Yes, sir.

Mr. TOWNSEND.—The same objection; it is leading.

The MASTER.—Sustained.

Q. (By Mr. BLAKESLEE.) Will you name, if you can, all of the kinds of closing machines that you have had experience with as superintendent?

A. The Can Co. and the Angelus and Wilson and Max Ams.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Mr. Crane, you were asked in regard to the Angelus. Suppose the rolls were adjusted too tight, and you answered that you would crack your tin—now suppose your curling die on the Pacific is adjusted too tight, what would it do?

A. Well, if you get any roll too tight it will crack the tin and mash it.

(Testimony of Frank B. Crane.)

[1174] And you also stated that all machines have to replace rolls quite often; is that right?

A. I have found it that way, yes.

Q. You have to replace the curling die on the Pacific too, occasionally, do you?

A. Well, that is a different die than the other machines.

Q. Just explain what you mean by different.

A. Well, it is a different operation than the way they curl on any other machine I have ever seen. It has a big, round plate—well, I don't know just how to explain it to you, but one of those will last you for a long, long time in the first operation.

Q. How is the seam different on that than it is on the Angelus?

A. Well, it is curled in a different way. The Angelus is curled with a roll, and this is curled with a kind of a chuck head. It curls up in there.

[1175] Q. You consider the kind of a seam that rolls different from the seam rolled by the Angelus, do you?

Mr. BLAKESLEE.—We don't care whether the witness considers it different or not. He can testify what the structures are, as he remembers them, but getting his opinion is not evidence.

The MASTER.—Sustained. You may answer, though.

A. It is a different operation. The curl might be about the same; I don't know. I never paid enough attention to it. But the operation is different.

(Testimony of Frank B. Crane.)

Q. (By Mr. TOWNSEND.) The operation is quite different there? A. Yes.

Mr. BLAKESLEE.—We object to that attempt to trace differences by comparisons, by saying "quite," and things of that kind. He should ask what the differences are. You can't call for his opinion.

The MASTER.—Proceed.

Q. (By Mr. TOWNSEND.) Just tell us how they are different and how you consider them different in the Pacific on the first operation of seaming and the Angelus first operation in seaming.

[1176] A. Well, there is a different head in the Pacific than there is in the Angelus. The Angelus is done by rolls and the Pacific is done by chuck heads, I guess you call it. The can revolves and goes up into the chuck head, I guess they call it.

Q. On the Angelus the can doesn't revolve but the chuck head with the seaming rolls runs around the seam; isn't that right?

A. That is the way the Angelus works.

Q. And it makes several revolutions, doesn't it, in rolling that seam?

A. Yes. I don't know just how many.

Q. It rolls it down gradually rather than all at once, doesn't it?

A. Well, it just curls it over. I don't know whether it is gradual or not. It is done so fast that I couldn't say.

(Testimony of Frank B. Crane.)

Q. I don't suppose you consider that sort of operation for seaming the same as the Pacific, do you?

Mr. BLAKESLEE.—We don't care, if the Master pleases, as to what he considers it. He is attempting apparently, to get an opinion from this witness, to trace some distinction in operation which is best shown by the evidence.

[1177] Mr. TOWNSEND.—I object to interference with the cross-examination now.

The MASTER.—Objection sustained. The witness may answer.

A. It don't look the same to me.

Q. (By Mr. TOWNSEND.) They don't operate the same, either, do they?

Mr. BLAKESLEE.—The same objection.

The MASTER.—Sustained.

A. The can moves on the Wilson machine, or the Pacific, and is stationary on the other machine, on the Angelus.

[1182] Q. What was the first sanitary can machine you ever came in contact with?

A. The Angelus.

Q. And I suppose you found that a great advance over the old soldering type? [1183] A. Oh, sure.

TESTIMONY OF RAY O. WILSON, FOR PLAINTIFFS (RECALLED).

[1184] RAY O. WILSON, recalled.

Direct Examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Referring now, similarly, to patent 1,203,295 of Plaintiffs' Exhibit 3, in manufacturing and putting out Pacific type closing machines have you made any changes from the drawings of this patent other than those pertaining to the can feed and the can feed members or features, about which you have testified with respect to the patents of Exhibits Nos. 1 and 2?

Mr. TOWNSEND.—That is objected to as leading.

The MASTER.—Overruled.

A. We have changed the different parts to make the machine easier to adjust and manufacture, but otherwise it operates and the dimensions are the same.

Q. (By Mr. BLAKESLEE.) Including the changes you made, referring to Patents 1 and 2?

A. Yes.

Q. (By the MASTER.) What do you mean by the dimensions are the same? What are the dimensions of the drawings in the patent?

Mr. BLAKESLEE.—The drawings in the patent are not to the scale.

Q. Are they?

(Testimony of Ray O. Wilson.)

A. No. I mean the same dimensions as that first machine we built. We keep the same sizes of turrets, gears, and [1185] height dimensions, and all that, that are the same.

Q. (By the MASTER.) Then you haven't varied from the drawings at all?

A. We have changed to aid in the manufacture and adjustment for the machine, to make them easier; but the operations are identical.

A. The adjustment of the second operation roll bracket was changed by placing a set screw on there for adjusting the one segment against the disk, and the lower tension adjustment was changed and the position of the spring was changed. The first operation cam was changed. The adjustment of it was changed, the manner of adjustment. That is all, except the changes to aid in the manufacture.

Q. Do those changes make any difference in the interrelation and mode of operation of the parts?

A. No.

Q. After you first knew of the existence of the defendants' P–24 machine were any changes made in the construction and operation of the Pacific type machine?

A. Not of our commercial machine. We have some changes in view and in the process of design.

Q. Do they relate at all to the design and construction of the P–24 machine? A. Yes.

[1186] Q. In what respects?

A. We applied a cushion roll on the machine in the plant of the Los Angeles Can Company in 1920,

(Testimony of Ray O. Wilson.)

and we since have built a design around that, which was completed about October, 1920.

Q. Had you then ever seen or heard of a completed Angelus P–24 machine? A. No.

Q. (By the MASTER.) What do you mean by a cushion roll?

A. We applied a cushion between the can roll and the compression roll on the second operation to allow for the compression roll going over the extra double thickness here at the body seam.

Q. (By the MASTER.) Where is that first machine that you say you built at Smith-Booth-Usher's?

A. We scrapped it in about 1918, I think, or 1917.

[1187] Q. Where were they first made?

A. In a little shop on the premises of the Los Angeles Can Company.

Q. Then after that you moved to the present premises? A. Yes.

Q. Is the shop the same size that it was in the beginning? A. No.

Q. When did you enlarge it?

A. We enlarged it in 1917, and again in 1919, and again in 1920.

Q. Can you state from the records of your company how many Pacific machines have been completed and sold or put into service during the last six months?

Mr. TOWNSEND.—That is immaterial.

Mr. BLAKESLEE.—I just want to piece out a little of the testimony.

(Testimony of Ray O. Wilson.)

The MASTER.—Overruled.

A. No, not exactly.

Q. (By Mr. BLAKESLEE.) What can you tell us as to recent construction and delivery of Pacific machines?

Mr. TOWNSEND.—We had that testimony yesterday from Mr. Stetson. Now is he trying to impeach Mr. Stetson?

The MASTER.—Let's see if they agree.

Mr. TOWNSEND.—But that doesn't conform to the rules of evidence.

[1188] The MASTER.—I don't know as they are precluded from asking two witnesses the same question.

Q. What, then, do you know as to recent construction and deliveries of Pacific type machines and the numbers?

Mr. TOWNSEND.—That is open to the same objection, there being records the records are the best evidence.

The MASTER.—That is overruled.

A. I think we have delivered five machines in the last month.

Q. (By Mr. BLAKESLEE.) Have you orders on hand for Pacific machines? A. Yes.

Q. For how many?

Mr. TOWNSEND.—We object again because Mr. Stetson testified on this point apparently from the records, and the purpose could only be to impeach Mr. Stetson.

(Testimony of Ray O. Wilson.)

[1189] The MASTER.—It may be to corroborate him. Overruled.

Mr. TOWNSEND.—But the records should not require corroboration in this manner.

A. I am not certain on that point, but I think we have orders for seven.

Q. (By Mr. BLAKESLEE.) Can you state now the total number of machines that E. W. Bliss Company has paid royalties on to date under the license agreement in evidence?

Mr. TOWNSEND.—That is mere repetition. We had that here two months ago in testimony. If this hangs on for another year or so I suppose we will have to keep the case open to know that.

Mr. BLAKESLEE.—I am bringing the matter up to date and I don't see how it can hurt anybody.

[1190] Mr. TOWNSEND.—And the payment of royalty or sums alleged to be royalty is no proof bearing on the patents in suit.

The MASTER.—Overruled.

A. I can't answer as to how many machines they have paid royalty on.

Q. Can you state a number they have paid royalty on? A. Yes.

Q. How many?

Mr. TOWNSEND.—That doesn't call for the best evidence when there are records to show.

Mr. BLAKESLEE.—I haven't referred to records.

Mr. TOWNSEND.—Well, there are records, and I insist on my objection.

(Testimony of Ray O. Wilson.)

The MASTER.—Overruled.

A. Seventy-five.

Q. (By Mr. BLAKESLEE.) Of the Pacific type machine?

[1191] A. Yes, sir.

Q. (By the MASTER.) Can you fix the period within which those were made or sold? A. Yes.

Q. What period did that cover? I didn't get that.

A. I didn't give it. It was the season beginning with 1920 and the ending of last season, say December of last year.

Q. 1922? A. Yes.

Cross-examination.

(By Mr. TOWNSEND.)

Q. Mr. Wilson, you spoke about one of these Wilson machines running in 1915. Where was that?

A. I don't remember of speaking of it.

Q. That was a machine you said you saw run 130 cans a minute and as high as 150 of squats.

A. That was in 1916.

Q. My notation was 1915.

Q. (By Mr. TOWNSEND.) You say that was in 1916? A. Yes.

[1192] Q. And where was that?

A. In Ontario.

Q. In what plant?

A. I think it was called the California Co-operative Canneries at that time. It is now the California Growers Association plant.

(Testimony of Ray O. Wilson.)

Q. Is that same machine running to-day?

A. I am pretty sure it is, yes.

Q. Has it been changed from its character in 1916? A. Yes.

Q. Well, if it gave such excellent results as 130 cans a minute, why change it?

A. I don't remember claiming it gave such excellent results.

A. It was good, and they got through the season very nicely and through part of the next season. We changed the cap feeds on those machines two years ago.

Q. You say it ran part of the next season. Was that the season of 1917?

A. Yes, with that same original can feed on it, and we changed that in—I am not sure but I think we changed it in 1917. We changed the cap feeds two years ago.

Q. Do you mean to say that 130 cans a minute was the every-day operation of that machine?

A. Yes, sir.

[1193] Q. And that 150 was a regular every-day operation?

A. They ran that machine 150 on sliced peaches nearly all of the peach season.

Q. Have you any records of the rate of speed?

A. No. The reason I recall it is that the motor that was on that line burned out. The motor ran the exhaust box, cooker, and double-seamer, and they substituted that motor for another one which was of a higher rate of speed, and stepped the whole

(Testimony of Ray O. Wilson.)

line up to 150. Now I can't recall the exact time that happened.

Q. Do you recall what the speed of that motor was?

A. No, I do not. It was a five horse-power motor.

Q. Did you furnish them that motor?

A. No. I remember there was quite a little excitement the first day they started it up at that speed.

Q. Were you working in the cannery?

A. I was out there quite a good deal.

Q. Well, were you working in that cannery?

A. No.

[1194] Q. Were you there when the motor burned out? A. No.

Q. You don't know what size the old motor was, do you? A. Five horse-power.

Q. Did you see it or were you told that it was?

A. I was told that it was a five horse-power.

Q. I suppose you were also told what the speed and rate was of the new motor?

A. Yes. Not the motor, but the line.

Q. Of the line? A. Yes.

Q. You were told that they were operating about 130 cans a minute? A. 150.

Q. 150 cans a minute? A. Yes.

Mr. TOWNSEND.—I think the testimony is sufficient to show that that testimony given is hearsay and I move it be stricken out.

The MASTER.—He doesn't say that was his only reason for believing so.

(Testimony of Ray O. Wilson.)

Mr. BLAKESLEE.—He says he saw them operated, and he has previously testified that he made a frequent practice of timing them.

[1195] Q. (By Mr. TOWNSEND.) And the machine in the year 1916 that would turn out 130 cans a minute was a machine that you considered gave very excellent results? A. Yes.

Q. Then why did you find it necessary to make the changes that you did in that machine?

A. The parts on the cap feed were not rigid enough They were light and flexible, and naturally a lot of wear took place and we had to replace them. That was one thing that made the feed unsatisfactory.

Q. You had frequent replacements with that cap feed that you had on there?

A. More than we should have had, yes.

Q. Every time you would have a replacement you would have an interruption of the operation of the machine? A. Yes.

Q. How about the can feed?

A. That can feed spilled the syrup a little too much to suit the trade so we kept changing it from time to time, as I spoke of before.

[1196] A. That I find is chronic with the biggest part of cap feeds, except our present one. I have seen the time when I couldn't fix them on the 14–P or Max Ams or the Johnson. At times they all give trouble which you really can't figure out, and that is the reason why I said at times I think everything is the matter with them.

Q. So, in order to avoid those annoyances, you

(Testimony of Ray O. Wilson.)

finally came to the cap feed that you have now, such as we saw on the Pacific machine at the initial session of this trial? A. Yes.

[1201] 811 Washington Bldg.

Los Angeles, California, Friday, April 20, 1923, 10 A. M.

(Appearances as previously noted.)

The MASTER.—Let the record show that the Master has requested and received on account of Master's fees the sum of $150 from each of the parties, making a total of $300, which, with the moneys heretofore received, makes a total of $800.

[1205] Cross-examination (Resumed).

(By Mr. TOWNSEND.)

Q. Mr. Wilson, when we adjourned last night we were talking about your new type of cap feed that you have on the Pacifics to-day and such as we saw at the initial session of taking this testimony. Have you any blue-prints showing that construction that you could bring into court so that we could have something definite before us?

[1206] A. We have only the cap feed itself, that is, the pusher mechanism; but I don't think it is connected up with the can feed apparatus, so it would just be the cap feed and mechanism.

Q. Will you be good enough to bring any such drawings as will illustrate that construction, at two o'clock, and we will assume that as part of your examination? A. Yes.

(Testimony of Ray O. Wilson.)

[1208] Q. What is the piece that is marked J?

A. The first operation, upper turret.

Q. And what is N?

A. It is pointing directly to the upper knock-out head.

Q. Knock-out for what?

A. To knock the cans out, to be discharged from the machine, to knock the cans off of the upper disk, in other words.

Q. And what is M?

A. It is a reverse drive gear for the second operation upper spindles.

Q. (By Mr. BLAKESLEE.) Of which turret?

A. The second operation.

Q. (By Mr. TOWNSEND.) This transfer should be shown. Do you care if I run an arrow through it?

Mr. BLAKESLEE.—You had better have him describe it first.

Q. (By Mr. TOWNSEND.) Does the transfer from the first to the second turret show? A. Yes.

Q. Will you draw a line and mark that O?

(Witness marks.)

Q. That is the transfer wheel that takes the cans from one turret to the other? A. Yes.

[1209] Q. (By Mr. BLAKESLEE.) The letter O leads to one of the recesses of the transfer means for receiving the can, does it? A. Yes.

Q. (By Mr. TOWNSEND.) What does that letter L refer to?

A. That is part of the transfer turret.

(Testimony of Ray O. Wilson.)

Q. That is the transfer that carries the part O, do you mean? A. Yes.

Q. What style of cap feed does the Bliss Company use in the machines that they put out and which you term as Pacific machines?

A. The same as shown in that photograph X.

[1210] Q. In other words, they are using the present-day type of Pacific cap feed? A. Yes.

Q. How long have they used that type?

A. Altogether from 1920 up to the present time.

Q. When did Bliss start putting any of the Pacific machines on the market?

A. Bliss started to build the machines in the latter part of 1919.

Q. Were you there in the middle of 1920?

A. I was there from January, at the Bliss plant, until July of 1920.

Q. Assisting them to build the machines?

A. Yes.

Q. And when you left had they built one by that time?

A. They had completed five or six and had thirty-six [1211] under construction and almost completed when I left.

Q. By July, 1920? A. Yes.

Q. What style of a can feed and accelerating means, if any, does Bliss use?

A. The same as shown in Exhibit X.

Q. And the same as we saw out at the plant that day when we visited it with the Master? A. Yes.

(Testimony of Ray O. Wilson.)

Q. How long have they been using that particular type and form?

A. Since they began building the machine.

Q. They never have used anything else?

A. No.

Q. Was the installation of that particular character of cap feed, which you state was put on at the very beginning by Bliss, the first time that you had used that form of cap feed in any way?

A. I re-designed the mechanism while I was at the Bliss plant, the mechanism for operating the oscillating knife and that is the first of that type of mechanism that we had on the machine.

Q. In other words, the cap feed which you now use was not put on any Pacific machines until first applied at the Bliss plant. Am I correct in that?

A. No. Excepting that one detail of the operating mechanism [1212] the cap feed operated identically the same as far as the work on the cap; but we changed the operating mechanism at the Bliss plant for the first time.

Q. Let's see if we understand each other. In speaking of the present-day type of cap feed, where you have the oscillating kicker or knife and the recess or pocket in the can carrier wheel, was that used anywhere by you before Bliss used it?

A. Yes.

Q. Oh, you had already adopted that form before you went to Bliss, had you? A. Yes.

Q. Then you said when you got there you redesigned it?

(Testimony of Ray O. Wilson.)

A. Re-designed the mechanism that operates the cap feed.

Q. What was the occasion calling for re-designing? A. It was a big improvement.

Q. A big improvement in what respects?

A. In the operation.

Q. Had you employed that form of can feed of using two disks and the four rubber arms on the first disk, and the complementing star wheel on the second disk where the accelerator rails are prior to putting the form in use on the Bliss machine?

A. Yes.

Q. You had already adopted that here?

A. Yes.

[1213] Q. Before you had gone East?

A. Yes.

Q. Did you make any changes, or has Bliss made any changes in that from the time they started?

A. No, not that I know of.

Q. You told us the changes you made in improving the cap feed on the Bliss machine. Now, what other changes from any machine you built previously here were made on the Bliss machine during the six months or so you were there?

A. Nothing only changes to benefit the manufacturing, that is all. In other words, they cast our upper turrets in one solid piece, and they changed the design of the lower turret but not the dimensions of it. The machine is identical with our commercial machine except for the changes to aid in manufacturing.

(Testimony of Ray O. Wilson.)

Q. (By Mr. BLAKESLEE.) Identical with what?

A. With our commercial machine here.

Q. Of Bliss? A. Yes.

Q. (By Mr. TOWNSEND.) It is your contention, is it not, that on the Pacific you can turn a better seam than can be turned on the type of seaming rollers used on the Angelus?

A. That depends largely on the can. I think that our machine will make a better average, in fact it has proven so, a better average seam over the whole season than can be done on the Angelus.

[1214] Q. (By the MASTER.) What do you mean by "Angelus"? There are three of them.

A. The 14–P, the only one I have had experience with.

Q. (By Mr. TOWNSEND.) To what do you attribute that better average? We are speaking now of the quality of the seam,—and leakage, and so forth.

A. Well, our machines seem to be freer from the tits that we spoke of the other day in operating on a tit can.

Q. That refers more to the result than to causes. What causes do you attribute the better results to that you say exist?

A. I think it is our first operation or seaming means.

Q. In what way?

A. It has sort of a spiraling effect operating on the cap that the rolls have not, and on the average

(Testimony of Ray O. Wilson.)

will get the cap flange under better than the roll type machine.

Q. I suppose that is due to the fact that you use the curling die on your type while the defendant uses the seaming roller; is that correct? A. Yes.

[1215] Q. You don't agree with Mr. Mudd and some of the other witnesses that better results are obtained with compound sealing than with paper gasket sealing?

A. They are speaking from a cannery standpoint, from the troubles of losing the gaskets and getting wet, and things like that, and I am speaking just of the seaming on the machine where there is no difference. I approve, myself, of the compound end over the paper gasket, though.

A. Well, I have heard in the East that they complain and they thought the paper gaskets dried out and discolored such things as corn, and in the Islands they are complaining against the paper gasket because they feel—that is, in rare cases—that the compound end is the best as there isn't so much trouble from losing the gasket or getting it wet and letting it stand around. I don't know much about the paper [1216] gasket but we have closed a lot of cans on the Pacific machine with paper gaskets.

Q. Did the Bliss Company ever use the rubber wheel 22 of patent 1,301,348?

A. I don't know.

Q. I mean on the Pacific machine.

A. Not that I know of.

(Testimony of Ray O. Wilson.)

Q. And they have never used the upstanding lug projections 31, Fig. 4, of that patent, which lugs 31 form part of the lifters and pushers 30?

A. Not that I know of.

TESTIMONY OF JOSEPH A. CAMPBELL, FOR PLAINTIFFS.

[1219] JOSEPH A. CAMPBELL, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. BLAKESLEE.) Mr. Campbell, please state your age, residence, and occupation.

A. Age, forty-five; residence, 1151 Fifth Avenue; general manager of the California Growers' Association, Incorporated.

A. Yes; we have five plants.

A. At Ontario, Riverside, Hemet, Elsinore, and Fallbrook.

Q. (By Mr. BLAKESLEE.) How long have you been general manager of the California Growers' Association?

A. The California Growers' Association, Incorporated, since its incorporation.

[1220] Q. And that was when?

A. Three years.

Q. Approximately what was the pack in cases in those canneries last year?

A. About three-quarters of a million cases.

(Testimony of Joseph A. Campbell.)

Q. Do you use in those plants machines for closing cans? A. Yes, sir.

Q. What machines do you use?

A. We are using both the Pacific seamers and those Angelus seamers?

Q. The Pacific seamers you obtain through the L. A. Can Company, do you? A. Yes.

Q. Whose cans do you use?

A. The L. A. Can Company's cans.

Q. Exclusively? A. Yes.

Q. Do you obtain the Pacific seamers also through the L. A. Can Company? A. Yes.

Q. You obtained the Angelus machines also through the L. A. Can Company, did you?

A. Yes, sir.

Q. What type of Angelus machines have you in use at your plants?

A. Well, we are using the—I don't know what type you [1221] would call it.

Q. Do you know them by the number?

A. No, but I know for several years we had some of the first ones they put out.

Q. Is it the single-turret or double-turret machine? A. The single-turret.

Q. And is it continuous in operation or does it stop and start as the cans are put in and close? I mean is its operation continuous?

A. It is not a continuous machine.

Q. Approximately at what speed do you operate those Angelus seamers?

(Testimony of Joseph A. Campbell.)

A. On the 2½ cans, about fifty to sixty cans a minute.

Q. Do you or do you not keep in direct touch with the operation of can closing and the other canning operations in your several plants?

A. Only in just a general way.

Q. How frequently do you go into the canning rooms of the plants?

A. During the season I am in each one of the plants practically every week.

Q. And at those times do you observe the can closing operations? A. In a general way, yes.

[1222] Q. (By Mr. BLAKESLEE.) To what extent do you witness the operations of the closing machines in these several plants?

A. Well, it is pretty hard to say. Just as any manager would do, to see if the machinery is in working order throughout the plant; but I wouldn't take any interest in seeing that machine more than any other machine.

Q. And do you observe them as you go over the plants? A. Yes, sir.

Q. If any trouble crops out in the operation of any of the machinery at those plants, do you know of it? Are reports made to you? A. Oh, yes.

Q. Have you had troubles with the can closing machines in your canneries?

A. We have troubles with all kinds, no matter what machine we have. We have troubles with all kinds of machines.

(Testimony of Joseph A. Campbell.)

Q. What kinds of troubles have you had with can closing machines?

A. Well, not any particular trouble I would say. We have very few leaks on account of poor closing. And I think our sealing operations all through have been fairly satisfactory.

[1223] Q. With both types of machines you have mentioned?

A. Well, we have had, I might say, if anything, less trouble with the Pacific than we have had with the old machines.

Q. At what speed have you operated and do you operate the Pacific double-seamers in your canneries?

A. Well, around about a hundred cans a minute.

Q. Have you ever had any particular troubles with the Pacific seamers?

A. No. They have given pretty good satisfaction.

Q. Comparing the Pacific and Angelus seamers which you have in your canneries, state, please, what, from your knowledge, is their relative efficiency, or if there is any preference between them in general serviceability. If so, what?

A. Well, we prefer a high speed machine. That is our primary reason for putting in the Pacific, naturally, to get a larger volume of fruit through the plants. And the operation of the machine is very satisfactory in that it is a continuous operation and it doesn't start and stop or spill the juice in the operation.

(Testimony of Joseph A. Campbell.)

Q. How many years have you had the Pacific machine in your plants?

A. You see, there are two organizations; the California Growers Association is the old organization who organized in 1914. Since 1916 we have had the machines in the plant.

[1224] Q. The Pacific machines? A. Yes.

Q. Have you acquired or put in any other Pacific machines since those put in in 1916?

A. Yes; all additional machines. I think the very first year we had maybe five or six machines and we have increased them from time to time until we have—I don't know exactly but I think about fifteen machines.

Q. Pacifics? A. Yes.

[1225] Q. (By the MASTER.) Were you there in 1916?

A. As I just stated, there were two organizations. The California Growers Association was reorganized into the California Growers Association, Incorporated; and the California Growers Association was organized in 1914, and I have been with the organization all the time.

Q. (By Mr. BLAKESLEE.) What was your connection with the [1226] California Growers Association in the 1914 organization?

A. I was superintendent of the plant at that time.

Q. Please state what your duties from that time up until 1919 were, when the California Growers Association was incorporated?

(Testimony of Joseph A. Campbell.)

A. In 1914 and for two years I was local plant superintendent.

Q. (By Mr. TOWNSEND.) At what plant was that, Mr. Campbell?

A. At Tulare and Kingsburg.

Q. That was in 1914 and when?

A. In 1915. And then I was general superintendent of plants from 1916 to 1920.

Q. And how many plants did you have in 1916?

A. We had four plants.

Q. And what were they?

A. In 1916 there was Ontario, Hemet, Elsinore, and Fallbrook.

Q. Let me ask you another question. Where were your headquarters in 1916?

A. The headquarters of the Association were in Los Angeles, but my headquarters from the operating end were at Ontario. I was located at the Ontario plant.

Q. (By Mr. BLAKESLEE.) Now, this present California Growers Association is the successor of the original Association, is it? A. Yes.

[1227] Q. In corporate form? A. Yes.

Q. Then in your position as superintendent of plants prior to 1919 what contact did you have with closing machines in the canneries?

A. Well, I observed them every day during the operation.

Q. (By Mr. TOWNSEND.) That is at Ontario?

A. At Ontario, yes. Well, at Ontario and the

(Testimony of Joseph A. Campbell.)

other plants as well. I had supervision over the other plants.

Q. Did you visit them all every day?

A. Not every day, no.

Q. (By Mr. BLAKESLEE.) What plants were the Pacific machines in in 1916, Mr. Campbell, please? [1228] A. In Hemet and Ontario.

Q. (By Mr. TOWNSEND.) Just a moment. How many were put in at Hemet?

A. I wouldn't say positively.

Q. In 1916.

A. Oh, then I think there were two machines at Hemet.

Q. Two at Hemet, and how many Pacific machines were put in in Ontario in 1916?

A. Well, I believe there were four.

Q. I will ask you another question: Have you any records which would definitely state those things?

Mr. BLAKESLEE.—Now, I would like to finish my direct examination without interference. I am getting tired of this constant pecking and pecking in here by counsel. Counsel takes all the time he wants for cross-examination.

Mr. TOWNSEND.—But we have to have a proper foundation.

The MASTER.—Let him answer this one question.

No. 4420

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FIVE VOLUMES)

ANGELUS SANITARY CAN MACHINE COMPANY, a Corporation, and HENRY L. GEUNTHER,

Appellants,

vs.

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(Testimony of Joseph A. Campbell.)

Q. (By Mr. TOWNSEND.) Have you any records which will show in your plant when these machines came in, and how many? Your records show that, do they not?

A. Oh, we probably could find that out from our records.

Q. And have you examined those records lately?

A. No, I haven't.

Q. Are you testifying now merely from memory?

A. Yes, from memory.

Mr. TOWNSEND.—It being shown that there are records, I [1229] object to receiving other than the best evidence.

The MASTER.—The objection is overruled. Now let the witness answer without disturbance. Read the question, the original question.

(Record read.)

A. In regard to the efficiency of the machines, the first machines we put in were fairly satisfactory. They have been improved, though. I notice from a manufacturing standpoint the boys all want new machines, which is just natural. I don't know as there are any particular changes in the machines that make them better any more than putting up the machine, maybe, in a little better shape; but as for their being satisfactory as an operating machine I would say that the first machines were satisfactory.

Q. (By Mr. BLAKESLEE.) During how much of the season in 1916 did the Pacifics operate?

A. All the season.

(Testimony of Joseph A. Campbell.)

Q. Each day of the season that you ran?

A. Oh, yes. We started in on Apricots that year, and we ran those machines clear through, if I remember correctly, quite late that year on tomatoes. We were running up till along in November sometime.

Q. (By the MASTER.) Can you particularize a little more? You say they operated—I have forgotten the expression you used. I think you said satisfactorily in 1916. How about speed and spill and that sort of thing?

[1230] A. When we started, our idea was to run them about 120 cans a minute or more. We designed our own exhaust boxes and own cookers and we designed them to operate at a speed of about 120 cans a minute and putting in these high speed sealers to take care of the sealing. We found that they would seal the cans all right; but if we got in a can that was jammed, or something of that kind, and you would maybe get two or three cans in there, you would spill the cans before you could stop the machine, and the operator would do better if you ran at a little less speed. We tried it out that year, and since that time we have reduced the speed to about 100 cans. Some of the operators like to operate them at a better speed or a higher speed, but we have now put all the machines down to about 100 cans a minute.

Q. (By Mr. BLAKESLEE.) Have you any of

(Testimony of Joseph A. Campbell.)

the Angelus type machines in your lines there in any of these canneries now?

A. Only on the gallon lines.

Q. Do you remember the number of that type? The 19–P, is it?

A. I don't now the type. It is the old original. I think on the gallon machine we ran the old No. 1 machine, the first one that was ever put out.

Q. At what speed then did you operate the Pacific machines during the season of 1916?

A. We operated that year practically all the machines at 120 cans.

[1231] Q. All the Pacific machines? A. Yes.

Q. Did you have any Angelus machines in your lines that year?

A. Not outside of the gallon machines.

Q. You had no 2½ pound can machines?

A. No, unless we did have one at Elsinore. Whether it was that year or the year following we put in a line there with the—or they couldn't furnish us with a Pacific and they furnished us with the Angelus machine.

Q. (By Mr. TOWNSEND.) How many?

A. One, I believe. I think we have four or five gallon machines of the Angelus type.

Q. (By Mr. BLAKESLEE.) You have them now? A. Yes, sir.

Q. Have you any gallon machine of the Pacific type? A. Just one.

Q. How do the speeds of the Angelus and the Pacific gallon machines compare?

(Testimony of Joseph A. Campbell.)

A. Well, we can run the Pacific machine faster than it is necessary to operate it, but the real advantage in that machine is that they don't spill. You take these large cans and as you stop and start it throws the juice out, and on a continuous operation it carries it around without any spill.

Q. (By Mr. TOWNSEND.) I understood him to ask what the rates [1232] of each machine were.

A. We run them about 20 cans a minute.

Q. Both the Angelus gallon and the Pacific gallon? A. Yes.

Q. (By Mr. BLAKESLEE.) You say you can operate the Pacific faster? A. Yes.

Q. But your line has a speed of 20 per minute? A. Yes.

Mr. TOWNSEND.—I beg your pardon, he didn't say that, and I object to the question as leading in that respect.

A. Well, we built the 2½ lines for the Pacific machine, the fast machine, and we built the gallon line for the Angelus because there were no Pacific gallon machines to be had, and we can't run them faster than that because we crowd our cooking apparatus.

Q. (By Mr. BLAKESLEE.) Again, how fast do you operate the Pacific gallon machine?

A. About 20 cans.

Q. (By the MASTER.) What do you fill the gallon cans with?

A. We put all grades of fruit in them. Chiefly,

(Testimony of Joseph A. Campbell.)

though, it is packed with pie fruit and the water fruit, the lower grade fruits.

Q. (By Mr. BLAKESLEE.) Now, tell us, please, if you recollect any troubles you had with the cap feed mechanism on the Pacific closing machines which were operated in your [1233] plants in 1916.

Mr. TOWNSEND.—I don't think that a sufficient foundation has been laid for such a specific question.

The MASTER.—Overruled.

A. Well, I might say that was our chief trouble, there wasn't clearance enough between the cap feed and the fruit. I know the caps jammed sometimes, and we did have some trouble with the cap feed. If I remember rightly, they worked on them all season fixing those.

Q. (By Mr. BLAKESLEE.) To what extent did that working on them interfere with the use of the machines that season to get out the pack?

A. Well, there was no material interference in the operation of the machines; but I know we had them observed, and they were adjusted from time to time.

Q. (By Mr. BLAKESLEE.) Then when you speak of working on them through the season, do you refer to such adjustment and observation as you have mentioned? A. Yes.

Q. Through what part of each week during that season of 1916 did those Pacific machines operate,

(Testimony of Joseph A. Campbell.)

that is, approximately what part of the week were they run?

Mr. TOWNSEND.—Are there records that will show the times [1234] of operation of any machine?

Mr. BLAKESLEE.—I don't asume there would be any such records.

A. Our records would show how many cans we packed on the different days and would show how many machines—or show about how many cans we carried through those machines.

Q. (By Mr. TOWNSEND.) By those records, then, you would be able to give a definite answer to Mr. Blackeslee's question, wouldn't you, better than you could from memory? A. Oh, naturally.

Mr. TOWNSEND.—Then I object to it as not calling for the best evidence.

Mr. BLAKESLEE.—We insist the best evidence rule does not apply. If counsel wants to get these records in court as a part of his case, doubtless he will be able to do so.

[1236] The MASTER.—Objection overruled.

A. The machines operated during the season six days a week.

Q. (By Mr. BLAKESLEE.) And you got out your pack with them that season? A. Yes.

Q. Do you recollect any troubles you had in 1916 with the can feed mechanism of the Pacific machines?

Mr. TOWNSEND.—I make the same objection as to foundation.

(Testimony of Joseph A. Campbell.)

The MASTER.—Overruled.

A. As I recollect, we had no trouble as far as the can feed was concerned.

Q. (By Mr. BLAKESLEE.) I call your attention to a copy of letters patent 1,301,348, being part of Plaintiffs' Exhibit 1 [1237] and to Figures 1 and 2 and the drawings thereof, and ask you if you note any resemblance between what is shown in those drawings and the can feed mechanism of the 1916 Pacific closing machines you have told us about?

Mr. TOWNSEND.—I object to that as being grossly leading and grossly improper and no foundation laid. It isn't shown that he knows how to read drawings.

The MASTER.—Do you know about drawings?

Mr. BLAKESLEE.—Before answering that question just add, are you accustomed to reading drawings? A. Oh, somewhat.

Q. Do you have any trouble raising an elevation out of the flat on a drawing and visualizing what a drawing shows?

Mr. TOWNSEND.—That is calling for an opinion.

The MASTER.—He may answer that.

[1238] The MASTER.—Is there anything to prevent your asking him [1239] what he does recollect of the mechanism before you show him the drawing?

(Testimony of Joseph A. Campbell.)

Mr. BLAKESLEE.—Well, he has already seen it. The only thing I wish to elicit is any agreement or difference between what he had then and this time. My object is apparent, of course.

The MASTER.—I will receive the testimony subject to the testimony and reserve the ruling.

(Question read.)

A. Well, I would recognize what that was all right, if that is what you want to know.

Q. (By Mr. BLAKESLEE.) How do these drawings compare, that is, agree with or differ from the can feed of the 1916 Pacific closing machines you have told us about?

A. Well, this seems to me to be a very plain drawing and illustrates the principle of the feed at the present time.

[1240] Q. (By Mr. BLAKESLEE.) How about the speed of the 1916 machine I was inquiring about?

Mr. TOWNSEND.—The same objection.

A. The same thing.

(Record read, as follows: "A. Well, this seems to me to be a very plain drawing and illustrates the principle of the feed at the present time.")

Mr. TOWNSEND.—I move to strike that answer out.

The MASTER.—The motion will be denied except as to the last sentence, that it illustrates the principle of the present operation. That, of course, is a conclusion of the witness.

(Testimony of Joseph A. Campbell.)

(The following answer read: "A. The same thing.")

[1241] Q. (By Mr. BLAKESLEE.) How about the can feed on the machines as installed in 1916 in comparison with these drawings?

Mr. TOWNSEND.—I make the same objection, as leading and no proper foundation laid.

The MASTER.—Overruled.

Q. (By Mr. BLAKESLEE.) Do you understand the question?

A. Are you calling this the can feed?

Q. Yes, as shown in both figures.

Mr. TOWNSEND.—Your Honor, I move to strike out and suppress all of this part. The gentleman evidently has to inquire of counsel what the drawings are.

The MASTER.—Overruled. Now take the drawings, Mr. Campbell, and let us have the explanation about the 1916 machines.

A. I remember distinctly about the operation here.

Q. (By Mr. BLAKESLEE.) Referring to Figure 2?

A. Yes. In order to get this on the out edge without spilling, that is shoved on here, and we made this mechanism out here ourselves to pjush this on here, and this was the same thing identically of the first machines that were put on the last machines. There may be some little changes but the principle is the same. I wouldn't know whether it

(Testimony of Joseph A. Campbell.)

was just the same size as the drawings, but it is the same principle exactly.

[1242] A. The same method, then.

Q. (By Mr. BLAKESLEE.) When you use the word "principle" does it refer to the way the parts are related or put together in these drawings?

Q. (By Mr. BLAKESLEE.) What is the answer?

A. It is the same way, that is, practically the same way that it is put together.

Q. Now, going a little further, do you recollect any differences, having gotten to the point at which you have arrived, between the can feed of the 1916 machines as installed and first operated, and the principle or get-up or construction or combination illustrated in this patent, Figures 1 and 2?

[1243] (Question read.)

A. I don't know of any difference.

Q. (By Mr. BLAKESLEE.) Now, a little further, referring to these same 1916 machines, namely, those in which you say there was no difference in the can feed, can you state whether such machines or any of them, are in present use at any of the canneries under your supervision in the condition and with the construction of can feeds which were included in [1244] them when they were first installed and used?

(Objection.)

Mr. BLAKESLEE.—My question was merely whether any of those machines he last told us about

(Testimony of Joseph A. Campbell.)

remain to-day in any of his plants in the condition as they were at that time.

A. We have the original machine that we put in in 1916.

Q. (By Mr. BLAKESLEE.) Well, with the can feeds that were in them as delivered and first operated by you?

A. So far as I know there have been no changes in that at all.

Q. Have they been used every season since 1916 in those canneries? A. Yes, they have.

Q. And to what extent each season—

[1245] A. These machines are at Ontario and Hemet, our largest plants.

Q. (By Mr. BLAKESLEE.) To what extent have they been used each season there?

A. They have been used the same as any other machine. They have taken their place in the lines and have been run full capacity.

Cross-examination.

(By Mr. TOWNSEND.)

[1247] Q. You you were speaking from the machine and not from the drawings?

A. When he asked me about the drawings I was speaking about the drawings, and when he asked me about the machines I was speaking about the machines.

[1250] Q. How many machines in 1914 did you have in the Ontario [1251] plant?

A. We didn't have a plant there in 1914.

Q. When did you put the plant in there?

(Testimony of Joseph A. Campbell.)

A. In 1916.

Q. And you put in what character of machines?

A. They put in the Pacific machines.

Q. Exclusively?

A. Yes, outside of the gallon machine.

Q. The one-gallon Angelus? A. Yes.

Q. Those were all supplied by the L. A. Can Company, were they?

A. By the L. A. Can Company.

Q. Did you buy them or were they taken on lease? A. On lease.

Q. How long did you continue leasing them? Do you do that to-day?

A. We do that all the time.

Q. You buy the cans from the can company?

A. Yes.

Q. And lease their machine? A. Yes.

[1252] Q. By leasing their machines at a nominal rental you get a pretty good machine, or get a new machine, and you get your cans at the same price as if you had bought them from the other fellow?

A. It doesn't make any difference.

Q. In 1914 and 1915 you were at the Tulare and Kingsburg plants? A. Yes, sir.

Q. What machines were you using at Tulare?

A. The Angelus machine.

Q. That is, the 2½ pound? A. Yes.

Q. Did you use any gallons?

A. The 2½ and gallons.

Q. How many of the 2½ size? Those are what we know as the 14–P Angelus.

(Testimony of Joseph A. Campbell.)

A. Two machines, I believe.

Q. How many Angelus 19–P's, or gallons, No. 10, were you using? A. One.

Q. Did you have any other double-seamers at Tulare at [1253] that time?

A. Yes, we had for a while a Johnson machine, furnished by the American Can Company.

Q. At Kingsburg what did you have?

A. We had one gallon machine.

Q. Angelus?

A. Angelus; and two 2½ Angelus machines.

Q. Any other seamers?

A. No other seamers.

Q. Then from Kingsburg you came down to Ontario? A. Yes, sir.

Q. That was a new plant, and you put in how many Pacifics? A. Four, I believe.

Q. Then what machines did you have at Hemet?

A. At Hemet we put in two Pacific machines, if I remember rightly?

Q. And what else?

A. And one gallon machine, an Angelus machine.

Q. Any others?

A. I believe that is all, that is, all during the fruit season. In the winted we run olives there, and we put in the Angelus machine to run olives.

Q. You put the Angelus on olives? A. Yes.

Q. That is where?

[1254] A. At Hemet.

Q. What size was that?

(Testimony of Joseph A. Campbell.)

A. That was to run the tall cans, the No. 1 pound talls, an odd-sized can.

[1255] Q. And what have you to-day at the Ontario plant?

A. We have five Pacific machines and one Angelus gallon machine.

Q. When did you become familiar with the machinery at the [1256] Riverside plant?

A. We purchased the Riverside plant in 1920.

Q. What did you find in the plant when you took it over?

A. They had two Angelus machines, 2½, and one gallon machine, I believe.

Q. And you returned the other two, the Angelus, did you? A. Yes, and put in Pacifics.

Q. How many Pacifics have you taken?

A. We put in an extra line. We have three Pacifics there.

Q. In other words, you have increased your capacity? A. Yes.

Q. You have increased your plant there and now have three Pacifics where you had two Angelus before? A. Yes.

Q. When did you put those Pacifics in?

A. In 1920.

Q. And those are leased machines? A. Yes.

Q. What is your yearly rental on a Pacific?

A. I think it is $100 a year.

Q. When did you become familiar with the plant at Elsinore?

(Testimony of Joseph A. Campbell.)

A. I don't remember what year that was built, but I believe it was either 1916 or 1917.

[1257] Q. How many Angelus did they have then and how many Pacifics of the small type, the 2½? A. One 2½.

Q. One 2½ of Angelus? A. Yes.

Q. And how many Pacifics? A. None.

Q. No Pacifics whatever? A. No Pacifics.

Q. Did you increase the number of machines or change them at any time in Elsinore?

A. Well, we have changed machines. We took out the gallon machine and put in another 2½ machine, and changed both lines into 2½ lines.

Q. And what are they now?

A. I believe they are still Angelus machines.

Q. Now, at Fallbrook, which you say is in San Diego County, when did you become acquainted with that plant, and [1258] what type of machines did you find there, and what did you do?

A. That was a local association up until 1920. We handled the output of the pack for them. When we took the plant over they had either two or three Angelus machines, and they have been changed from time to time from one size to another, but they still have Angelus machines in the plant.

Q. Have you any Pacifics there?

A. No Pacifics. That plant is operated on tomatoes and olives, and the lines are small lines and low speed lines.

Q. By low speed lines do you mean the cooker and the exhaust box, and so forth, are low speed?

(Testimony of Joseph A. Campbell.)

A. Yes.

Q. There is no difference in the mode of operation of the 14–P or 2½-pound can machine from a gallon or No. 10 Angelus, is there?

A. No. It is a double-seamer, two rolls.

Q. What do you mean by double-seaming?

A. Well, the first roll first crimps the lid, and the next one seals it tight.

[1259] Q. Were those done all at one place or at two different locations on the machine, those first and second operations?

A. I don't remember just how that operation is.

Q. Although you have a number of these Angelus machines in operation to-day in these plants you can't recall their operation? A. I don't, no.

Q. You stated that you found less trouble with the Pacific than the old machines. What old machines did you mean? The old machines that were in the plant or had been in use a number of years?

A. Just in what connection did I make that statement?

Q. Well, it was in connection with your direct examination. You said that you had trouble with all machines and all kind of machines and not any particular trouble with the seamers, that there had been very few leaks on account of poor closing; that the seaming operations were fairly good all through; that you had less trouble with the Pacific than with the old machines. When you said old machines did you mean the machines that had been

(Testimony of Joseph A. Campbell.)

in use for a number of years as distinguished from the newer machines that had been manufactured?

[1260] A. Yes, that is what I intended.

Q. In other words, you look for less trouble with a new machine than with an old machine?

A. Yes.

Q. Where are your headquarters at present?

A. In Los Angeles.

Q. And you are confined chiefly to office work, or do you make periodic visits to all of these plants?

A. I go to the plants practically every week during the season of manufacture, and then maybe once or twice a month outside of that.

Q. But since 1919 your duties have been chiefly executive rather than as an operator, haven't they?

A. Yes.

[1261] Mr. BLAKESLEE.—I don't think that is proper cross-examination.

Q. What specific changes do you recall were made in the Pacific machines to obviate what you said was the jamming and spilling of the cans going through?

A. There has been no change of machine.

Q. Or, first, what caused the jamming and spilling, and how did you overcome it?

A. Was that in connection with some statement I made before?

Q. Yes.

A. That was on account of the speed. The cans would get into the machine and might have been jammed in some way or other, that is, crooked cans,

(Testimony of Joseph A. Campbell.)

and wouldn't properly seal, and we reduced the speed to lessen the waste, so that if a can came in of that kind they could stop it before several cans got into the machine.

Q. And you found by reducing the speed down to about a hundred cans per minute you obviated that difficulty? A. Yes.

Q. Do you remember any particular point or position in the machine where the jamming or spilling took place?

A. No; I don't know that I can recall.

[1262] Q. It was after it got the cap?

A. Yes, after it got the cap.

Q. And was it after it got into a seaming mechanism?

A. Well, there is where you notice it always, is when you come to the cap. If tht cap is all right and fits the can, why, it will go through all right, but if the can is crooked or something of the kind, and doesn't take the cap, before that can would be taken and thrown out they would have to stop the machine.

The MASTER.—He is asking the general question, if there is less jamming in those machines to-day than there was in 1916.

A. Is that your question?

[1263] Q. (By Mr. TOWNSEND.) Yes, that is a good question.

A. I don't think that was your question, but there is less jamming to-day than there was.

(Testimony of Joseph A. Campbell.)

Q. What is the reason for that? Is it because you have less trouble with the cans? A. No.

Q. Or because you have a better machine?

A. No, because we have a better cap feed.

Q. (By Mr. TOWNSEND.) Where did that jam take place in the machine?

[1264] A. It did not take place in the machine at all.

Q. Well, where did the trouble come that failed to affect a seal in the machine?

A. If the can is faulty, no matter what kind of a machine you have, you can't put a cap on it. The cap will not seal, and if the machine is going too fast, naturally it will spill it.

Q. Have you seen a Pacific machine recently?

A. Oh, within a week, I guess.

Q. Where did you see it?

A. I made the rounds of the plants about a week ago and I saw them in the plants. I didn't take any particular notice of them, though.

Q. Have you particularly inspected a Pacific machine [1265] recently. A. No.

Q. How recently have you seen an Angelus machine? A. At the same time.

Q. Within a week? A. Yes.

Q. Have you been talking, before coming to the stand, recently, to anyone about these old machines of 1916 and 1917, in order to refresh your recollection? A. No, sir.

[1266] The MASTER.—Have you ever been a witness before, Mr. Campbell?

(Testimony of Joseph A. Campbell.)

A. I think once about thirty years ago.

Q. (By Mr. TOWNSEND.) Have you talked with anyone, before taking the stand and giving your testimony here to-day, about the 1916 operations? A. No.

Q. You have had no conversations at all in regard to those early 1916 machines? A. No.

Q. None whatever? A. None whatever.

Q. With anybody? A. With anybody.

Q. Until you took the stand here a few moments ago? A. No.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. Mr. Campbell, as to the Pacific type machines which were put into the plant you have referred to, in 1916, and some of which you say you still have in your plants in operation, please state whether or not any of those machines [1267] of 1916, the Pacific type, have the cap feed mechanisms in them which they had in 1916.

The MASTER.—Overruled.

A. I couldn't say definitely.

Q. (By Mr. BLAKESLEE.) Do you know of any changes having been made in those cap feeds in the 1916 machines?

A. I know there have been changes made in the cap feeds because they were not satisfactory. I know they were changed. I know that. I don't know whether all of them were changed, though.

Q. (By Mr. BLAKESLEE.) Were or were not those machines run in 1916 with those cap feeds?

(Testimony of Joseph A. Campbell.)

A. Yes, sir.

Q. And you got out the pack with those cap feeds on those Pacific machines in 1916? A. Yes, sir.

Q. And do you know whether you did, or not, in 1917 or in subsequent years?

[1268] A. I can't say when the changes were made.

Q. (By Mr. BLAKESLEE.) They were made after 1916, were they? A. Yes, I know that.

Q. When you say that the cap feed of the 1916 Pacific machine was not satisfactory, in what way do you wish us to understand the term, "not satisfactory"?

Mr. TOWNSEND.—I object to the cross-examination of the witness.

The MASTER.—He may answer.

A. For one thing, there was not clearance enough about the can. We had to pack our fruit low to get under the cap feed, and sometimes it would feed two caps at once.

Q. (By Mr. BLAKESLEE.) To what extent, if you know, did the objections which you have mentioned against the cap feed in 1916 on the Pacific machine interfere with getting out the [1269] pack on those machines that year?

A. I can't say to what extent, but not to any considerable extent.

[1270] AFTERNOON SESSION—2 o'clock.

The MASTER.—You may proceed. Will Mr. Berry be here this afternoon?

Mr. BLAKESLEE.—I asked him to be here at

(Testimony of Ray O. Wilson.)

three, as I wish to call Mr. Guenther first, and that will give Mr. Berry an opportunity to look over his affidavit.

Mr. TOWNSEND.—I would prefer to have Mr. Berry appear right after Mr. Wilson's cross is finished, in view of the fact that the expert affidavit has been filed.

The MASTER.—It hasn't been accepted yet.

Mr. TOWNSEND.—I have some objections to make to that, and then in accordance with Rule 48 I want to conduct the cross-examination as he is part and parcel of the affidavit.

The MASTER.—I received it subject to the objection until Mr. Berry got here.

TESTIMONY OF RAY O. WILSON, FOR PLAINTIFFS (RECALLED).

RAY O. WILSON recalled.

Cross-examination (Resumed.)

(By Mr. TOWNSEND.)

Q. Mr. Wilson, when you were testifying I believe yesterday on direct examination in regard to the number of machines that were put out by the Pacific or its predecessors, were you testifying from records or from memory?

[1271] Mr. BLAKESLEE.—We object to the question as immaterial. Obviously the witness testified from memory. He didn't have a record before him.

The MASTER.—Overruled.

(Testimony of Ray O. Wilson.)

Mr. TOWNSEND.—Now I object to any such interruption.

The MASTER.—You made your objection. Don't make any comments.

A. I was testifying strictly from memory.

Q. (By Mr. TOWNSEND.) Although the records were available for the purposes of those answers?

Mr. BLAKESLEE.—The same objection.

A. Yes.

The MASTER.—Sustained.

Mr. TOWNSEND.—In view of that, I move that all the testimony relating to numbers and dates in reference to machines of the Pacific Company or its predecessors be struck out as not calling for the best evidence.

The MASTER.—Motion denied.

Q. (By Mr. TOWNSEND.) How many machines did you say of the Pacific type, or we will call them Pacific machines or Wilson machines, were put out in 1916?

A. I think it was 12. I am not sure about that, though.

Q. You think there were 12 in 1916?

A. I think so.

Q. How many were put out in 1917?

A. I don't remember.

[1272] Q. Did you put out any?

A. Yes.

Q. Did you put out as many as 12?

A. I don't remember about that time. That was

(Testimony of Ray O. Wilson.)

during the time we moved across the street and I don't recall how many machines we put out.

Q. How is it you can remember you had 12 in 1916 but you can't remember any in 1917?

A. I remember that because we made our first installation of any magnitude at all in 1916.

Q. How many machines did you put in of that installation and that magnitude in 1916?

A. I think there were 5 in the Ontario plant of the California Growers, and 2 or 3 in the Hemet plant, and 2 in the plant of the Los Angeles Can Company.

Q. That makes 10 for 1916. A. Yes.

Q. Do you think that is all, or were there 12, as you say?

A. I think we put out 12, but I am not sure about the exact number.

Q. How about 1917? A. I don't remember.

Q. Did you put any out?

[1273] A. Yes.

Q. Can you remember where you put them?

A. I think we put some in the H. C. Prince plant at Oakland, and then the Los Angeles Can Company took some, but just how many I don't know. We were working during that year, though.

Q. Don't you remember how many Prince took?

A. No.

Q. How many machines has Prince to-day, or did they have last season in 1922, of the Pacific type?

A. Seven. Well, no; in 1922 we had six there.

(Testimony of Ray O. Wilson.)

Q. You had six Pacifics in the Prince Company in the season of 1922?

A. Yes; and we delivered him one about a month ago.

Q. Of those six that they had in 1922 did they get any of those in 1922? A. No.

Q. Did they get any of them in 1921?

A. I think not.

Q. Or any in 1920?

A. There were two delivered some time in that period, or three maybe, around 1919 and 1920. I am not sure as to the exact date.

Q. Then that would leave three prior to 1920?

A. Yes.

Q. Did you put any in in 1918?

[1274] A. I say there were three put in the plant in 1917 or 1918.

Q. You couldn't tell which year? A. No.

Q. Did the L. A. Can Company in 1917 put any in?

A. I am sure they did, but how many I don't know.

Q. Did they have any, as a matter of fact, in 1917?

A. I am sure they did, because they were continually taking them, but just how many they took I don't recall.

Q. And what is your best recollection as to the total number that you put out in 1917?

A. I don't remember.

Q. Have you anything to fix that? A. No.

(Testimony of Ray O. Wilson.)

Q. In 1918 what was your output of Pacific machines? A. I don't recall.

Q. You don't remember? [1275] A. No.

Q. Did you put out any?

A. We undoubtedly did because we were pretty busy along in those years.

Q. In 1918? A. Yes.

Q. That was in the period of the war, wasn't it?

A. Yes.

Q. Where were you employed?

A. At the same place we are now, 324 San Fernando Road.

Q. You were in that place then known as the Stetson Machine Works, were you? A. Yes, sir.

Q. Were you doing any other kind of work than building Wilson machines? A. No.

Q. Yet you can't remember in 1918 even the approximate number that you put out?

A. No.

Q. Did you put out one?

A. We undoubtedly did because we were busy that year.

Q. Did you put out a dozen?

A. I don't remember.

Q. In 1919 what did you do?

A. I don't recall that, either. I can't give you the number of machines put out in any year except the first one, [1276] and I explained that to you, how I got at that number. Those figures don't stay with me very long.

(Testimony of Ray O. Wilson.)

Q. You don't know whether you put out any in 1919, do you?

A. I know we put them out, yes; but just how many I don't know.

Q. In 1920 what was your output?

A. We shipped ten machines to the Islands in 1920, and the Can Company has been all through these years taking from five to ten machines a year, maybe more than that some seasons.

Q. When you say the Can Company was taking five to ten a year it was not for use in their own cannery, that is, those numbers didn't all go into their cannery, did they?

A. Into their can factory, do you mean?

Q. Can factory, yes. A. No.

Q. They were taken to their customers who bought cans? A. Yes.

Q. And yet you can't tell even in 1920 how many machines you put out? A. No.

[1277] A. In 1921 we worked entirely on the larger machine, the gallon machine.

Q. How many of those machines did you put out? A. We put out seven that year.

Q. Seven large machines?

A. Well, no. Two that year; that was the first year.

Q. You put out two in 1920 of the No. 10?

A. Yes, and finished up about 20 of the smaller machines that we had in course of construction.

Q. But didn't dispose of any small machines in 1921?

(Testimony of Ray O. Wilson.)

A. Yes, we did, but how many I don't know; five or six.

Q. I understood you to say that you did not.

A. How is that?

Q. I had understood you to say that you did not.

A. I took it by your remark that you meant did we build them, did we start any more, or put them through.

A. We had started in 1920 I think 25 small machines, and we finished them up in 1921 and built two more gallons.

Q. Did you sell any in 1921 or dispose of them?

A. Yes.

Q. How many?

[1278] A. I don't know; five or six I said, I don't recall the exact number of the smaller machines.

Q. How did you do in 1922? That is last year. How many did you build and how many did you dispose of?

A. We built 6 gallon machines and started on six more, and I don't think there were over 4 or 5 of the small machines we disposed of.

Q. In other words, you disposed of 4 or 5 in 1922? A. Yes.

Q. Will you state again what your disposal was in 1921?

A. I said 5 or 6, but I am not sure of that.

Q. You say about 25 were in course of construction? A. Yes.

Q. At the beginning of 1921? A. Yes.

(Testimony of Ray O. Wilson.)

Q. And you say you started how many more in 1921 in construction?

A. We built 2 gallon machines, and finished up 25 of the smaller.

Q. How many more in 1922 did you start construction on?

A. We started six more gallons.

Q. You only built gallons then in 1922?

A. Yes.

Q. You started no new Pacifics either in 1921 or 1922? A. Gallon machines, yes.

Q. You started gallon machines only in 1921 and 1922? [1279] A. Yes.

Q. And you started the construction of no new Pacifics 2½ or small machines in either 1921 or 1922? A. No.

Q. That would apparently leave you quite a stock of small Pacifics on hand.

A. I think we have about 12 small ones on hand.

Q. Are you running any new small ones through now? A. No, only parts.

Q. Just replacements on others that are out?

A. Yes, sir.

Q. (By Mr. BLAKESLEE.) The 25 you said you started in 1921, what became of those?

Mr. TOWNSEND.—He started them in 1920 and completed them in 1921, he said.

Q. (By Mr. BLAKESLEE.) Please state what happened to them.

A. I think there are about 12 left in our shop yet of those 25.

(Testimony of Ray O. Wilson.)

Q. The rest were sold? A. Yes.

Q. And you started no other small size in 1921?

A. That is right.

Q. And in 1922 how many did you start?

A. No small ones.

Q. No small ones? A. No, sir.

[1280] Q. And you have about 12 of the 25 on hand?

A. Yes. I think that is close to the figure, but I am not sure.

Q. (By Mr. TOWNSEND.) I understood you to say that you thought about 25 or 30 machines had been put out with the cap feed of your patent 1,250,406, forming part of Exhibit 2, and I believe you also stated that some of those had been changed over to the present type of cap feed. A. Yes.

Q. How many of those have been changed over to the present type of cap feed, if you know; but if you don't know I don't want your answer. If you do know I want you to state where those machines are located and where they were located when the change was made, and name the cannery and who had charge of the operation of the cannery, the superintendent or foreman of the machine.

A. I can't answer that question.

Q. Can you answer any part of it? A. No.

Q. All you can say is that some of those were changed over to the present style?

A. Yes, the biggest majority of them.

Q. When you state you thought you made the change on the [1281] can feed device of patent

(Testimony of Ray O. Wilson.)

1,301,348, by doing away with the rubber wheel 22 of Fig. 1 of that patent and adding the other disk for the cans and putting the four rubber fingers on that additional disk, when was that?

A. That must have been in 1918.

Q. You think that was in 1918? A. Yes.

Q. Do you recall when you first changed the rubber roller 22 and put on the four rubber fingers on the same disk that the rubber roller was on originally? A. No. It was around in 1917, though.

Q. What was the reason for doing that in the first instance, of putting the rubber fingers on there in place of the rubber wheel on the same disk where the rubber wheel is shown on your patent, and then the reason for the subsequent change of putting the rubber fingers over on the initial disk, which you later added?

A. Why, by experimenting with it we found it improved the thing.

Q. Was that experiment that improved it a matter of chance or a matter of necessity?

[1282] A. We have always been trying to bring the machine up to as perfect a point as we possibly could in design and utility, and that was one of them.

Q. You saw a want and then you made the improvement? A. And we filled it.

Q. What was the want?

A. The want of a better feed.

[1284] Q. I understood you to say you junked the original Wilson machine. Did you say that?

(Testimony of Ray O. Wilson.)

A. Yes.

Q. When?

A. I don't remember. It was around 1917 or 1918.

Q. My recollection is that yesterday you testified you junked it in 1918.

A. It was around in there some place.

Q. It might have been earlier?

A. It might have been, yes.

Q. Had that ever gone out into a cannery for operation? A. Yes.

Q. Where?

A. In the canning plant of the F. F. Stetson Company and I think it was one full season and part of another in the El Monte Canning Company, or the V. K. Morgan Company at El Monte.

Q. Who was the double-seamer man in charge at El Monte?

A. I don't remember, but his first name was George.

Q. What did he look like, can you remember?

A. He wouldn't win a prize in a beauty contest. He was sort of a husky young blacksmith.

Q. Who was the superintendent?

[1285] A. Mr. Morgan.

Q. Is he still there? A. No, I think not.

Q. Do you know where he is? A. No.

Q. Is he still living? A. I don't know.

Q. When did you last see him?

A. It must have been a year and a half ago or two years ago.

(Testimony of Ray O. Wilson.)

Q. Where was he then?

A. I don't recall that. It seems to me I saw him in the Los Angeles Can Company but I am not certain.

Q. What was the last time that you knew him to be connected with a cannery in any way?

A. I don't remember just the time.

Q. Do you remember the year that that machine was in the Morgan cannery at El Monte?

A. I think it was 1916 and 1917.

Q. 1916 or 1917?

A. 1916 and part of 1917, but I am not certain.

Q. Do you remember any of the other men at the El Monte plant at that time? A. No.

Q. What was the reason for scrapping that first machine?

A. It had sort of outlived its usefulness. It wasn't [1286] built very good in the first place. Owing to the machinery I had down there and the equipment in the Smith-Booth-Usher plant there were quite a lot of errors in the machine, and the first chance I got I had it smashed up.

Q. Do these five photostat sheets that you have produced represent the cap feed arrangement which you now use on your modern Pacific machine?

A. Yes.

Q. In every detail? A. Yes.

Q. Does your answer also apply to the Bliss Pacifics? A. Yes.

[1287] Q. I want to make sure whether or not there are any deviations in the machines on the

(Testimony of Ray O. Wilson.)

market under the name of Pacific, either by yourselves or Bliss, on these drawings.

A. Those drawings I don't think are to scale; otherwise they represent the exact feed, yes.

Q. So you can frankly state that these drawings correctly represent the machine that is now in modern practice? A. Yes.

Q. Either by yourself or Bliss? A. Yes.

[1288] Mr. TOWNSEND.—These drawings are offered respectively as Exhibits "J–1," "K–1," "L–1,"—well, pardon me, before I proceed further with this offer, it is possible you have mixed two different sets of drawings here, because I observe a duplication of figures.

Q. What are those two drawings I show you, comprising figures 1 to 9 inclusive, two sheets of drawings, figures 1 to 9 inclusive? What do they represent? A. They represent our cap feed.

Q. The cap feed feature? A. Yes.

Q. What part of the cap feed feature?

[1289] A. The upper part, the actual cap feed.

Q. Does it show the oscillating knife?

A. And pusher; yes.

Q. Which is the oscillating knife in those drawings? A. Figure 9.

Mr. TOWNSEND.—I offer these drawings as Defendants' Exhibits "J–1" and "K–1."

[1296] Mr. TOWNSEND.—Let me first state I offer the three blue-prints last referred to as Defendants' Exhibits "L–1," "M–1," and "N–1," which are shown in those five drawings—Exhibits "J–1" to [1297] "N–1," inclusive.

(Testimony of Ray O. Wilson.)

[1298] Q. (By Mr. TOWNSEND.) I will put it this way: Give us your best recollection of when you adopted that form. Give us the year and also give us about the month.

A. That we adopted this entire feed?

Mr. BLAKESLEE.—By "adopted" do you mean put on the commercial machine?

Mr. TOWNSEND.—Yes, on the five exhibits, or the set of two exhibits represented by drawings Exhibits "J–1" and "K–1," and then the three Exhibits "L–1," "M–1," and "N–1."

A. Exhibits "J–1" and "K–1"—I think we put these on in early 1919, or it might be late in 1918. That feed there was on around the month of November, 1918.

Redirect Examination.

[1299] Q. (By Mr. BLAKESLEE.) In the marketing of the Pacific type machine, what course have you and your associates pursued in making changes from time to time with respect to the parts of the machine?

(Objection.)

The MASTER.—The witness may answer.

A. It has always been our policy to improve the machine and to keep the machines up to date, in some cases even at a loss to ourselves.

Q. (By Mr. BLAKESLEE.) Do you know to what extent during the last three years in the canneries in California other can-closing machines than the Pacific type have been installed; in other

(Testimony of Ray O. Wilson.)

words, what has been the extent to which such installations have been made, as far as you know?

Mr. TOWNSEND.—That is wholly immaterial.

Mr. BLAKESLEE.—It tends to show the market during those three years in California.

The MASTER.—The question is objectionable in form, it seems to me.

[1300] Mr. BLAKESLEE.—That might be answerable by a concrete, specific number, so it doesn't seem to me it is indefinite.

The MASTER.—Objection sustained. You may answer.

A. Is that in Southern California?

Q. (By Mr. BLAKESLEE.) In California, throughout California.

A. I know nothing about the northern part.

Q. What do you know as to south of the Tehachapi?

Mr. TOWNSEND.—The same objection.

The MASTER.—Sustained.

Mr. BLAKESLEE.—May the witness answer?

The MASTER.—Yes.

A. I can't recall any installations of machines other than our own in Southern California.

Q. (By Mr. BLAKESLEE.) To what extent have you been in touch with the canners of Southern California?

A. I have been around to the canneries quite a good deal each season, except the 1920 season.

Q. (By Mr. BLAKESLEE.) To your knowledge how many P–24 machines of the defendants have

(Testimony of Ray O. Wilson.)

been installed in Southern California during the last three years?

Mr. TOWNSEND.—Manifestly this witness knows nothing about the defendants' business.

[1301] The MASTER.—He may answer the question.

A. I saw the machine out at the Pomona plant of the Golden State in 1921 in September, and last season I saw one in the plant of the California Packing Corporation on Macy Street.

Q. (By Mr. BLAKESLEE.) What territory to your knowledge does the E. W. Bliss Company, manufacturing Pacific machines under the license in evidence, serve and supply?

(Objection.)

[1302] The MASTER.—He may answer. Overruled.

A. They have all territory east of the Rocky Mountains, both in Canada and the United States, and nearly all of the foreign trade that comes to New York, such as Continental Europe and England and South America and Mexico.

Q. (By Mr. BLAKESLEE.) Can you tell us canning centers in the United States east of the Rockies which to your knowledge they have supplied with Pacific machines?

(Objection.)

Mr. TOWNSEND.—That is objected to as wholly immaterial. We have already had the fact of the territory they have and we have been told how many machines were put out.

(Testimony of Ray O. Wilson.)

Mr. BLAKESLEE.—It goes to the extent of the actual adoption of plaintiffs' invention as shown by the distribution of the machines.

Mr. TOWNSEND.—That is repetition then.

Mr. BLAKESLEE.—They might have rights to supply Australia, but they never have gone there. I am asking what centers they have served, and I shall not press it beyond that.

The MASTER.—Overruled.

A. In Maryland, Virginia, New Jersey, and some machines in New York and Ohio that I know of.

[1303] Q. There is one question I haven't asked you and that is, from your own observation what have you to say as to the effect of the intermittent motion of the P–14 machine in its stopping and starting upon the fluid contents of cans being closed on such machine in practice?

Mr. TOWNSEND.—That is objected to, as this man is not a machinist and he is not a canner, and that is for the canner to testify to. These people are estopped to conclude that the Angelus is a faulty machine by the mere fact of their own acts in handling these machines for years.

The MASTER.—Overruled. Answer the question.

A. It makes it a slower machine on account of the jerky [1304] motion which is bound to slop out the contents of the can if run at any high rate of speed.

Q. Have you seen any such slopping in the use of the P–14 machines? A. Many times, yes.

(Testimony of Ray O. Wilson.)

Q. At the places you have told us about in your previous testimony? A. Some of them, yes.

Q. In the operation of the Pacific machine what have you observed as to any such slopping out of the liquid contents?

A. Compared with the P–14, we have made tests that have proved that we can more than double the amount and the same amount of slopping.

Q. Do you mean double the output of the stuff that is slopped, or double the output of closing the cans? A. Double the output of cans.

Q. Please tell us about the operation of the Pacific machine with its two turrets, in the first of which the first rolling down of the can occurs, and in the second of which the final rolling down occurs, and the relation between these operations, one taking place while the other takes place, in distinction from the P–14 machine in which there is but one turret and the can is subjected in the same turret to both rolling down operations, and compare the two performances as to speed of operation and any other factor that you can tell us about.

[1305] Mr. TOWNSEND.—Your Honor, that question is not only involved, but it is leading in the initial statements there, and it is a repetition of the testimony that has been given time and again by the witness where he described the Pacific, and he has described the Angelus, and the comparison has been over and over again, and any conclusions drawn are for the Court.

(Testimony of Ray O. Wilson.)

Mr. BLAKESLEE.—I am drawing attention to certain particular aspects of the operation.

The MASTER.—I think the objection is well founded. It is sustained. The witness may answer.

[1306] A. In the Angelus the first operation is done on one spindle and it is carried from there by a star wheel, or can-carrying disk, to the second operation, and the second operation is applied there. In the Pacific the operations are done, first, on one continuously rotating turret which carries four spindles, and then it is transferred to the second operation turret where the second operation roll is applied. By this means the can is carried by the actual operating means, against the Angelus 14–P, having the necessary [1307] mechanism to carry the can outside of the actual operating spindles. The separation of the two turrets in the Pacific machine naturally increases the speed, because you are working on two cans, where in the case of a single turret you would only be working on one can. It practically doubles up the speed.

Q. (By Mr. BLAKESLEE.) Is this star wheel you referred to a rotating member in the 14–P which carries the can around from the point it receives the cap until it is seamed and discharged?

A. Yes.

Q. That is the rotating carriage or frame in the 14–P, is it?

A. It is the rotating carriage.

Q. In the 14–P is a can receiving its second seam-

(Testimony of Ray O. Wilson.)

ing operation while another can is receiving its first seaming operation? A. Yes.

Q. That occurs? A. Yes.

Q And there has to be a stop for each operation?

A. Yes.

Q. In the Pacific machine, then, from your former testimony, there is no stop during either operation?

[1308] A. That is right.

[1309] Q. Will you please compare the Pacific machine and the 14–P Angelus machine as to the movement, location, and action of the seaming mechanisms therein?

Mr. TOWNSEND.—I interpose the same objection.

The MASTER.—I don't think that is quite so objectionable this time. He is asking for particular features of comparison. He doesn't indicate what he wants. Overruled.

A. In the 14–P Angelus the first and second operation spindles and seaming mechanisms are stationary, while in the Pacific they are mounted on continuously revolving turrets.

A. It produces a greater speed and less mechanism per spindle. Also it carries the can forward without any extra mechanical contrivances.

Q. In the Pacific type of can-closing machine would it be possible to feed the caps to the cans while they are being transferred from the first turret to the second turret and close the cans in that machine?

(Testimony of Ray O. Wilson.)

[1310] The MASTER.—From the first turret to the second turret?

Mr. BLAKESLEE.—Yes, sir.

The MASTER.—What do you mean by the turret there?

Mr. BLAKESLEE.—The first turret is what the witness has referred to as the first rotating carriage in which the cans are treated and the transfer means is between them here.

[1311] The MASTER.—I will let him answer, but I don't see the bearing of it.

Mr. BLAKESLEE.—The bearing will appear later.

A. No.

Q. It would not? A. No.

The MASTER.—As was said before, I think it is obvious. You would have to modify the whole machine to feed that cap in there.

Mr. BLAKESLEE.—Yes; that is exactly what I want to bring out. That is all.

Further Recross-examination.

(By Mr. TOWNSEND.)

Q. Where have you any machines around San Francisco or the Bay region, other than at the Prince plant? A. At San Jose.

Q. What cannery?

A. At the California Co-operative Canneries.

Q. Any others in San Jose? A. No.

Q. Any others in San Francisco or Oakland?

[1312] A. We have them in Oakland at Fruitvale at the H. G. Prince Company.

Q. In the Angelus you have one spindle or sta-

(Testimony of Ray O. Wilson.)

tion for performing the first seaming operation, have you, in the Angelus 14–P? A. Yes.

Q. And you have another spindle or station separated therefrom performing the second seaming operation, have you? A. Yes.

Q. Both of those operations proceed at the same time, do they not, that is, the seaming of a can on the first station proceeds simultaneously with the seaming of the second can at the second operation station? A. Yes.

Q. (By the MASTER.) That is, you have two at the same time? A. Yes.

Q. (By Mr. TOWNSEND.) You have two at the same time, undergoing simultaneous operation? A. Yes.

Q. One getting the first seam and the other getting the second seam? A. Yes.

[1313] Q. You have that also in the Pacific, have you not? A. Yes.

Q. In the Angelus you have a transfer means that takes the can after it has been sealed at the first seaming operation on to the second seaming operation, have you? A. Yes.

Q. In the 24–P we have a seaming operation going on on a can at the first seaming operation or station and at the same time we have the second seaming operation going on at the second station? A. Yes.

Q. And you have a transfer means between those two stations on the 24–P, have you? A. Yes.

(Testimony of Ray O. Wilson.)

Q. But in the 14–P you have an intermittent movement? A. Yes.

Q. And in the 24–P you have a continuous movement or progress? A. Yes.

Q. And as a matter of fact, isn't that the real distinction of feed, that you have speeded up the 14–P to make it continuous?

Mr. BLAKESLEE.—We object to that. The 14–P is not the 24–P, and that question is leading.

The MASTER.—I think the witness can answer; overruled.

Q. (By Mr. TOWNSEND.) That is, you have speeded up the [1314] seaming means, the identical seaming means of the 14–P, so that they are continuous? A. No; there is no comparison.

Q. To your mind there is no comparison?

A. Absolutely none.

Q. We have the identical seaming means on the 24–P that we have on the 14–P, have we not?

A. Yes; but you say we speeded it up. There is no comparison in the construction of the two machines. You couldn't speed the 14–P up to make it continuous.

Q. You didn't understand my question. I agree that speeding the same machine up in that sense—if I make those carriers continuous in movement with the first seaming operation of the 14–P, similar there, and use the same seaming means for the second operation that we have on the 14–P, to be continuous, you would recognize the same principles of seaming, would you not?

(Testimony of Ray O. Wilson.)

Mr. BLAKESLEE.—We object to that as purely argumentative, hypothetical, and whether he recognizes it is not *probitive,* and the construction the witness said is totally different, and of course it is, from the exhibits.

Q. (By Mr. TOWNSEND.) Can you answer the question?

A. No, I couldn't answer the question. That is too much speed for me, in design, I mean.

Q. Well, I am serious in propounding these questions, and I would request—

[1315] A. Well, I would answer your question if I could.

Q. I won't duplicate the examination we have already had, but the seamers or spindles on the 24–P operate upon the can identically in the same way they do on the 14–P, as far as the can being nonrotative on its axis, while the seaming-head revolves and rolls around the cap and body and turns the seam down? A. Yes.

Q. And that we have the same identical or substantially identical compression roll for the second operation of the 24–P that we have on the 14–P?

A. I think not.

Q. I said substantially identical, it being adapted to its new environment, but the can being rotated while the seaming roller goes in and against the can.

Mr. BLAKESLEE.—That is argumentative and hypothetical when he brings in environment, which

of course contemplates the whole reorganization which has taken place.

A. It is correct as far as operating on the can while the can is rotating, but the seaming compression roll means are totally different.

Q. (By Mr. TOWNSEND.) Well, in the 24–P the second seaming adjuncts travel, while in the 14–P they are stationary; is that correct?

A. You are trying to get me to say that the second operation means of the 14–P and the 24–P are identical, which [1316] they are not. You couldn't replace the one with the other.

Q. (By Mr. TOWNSEND.) And the chief difference is that in the 24–P that action takes place while the can progresses around the axis that carries the second operating spindle; in other words, the apparatus is a movement, while in the 14–P it happens to be stationary? A. Yes.

Q. You stated, I believe, that by the Pacific you could have two cans or two spindles working on the first seaming operation at the same time.

A. Yes. There are two and at times three working on [1317] three different cans.

Q. And how many spindles do you have in order to give you that speed of operation?

A. Four firsts and four seconds.

Q. In the high speed four-spindle machines of the Can Company, how do they operate under those circumstances?

Mr. BLAKESLEE.—What can company?

(Testimony of Ray O. Wilson.)

Mr. TOWNSEND.—The American Can Company.

A. Their high speed W. machine is approximately the same. They are working on at times three cans in the first and second operation.

Q. And the American Can Company in that high speed four-spindle machine is able to do it by making it run continuously and with four spindles to do it?

A. Yes. Of course the first part of the circle of the turret is the first operation and the last part of it is the second operation.

[1318] Further Redirect Examination.

(By Mr. BLAKESLEE.)

Q. When did you first see such an American Can Company four-spindle machine?

A. About in the year 1915.

Q. Did you ever know of one being operated prior to that year? A. No.

Mr. BLAKESLEE.—Then, Mr. Master, we move to strike out the testimony as to the American Can Company mode of operation—

Mr. TOWNSEND.—We will show you the patent on it when we come to it—

Mr. BLAKESLEE.—If it is offered as any proof of prior art in this case, as it is obviously not early enough.

Mr. TOWNSEND.—Well, if we don't connect it up that motion would be good; but we offer to connect it up with a patent which is anterior.

(Testimony of Ray O. Wilson.)

Q. (By Mr. BLAKESLEE.) That American Can Company four-spindle machine has how many turrets or revolving carriers or carriages?

A. One single turret.

Q. And it moves continuously? A. Yes.

Q. At what speed have you seen that run?

[1319] A. 120 cans a minute on fish; not on fruit.

Q. Has it any separate transfer means rotating differently from the main carriage or carrier?

A. No.

Q. In the Angelus P–14 or P–19 machine is there any part of the seam forming means, either first or second operation, carried by what you call the star wheel or single revolving carrier which carries the can from first to second seaming operation?

Mr. TOWNSEND.—That is objected to as leading.

The MASTER.—That is obvious from an inspection of the machine there is not. He may answer.

A. No.

Q. (By Mr. BLAKESLEE.) In the Angelus P–24 and Pacific machines, where and how are the seaming means for first and second operations mounted and carried?

A. They are carried and mounted right on each individual spindle.

Q. And the spindles are mounted on what?

A. Continuously revolving turrets.

Q. So that the mechanism that does the seaming moves along with the parts that carry the cans, is that right?

(Testimony of H. L. Guenther.)

Mr. TOWNSEND.—Objected to as leading.

The MASTER.—Sustained. You may answer.

A. Yes.

TESTIMONY OF H. L. GUENTHER, FOR PLAINTIFFS.

[1320] H. L. GUENTHER, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Mr. TOWNSEND.—I wish to state it is obvious to the Master that Mr. Guenther is suffering from an affliction of deafness to a very great degree. He has an Acousticon that enables him to somewhat hear better than he otherwise would; and he is also quite a severe sufferer from neuritis, and at times he is under great pain and stress. I only make that as a preliminary mention of facts that are obvious to the Court, and perhaps if Mrs. Guenther could sit near him—he is more used to her voice, and the questions might be repeated through her in case you find difficulty.

Mr. BLAKESLEE.—I will say this, that I don't want to impair the facility of Mr. Guenther's giving answers to questions, but I talked with him on the street and exchanged answers and comments without any trouble, and I will try to do the same here.

Mr. TOWNSEND.—Mr. Guenther, if you don't

(Testimony of H. L. Guenther.)

hear and understand his questions you ask the Master to ask the Reporter to please repeat them for you.

The WITNESS.—All right.

Q. (By Mr. BLAKESLEE.) You are President of the Angelus [1321] Sanitary Can Machine Company, a defendant in this case? A. Yes, sir.

Q. When was that Company organized?

Mr. TOWNSEND.—We will stipulate as to that.

A. I believe I have it in the record there, but I can't tell you the exact date now.

The MASTER.—What is the date, Mr. Townsend?

Mr. TOWNSEND.—It was incorporated September 29, 1910.

Q. (By Mr. BLAKESLEE.) How long have you been President of that Company?

A. Ever since it was organized.

Q. What proportion of its stock do you own?

Mr. TOWNSEND.—That is objected to as prying into his private affairs. We were prevented from inquiring into such a matter with regard to the plaintiffs. If he owns a majority, that is sufficient, or if he controls it.

The MASTER.—Sustained. You might ask him the proportion he owns.

Q. (By Mr. BLAKESLEE.) What proportion of the stock of the Company do you own?

A. A majority.

Q. What have been your duties as President of that Company?

(Testimony of H. L. Guenther.)

A. Well, I have complete charge of it.

Q. Have you directed all of its enterprises and activities? [1322] A. Yes, sir.

Q. And directed the building and selling of the P–24 machines? A. Yes, sir.

Q. How many P–24 machines have you and the defendant Angelus Sanitary Can Machine Company made?

Mr. TOWNSEND.—That is objected to as a matter of privilege. If he asks him whether he made a 24–P such as is in evidence, prior to the filing of this suit and subsequent to the issuance of the patents, that is proper; but this is not an accounting, and to inquire what he has done is a matter of privilege, and I think we are entitled to protection on that.

Mr. BLAKESLEE.—This is not an attempt to conduct a premature accounting, but the Courts have held that the question is proper to further show the extent of the adoption of the device of the patents in suit.

Mr. TOWNSEND.—That may be due to its superiority.

Mr. BLAKESLEE.—And to that extent the question is entirely proper. We are not attempting to carry on an accounting here. The defendants can have nothing to conceal. If there is to be an accounting we will get the same evidence, and if there is not it can't hurt anybody to answer that.

Mr. TOWNSEND.—There is no objection to asking, if you want to, as to how many of these machines he sold prior to the filing of this bill, December 7, 1921; but if he sold [1323] one or more than one, that is sufficient. To pry into our private affairs is grossly improper and I hope you will protect the defendants.

Mr. BLAKESLEE.—The whole matter here involves the matter of making and sale of those machines, and we have a right to interrogate this witness as to where he put every one that he made, in proving our infringement.

The MASTER.—I would have to have the authorities on that, Mr. Blakeslee. I don't believe I would want him to answer until I had them, as I understand the law at the present time.

Mr. BLAKESLEE.—The whole proceeding is to determine his acts of infringement.

The MASTER.—If you have him infringing with one, that is as much as you need to prove.

Mr. BLAKESLEE.—But we have a right to show any act of infringement that he did, and the main object is to show the extent to which the invention through defendant has been adopted. What privilege is violated by his stating the number of these machines that he has notoriously put out?

The MASTER.—Counsel has offered to let you ask him up to the date of filing suit.

Mr. BLAKESLEE.—Well, I can't see the reason for drawing the line of demarcation.

(Testimony of H. L. Guenther.)

Mr. TOWNSEND.—If they can't prove a sale on one of these things prior to the filing of this suit, their case falls; so [1324] everything that is done subsequent to the date of the suit is of no consequence.

Mr. BLAKESLEE.—It is certainly of consequence within the scope of the charge of infringement, because the infringement continues as well after the bill as before.

The MASTER.—You may answer up to the date of filing the suit, how many of these you sold, of the P–24.

A. I couldn't tell you how many I sold without looking up the records, and I may not be able to then.

Q. (By Mr. BLAKESLEE.) Haven't you any records as to the number you have sold of P–24 machines?

Mr. TOWNSEND.—We will stipulate that we sold or manufactured—I don't care what you want to call it—one of these machines prior to the filing of this suit, and that is as far as counsel has any right to inquire. We have practically conceded that already, and if that is what you want to get, a machine, before the Court, that is far as counsel has a right to inquire.

Mr. BLAKESLEE.—We don't need that because you have admitted it in your bill of particulars.

Mr. TOWNSEND.—Then this is a fishing expedition purely and simply.

Mr. BLAKESLEE.—Not at all. Does that

stipulation you offer carry with it the fact that such a 24–P machine has been made and sold in the Southern District of California prior to the bringing of suit?

[1325] Mr. TOWNSEND.—Why, of course. We want to have this litigation disposed of, and we will go to work and help you on your proofs. You haven't proved anything like that, and we will admit it.

Mr. BLAKESLEE.—You admit it again by stipulation?

Mr. TOWNSEND.—Yes; that we made one of these P–24's like the Master saw, prior to the filing of this suit, in the Southern District of California, and that ought to foreclose any further inquiry as to quantity.

[1329] 811 Washington Building,
Los Angeles, California, Tuesday, April 24, 1923,
10 A. M.

(Appearances as heretofore noted.)

Mr. BLAKESLEE.—As to the matter of the record last Friday in connection with the testimony of Mr. Guenther, on which I desisted from examining him as to the number of P–24's, I want to ask that the record show, if that stipulation is to stand as to the making of a P–24 prior to the bringing of suit, that such P–24 was so made subsequent to the issuance of the three patents in suit? I presume that was implied in the stipulation. Is that correct?

Mr. TOWNSEND.—That is correct.

[1330] Mr. BLAKESLEE.—And within the Southern District of California?

Mr. TOWNSEND.—And within the Southern District of California, but none have been sold within the Southern District of California, nor used commercially, except in the demonstrations of the 24–P.

Mr. BLAKESLEE.—But one had been completely manufactured?

Mr. TOWNSEND.—One 24–P had been completely manufactured prior to suit and subsequent to the issuance of all these patents, but none have been sold in the Southern District. We meet the issue on the manufacture alone.

Mr. BLAKESLEE.—It is the affidavit of November 13, 1922, entitled: "Affidavit of Reni S. Berry Under Equity Rule 48." That is formally offered.

(The affidavit referred to is in words and figures as [1331] follows:)

AFFIDAVIT OF RENI S. BERRY UNDER EQUITY RULE 48.

(Title of Court and Cause.)

State of California,

County of Los Angeles,—ss.

RENI S. BERRY, being first duly sworn, deposes and says: That I am now a resident of the city of Los Angeles, State of California, and am an attorney-at-law and for fifteen years have been registered as an attorney in the United States Patent Office throughout which time I have been per-

sonally engaged in the preparation and prosecution of applications for letters patent including the making of patent drawings and writing patent specifications and claims;

That throughout the year of 1914 I was in the employ of the firm of Hazard and Straus, patent attorneys, during which time I personally made the drawings and wrote the specification and claims in the application for United States letters patent of Ray O. Wilson and Arthur D. Sumner as such application was originally filed, which application resulted in Patent No. 1,203,295 on Can Heading Machine, dated October 31st, 1916; and that subsequently I personally prosecuted the application to allowance;

That in the course of the prosecution of the above named application I made a careful study of the art of Canning Machinery as evidenced by the references cited by the Patent Office as bearing on the case, from which, together with the preparation and prosecution of other applications for letters patent pertaining to Canning Machinery, I have become familiar with the art.

That I superintended the preparation of the applications of Ray O. Wilson and Arthur D. Sumner on Can Top Feeding Device and Can Feeding Device, filed January 14, 1916, which resulted in United States Letters Patent Nos. 1,250,406 and 1,301,348, respectively.

That I have carefully read the plaintiff's bills

of particulars, dated June 5, 1922, and August 16, 1922, respectively;

That I have carefully examined the Defendant's Exhibits "A," "B," "C," "D," "E," "F," and "G," referred to in the bills of particulars;

That on the 16th day of Oct. 1922, at the request of Ray O. Wilson, I carefully examined a Canning Machine at the plant of the California Packing Corporation, No. 900 Macy Street, Los Angeles, California, which machine I am informed was manufactured by the defendants;

That in my opinion the elements specified in Claim 1, Patent No. 1,250,406, Can Top Feeding Device, dated December 18, 1917, are disclosed in the structure shown in the blue-prints designated as Defendants Exhibits "E" and "F," and also [1332] in the machine at the California Packing Corporation's plant at No. 900 Macy Street, Los Angeles, California, above referred to.

That in my opinion the elements specified in Claims 1 to 10, inclusive, of patent No. 1,301,348, for Can Feeding Device, dated April 22, 1919, are disclosed in the structure shown on the blue-prints designated as Defendant's Exhibits "D" and "G."

That in my opinion the elements specified in Claims 1 to 18, inclusive of Patent No. 1,203,295, Can Heading Machine, dated October 31, 1916, are disclosed in the structure shown on the blue-print designated as Defendant's Exhibit "B," and that the machine at the plant of the California Packing Corporation above referred to contains the elements specified in Claim 2, and also discloses the con-

structions specified in the remaining claims of the patent, except that the spindles designated in the claims on one of the carriages as being revoluble, are non-rotatable in the machine.

CONSIDERING PATENT No. 1,203,295.

This patent relates to a machine for placing Can Tops on Cans, and briefly is predicated on a machine by which a can top is applied to a can while the latter is advancing, which is effected by two main operations, namely, First, to form the seam between the can-top and can, and Second, to roll the seam, the machine embodying two revoluble carriages, each fitted with can-supporting means, one of the carriages being fitted with means for forming a double seam between a can-top and can, and the other carriage being fitted with means for rolling the seam formed on the first carriage. The machine also includes mechanism for delivering cans and can-tops to the first carriage and also includes means for transferring the connected can-tops and cans to the second carriage. In the operation of the machine the several operations are performed while the carriages are rotating; that is to say, the can-tops and cans are fed to the first carriage while the latter is in motion; the seam forming operation is effected while the can and can-top are being advanced by the carriage; the joined can and can-top are transferred from one carriage to the other while both carriages are in motion, and the final seam rolling operation on the second carriage and the discharge of the product is effected while the carriages are in motion. The can is thus

continuously advanced through the machine, that is to say, there is no intermittent or stop and start movement of the can in its progress through the machine.

This construction is clearly set forth and constitutes the subject matter of Claim 2 in the patent, and it is my opinion that the patentees Ray O. Wilson and Arthur D. Sumner [1333] were the first to invent and perfect a machine of this character; as, according to my knowledge of the art as it existed prior to filing of the application for this patent, no machine had been patented in which the continuous operation as above stated was effected, it being common practice however to stop a can during its progress through a machine while being subjected to the can-heading operation.

CONSIDERING THE DEFENDANT'S MACHINE.

I have carefully examined a canning machine at the plant of the California Packing Corporation at No. 900 Macy Street, Los Angeles, California, as before stated, which machine I am informed was manufactured by the defendant's which is of the type of machine illustrated in the blue-print designated as Defendant's Exhibit "B," and which machine in my opinion is constructed and operated substantially in the same manner as the machine disclosed in Patent No. 1,203,295; that is to say, the machine embodies two revoluble carriages, one of which is fitted with a double-seam forming mechanism to which the cans and can-tops are delivered

while the carriage is in motion and operates to form the seam while the can and can-top are being advanced with the carriage, and the other carriage is fitted with a seam-rolling means to which the cans are delivered from the first carriage. I particularly noted that means were provided for rotating or spinning the can while being advanced on the second carriage and that no means were provided for spinning the can on the first carriage.

This machine was equipped with a can-top feed constructed in accordance with Claim 1 of Patent No. 1,250,406; that is to say, it embodied a revoluble disk formed with can-receiving depressions on its periphery, a pair of curved rails arranged above the disk on each side of the edge thereof, a can-top rack, means controlled by a can being advanced by the disk for delivering a can-top to the curved rails, and a finger on the disk for engaging the delivered can-top and conveying it on the rail directly above the can carried by the disk.

The machine was not equipped with the type of can-feeding mechanism set forth in Patent No. 1,301,348.

(Signed) RENI S. BERRY.

Subscribed and sworn to before me this 13th day of Nov. 1922.

[Notarial Seal] J. CALVIN BROWN,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Sept. 27, 1925.

[1334] Mr. TOWNSEND.—I now move to strike out the following specified portions of the affidavit

of Mr. Berry just offered on the grounds hereinafter stated:

Page 2, eight lines from the bottom, reading as follows: "That in my opinion the elements specified in Claim 1, patent No. 1,250,406, can-top feeding device, dated December 18, 1917, are disclosed in the structure shown in the blue-prints designated as Defendants' Exhibits 'E' and 'F,' and also in the machine at the California Packing Corporation's plant at No. 900 Macy Street, Los Angeles, California, above referred to," the grounds of this motion being that the same is a statement of a legal conclusion and an attempt to construe the patent, which is the sole province of this Court. There are various authorities on that, Walker, Section 499; Robinson, Sections 1013 and 1014; and Wigmore, Section 1927; and other authorities.

Mr. BLAKESLEE.—I think it is, of course, the province of the Court to pass upon the question of infringement. The statement in the affidavit, being the subject of the motion, relates to the elements specified in Claim 1. It is not a conclusion to the extent that it would be did it assert that the claim was found in its substance in the structure, but the elements are referred to separately and, therefore, taken with the rest of the affidavit I think it should stand. The Master, of course, has to find infringement, but it seems to me that as it stands it simply invites cross-examination; [1335] and inasmuch as the province of an expert is to advise the Court I cannot see why that part of the affidavit should not be allowed to stand and utilize to

the extent that the Master elects or desires or feels is useful. Our courts here have repeatedly allowed such testimony where the witness opined as to this and that, for the assistance purely of the Court, not to be binding on the Court. But, inasmuch as the province of a witness is to render his opinion, that has been permitted.

Mr. TOWNSEND.—Inasmuch as the claims are made up of elements and this is an attempt to construe the claim, of course, it is so manifest that that is the only way one would touch upon a claim at all; and as it is tabooed with experts to construe claims or touch upon the claims, it is manifest that that is an improper assumption and usurpation of the Court's function in expressing opinions on the claims. The Court needs the construction for structures and assistance for structures, but the claim is merely a legal summary.

Mr. BLAKESLEE.—In that connection, of course, later on in the affidavit on pages 4 and 5 it refers to structure, bearing out the opinion as to this matter.

The MASTER.—The motion is granted.

Mr. TOWNSEND.—I move the following be stricken out on pages 2 and 3, reading:

"That in my opinion the elements specified in Claims 1 [1336] to 10, inclusive, of patent No. 1,301,348 for can feeding device, dated April 22, 1919, are disclosed in the structure shown on the blue-prints designated as Defendants' Exhibits 'D' and 'G,' on the same grounds stated and the same authorities.

Mr. BLAKESLEE.—We simply repeat the contentions made just previously, that it is purely advisory and that it cannot prejudice either party to have it stand in the affidavit, and it may be used to the extent that it may be advisory or helpful, subject to cross-examination.

The MASTER.—Motion granted.

Mr. TOWNSEND.—I move the following be stricken out, appearing on page 3, on the same grounds and for the same reasons:

"That in my opinion the elements specified in Claims 1 to 18, inclusive, of patent No. 1,203,295, can heading machine, dated October 31, 1916, are disclosed in the structure shown on the blue-print designated as Defendants' Exhibit 'B,' and that the machine at the plant of the California Packing Corporation above referred to contains the elements specified in Claim 2, and also discloses the constructions specified in the remaining claims of the patent, except that the spindles designated in the claims on one of the carriages as being revoluble, are non-rotatable in the machine."

The MASTER.—Motion granted.

Mr. TOWNSEND.—On page 4 I move to strike out the following: [1337]

"This construction is clearly set forth and constitutes the subject matter of Claim 2 in the patent, and." I move to strike that out.

The MASTER.—Motion granted.

Mr. TOWNSEND.—On page 5 I move to strike out the following, on the grounds stated:

"This machine was equipped with a can top feed

constructed in accordance with Claim 1 of patent No. 1,250,406, that is to say."

Mr. BLAKESLEE.—I don't see why the construction of a claim cannot be set forth in that way. The structure here [1338] is referred to definitely and it isn't merely a conclusive statement. In all of these matters the claims are part of the patent and may be used for reference to the structure of the patent. I don't think that last portion is comparable with the others.

The MASTER.—The motion will be granted as to the following words, page 5, line 12: "constructed in accordance with Claim 1 of patent No. 1,250,406." All of line 12 will be stricken out.

Mr. BLAKESLEE.—In view of the fact that this motion was brought before and was not pressed, and that therefore there has been no opportunity accorded plaintiffs to re-form their affidavit, we shall ask that we immediately be permitted to examine the witness Berry *viva voce* prior to his cross-examination, as we have had no time to advise on the matters which have been stricken out. We therefore shall ask to examine him here before the Master; otherwise we are prejudiced in the case. We now should be left to our procedure in this manner to compare the structures of the patents with the structures of the defendants, purely as structure. If we are not accorded that right the whole proceeding here will be prejudicial to us entirely. There is no foundation for any expert's cross-examination at all because the heart of the affidavit has been cut out and nothing is left that

is substantive. What is left of this affidavit is practically useless because there isn't a single discussion of the [1339] plaintiffs' patented structures in comparison with defendants' structures, which is the function of an expert. It doesn't do us any good to leave us with the mere statement, "I have carefully examined the canning machine and this machine shows so-and-so." An expert's province is to compare structures. With the affidavit emasculated as these rulings leave it, there is no ground left even for the defendants' expert affidavit. There is nothing left here at all and no issue tendered on the expert side.

The MASTER.—He has fully described defendants' machine here in connection with the patent.

Mr. BLAKESLEE.—I don't see where he has compared it with the patent.

The MASTER.—He says: "I have carefully examined a canning machine at the plant of the California Packing Corporation at No. 900 Macy Street, Los Angeles, California, as before stated, which machine I am informed was manufactured by the Defendants, which is of the type of machine illustrated in the blue-print designated as Defendants' Exhibit 'B,' and which machine in my opinion is constructed and operated substantially in the same manner as the machine disclosed in patent No. 1,203,295; that is to say, the machine embodies two revoluble carriages, one of which is fitted with a double seam forming mechanism to which the cans and can tops are delivered while the carriage is in motion and operates to form the seam while

the can and can top are being advanced [1340] with the carriage, and the other carriage is fitted with a seam rolling means to which the cans are delivered from the first carriage. I particularly noted that means were provided for rotating or spinning the can while being advanced on the second carriage, and that no means were provided for spinning the can on the first carriage."

Mr. BLAKESLEE.—There is one instance of comparison, that is true, as to one patent, but not as to either of the other patents.

The MASTER.—It says: "This machine was equipped with a can top feed, that is to say, it embodied a revoluble disk formed with can receiving depressions on its periphery, a pair of curved rails arranged above the disk on each side of the edge thereof, a can top rack, means controlled by a can being advanced by the disk for delivering a can top to the curved rails, and a finger on the disk for engaging the delivered can top and conveying it on the rails directly above the can carried by the disk."

Mr. BLAKESLEE.—Having cut out reference to patent 1,250,406 it leaves that a mere idle statement.

The MASTER.—It has every element that is stated in the claim.

Mr. BLAKESLEE.—But that doesn't help any more than simply looking at the machine because it is a mere statement of what is in it and it doesn't compare it with the patent. I think in view of the fact that that motion was withdrawn [1341] that the witness should be given permission to do this:

to take the three patents and briefly state their construction and then take the blue-prints and briefly state their construction in cross-reference and comparison, and we can't do that now because there is no ground for expertation left here.

Mr. TOWNSEND.—That is for the Court to do. The machines are before the Court and the Master has read the experts' views of these two machines. The patents in suit are the best evidence of their contents and certainly the Master knows what that description means there just as well as anyone can tell him, after he has seen the machines.

Mr. BLAKESLEE.—If that is so, expertation is a farce entirely, if there is nothing left for the expert to do that the Master can't do. Had this motion been pressed we could certainly have filed an amended affidavit, if the Court had indicated that it would be required.

The MASTER.—I see no reason for further experting. The motion is denied.

Mr. BLAKESLEE.—We will simply have to deal with it on argument, then.

TESTIMONY OF RENI S. BERRY, FOR PLAINTIFFS.

[1342] RENI S. BERRY, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows on

Cross-examination.

(By Mr. TOWNSEND.)

Mr. TOWNSEND.—This is cross-examination

(Testimony of Reni S. Berry.)

of the plaintiffs' expert, Mr. Berry, on his affidavit subscribed and sworn to on or about November 13, 1922.

Q. Mr. Berry, in your affidavit you state that you are an attorney at law. How long have you been an attorney at law, and when were you admitted?

A. I couldn't give you the exact date.

Q. Approximately. A. About three years.

Q. What year would that be in? You passed the bar examination, did you? A. Yes.

Q. What year would that be?

A. 1919, I think it was, or it might have been 1920.

Q. Are you the patent solicitor whose name appears in the file-wrapper in connection with the prosecution of the three patents in suit? A. Yes.

[1343] Q. How long have you been a patent solicitor for the plaintiffs or connected in that capacity?

A. Do you mean while I was associated with Hazard and Strause?

Q. Well, that would no doubt include the time you were associated with Hazard and Strause and did work as solicitor upon these cases, if that was the fact.

A. Well, it would be sometime in the early part of 1914.

A. Yes. Of course, during 1914 I was in the employ of Hazard & Strause, and they were the attorneys for the plaintiffs at that time.

(Testimony of Reni S. Berry.)

[1344] Q. Are you the same Mr. R. S. Berry whose name appears appended to the various amendments filed in connection with the prosecution of patent No. 1,203,295? For instance, paper No. 3 of the file-wrapper of Plaintiffs' Exhibit 3?

A. Yes.

Q. And paper No. 6, for example, of the same file? A. Yes.

Q. And paper No. 8 in the same file? A. Yes.

Q. And in fact wherever "R. S. Berry" appears, that is your name and apparently a facsimile of your signature, is it? A. Yes, sir.

[1345] Q. But you state that that work was done under your control? A. Yes.

Q. I show you a letter dated March 25, 1922, and ask you if that is your signature and your letterhead? A. It is.

Q. Did you write that letter? A. Yes.

Q. I notice this affidavit, Mr. Berry, of November 13, 1922, is only five pages in length. How much time did you put in on that affidavit?

A. One day.

Q. Where you have referred to the prior art I supposed you relied largely on your memory of the art in connection with the prosecution of cases, or did you refer to the files and refresh your memory to what extent?

Mr. BLAKESLEE.—That question, unless it refers to some [1346] particular part of the affidavit, I don't think is proper, and I don't think the affidavit is directed to the prior art.

(Testimony of Reni S. Berry.)

The MASTER.—It has a statement that they were the original and first inventors. He may answer.

A. I had no file-wrappers or file contents available at the time that this was prepared, so I had to rely entirely on my memory as far as the prior art was concerned.

Q. (By Mr. TOWNSEND.) You stated you saw one of defendants' machines at the plant of the California Packing Corporation at No. 900 Macy Street, Los Angeles, California. Do you recall when you saw that machine?

A. I stated in the affidavit it was October 16, 1922.

Q. Was that machine operating at the time you saw it, or standing still?

A. It was standing still at the time but had evidently been in operation as there was a spill of fruit on it.

Q. You didn't see that machine yourself operating? A. Not in actual operation, no.

Q. Your study of it, then, was confined to your observation as it stood there in an inert condition?

A. Excepting as it was moved by hand so as to show the parts.

Q. Turned over by hand? A. Yes.

Q. But were any cans run through it? A. No.

[1347] Q. How long a time did you expend in a study of that machine and examination?

A. About two hours.

Q. Had you ever seen one before?

(Testimony of Reni S. Berry.)

A. Do you mean of the defendants' machine?

Q. Yes, of the defendants' machine of that particular style and type.

A. No, that was the first and only one I had seen until later.

Q. Until later? A. Yes.

Q. Have you seen one since?

A. Only at the defendants' plant when we visited the plant with the Master.

Q. During the initial session of this trial?

A. Yes.

Q. Do you recall what size of cans that California Packing Corporation machine was adapted to receive or operate on? A. No.

Q. Did you make any measurements?

A. No; I couldn't say. I should judge it was what they call a 3-inch can, a can of this size (indicating).

Q. You say a 3-inch can, referring to Defendants' Exhibit "T," which is commonly designated as a 2½-pound can?

A. Yes; I assume that is the type of the can that was operated on that machine.

[1348] Q. What diameter can do you think that was?

A. I said, without looking, about a 3-inch, but apparently it is pretty close to 3½ or 4.

Q. What is your best judgment as to the diameter of this can that you are now looking at, Defendants' Exhibit "T"?

A. I would say it was 3½ inches.

(Testimony of Reni S. Berry.)

Q. Do you remember what day of the week it was that you made that visit which you have said was on the 16th of October last?

A. No, I couldn't say exactly.

Q. I notice that the names of the witnesses appearing to the drawings of the patent in suit, 1,203,295, appear to be as follows: James M. Abbett and R. S. Berry. That R. S. Berry is yourself as a signatory, is it? A. Yes.

Q. And James M. Abbett is the Mr. Abbett who is here present at this time? A. It is, yes.

Q. What work did Mr. Abbett have, if any, on those drawings, or why did he sign as a witness?

A. It was customary at that time for two witnesses to sign drawings on applications for patents. Mr. Abbett had something to do with the preparation of the drawings in this case. I think, particularly, that he lettered or placed the reference numerals on the drawings.

Q. Did he do any more than merely letter the drawings?

[1349] A. As I recall it—I have nothing but recollection to predicate my opinion on—there was considerable co-operation between Mr. Abbett and myself in the preparation of these drawings. In preparing my affidavit, in glancing over the drawings, I saw certain characteristics of it that I recognized as my own handiwork. The case you see is quite extensive and such a long time elapsed that I have forgotten as to just what the circumstances were surrounding the preparation of the drawings;

(Testimony of Reni S. Berry.)

but I have a very clear recollection of having inked in this particular sheet of drawings.

Q. Sheet 4, Figure 5? A. Yes.

A. I don't recall as to whether Mr. Abbett or myself laid out the drawings, but I believe I am safe in saying that the drawings were entirely compared and completed jointly between Mr. Abbett and myself.

Q. What were Mr. Abbett's duties at that time with you?

A. As I recall, he was a draftsman at that time.

Q. On Sheet 1 of this same patent 1,203,295 for the drawings, do you recognize whose pen and ink work appears [1350] there, aside from the signatures as witnesses and as attorneys, on the drawings themselves?

A. There is nothing there that I could distinguish as particularly characteristic of either Mr. Abbett's work or mine, and I have no particular recollection of any of the pen work.

[1351] A. Yes. It is the practice for the draftsman to lay out the drawing in pencil, usually from models, sketches, and blue-prints, and many times it is necessary for him to construct the drawings from crude descriptions. After the drawing is thus laid out and approved by the applicant, then it is customary to ink it in. Sometimes the layout work in pencil is done by one draftsman and the inking in by another.

[1352] Mr. BLAKESLEE.—That closes our *prima facie* case; but I want to reserve two or three

little matters until such time as the Master cares to take them up. The first is that we should like to have another run made of the plaintiffs' machine before the Master, the conditions not having been most favorable to a perfect and satisfactory operation the day that the plaintiffs' machine was run at the plant of the Pacific Company; and I suggest in that connection that it might be better to have an observation made of a plaintiffs' machine in actual operation in double-seaming the bottoms of cans in the shop of the L. A. Can Company, where such machines are in the lines, so that the Master may observe the machine as it is operated right along from day to day in actual practice. If that is done, we have the further suggestion to make that one of defendants' machines, such as the one which has been offered in evidence, for instance, be transported to the L. A. Can Company shop and put in the line with the plaintiffs' machine, so that there may be a comparative operation for the Master to observe, and I think that that will be a useful comparison for many purposes. At that time we should ask that the Master particularly direct his attention to the claims of the patents in suit and read them on the machines of both parties. That would be a good time to do that.

Mr. TOWNSEND.—Well, we decline to submit our machine to the plaintiffs to do anything of the sort in regard to [1353] operating it under their own conditions the way they see fit. There is no objection to again seeing the machines or having

these machines viewed in a comparison under working conditions; but as far as taking our machine over to the plaintiffs' shop and letting them set the thing up and run it on their own line to suit themselves, that certainly would not be agreeable to us.

Mr. BLAKESLEE.—We haven't asked that, Mr. Counsel, and we wouldn't expect it of you or anyone else. Our suggestion was that it simply be transported there in such a manner as would be agreeable to counsel and the Master, and under all the safeguards of control and tuning up and actual operation, simply for the purpose of having a comparative test, * * *

[1358] Mr. TOWNSEND.—I think the trial of this case could have been very much simplified if counsel had specified with respect to the can body patent 1,301,348 and the can heading patent 1,203,295 the particular claims that they are going to rely upon rather than just simply take the whole blanket of claims, the ten claims in the can body patent No. 1,301,348 and the eighteen claims in the patent No. 1,203,295. Of course if it is still their contention that all of those claims in both of those patents are infringed we have only to meet them, but I think if counsel has any reformation of his idea to express on the matter, or that he isn't going to stand on the whole eighteen of the one patent or the whole ten of the other patent, that when we come to argument the issues may be much simplified. As it is, I have got to meet the entire situa-

tion, as it were, with respect to every one of those twenty-eight claims, and I am quite satisfied that he hasn't any intention of relying upon any such number, and if he can specify, as he has done in the other patent, the third patent, on the can top patent, that only Claim 1 is infringed in that patent, and specify in these other two patents the specific claims, we will have gone a long ways toward a simplification of the procedure and I believe a shortening of the record.

Mr. BLAKESLEE.—The trouble with that, which I have found from experience, as in one case where I even had to file a separate bill in the nature of a supplemental bill and have [1359] the cases consolidated, is that matters often develop both for and against limitation during the taking of proofs, not only of the plaintiff but of the defendant, and it is impossible to foresee what a proper reduction of the number of claims may be, for this reason, that the scope of a patent under the doctrine of equivalence depends very largely upon the defenses made out, particularly prior art defenses, as to which we are often taken entirely by surprise. I don't anticipate that in this case but it may occur of course. Therefore we don't feel safe, and I don't feel safe in my duty to the plaintiffs, to emasculate either the patents of Exhibits 3 or 1 by reduction of the number of claims stood upon at this time. We have frankly done that as to the patent of Exhibit No. 2, which counsel has referred to, the can feed patent. In that we stand only on Claim 1. As to

(Testimony of Reni S. Berry.)

the others, we are not prepared to do any further election. We realize of course that this matter may result in an imposition, or at least in a loss of some of the costs otherwise recoverable, but we feel it is safer to not trim these claims any further at this time.

Q. (By the MASTER.) Take Claim 1 in patent No. 1,203,295, which is Exhibit No. 3. That apparently covers your first operation—

Mr. TOWNSEND.—If the Master please, it may be very interesting, that which you are going to state, but it might appear to be in the nature of a construction which you have [1360] in mind, and, while what you may say may be most interesting and might be for the defendant or the plaintiff, the Master will appreciate it when I say I suggest that your comments be not put forth, with possible embarrassment to one or the other of us at the present time.

Mr. BLAKESLEE.—I am quite anxious to have the Master tell us anything that he at this time entertains as an impression.

Mr. TOWNSEND.—Your conclusions will best be drawn from the evidence adduced on behalf of both sides.

The MASTER.—I don't need any evidence from the defendant on this side now. It is a matter of argument. This is not infringed right now, and why go any further with it? Of course argument might change the proposition. Here is what I was

going to suggest: You have the spinning of the can in the first operation in this first claim.

Mr. BLAKESLEE.—Yes.

The MASTER.—There is no claim whatsoever that there is a spinning of the can whatsoever in the defendants' structure, therefore you have an element in here that is not contained in the defendants' structure.

The MASTER.—There are several other claims of the same character, and it struck me that Mr. Townsend's suggestion [1361] was perhaps a good one, if you agree with my view there that the defendants' machine does not contain one of the elements of the claim.

Mr. BLAKESLEE.—Just which element does your Honor refer to there?

The MASTER.—The spinning of the can in the first operation.

Mr. BLAKESLEE.—What element of it? Is it the means for rotating?

The MASTER.—It is in line 20: "means for clamping a can top and can against each of the disks to cause the cans to rotate as they are advanced by the revoluble member."

Mr. BLAKESLEE.—A can cannot be advanced by a revoluble member without rotating upon its vertical axis. That is the trouble with this whole proposition: that may be merely an incidental limitation, not controlling on structure, but, frankly, we are afraid to strike any of those claims out at the present moment.

The MASTER.—Well, take Claim 6. You have it more clearly there.

Mr. BLAKESLEE.—I don't think it makes any difference, for this reason: Here we have a structure, a complete combination. Counsel has to direct his attack to that structure and I can't see that it makes much difference whether he limits his attack somewhat because of certain incidental features, or attacks the whole thing. What other claim was it, Mr. Master?

[1362] The MASTER.—Claim 6 has both spinning operations clearly described, in line 115: "Means for spinning the can when encircled by the seaming means, a second continuous revoluble can conveying carriage"; and then line 120: "Means for spinning the can during the seam rolling operations"; so you have both operations with the can spinning.

Mr. BLAKESLEE.—There is no doubt about the spinning in the second operation, of course, but the question is how material that is. The can does have to rotate on its axis once as it travels around. Now, whether that satisfies the claim or not must depend on the defenses to the proper art; and while I should like to abbreviate all I can, I can't feel it is cautious to do that now. The Master of course will remember these claims are for separate entities and comparison, and they are to be construed in the light of the prior art, and they are to be construed as broadly as the prior art permits; and irrespective of what was done in the

amending of the claims in view of references, the claims are entitled to that interpretation, which is the net difference between the references and their structures. In amending claims or references the language is to be construed, even after the amendment, to give the patentee the net result between the reference and his structure. That is the rule as we will assert it here. The question to me is difficult, your Honor, and for that reason I don't wish to be foreclosed by making a further election now. It will cause us [1363] more work but I don't see how it can be helped.

Mr. TOWNSEND.—On behalf of the defense I now formally offer the affidavit of defendants' Expert, Witness, James Melville Abbett, given pursuant to the order of the Court entered on the 2d day of October, 1922, this affidavit being subscribed and sworn to on the 9th day of December, 1922; and in conjunction with this Abbett affidavit a certain blue-print is annexed as a part thereof; and with it I also offer two volumes of patents, variously referred to in the affidavit, and while some of these patents are duplicated in one volume perhaps over the other they are so classified that the duplication has been made merely for the purpose of convenience. In one or two instances there may be a patent indexed in one volume that is not found there but will be found in the other, due to the fact that we couldn't find duplicate copies, and I think in one or two instances there are merely drawings of a patent or two in one volume, but I believe in all

instances the complete patent will be found in the other volume, and these books may be respectively marked Defendants' Exhibits "Q–1" and "R–1."

Mr. BLAKESLEE.—Is it counsel's idea that Mr. Abbett is to be cross-examined now?

Mr. TOWNSEND.—Yes, Mr. Abbett is offered for cross-examination at this time, in accordance with the Rule.

Mr. BLAKESLEE.—You have no further direct examination?

Mr. TOWNSEND.—Well, we will dispose of the affidavit of [1364] Mr. Abbett as an expert. Now I will suggest, and I meant to suggest it at first in regard to Mr. Berry's affidavit, just before the examination it would have been well to have had that reproduced in the record and then the cross-examination upon it appear in proper sequence; and I suggest that this affidavit appear here in the record at this time so Mr. Blakeslee's cross-examination may show a direct reference to it, just like we have the examination in chief and the cross-examination of any witness.

(The affidavit of James Melville Abbett is in words and figures following, to wit:)

(Affidavit printed as Appendix to Record.)

TESTIMONY OF JAMES MELVILLE ABBETT, FOR DEFENDANTS.

[1365] JAMES MELVILLE ABBETT, called as a witness on behalf of the defendants, being duly sworn testified as follows on

Cross-examination.

(By Mr. BLAKESLEE.)

Q. Are you a mechanical engineer by profession, Mr. Abbett?

A. No, I am not a mechanical engineer in the term that you would say a graduate engineer.

Q. Not an M. E.? A. No.

Q. Are you a lawyer by profession or a member of the bar of California? A. No, I am not.

Q. Did you ever have any post in the Patent Office as Examiner or in any other capacity?

A. No, sir.

Q. What academic or preparatory training did you have?

A. I went to what is known as the Manual Training High-School in Indianapolis, Indiana. That is a school that teaches the ordinary educational departments as well as manual [1366] arts. The first year of that course, besides English, mathematics, and languages, I was required to take a year of wood working and the next year was pattern making and some advanced wood working, and then in the following two years, during different terms, I had foundry work, which included making the castings, and then a year in the forge shop where

(Testimony of James Melville Abbett.)

we did mechanical blacksmithing, and finally the remainder of the time in the machine shop. During these four years we were required to take drawing. The first year was devoted to free hand drawing, and the next three years to mechanical drawing. After that I went to a University in Indianapolis known as the Butler University, which is a liberal arts school, and I stayed there that year. That constitutes the academic training I have had.

Q. You have carefully examined, have you, the three patents still remaining in suit, Nos. 1,301,348 and 1,250,406 and 1,203,295, both as to the drawings and the descriptive portions? A. Yes, I have.

TESTIMONY OF D. F. DREGER, FOR DEFENDANTS.

[1461] D. F. DREGER, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. Mr. Dreger, please state your age, residence, and occupation.

A. I am forty-seven years old. My occupation is wood pattern and model maker. Residence, Kentfield, Marin County, California.

Q. Where is your shop located?

A. 17 Tehama Street, San Francisco.

A. I have made a great many models in a great many cases, or quite a number of cases. I have

(Testimony of D. F. Dreger.)

made models of all kinds, working models as well as experimental models of all kinds.

A. I have been actually in my own business since 1906.

[1462] Q. I show you copies of the patents in suit annexed to Plaintiffs' Exhibits 1, 2, and 3, and ask you if you have read those patents and understand them?

A. Yes, I have read them and have made some models from them in accordance with specifications, and scaled as near as we possibly could where our strength of material would permit.

Mr. BLAKESLEE.—We move to strike out that answer as merely stating a conclusion and not a proper method of proof, which resides in the comparison of the very things themselves with the disclosures of the patents, and not probative in any respect.

The MASTER.—The conclusion will be stricken.

[1466] Q. (By Mr. BLAKESLEE.) Have you ever operated any one of these models, to do any work with them, to convey cans, or to feed them, or for the purpose of putting tops or bottoms in them and seaming the cans?

A. Well, these models here are not for the purpose of seaming cans or putting cans together. They are simply a mechanism to feed can tops.

Mr. TOWNSEND.—The can top model we will mark Defendants' Exhibit "T–1" and the can feed model Defendants' Exhibit "U–1," and the can body

(Testimony of D. F. Dreger.)

machine model we will ask be marked Defendants' Exhibit "V–1."

A. This model here, "T–1," is made and constructed to do everything that it was intended for. It will feed can [1467] tops and take a can and place the can top on top of the can.

Q. How fast did you operate it?

A. I operated it by hand.

[1468] Mr. BLAKESLEE.—We contend that this witness can't tell this Court anything that is of any use in this case other than to say that he made these models. If he wants to describe them as are I have no objection, but I can't see where that would be of any assistance, either. The patents are before the Master and these are before the Master, and they speak for themselves. If he says that this is made just like patent 1, 2, or 3, or part of it, that doesn't prove anything at all in this case. They speak for themselves.

The MASTER.—Very well. Let us have a question.

Mr. TOWNSEND.—Is that all, Mr. Blakeslee?

Mr. BLAKESLEE.—I have finished my qualifying questions and made my objection based on those questions, that the witness knows nothing about the practical operation of any such machines and never saw one before he built the models, and that they would not operate for any given length of time that [1469] he knows of.

Mr. TOWNSEND.—We know and the Court knows what the models are.

(Testimony of D. F. Dreger.)

The MASTER.—Oh, obviously they are models. Ask a question.

Q. (By Mr. TOWNSEND.) Referring to this model "T-1," what did you make that model from, what information?

A. I made it from the patent drawings and specifications.

Q. Of what patent?

A. Of the Wilson and Sumner patent.

Q. Give the number and date.

A. No. 1,250,406.

Q. And the date?

A. December 18, 1917.

Mr. BLAKESLEE.—We move to strike the answer out as stating a mere conclusion, and we are very particular about this objection to this model matter because we cannot see but what any attempt to make it appear from this witness or any other that these are made in exact accordance with the patent disclosure will be misleading rather than assisting. It will attempt to convey the impression that a mere makeshift like this is the actual thing of the patent, as it would be if properly made. It is flying in the face of the disclosures which are the real authority as to that.

The MASTER.—I don't think any Court would be deceived, Mr. Blakeslee, if it had the models before it. The objection is overruled.

[1470] Mr. BLAKESLEE.—But, if your Honor please, they cannot operate as the machine embodied in the invention.

(Testimony of D. F. Dreger.)

The MASTER.—And any court of intelligence would perceive that.

Mr. BLAKESLEE.—But for a witness to state a conclusion of that sort cannot be of interest here.

The MASTER.—He simply says he constructed them according to certain specifications, and whether he made a good job or a bad job is something we will find out. Motion denied.

Q. (By Mr. TOWNSEND.) State whether or not this model, Exhibit "T–1," is in accordance with the disclosures, description, and drawings of the patent just referred to. A. Yes, it is.

Mr. BLAKESLEE.—Now that is purely—

The MASTER.—I would sustain an objection there. He did the best he could, and we will let it go at that.

Mr. BLAKESLEE.—I move to strike the answer out.

The MASTER.—The motion will be sustained.

Q. (By Mr. TOWNSEND.) Referring to the model "U–1," will you state what instructions you followed in the making of that model?

A. This model was also made according to the drawings and specifications of this patent, which is Wilson and Sumner patent 1,301,348, patented April 22, 1919, for can feeding device.

Mr. BLAKESLEE.—The question was, as I understood it, as to [1471] what instructions he had, but his answer is that it was made in accordance with that disclosure and therefore we move to strike the answer out.

(Testimony of D. F. Dreger.)

Q. (By the MASTER.) Did they give you a patent like that? A. Yes.

Q. Did they give you any verbal instructions? A. No.

Q. They just gave you the patent and told you to make a model? A. Yes; like that.

The MASTER.—That was all you wanted, wasn't it?

Mr. TOWNSEND.—Yes. I must establish the fact that these models are correctly made. I can't come into court here and offer some models and then try to make the Court believe that they are so and so when they might not be.

Q. (By Mr. TOWNSEND.) Are you able to state whether or not this model Exhibit "U–1" is made in correct accordance with the teachings of the patent last referred to?

Mr. BLAKESLEE.—We make the same objection which was last sustained. We have no objection to him saying that he had those instructions before him, but to say they are in exact accordance is not proper and we make the same objection.

The MASTER.—The objection is sustained. You may answer.

[1472] A. Yes, they are made in accordance with the drawings and specifications.

Q. (By Mr. TOWNSEND.) In regard to the other model Exhibit "V–1," what instructions and drawings or specifications, if any, did you follow in the making of this model, Exhibit "V–1"?

(Testimony of D. F. Dreger.)

Mr. BLAKESLEE.—We object to what he followed. We will not object to it if he is asked what he had before him. We make the objection it is leading and calls for a conclusion.

The MASTER.—Overruled.

A. This model was also built from the drawings and specifications of the Wilson and Sumner patent can-heading machine 1,203,295, patented October 31, 1916.

Mr. BLAKESLEE.—We move to strike the answer out on each of the grounds of the objection. The witness says he followed those disclosures.

The MASTER.—That wouldn't necessarily indicate that he correctly and absolutely followed them. We would have to determine that from the model. Motion denied.

Q. (By Mr. TOWNSEND.) Are you able to state whether or not this model Exhibit "V–1" truly and correctly represents the drawings and description set out in the patent last referred to?

Mr. BLAKESLEE.—That we will object to on the same grounds. It is going further than your Honor indicated.

The MASTER.—I think that is a conclusion. The objection is sustained. You may answer.

[1473] A. It does.

Q. (By Mr. TOWNSEND.) In regard to the model in evidence, "S–1," tell us what you know about that model, if anything.

A. This model was also constructed in the same

(Testimony of D. F. Dreger.)

manner as the other models. This is the A. Johnson combined can body flanging and double-seaming machine No. 1,040,951, patented October 8, 1912.

Q. (By the MASTER.) You mean you used this patent for your instructions or model?

A. Yes.

Q. (By Mr. TOWNSEND.) State whether or not that model truly and correctly represents the showing in that patent.

Mr. BLAKESLEE.—We object to that on the same grounds.

The MASTER.—The objection is sustained. You may answer.

A. It is correct as far as the can feed and can top device is concerned.

Q. (By Mr. TOWNSEND.) Do you mean it is correct, or complete that far?

A. It is complete that far.

Mr. BLAKESLEE.—We object to that, whether it is complete or not. That is a matter of comparison.

The MASTER.—And as a matter of fact we have discovered certain deficiencies in it.

Mr. TOWNSEND.—There are a great many things left out. We don't contend all of the little details are in it.

Mr. BLAKESLEE.—This part here, back in here, is incomplete. [1474]

Mr. TOWNSEND.—This is in conformity with the possibilities of wood reproduction. These

(Testimony of D. F. Dreger.)

models are of course for illustrative purposes and for the aid of the Court, and for no other purpose.

The MASTER.—Proceed.

Q. (By Mr. TOWNSEND.) We have another model here, which I will mark Defendants' Exhibit "W-1," and I will ask you what, if anything, you know about this model.

A. This model shows the can flanging operation and can feed operation, and it is constructed in accordance with the specifications and drawings of patent to H. C. Black, can flanging and can head seaming mechanism, No. 858,785, patented July 2, 1907.

Mr. BLAKESLEE.—We move to strike the answer out on the ground it states a conclusion, that it is constructed in accordance with that patent. It is obvious it is not.

Mr. TOWNSEND.—It obviously is. You may ask him why it isn't, if you want to find out.

The MASTER.—The conclusion will be stricken.

Mr. BLAKESLEE.—Let me ask the witness: Does the model just referred to by you show any means for feeding caps to the mechanism?

A. It does not.

Q. Do you understand where those caps are fed to the mechanism from the model, where they would be fed?

[1475] A. Well, according to that, in this machine they would have to be fed in the center.

Q. You mean fed to the center rotating part?

(Testimony of D. F. Dreger.)

A. To the center rotating part.

Q. (By Mr. TOWNSEND.) Are you able to state whether or not this model correctly represents the features depicted and as shown in the patent of Black here referred to?

Mr. BLAKESLEE.—We object to that as calling for a conclusion and leading.

Q. (By Mr. TOWNSEND.) And include in your answer whether or not you made this model. You didn't state specifically whether you had made this model.

Mr. BLAKESLEE.—We object to the first part of the question.

The MASTER.—Sustained as to the first part.

A. I constructed this model in accordance with the drawings and specifications I mentioned, and it is complete in so far as the flanging device and can-feed device is concerned.

[1477] Q. (By Mr. TOWNSEND.) Here is another model in wood, Exhibit "Y–1." I will ask you if you know anything about it, and, if so, what?

A. That is a can top feeding device. This model is also constructed in accordance with the drawings and specifications of a patent to Sumner and Wilson, patent No. 1,124,553, patented January 12, 1915.

Q. Did you make that model? A. I did.

Mr. BLAKESLEE.—We move to strike out his statement that it was made in accordance with that patent.

(Testimony of D. F. Dreger.)

The MASTER.—Hasn't that patent been withdrawn?

Mr. BLAKESLEE.—It has been withdrawn, yes.

Mr. TOWNSEND.—It is in the pleadings, of course, and it is also a part of the prior art and it is referred to in Mr. Abbett's affidavit. It is for illustrative purposes, of course.

The MASTER.—Objection sustained.

Q. (By Mr. TOWNSEND.) Are you able to state whether or not this model correctly represents the drawings and description of the Sumner and Wilson patent referred to?

A. Yes, it does.

Mr. BLAKESLEE.—The same objections to that.

The MASTER.—The same ruling.

[1478] Q. (By Mr. TOWNSEND.) Do I also understand you made this model? A. I did.

Q. (By Mr. TOWNSEND.) I will put it this way: Will you describe the operation of a can passing through the device, according to the model and patent of which the model Exhibit "U–1" you said is a representation?

Mr. BLAKESLEE.—That can't help us, because a model can be used to the extent of its capabilities, and it also brings in the model as tied to the patent and based upon an assumption that they agree.

The MASTER.—I will sustain the objection. The witness may answer.

(Testimony of D. F. Dreger.)

A. In feeding the cans through this mechanism here I find that there is a round rubber roller or disk in the center of it which is for the purpose of retarding the can [1479] when it is passing through, or, in other words, to allow them to be spaced sufficiently so that the cam operating from below will protrude up through the plate that holds these cans and come in between the cans and cause them to be fed into the guides that feed the can to the machine. From trying this out on this model I find that it is inoperative and it doesn't perform that duty.

Mr. BLAKESLEE.—We move to strike the last part out—

Mr. TOWNSEND.—Wait a minute, the witness hasn't finished yet.

A. As the can passes in the cam comes up and hits the bottom invariably and there is no spacing for the cam to go up into in order that the can may be fed by it.

Q. Do you mean the blades working through the slots?

A. Well, whatever it is that comes up through. You might call it a blade, that feeds the can.

Mr. BLAKESLEE.—We move to strike that out. It is obviously now an attempt to prove inoperativeness.

The MASTER.—Well, legally the answer is not before the Court so there is nothing to be struck.

(Testimony of D. F. Dreger.)

Q. (By Mr. TOWNSEND.) Explain your answer more in detail as to that feature of inoperativeness.

Mr. BLAKESLEE.—The same objection as previously.

The MASTER.—Sustained.

Mr. TOWNSEND.—This is the only way you can illustrate and show what the feature is of impracticability or inoperativeness.

[1480] The MASTER.—I don't think you could do it with a wooden model, though. Proceed.

A. The cans coming so near to one another the two peripheries of the circle meet and this blade would have to find the exact periphery of those two circles in order to divide the can to make it feed.

Q. Make that clear as to what peripheries meeting means.

A. The peripheries of the two cans, I said.

Q. Explain that so the Court may understand.

A. This is the periphery of the circle.

Mr. BLAKESLEE.—The same objection and the further objection is made that the witness is not qualified to testify as to the operation of any machine of this sort, in fact he has disqualified himself by his own testimony that he never saw one operate until after he made the models.

Mr. TOWNSEND.—Well, that goes to the weight. If you want to examine the witness on his abilities as a mechanic and engineer and reader of drawings, that is another thing.

(Testimony of D. F. Dreger.)

The MASTER.—The objection is sustained to the first part of it anyway.

Q. (By Mr. TOWNSEND.) Now as to the meeting of the peripheries of the can, will you explain that? Do you mean the two bottoms?

[1481] A. The two bottoms meet.

Q. They contact with one another.

Q. And what effect, if any, does that have on the upward movement of the blades?

Mr. BLAKESLEE.—I make the same objection to this whole line and ask that it stand as my objection without repetition.

The MASTER.—The same ruling. You may have the same objection and the same ruling.

Mr. TOWNSEND.—Of course it is of importance to the defendant to know whether or not the sustaining of an objection is directed to the models themselves or to the qualifications of this witness to testify from his reading and understanding of these patent drawings and his manipulation of this model, because that may have an effect as to his ability.

The MASTER.—You already have your expert's affidavit in on that.

Mr. TOWNSEND.—But this goes to a practical man's operation of it, of a mechanic who has made the models, and, directed to this matter, it is not a mere matter of opinion, it is a matter of demonstration. If Mr. Dreger's credibility or preparation is anyways in question, that becomes of

(Testimony of D. F. Dreger.)

moment to me with regard to an appellate court's reviewing the matter.

The MASTER.—My reason for sustaining the objection is [1482] that you can attach very little weight, if any, to the operation of a wooden model.

Mr. TOWNSEND.—If your observations are along that line that doesn't effect the credibility of my witness then.

Mr. BLAKESLEE.—And I make this further objection to this whole line, that the witness is not qualified, whether he be a mechanic or not, because he has testified he never has seen a double-seaming machine operate and never had until he made these models.

Q. Have you ever operated a can-seaming machine? A. I never did, no.

Q. Have you ever worked in a machine shop and operated machine tools? A. I have.

Q. Have you ever operated any machines in a cannery or can-making factory? A. I have not.

Mr. BLAKESLEE.—I think he is disqualified. Certainly he can't testify as to the operativeness of such machines as an expert in any way.

Q. (By Mr. TOWNSEND.) What mechanical training have you had as a practical mechanic or otherwise?

A. I am a mechanical engineer, drawing, drafting, and designing of all kinds and shapes.

Q. Did I understand you to say you have worked in a machine shop? [1483] A. Oh, yes.

(Testimony of D. F. Dreger.)

Q. Did you serve your time on different machines? A. Yes, I have.

Q. Are you familiar with mechanical movements?

A. I am.

Q. Have you been accustomed to designing or laying out mechanical movements? A. I have.

Q. Have you made other structures in accordance with those structures and designs which you have laid out? A. I have.

Q. Have you ever made them other than in wood? A. I have.

Q. Have you manipulated such things in metal?

A. I have, yes.

Q. What are some of the different machines that you recall that you have reproduced, either in metal or wood, either as models or as full-sized machines?

A. Well, I have reproduced about twenty or twenty-five models of tractors, operative tractors in metal.

Q. Caterpillar tractors?

A. Caterpillar tractors of all different kinds and designs, and built wine-making machinery of all kinds, and macaroni machinery and numerous others, that it is hard to remember.

Mr. TOWNSEND.—Do I understand there is no question as to [1484] the credibility of this witness but that it merely goes to the matter of the effect of the models?

The MASTER.—Not in my mind; but I don't

(Testimony of D. F. Dreger.)

see where you can get any place telling what this man has done.

Q. (By Mr. TOWNSEND.) Will you tell us what the model in the patent teaches you would inevitably occur, from your knowledge and experience, not only from creating the model but as a designer and engineer?

Mr. BLAKESLEE.—We don't think that what this model and the patent would teach him is any testimony that will help us. We have had testimony here of people that have built them and operated them, such as Mr. Campbell for instance, and for this witness to merely opine what his teaching was of the patent and what this ramshackle model taught him is not probative in this case.

The MASTER.—I think I will let him answer that and sift the evidence on the basis of its weight rather than its admissibility. Objection overruled.

A. In this device, Exhibit "U–1," in place of the dividing blades striking between the cans in order to force them to feed, they invariably strike the bottom and it renders the operation useless.

Q. (By Mr. TOWNSEND.) In striking the bottom of a can what did that do?

A. Well, that renders the operation useless. There was no feed.

[1485] Mr. BLAKESLEE.—We object to the question what did it do. His opinion is being called for as to what would happen.

(Testimony of D. F. Dreger.)

The MASTER.—Well, it would tip it over. That is the obvious effect of it.

Mr. TOWNSEND.—It would lift the can, that is what you mean, I suppose.

A. It would lift the can and stop the operation.

Q. (By the MASTER.) Do you mean it would not tip it?

A. Well, it would stop the operation of that can. It might possibly slide back again, or the next can might pick it up. It is hard to say.

Q. (By Mr. TOWNSEND.) What causes that operation of the failure of the blades to come in between the contacting cans and the tipping action to result?

A. It lacks a positive feeding device.

Q. Is there anything present there which contributes to that cause as well?

A. Yes. There is a rubber roller retarding the cans which gets them all out of time.

Q. Looking at patent 1,301,348, what is the number of that rubber roller? A. No. 22.

Q. Tell us how that rubber roller acts or coacts with any other part, if so, to produce the result you referred to.

A. This rubber roller retards the cans but it doesn't do it evenly and it doesn't space the cans evenly. Therefore [1486] the rubber roller is inoperative.

Q. (By Mr. TOWNSEND.) Referring to the model of the can-heading machine, Defendants' Exhibit "V—1", please tell us whether or not the

(Testimony of D. F. Dreger.)

can-feed shown on the model is for an operative or an inoperative device, and state your reasons for it.

Q. (By Mr. TOWNSEND.) First, preliminary to that, please state whether or not the can-feed attachment on this model "V—1" is made in accordance with the patent teachings of the specifications and drawings of that Sumner and Wilson patent referred to, 1,203,295?

Mr. BLAKESLEE.—We object to that for the same reasons as [1487] previously stated.

The MASTER.—Sustained.

A. It is.

Q. (By Mr. TOWNSEND.) Now please answer the previous question.

Mr. BLAKESLEE.—We object to that as calling for a conclusion and not a proper method of proof. What the model does is not proof of anything in the working machine.

The MASTER.—The objection is sustained.

Q. (By Mr. TOWNSEND.) Go ahead, Mr. Dreger.

A. This can-feeding device is inoperative inasmuch as, only having one holder under the can tops—

Q. You had better refer to the patent and give the reference numeral.

A. Figure 21, number 64—I find that when there is no can passing through that this finger holds the can tops on an angle, and, as lug No. 73 passes under to remove or slide the can top, this lug interferes

(Testimony of D. F. Dreger.)

with the bottom of the stack of cans and would naturally stop the operation of that part of the mechanism.

Q. Mr. Dreger, will you please direct the attention of counsel and the Master to the point you have just illustrated by manipulating the model?

A. Yes, I will.

Mr. BLAKESLEE.—We made the same objection as before, to the use of the model.

[1488] A. In placing the can top in the cap magazine, by operating the lever 70 the finger 64 divides the can tops, and when no can passes you will notice that lug 73 is passing underneath the can top and jamming same, making that part inoperative.

Q. What does that lug passing under the cap at the bottom of the stack of caps do in the absence of a can to be capped?

Mr. BLAKESLEE.—The same objection to this whole line as before, without repeating it.

The MASTER.—The ruling will stand the same.

A. It jams the can tops.

A. It jams it underneath, from the bottom of the can top.

Q. What is the reason for that jamming?

A. The finger number 64 holding the stack of can tops on an angle does not allow the lug 73 to come in contact with the edge or outside diameter of the can top.

Q. Why have you shown only one knife or finger 64 for supporting the caps in that model?

(Testimony of D. F. Dreger.)

A. This is absolutely in accordance with the specifications and drawings in this patent.

Q. What do they provide there for supporting the caps, if anything, in addition to the finger or blade 64? A. There is no other provision.

Q. How about if a can comes along in proper timed relation and trips the trigger 70 and rocks the blade 64, will [1489] you meet with that difficulty then? A. No.

Q. But this is a difficulty that you find is encountered whenever there is an absence of a can?

A. Whenever there is an absence of a can.

Mr. TOWNSEND.—That is all.

Q. (By Mr. BLAKESLEE.) Did you have any assistance by Mr. Townsend or Mr. Abbett or Mr. Guenther, or anyone connected with this case, in making these models you have testified about? Did they stand over the work when you made it, or give you suggestions or help you? A. No, sir.

Mr. BLAKESLEE.—That is all. No more cross-examination.

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Mr. BLAKESLEE.—Plaintiffs object to each and singular the several wooden models offered in evidence yesterday, to wit, "T–1," "U–1," "V–1," "W–1," "X–1," and "Y–1," that is, all of the wooden models offered yesterday, on each of the grounds of objection made during the discussion of the same in

(Testimony of James Melville Abbett.)

connection with the witness Dreger, and on the further ground that they are not material evidence and not probative in nature and at best can be used merely by the defendants in attempted illustration of argument, and particularly that they are not material to any issue in the case.

The MASTER.—Objection overruled.

TESTIMONY OF JAMES MELVILLE ABBETT, FOR DEFENDANTS (RECALLED).

JAMES MELVILLE ABBETT recalled.

Cross-examination (Resumed).

[1519] Q. (By Mr. BLAKESLEE.) Then in the Kruse patent, as I understand it, there is no device carried by the carrier or mounted on it which withdraws the cap from the stack, or takes it after being released from the stack and conveys it on a rail or rails, is there?

A. That is just what I understood the meaning of your last question to be. There are two sides to your question. The first is it withdraws it from the stack and the second is that it conveys it along a rail or rails. I construe the Kruse patent to show that there is means for conveying the cap along the rail or rails.

Q. My question included withdrawing and conveyings.

The MASTER.—Does it have a double function?

[1520] A. No.

Q. (By Mr. BLAKESLEE.) As you understand the Wilson patent 1,250,406, the finger 12 does sweep

(Testimony of James Melville Abbett.)

the cap from the position it is left in when released from the stack and carries it on the rails, does it not?

Q. (By Mr. BLAKESLEE.) This includes a cap feed of the type employed in the so-called 14–P machine of defendants, doesn't it? A. It does.

[1558] Q. (By Mr. BLAKESLEE.) Referring to the Wilson et al. patent 1,203,295, do you, by your affidavit, mean us to understand that you have found and designated therein any prior patent or prior device or thing which contains or exhibits the following combination of parts and elements and accompanying operation, to wit: first, a first revoluble carriage and a second revoluble carriage; second, means for transferring cans from the first revoluble carriage to the second revoluble carriage; third, means for delivering simultaneously or coincidentally can tops and cans to the first revoluble carriage [1559] while it is rotating; fourth, means encircling the can top while on the first revoluble carriage for forming seams between such can tops and cans while they are being moved through a part rotation of the first carriage; fifth, can-supporting means for the first carriage; sixth, can-supporting means for the second carriage; and, seventh, means controlled by the rotation of the second carriage for rolling or completing the seam mentioned as formed while the can tops and cans are advancing on the first carriage?

Mr. TOWNSEND.—That question is objected to as framed substantially in the terms of Claim 2, and

(Testimony of James Melville Abbett.)

it calls for a legal construction by the witness, and is not the proper way of developing the art. And the question, furthermore, is multifarious.

Mr. BLAKESLEE.—And I have stated that I consider them germane to the whole set of claims, that is to say, fundamental elements of the patent—fundamental or, we may say, important elements of the patent.

The MASTER.—The objection is overruled.

A. The following patents, in my opinion, substantially fulfill the specification laid out in the previous question:

Black 858,785, July 2, 1915, Vol. 1, No. 25; also Vol. 2, page 34;

Johnson 1,040,951, October 8, 1912, Vol. 1, No. 28;

Brenzinger 813,482, February 27, 1906, Vol. 1, No. 23; also Vol. 2, page 12;

[1560] Dugan 848,296, March 26, 1907, Vol. 1, No. 24;

Kruse 1,152,188, August 31, 1915, filed May 22, 1914, Vol. 1, No. 33; also Vol 2, page 35;

Nichols 1,096,937, May 19, 1914, Vol. 1, No. 30.

These patents I have cited as being pertinent to the general combination of elements specified in plaintiffs' question.

Q. Are they cited as showing the combination definitely stated in my question?

A. They are cited to show substantially the same combination, although not minutely agreeing in structural details with the various elements specified in the question.

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Appearances as heretofore noted.)

Mr. BLAKESLEE.—I will withdraw the last question. I think it is somewhat argumentative. At this point I want to object, before further discussion of these patents, to the patent to Kruse 1,152,188, August 31, 1915, being a publication subsequent to the date of application of patent No. 1,203,295 in suit, and therefore being immaterial to these proofs in this cause, the subject matter of such patent not being pleaded. It is immaterial because it is not in the prior art, the patent itself not being a thing of which knowledge could have been had to make it a prior art example, and the only use which could be made of the said patent is as evidence tending to show prior invention, and that has not been pleaded as required by Section 4920, U. S. R. S., or the Eighth Defense of Walker.

Mr. TOWNSEND.—Our answer to that is the same that we made with respect to other patents on which counsel has made similar objections, and in due course further reasons and argument will be shown why it should be received.

The MASTER.—It will be received subject to the objection with the ruling reserved.

[1562] Mr. BLAKESLEE.—As I said the other day, I will admit the Patent Office sometimes cites these patents having co-pending application, but they are not cited as anticipatory because to be anticipa-

(Testimony of James Melville Abbett.)

tory there must be a publication or public of an actual completed thing of which knowledge could be had, to constitute prior knowledge. Knowledge of an invention which has not been publicly used is not prior knowledge to constitute anticipation, and when they are so cited at times under Rule 75 affidavits are made swearing back of the application date to meet any contention of the Patent Office that they show prior invention; but in a suit, such a patent must be interposed under the theory of prior invention and not anticipation.

Mr. TOWNSEND.—That is not an entirely correct statement of the rule. It is more frequently cited to show lack of invention. But we will meet the matter in due course.

Mr. BLAKESLEE.—Prior invention cannot be shown without pleading.

Mr. TOWNSEND.—Lack of invention can always be shown.

Mr. BLAKESLEE.—Not without prior knowledge, use, or publication.

Mr. TOWNSEND.—Well, we will show that when the time comes.

[1563] JAMES M. ABBETT recalled.

Cross-examination (Resumed).

(By Mr. BLAKESLEE.)

Q. I want to ask the witness, now, preliminarily, which of these six patents just cited with respect to the Wilson patent in suit 1,203,295 was cited by the Patent Office as shown in the file-wrapper and contents of this case, Exhibit 3.

(Testimony of James Melville Abbett.)

Mr. TOWNSEND.—The file-wrapper is the best evidence. We can agree on that in a moment.

The MASTER.—It is Brenzinger, Black and Nichols.

A. The patents to Brenzinger, Black, and Nichols. In connection with this I will state that the file-wrapper shows a number of other patents which have been cited but these were not mentioned by me as they are directed to features of the invention and not meeting the full requirements of plaintiffs' question.

[1564] A. The following patents were cited during the prosecution of the application which eventuated in the Wilson and Sumner patent No. 1,203,295: Brenzinger 813,482, February 27, 1906;

Black 858,785, July 2, 1907;

Wegner 1,104,751, July 21, 1914;

Johnson 1,074,325, September 30, 1913;

Gillette 770,803, September 27, 1904;

Adriance 747,671, December 22, 1903;

Nichols 1,096,937, May 19, 1914;

Conradi 1,077,393, November 4, 1913.

Mr. BLAKESLEE.—Without attempting at this time to start any law argument, I think that it might be of interest to the Master to at his convenience in connection with this question of anticipation read this fragment of the decision of our Circuit Court of Appeals, in Stebler vs. Riverside Heights Orange Growers Association, 205 Fed. Rep. 735, at page 738, a case, of course, with which counsel is very familiar.

(Testimony of James Melville Abbett.)

[1565] Mr. TOWNSEND.—Well, I will object to lumbering up the record with needless argument. We have enough.

Mr. BLAKESLEE.—I am making no comments; I am merely citing the case for the Master's attention at this time.

The MASTER.—I might say that I am already familiar with it and the rule set down.

Q. (By Br. BLAKESLEE.) I will now invite your attention to the patent to Johnson 1,040,951 and ask you where you find therein two revolving carriages or revoluble carriages or turrets, with transfer means for cans and caps between such [1566] carriages, and by that I mean separate transfer means distinct from the two carriages themselves.

A. Referring to Figure 2 of the Johnson patent, we have a first revoluble carriage numbered 2, which receives the can. We have a final revoluble carriage, generally indicated at 27 in the patent, to which the can is to be delivered from the first revoluble member 2 and between which two carriages are revoluble transfer means is provided operating in synchronism with the carriages 22 and 27 and inter-geared therewith to transfer cans from the carriage 22 to the carriage 27.

Q. Will you please point ont in this same Johnson patent any transfer means between any two such carriages which transfers, as my last question asked, both caps and cans from a first revoluble carriage to a second revoluble carriage?

(Testimony of James Melville Abbett.)

A. The intermediate disk previously referred to in the Johnson patent, and which is numbered 14 in the drawing, transfers a can from the carriage 2 to the carriage 27 and at a point during the transfer obtains a cap and delivers the can and cap to the second carriage.

Q. Then the intermediate carriage does not transfer a cap and can from the first carriage to the second carriage, does it?

A. It does not receive a cap and can from carriage number 2, but delivers a cap and can to carriage 27.

Q. (By Mr. TOWNSEND.) What does it receive from the first carriage?

[1567] A. It receives a can which has previously been acted upon on the carriage 2 to partially produce a seamed element.

Q. (By Mr. BLAKESLEE.) But no cap is supplied to the first revoluble carriage 2 in the Johnson patent, is there? A. No.

Q. Then the feature or means for coincidentally or simultaneously delivering cans and can tops to the first revoluble carriage 2 is entirely lacking in the Johnson patent 1,040,951, is it not?

A. Yes, although the three revoluble turrets would function exactly the same in conveying a can and cap from the carriage 2 to the final disk 27 as they now function; and in addition it is noted that the disk 14 does coincidentally carry a can and cap to a carriage on which the first seaming operation takes place.

(Testimony of James Melville Abbett.)

[1568] Q. (By Mr. BLAKESLEE.) The operation of the first carriage 2 does not contemplate or concern a cap in any respect whatsoever, does it?

A. Yes; it forms a flange on the can for the reception of the cap.

Q. The operation of the first turret 2 does not affect in that turret a cap nor in any cap ever applied to that turret nor to a can carried thereby; is that not correct? A. That is correct.

Q. I note that the cap-feed to the intermediate carriage [1569] or transfer means 14 provides for a feed of the cap to such carriage in a radial direction. That is correct, isn't it?

A. The operating mechanism moves radially but the caps are not fed radially.

Q. Do you understand it that those caps could be properly fed to the turret 14 or carriage 14 and properly emplaced thereon during continuous operation of that carriage 14?

A. Yes. The provision of the operating faces 95′ is for that very purpose and that face 95′ is elongated so that the cap will have an opportunity to drop on to that ledge and the ledge of the disk 25′ as the carriage rotates, and will then be carried forwardly.

Q. In other words, that cut away portion of the disk 14 is to take care of noncoincidence of caps and recesses 13, is it?

A. It is to provide an interval of time during the rotation of the disk 14 and during which time

(Testimony of James Melville Abbett.)

the cap will have an opportunity to drop on to the ledges 25′ and 95′ the same as is afforded in the Wilson patent in dropping on the rails prior to engagement by the shoulder on the rotary disk and of course while the disk 14 is in movement.

Q. Then if it drops on the portion 95′ in advance of the recess 13 it is not fed to the carriage 14 coincidentally with the can which finally comes under it, is it?

[1571] Mr. BLAKESLEE.—I would like, if I may, to refer to that portion of the claim which refers to coincidence, and I take it that, broadly, that means coinciding in point of time, not possibly in the matter or aspect of registration; but I am speaking now or treating now of this matter of registration as one feature of it, that is all.

The MASTER.—It doesn't appeal to me at the present time but you may develop it.

Mr. BLAKESLEE.—There is a slip there in the Johnson patent which might defeat ultimate registration. That is all I am trying to bring out here. For instance, there might be a jam of the cap or retardation or something that would defeat it, and certainly it has a difference in operation.

[1572] (Last question read.)

A. No, the cap is dropped during the time interval defined by the length of the face 95′ as the disk is rotating, and it is not for me to say at what moment during that time the cap will reach the can. In addition, I would like to say that it is my under-

standing that "coincident" referred to the coincident delivery of the can and cap to the seaming means and not coincident delivery of the cap to the can.

Q. My statement involved the coincident delivering of can tops and cans to the first revolving carriage and not to seaming means specifically, and I am now referring to coincidence in respect of registration of the can and the cap.

A. In order to answer that question "yes" I would have to state that the cap dropped on to the can at the instant the can is in register with the cap stack, and I have no means of knowing when that final action will take place, although it is evident from the position of the trigger 99 that the no-can-no-cap mechanism will be set in operation in advance of a point where the can will be directly under the cap stack.

Q. In other words, it is set in operation when a part of the cut out portion 95 of the disk 14 is in registration with the cap stack, is that not correct?

A. Estimating by the eye, I would say yes.

Q. Do you know, as a matter of fact, from this Johnson patent disclosure, whether there is anything in its construction to insure the cap ever coming into registration with the [1573] can? What is there that acts to produce that effect in the patent?

A. You have your outer curved rail 25′ of Johnson that is going to define the outer movement of the cap, or limit it. You will have the shoulder,

(Testimony of James Melville Abbett.)

the arcuate portion of the shoulder, rising above the face or ledge 95′ to position the cap concentrically over the can, prior to such time that the cap and can leaves the disk 14.

Q. But will you please tell me what insures that the cap initially resting upon the cut away portion of 95 of the disk 14 and on the shoulder 25′ will ever slide back into position to rest directly over the can?

A. After referring to the patent, and from a study of the drawing, and particularly figure 2 of the patent, it is evident that the cap may and possibly is intended to move relative to the disk 14 as the disk rotates, until it encounters the final shoulder arising from the surface 95′, if the cap had not been previously fed into register with the can.

Q. There is nothing disclosed in this Johnson patent for positively, accurately, or surely causing such slip or slide or play of the cap as you have referred to, and which might be necessary to bring it to register with the can, is there?

Mr. TOWNSEND.—The same objection there as to what he means by positively. We should have a definition of counsel's [1574] meaning.

The MASTER.—Overruled. If the witness doesn't understand, he may say so.

A. As to the word positive, if you mean a mechanism or some particular device which would exactly spot a cap over the can in a direct manner, I would say that there is no such mechanism; but in view of the fact that the rail 25′ extends for substantially a quarter of a circle, and that the mechan-

(Testimony of James Melville Abbett.)

ism distance which the cap would travel to register with the can would be comparatively short, it was undoubtedly the idea of the inventor that there would be sufficient lag of the cap as it passed along the rail 25′ to cause it to positively register, or to accurately register, with the pocket.

Q. (By Mr. BLAKESLEE.) But even at that, the cap under the conditions now being discussed would have to slip back, that is, in a direction contrary to the direction of peripheral movement of the disk 14, of its own accord, to come into registration with the can, wouldn't it?

Mr. TOWNSEND.—I suggest that the patent is the best statement of what is shown there rather than to argue with the witness. If counsel wants to ask the witness in his question if that is a practical way of doing it, we would get somewhere.

Mr. BLAKESLEE.—I am analyzing the patent through the witness. He has made an affidavit about it.

[1575] The MASTER.—Objection overruled.

A. If you eliminate the function which the inventor has attributed to the ledge 25′, then the cap would have no means for causing it to slip back, and of course the cap would not slip back of its own accord without being influenced by anything else.

Q. (By Mr. BLAKESLEE.) The part 25′ is just merely a fixed finger or rail, is it not, without any motion in any of its parts?

A. Without any motion, but having a horizontal supporting ledge of considerable width on to which

(Testimony of James Melville Abbett.)

the can cap must rest and an outer vertical guiding face against which the can operates as it is deflected along the arc of a circle.

Q. In other words, it has those parts with which the can cap may contact in such movement?

A. Yes; and with which parts the cap was intended to contact in order to produce a lag in the movement of the cap.

The MASTER.—Friction brings it back on the shoulder, doesn't it?

Mr. BLAKESLEE.—That is just what I am trying to bring out. There is nothing further than the frictional lag which is relied upon in this patent.

Mr. TOWNSEND.—That is very positive.

Mr. BLAKESLEE.—Certainly not positive or definite.

A. In connection with the model and Figure 2 of the Johnson drawing, I think we will find when the model is examined [1576] that the width of the ledge of the rail 25′ as shown in the model is of less width than as shown in the patent. This is mentioned for the purpose of showing the amount of frictional surface which Johnson has provided.

(Defendants' Exhibit "S–1" produced by Mr. Townsend.)

Mr. BLAKESLEE.—Of course we don't accede that any attempted demonstration of this model "S–1" could prove anything or disprove anything. The friction of metal on wood is different than metal on metal and it is not a working structure.

Mr. TOWNSEND.—It is a demonstrating struc-

(Testimony of James Melville Abbett.)

ture. All a model or anything else can do is to illustrate a principle.

Q. (By Mr. BLAKESLEE.) Referring to Wilson patent 1,203,295, that patent discloses members 73 on the first carriage, to which the cans and caps are coincidentally fed, which can top engaging members, to quote from that patent, page 3, lines 25 and so forth, "will clear the can top supported on the plate 64 and will engage the lowermost can top supported on the plates 65 and 66." These members 73 are for the purpose of positively and definitely and surely carrying an instant cap on in registration with the can under it, isn't that correct?

Mr. TOWNSEND.—In connection with that, the Master's attention is called to the rulings of the Patent Office on this positively acting matter in connection with the file wrapper of that same patent.

The MASTER.—Yes, I read that.

Mr. TOWNSEND.—So that the question is quite immaterial.

Mr. BLAKESLEE.—I am speaking now of just the one element of the feed of the cap with the can.

The MASTER.—The question is proper.

Mr. BLAKESLEE.—Of course the claims are taken as combination entities and one combined structure, and of course I am speaking now of the feed of the cap.

A. When the plaintiffs' structure shown in Figure 20 of patent 1,203,295 is in operation with empty cans, a cap will be cut from the bottom of the stack during the time a can passes the trip lever which

(Testimony of James Melville Abbett.)

extends into the path of travel of the can, and this released cap will then be supported upon spaced rails or plates as specified in the patent, numbered 65 and 66, and as the member 56 rotates a projection 73 would pass between the plates or rails 65 and 66 and carry the cap forwardly in front of the engaging projection 73.

Q. And, necessarily, directly and accurately over the can, is that not correct?

Mr. TOWNSEND.—That is objected to in regard to "accurately," and so forth, as calling for a definiteness of degree that is best expressed by the patent itself.

Mr. BLAKESLEE.—I have to use words. I can't question him with anything else.

The MASTER.—The objection is overruled.

[1578] A. If the cans are empty it is of course assumed that the caps will be properly positioned above the cans, although in the instance of filled cans the material within the can might prematurely perform the function of the member 73.

Q. (By Mr. BLAKESLEE.) It is better, is it not, to have such a positively acting member 73 provided for that purpose of registering can top and can, whether the can is filled or empty, than merely relying upon indefinite phases of friction to bring about that result?

Mr. TOWNSEND.—I object to that as irrelevant and immaterial, and the Patent Office has already ruled on that.

The MASTER.—Overruled.

(Testimony of James Melville Abbett.)

A. My answer could only be that I am not competent to predict from an examination of the Johnson patent how positive it would operate.

[1579] Q. (By Mr. BLAKESLEE.) You recognize, do you not, that there is a difference between the Johnson patent and the Wilson patent 1,203,295 in suit in that in one case the members 73 do definitely and forceably and positively urge the caps along, whereas in the Johnson patent they must move in registration due to the effects of friction? Is that not a correct comparative statement?

Mr. TOWNSEND.—That is not a question. That is an argument.

Mr. BLAKESLEE.—I am asking for actual conditions.

Mr. TOWNSEND.—That is assuming a lot of complex functions.

The MASTER.—Overruled.

A. May I answer that by simply setting forth the two structures side by side?

Q. (By Mr. BLAKESLEE.) I have asked you if there isn't a [1580] difference in those respects and I would like an answer of yes or no, with any statement you feel called upon to give,—if there is not a difference in those respects.

A. Yes. The Wilson device with its projection 73 engages a can top while the top is supported on a pair of spaced ledges, and in the Johnson device the can top is engaged while the cap is supported on a moving ledge 65′ and the fixed ledge 25′ spaced therefrom.

(Testimony of James Melville Abbett.)

Q. By what is the can top engaged in the Johnson patent?

A. By an upstanding shoulder positioned at the same place on the rotary carrier as the member 73 of the Wilson patent.

Q. But it is not so engaged until it has slipped back against that shoulder, is it?

A. No, it is not engaged until the cap encounters the shoulder.

Q. In the defendants' structure, as far as it is exemplified in Exhibit "O" in part, there is an upstanding part on the revoluble carriage which does engage the can caps and positively urges them forward between the spaced rails upon which they are delivered from the cap-feed mechanism; is that not correct?

A. Referring to Defendants' Exhibit "O" we find a set of independently driven and variable moving arms, each formed with a can-receiving pocket and each arm being provided with a finger carried on a pivoted arm and adapted to move from a position coincident with or below the top of the arm to [1581] an upper position, at which point a cap will be engaged and carried for a distance along a downwardly-extending track, during which time the cap-engaging finger and its arm move downwardly with the track until a time when the cap and flange of the can pass through the track, and after which the finger on the arm is in a position on the level with or below the upper face of the can-carrying arm.

(Testimony of James Melville Abbett.)

Q. And that finger keeps the cap directly over the can in the respective can-receiving formation, does it not?

A. That is the purpose for which it is designed.

Q. The track you speak of is in effect and substance a pair of curved rails, isn't it.

A. The track, to be exactly described, comprises a pair of straight guides having continuations in the form of curved rails concentric with the axis, and on which the various can-feed arms move.

Q. It is concentric in the respect as the curved rails in plaintiffs' patent 1,250,406 are concentric with the center of the disk 10, is that not right?

A. Yes, as far as concentricity goes.

Q. The curvature in those rails commences approximately at the point where the can and cap come into registration, isn't that right?

A. Approximately, yes.

Q. In the event of cans being advanced by the disk 14 in the Johnson patent 1,040,951, and having contents such as [1582] fruit protruding upwardly from the mouth of the can or above its top level, wouldn't such protruding fruit interfere with the emplacement of the cap sliding back into position, or attempting to slide back into position over the can?

A. That would, of course, depend on the contents of the can. The Johnson patent itself, referring to Figure 16, shows that there is a generous provision made for the contents of the can, due to the fact that, as numbered in this view, Fig. 16, the

(Testimony of James Melville Abbett.)

shoulder 13 is considerably lower than the shoulder 21 on which the cap has been supported.

Q. That shoulder 21 is on what part, referring to Figure 2 of the patent?

A. On rotary member 14.

Q. And constitutes the shoulder at the margin of the recessed portion 95′?

A. Yes, as indicated at 13 in Fig. 2.

Q. I presume from what you state that it is a matter of degree as to how high the contents of the can might project as to any such interference, is it not?

A. Yes; and also a matter of degree as to the possible projection of various fruits. I assume in canning fruits that the machines are set to take care of a maximum projection of the material over the mouth of the can.

Q. In case a cap being emplaced upon the disk 14 in the said Johnson patent and on the finger 25′ became bent up at the edge, resting upon such finger 25′, might not the relative [1583] movement of the disk 14 and such finger 25′ and the resultant frictions on the can top cause the cap to ride out over such finger 25′?

A. Yes; I believe I am safe in saying that in any machine if an imperfect cap is fed to the machine there will be trouble.

Q. And don't you think less trouble would occur in the use of a finger such as in Exhibit "O" or the members 73 as in plaintiffs' patent 1,203,295?

A. In plaintiff's patent just mentioned, if a bent

(Testimony of James Melville Abbett.)

cap is fed into the grooved rails there would be a jamming action.

Q. Might not the positive urge of the member 73 tend to straighten out the cap in the curved rails?

A. It might tend to; but I could not say that it would not do it without damaging the flange of the cap.

Q. Where do you find in the Johnson patent 1,040,951 means encircling a can top for producing a seam between a can top and can while advancing on a partial revolution of a carriage, and, first, I will ask in that connection if you find any such means in the first carriage 2 of the Johnson patent.

A. While the can is on the first carriage 22 I find means encircling the can and forming an element of the seam.

Q. But it does not form a seam between the can top and can while they are being moved on a partial revolution of the carriage 2, is that not correct, and by "they" I mean [1584] the can and cap.

A. The Johnson patent does not show this, although that is a point which the Patent Office seems to have had considerable argument about in connection with the patents which were cited on rotary turrets.

Q. The first that the Johnson patent has to do with the cap is when it is fed into the second revoluble carriage 14, isn't that correct? A. Yes.

Q. In the third turret 27 of the Johnson patent or third carriage, what is done?

(Testimony of James Melville Abbett.)

A. The received can and associated cap are double-seamed.

Q. That is the first seaming operation which puts the cap and can in seamed relation together in the Johnson patent, isn't it?

A. Yes, that is the first operation by which the cap and can are locked together.

Q. And by "locked" you mean seamed and thus fastened together, isn't that it? A. Yes.

[1585] Q. Have you ever seen a machine built substantially in accordance with the construction depicted and described in the Johnson patent?

A. As to "substantially," will you please state to what combination or group of elements you refer?

Q. I mean by "substantially," in accordance with the patent, including the construction before us in Figure 2 of that patent, taking into consideration the features of such construction just discussed by us.

A. I have seen a so-called Johnson machine which has been attributed as the invention of Johnson, this patentee, and which in a number of features appears to conform to this patent.

Q. Were the caps fed into such machine in the intermediate rotating carriage?

A. I am endeavoring to remember the construction of that machine. I saw it for a short time only. The portion that I remember is the structure associated with the rotating carriage 14 and the last rotating carriage 27.

(Testimony of James Melville Abbett.)

A. I can answer the question very definitely as to the [1586] cap-feed if you will permit me to produce a commercial cap-feed of the Johnson type used at the present time by the American Can Company.

Q. My question merely goes to your recollection of whether that machine had the caps fed in to the intermediate revolving carriage.

The MASTER.—You don't need a model for that.

A. Well, I have already answered that I didn't recollect seeing a machine which had the three carriages.

Q. When and where did you see that machine?

A. At the plant of the American Can Company, around the first of the year.

Q. Was there more than one such machine there, as you remember?

A. I would like to answer that definitely, but the reason that I can't is because on two visits there I was in the factory and also in what they called their storage place, and I saw a number of types of seaming machines, from ancient ones up to the present day. This machine, however, is, as I understand, the commercial model now used, the Johnson machine to which I referred.

[1587] Q. Did you see it in use? A. No.

Q. Not in operation? A. No.

Q. (By the MASTER.) Like this No. 2 disk?

A. No. I again repeat that I don't remember that there were three disks.

(Testimony of James Melville Abbett.)

Q. (By Mr. BLAKESLEE.) You don't know which was missing—No. 2, No. 14, or No. 27?

A. Yes, I know which was missing.

Q. Which was missing? A. No. 2.

Q. And I presume the cans were fed to disk No. 14 from some sort of a can feed?

A. Yes, some sort of a can feed.

Q. Do you remember whether a seaming operation as between the cans and caps took place in that disk No. 14? A. Disk 14?

Q. Yes, the one to which the cans and caps were first fed.

A. No. That is the cap-feed mechanism, disk 14.

Q. Then all the seaming in that Johnson machine took place in the carriage corresponding to 27?

A. The one I saw, yes.

Q. The entire seaming operation? A. Yes.

[1588] Q. (By Mr. BLAKESLEE.) Summing up one phase of this Johnson patent, I understand that all of the seaming with the cap on the can takes place on the carriage 27, isn't that correct?

A. What we understand as the seam-curling operation and the operation of the seam against compression is all done on turret 27.

Q. (By the MASTER.) Both operations?

A. Yes.

Q. (By Mr. BLAKESLEE.) Any seaming that is done while the cap is associated with the can, whatever its nature may be, is done on the carriage 27, isn't it, that is, done with the cap and can carried by the carriage 27, isn't it?

(Testimony of James Melville Abbett.)

A. Yes. The only time in which the can and cap are operated on conjointly is on turret 27.

Q. Do you understand that this machine of the Johnson patent or as disclosed in that patent, is devised and intended to operate continuously without halt, or periods of rest alternating with motion?

A. No, I won't say that, because the patent states that in the combination there shown it is intermittent. That is partially due to the fact that the flanging operation apparently [1589] takes place when the can is at rest.

Q. Briefly considering all of these patents cited in connection with patent 1,203,295, that is, cited by you previously, including Black, Johnson, Brenzinger, Dugan, Kruse and Nichols, is the same true as to each of them, to wit, that the machine in each instance as disclosed in the patent is devised and intended for stop and start action or intermittent motion? A. No, it is not.

Q. Which ones are, as you understand it, intended for continuous motion?

A. Black, Dugan, and Nichols.

Q. Let us now refer to the patent to Black, 858,785. This patent has three revoluble carriages, 13, 39 and 42, has it?

A. I assume that those are the numbers.

Q. Those numbers relate to features of the respective carriages, anyway, don't they?

A. Yes. And referring to Figure 3 of the Black patent it appears that they are the certain numbers.

(Testimony of James Melville Abbett.)

Q. The carriage 13 is provided with a runway 37 for feeding cans to it, is it?

A. Runway is provided for feeding cans to the carriage 13.

Q. And the carriage 39 is provided with a runway 40′ for feeding caps to it, is it?

[1590] A. Yes.

Q. So that the first association of caps with cans in the Black patent is in conjunction with the carriage 39, is that correct?

A. The cans are delivered to the rotary member 39.

Q. That hardly answers the question.

(Question read.)

A. Yes.

Q. (By the MASTER.) What is the first carriage for?

A. The first carriage is for the purpose of forming a flange around the mouth of the can by means of rollers 17′, which rotate around the axis of shafts 23′.

Q. That is a flanging operation like the first one in the Johnson, isn't it?

A. It is a different flanging operation. It is a continuous one as shown in this model "W–1," the flanging taking place while the can is encircled and advances, and by means of the roller 17′ which revolve around the axis of the shaft 23′, after which the holding mechanism for the can releases automatically and permits the transfer of the can to the disk 39, or rotary carrier.

(Testimony of James Melville Abbett.)

Q. (By Mr. BLAKESLEE.) And that provides a flange on the can, that operation in carriage 13, to receive the cap provided to it on carriage 39?

A. Yes.

Q. (By the MASTER.) Where does the cap come in on 39?

[1591] A. The cap comes in on 40′.

Q. (By Mr. BLAKESLEE.) Do you understand, then, it can accurately be said that cans and caps are simultaneously or coincidentally delivered to carriage 13 in this Black patent?

A. No. I, of course, must admit that as shown in the drawings the cans are delivered to the rotary member 39, but in that connection I presume it proper for me to state that I agree with the Patent Office, as shown in the file wrapper, that the cans and caps cauld have been coincidentally delivered to the disk 13 without any inventive effort.

Mr. BLAKESLEE.—I move to strike all out after the word "Yes," as it is merely an argument by the witness and not a statement of fact.

The MASTER.—It is so stricken.

Q. (By Mr. BLAKESLEE.) You mean caps, of course, there? [1592] A. Yes.

[1593] AFTERNOON SESSION—2 o'clock.

Cross-examination (Resumed).

(By Mr. BLAKESLEE.)

Q. The means operative in the carriage 13 for forming a flange on the can encircle the can, do they?

(Testimony of James Melville Abbett.)

A. The flange-forming means comprises a so-called anvil structure, more clearly shown in Figure 4 of the Black patent, and the roller 17′. The anvil structure is a semi-circular fixed member 35′ and a semi-circular moveable member 35 which supplements the fixed member to form a complete enclosing device around the can and to provide a surface or anvil face over which the mouth of the can is flared by the moving rollers 17′.

Q. The cylindrical part that complements the semi-circular part simply surrounds with that semi-circular part a part of the can, doesn't it, and not the entire can?

A. By reference to Figure 1 of the drawing it will be seen that the complementary anvil 35′ and 35 substantially enclose the can, although in this view there is a small space between the contiguous face of the two members.

[1594] Q. Then there is a part encircling of the can, is there, in the structure?

A. The major circumference of the can is encircled.

Q. (By the MASTER.) It shows on the model, doesn't it?

A. Yes. It would seem that this would be required to substantially encircle the can, otherwise there would be an irregularity in the flange formed.

Q. (By Mr. BLAKESLEE.) In this connection, do you not understand with reference to Defendants' Exhibit "P" the flange at the bottom sub-

(Testimony of James Melville Abbett.)

stantially encircles the top of the can which is having the first seaming operation performed upon it?

A. That flange substantially encircles the can but not for the purpose of contributing to the seam-forming action.

Q. That flange last referred to has openings through which play the seaming rollers, and when those rollers are brought against the can-body and the seaming operation takes place, the top of the can-body is thus substantially encircled, isn't it?

A. Yes; but not with the seaming means.

Q. The top of the can is physically, substantially encircled during such seaming operation, isn't it?

A. It is physically encircled.

Q. And the rollers which hinge upon the top of the can and perform the first seaming operation in the use of the device, Defendants' Exhibit "P," execute a circular path around the top of the can, don't they? [1595] A. Yes.

Q. And the flange referred to in Exhibit "P" which surrounds the top of the can-body in the first seaming operation acts to center the can within itself, does it not?

A. The flange is provided to center the can and if the centering operation has been performed the flange might be completely removed during the seaming operation, as this flange contributes no part to the seaming operation and merely centers the cap on the can.

Q. As a matter of fact, the can remains centered within it during the seaming operation, does it not?

(Testimony of James Melville Abbett.)

A. It remains centered within it, but not by it, for the reason that after it has been initially centered the upper chuck comes down and seats within the cap.

Q. Within the what?

A. Within the cap. This chuck here comes down and seats within the recess of the cap and holds the cap while it is being worked upon by the two rollers.

Q. But the can is also being worked upon, is it not?

A. Yes, the can having been previously centered within the cap.

Q. Then while the can is being worked upon it is still surrounded by this flange which retains it against any force, irrespective of its nature and which might tend to displace the can laterally or sidewise?

A. Do you mean now during the seaming operation?

[1596] Q. Yes.

A. I could only answer that question by saying that the flange physically embraces the can; but as to its having any function after the seaming operation takes place, it is my understanding that it does not.

Q. During the seaming operation it still embraces the can, does it not?

A. It physically embraces the can during the seaming operation.

Q. And the can is impinged upon in the seaming operation between the rollers of Exhibit "P" and

(Testimony of James Melville Abbett.)

the disk which you have referred to that bears on the cap so that the can body is pinched and seamed between such rollers and disk?

A. The can and cap are acted upon by two diametrically opposite rollers moving in against the seaming portions of the can and acting in conjunction with the chuck plate, which is moved down into the recess of the cap to hold it, as we might term it, as an anvil, while the rollers work on it.

Q. And being so lowered down it is lowered within the mouth of the can to act as an anvil back of the material of the can body also, is it not?

A. Yes; it is lowered to the depth of the countersunk portion of the cap.

Q. And in plaintiffs' patent 1,203,295 the can-body material is pinched between the ring 98 and disk 96 under the pressure of the cam disk 107, is that not correct, to [1597] wit, in the first seaming formation?

A. Yes; the ring 98 is pressed in a direction at right angles to the axis of shaft 93 and co-operates with the usual chuck plate 96 to form the curl of the seam, as shown more particularly in Figure 15 of plaintiffs' patent.

Q. While the seaming rollers 98 of Exhibit "P" are separate objects from the flange through slots in which they pass, they nevertheless form with said flange when applied operatively to the can material in the seaming operation a substantially continuous encircling structure, part of which, to

(Testimony of James Melville Abbett.)

wit, such rollers, bears operatively against the can body in the seaming action; is that not correct?

A. I don't think so.

Q. Please explain why you disagree with me.

A. First I will say that the two semi-circular or arcuate flange portions and the two rollers are grouped around the chuck plate and the can and cap, but for no purpose can I consider that the grouping of two arcuate flanges with interposed circular rollers is a continuous or substantially continuous structure.

Q. Do you object to the definition of substantially continuous structure when these rollers are in their inward seaming positions because of the gaps between parts of the rollers and the walls of the flange structure?

A. Yes; and in addition to that the fact that the portion of the rollers projecting between the ends of the arcuate [1598] flange portions do not form a structure which I understand could be construed as continuous.

Q. By continuous you mean they are not integral or one piece in formation?

A. Not integral in formation or continuous in their relation to each other, nor of continuous contour, nor do they appear to bear a relation to the chuck which would be considered continuous from an operating standpoint.

Q. When these seaming rollers of Exhibit "P" are in their inward or working position it is possible, is it not, to describe a circle cutting the slotted

(Testimony of James Melville Abbett.)

flange and the central portions of said rollers which will be a continuous circle in which no gap occurs, and which circle will lie in an encircling relation about the top of the can body being operated upon?

A. Of course it is possible to describe a circle, of cutting through any number of parts and obtain a circle, but as to considering the operating faces of the various elements the best I can say is that these faces are grouped around the center.

Q. Then if this flange with its slots were of flexible material, or were articulated or jointed so that portions thereof might yield inwardly and outwardly radially, and the rollers bore against such radially moving portions, would you consider that there was a more perfect continuous formation of the flange structure than when the rollers are in [1599] inward positions within the slots in the flange structure?

Mr. TOWNSEND.—I object to that question as hypothetical. There is no structure of that sort before the court.

Mr. BLAKESLEE.—I am finding out what he means by continuous and trying to find just his means.

The MASTER.—The objection is sustained. He may answer.

A. I would like to have the question read. But before you read the question, are you implying that all these parts might be made out of rubber?

(Testimony of James Melville Abbett.)

Q. (By Mr. BLAKESLEE.) We will say made jointed of a number of sections, flexibly connected so that you could bear in on opposite sections and press them against the can, press them in by the rollers.

Mr. TOWNSEND.—I think, Mr. Master, that comes within the province of an expert, to assume structures for illustration of his meaning.

The MASTER.—We haven't anything with the yielding—

Mr. BLAKESLEE.—We haven't that structure before us, but for the purpose of defining his distinction as between a continuous, unbroken formation and this formation with the rollers in the slots completing a circular formation, I think it is helpful. I think it helps to define his distinction.

The MASTER.—If it is helpful we might receive it.

Mr. TOWNSEND.—But it doesn't get us anywhere. It is hypothetical.

[1600] The MASTER.—I will sustain the objection.

Mr. TOWNSEND.—Another thing, we don't know the purpose of this examination. This might go on indefinitely. Are you trying to prove, Mr. Blakeslee, that your curling die is the equivalent of Exhibit "P"?

Mr. BLAKESLEE.—I don't think it is necessary for counsel to attempt to tip off his witness.

The MASTER.—I think his witness has already got the purport of the questions.

(Testimony of James Melville Abbett.)

Mr. BLAKESLEE.—Doubtless he has. I don't think at every phase of this examination we have to announce our theories of the case.

Mr. TOWNSEND. It has this importance, here is the Guenther patent of 1912, and it shows the structure of Exhibit "P" that we are using on a double-seamer.

(Question read.)

A. In interpreting these words, such as "continuous," it is my understanding, as previously stated, that we have a right and it is necessary to consider also the function to be obtained by such a continuous structure, as in the present instant the plaintiffs' patent has a continuous circling seaming face on their ring 98, and in the seaming head of the 14–P machine we have diametrically opposite disposed rollers between which occur arcuate flanges which [1601] do not bear any relation to the rollers during the seating operation, and for that reason I have contended that these devices or elements were not continuous although, as before stated, they are grouped around a common center, the flanges being concentric with the center and the rollers which move to positions between the adjacent ends of the flanges being also on a circle concentric with the center.

Q. How much of the ring 98 of the plaintiffs' patent 1,203,295 do you understand actually contacts with the material of the can body when forced in by the cam disk 107 in the first seaming operation? In other words, what portion of the inner

(Testimony of James Melville Abbett.)

circumference of such ring 98 do you take it actually contacts with the can in that operation?

A. That would be a matter of geometry, depending upon the diameters of the circles, as these circles coincide at one point, the ring being eccentric to the concentric cap. And while in series there would be a point at which these two circles would coincide, yet in practice the ring is in engagement with the cap for a considerable distance along its circumferential length.

Q. The actual zone of pressure of the ring 98 against the can, or can and cap, or cap, in the first seaming operation in patent 1,203,295 is not any greater, is it, than the zones of pressure of the seaming rollers of Exhibit "P,' as such pressure is exerted against the can and cap, or cap, or can, in the first seaming operation in defendants' [1602] machine?

A. Undoubtedly so. My answer being based on the fact that we have two circles, one disposed within the other, which will have more contact in their eccentric relation to each other than a small roller positioned alongside a relatively large circumference will have.

Q. However, when the cam disk 107 is pressing the ring 98 against the can structure or can and cap structure in plaintiffs' patent 1,203,295, the actual zone of pressure to perform the seaming operation takes place in the radial direction, cutting through such cam disk 107 and ring 108, doesn't it?

A. Not the zone of pressure. The direction of

(Testimony of James Melville Abbett.)

pressure will be in a radial direction toward the center of the chuck spindle. But please bear in mind in this connection, also, that the cap enclosed therein is being curled and that we do not have a rigid circle as we have two circles laid out on paper, but we have one circle which is being continuously performed and at the same time being disposed eccentric to a seaming ring.

Q. That exact condition you last mentioned is true, is it not, in the deformation of the tin or other material in the action of the seaming rollers in Exhibit "P"?

A. There will be a deformation, but the zone of contact between the curling member and the seam on the can-encircling die will be far greater than the possible zone of [1603] contact between the circumference of the cap and the relatively small roller as in the 14–P.

Q. You don't want us to understand that the pressure is exerted on the material being seamed in plaintiffs' patent in the action of the parts 107, 98 and 96, through more than four or five degrees of the circle of the ring 98, do you?

[1604] A. I don't care to specify the degree, as two circles laid on paper cannot indicate the actual operation of the machine; but I do intend that my answer shall state that the effective zone of contact between the encircling ring of the Wilson patent is of greater surface area than the zone of contact or the area of the surface on a seaming roller of the 14–P top acting against a cap.

(Testimony of James Melville Abbett.)

Mr. BLAKESLEE.—Q. Supposing you consider the areas upon which pressure is effective with both of the opposed rollers in Exhibit "B," would you consider the total areas greater than the area affected in plaintiffs' patent?

A. I still am of the opinion that the area of contact with the seaming ring is greater than that of the two rollers.

The MASTER.—Does the exact degree cut any figure?

Mr. BLAKESLEE.—No, it doesn't.

Mr. TOWNSEND.—It does, your Honor; it goes to an absolute difference in operation.

[1605] Q. The ring 98, however, does not encircle the can body or can body and cap by contact with it so as to be in such contact at all points during the action of the cam disk 107, forcing the ring 98 inwardly in the same seaming operation, is that not correct?

A. No; the theory of the ring is that it shall be moved in a radial direction toward the cap, pressure being applied to one point exterior of the ring.

Q. And in Exhibit "P" the pressure is exerted through the seaming rollers at two points irrespective of the exact areas affected, isn't that correct? A. Yes.

Q. Turn now, please, to the patent to Brenzinger, 813,482. In this patent do you find two revoluble carriages and a revoluble transfer means between the carriages and means for coincidentally feeding cans and caps to one of the carriages?

(Testimony of James Melville Abbett.)

A. No. Briefly considered, you find two seaming stations between which a transfer of cans is made by a traveling conveyor, and at which stations the two seaming operations are successively brought about.

Q. There is only one revoluble carriage in effect then, or is there none?

A. There are two revoluble seaming heads, but the carriage moves horizontally and is shown as an endless conveyor.

[1606] Q. The can and cap are carried on this link conveyor which moves horizontally and in a straight path at all times, are they? A. Yes.

Q. And the can and cap are never supported by the heads that produce the seaming operations?

A. The can and cap remain supported on a conveyor throughout their travel.

Q. The cans and caps are not fed to the seaming heads, then, other than being fed to them successively by the link belt; isn't that correct?

A. That is correct. The link belt is the conveyor.

Q. Upon which the cans and caps are fed to this station?

A. Upon which the cans and caps are coincidentally fed to this first seaming station.

Q. And always carried on such belt? A. Yes.

Q. Do you find in this patent any means encircling the can top for forming seams between the can top and can while the can top and can are advancing on a partial revolution of any carriage?

A. This machine is an intermittent motion ma-

(Testimony of James Melville Abbett.)

chine, the cans remaining stationary at the two stations while the seaming operation is carried out.

Q. And there are no means in this patent controlled by the rotation of any carriage for rolling a seam, are there, [1607] that is controlled by the movement of the carriage carrying the cap and can?

A. The rotary mechanism is disassociated from the can-carrying member.

Q. Then in what respects do you find the Brenzinger patent mentioned to contain the combination of elements specified in my question which drew forth your citation of that Brenzinger patent, and which definitely cited the provision of two revoluble carriages and means for coincidentally feeding caps and cans to one of them, and supporting means on those carriages for the caps and cans?

A. That patent was cited more for its association with the prosecution of the case than as having the exact combination of elements to which you refer.

Q. Then you don't wish it to be included in the list fairly stating the combination which I stated, do you?

A. No. I am willing to frankly admit that this patent has no rotary carriages for the disk to convey the can from one seaming station to the other.

Q. Nor the means for coincidentally feeding cans and caps to a rotary carriage, or any rotary carriages at all; is that not correct?

A. There are no rotary carriages in the machine.

Q. Nor the means for feeding cans and caps coincidentally to any such rotary carriage?

(Testimony of James Melville Abbett.)

A. Of course the cans and caps are fed coincidentally [1608] to the carriage, but no means for feeding them coincidentally other than the traveling conveyor is shown.

Q. And the carriage you speak of is the traveling conveyor, isn't it?

A. The carriage is the traveling conveyor.

Q. You don't think that the defendants' device here in evidence by blue-prints or a machine has the same interrelation or combination of parts or law of operation as the Brenzinger device, do you?

Mr. TOWNSEND.—It is incompetent and irrelevant. We are not sued for an infringement of Brenzinger, and the relationship is between the plaintiffs' patent and Brenzinger. To try and prove this comparison between the defendants and some party not a party to the suit does not get us anywhere.

Mr. BLAKESLEE.—The defendants appraised the prior art and talk about following it.

The MASTER.—Overruled.

A. As before stated, I cited this patent more for its relation to the prosecution of the case than for its showing an exact combination of the plaintiffs' patent.

Q. (By Mr. BLAKESLEE.) What would you say as to the defendants' machine and its relation to this Brenzinger patent?

Mr. TOWNSEND.—I make the same objection. Any comparison of the defendants' machine with the Brenzinger patent is entirely beside the issue.

(Testimony of James Melville Abbett.)

Mr. BLAKESLEE.—I am going to ask the same question about [1609] plaintiffs' patent pretty soon.

The MASTER.—I don't know as it is relevant, but I will overrule the objection and he may answer.

A. It seems to me apparent from the drawing of the Brenzinger patent without dispute the Brenzinger patent shows a fixed station machine having a traveling conveyor, and the plaintiffs' patent—

Q. (By Mr. BLAKESLEE.) The defendants', I asked about.

A. —and the defendants' machine provides two rotary turrets and an intermediate can transfer.

Q. You don't think, then, they have the same construction, inter-relation, combination, and law of operation, do you?

Mr. TOWNSEND.—The same objection, as far as a comparison between the defendants' machine and the Brenzinger patent.

The MASTER.—I think the objection is good.

Mr. BLAKESLEE.—May he answer under the ruling?

The MASTER.—Yes, he may answer. I will change my ruling on the former question.

A. What were the three attributes there?

(Last question read.)

A. They have not the same construction. As to inter-relation, the mechanism here shown is for an intermittently operating machine, and in the defendants' machine it is continuous. As to combination, considered broadly they both have separate seaming

(Testimony of James Melville Abbett.)

stations for successively forming the two seaming operations and means for transferring the can [1610] from one station to another. As to the law of operation, that can be answered by saying that one machine is intermittent in its operation and the other is continuous.

Q. (By Mr. BLAKESLEE.) Do you consider that the Brenzinger patent without any separate revoluble carriages and revoluble transfer means between them, or means for coincidentally feeding caps and cans on to one of such revoluble carriages, has the same construction, combination, inter-relation and mode of operation as the disclosure of plaintiffs' patent 1,203,295? I would like a yes or no answer, qualified, if you have to qualify it in any way.

Mr. TOWNSEND.—You have a multifarious question there.

A. There are four things there, and sometimes you can't answer yes or no to four different attributes.

The MASTER.—Do you want to use the same answer?

A. I was wondering if it would be permissible to do so. If it is, I would like to say the same comparison to Brenzinger and plaintiffs' patent as applied to Brenzinger and defendants' machine.

Mr. BLAKESLEE.—I think the Master can see my reason for trying to prove that, that things that equal the same thing equal each other, and the converse of it.

Mr. TOWNSEND.—That doesn't get us anywhere.

(Testimony of James Melville Abbett.)

A. If you will ask me those attributes separately, I can answer yes or no.

Mr. BLAKESLEE.—I am satisfied with the answer, as far as it goes.

[1611] Q. Did you ever see a can-heading machine constructed substantially in accordance with the disclosure of this Brenzinger patent?

A. Substantially in accordance with? Do you mean did I ever see a Brenzinger machine that was supposed to have been built according to this patent?

Q. Yes.

A. No. I have never seen a Brenzinger machine.

Q. Turn now, please, to the patent to Dugan, 848,-296. Referring to the Dugan patent, it does not contain two separate revoluble carriages with a transfer means between the carriages, does it?

A. No. This patent contains one carriage upon which both seaming operations are completed as the carriage continuously revolves.

Q. It is continuous in operation? A. Yes.

Q. In what respects, then, do you consider the disclosure of this patent analogous to the combination of elements which I stated in my question, which drew forth this patent as a citation of something resembling the combination I stated?

A. In my answer to your question I responded by stating, as I remember it, that certain patents were pertinent to the substance of the plaintiffs' patent under discussion, and for that reason I have cited Dugan.

[1612] Q. Which, if any, of these six patents,

(Testimony of James Melville Abbett.)

Black, Johnson, Brenzinger, Dugan, Kruse, and Nichols, do you consider fairly shows the substance of the combination of the elements in my question, responsive to which you have cited these six patents?

A. I think that the substance of the combination is shown in the Johnson, Black and Dugan patents.

Q. Do you consider that Dugan shows the substance of the combination I have stated, when it does not contain two separate revoluble carriages with transfer means for cans and caps between said carriages?

A. My reason for citing Dugan is that Dugan is a continuously operating machine which, although having one carriage, is provided with means moving with the chucks and the can and cap associated therewith, to form the complete seam as one turret advances, and to form the same seam which is formed on plaintiffs' machine during the advance of a can through two turrets and an intermediate transfer.

Q. In other words, you cite it as showing the same combination of features for the reason that you think it produces somewhat analogous results; is that right?

A. It produces somewhat analogous results by features which I believe to have a great deal in common with the features of the Sumner and Wilson patent.

Q. And you draw no distinction, then, that is material, do you, between a single revolving structure upon which two [1613] seaming operations are performed and two separate revolving structures

(Testimony of James Melville Abbett.)

with transfer means between them, the separate seaming operations being performed on the respective revoluble structures?

A. Frankly, speaking from my first consideration of this matter, I have tried to arrive at some conclusion which would make a distinction between forming a complete double seam on one rotary carriage as compared with multiplying the carriages and providing an intermediate transfer for doing the same work.

Q. You draw a distinction—

Mr. TOWNSEND.—The witness hasn't finished his answer.

Mr. BLAKESLEE.—How does counsel know? I waited for him ten or fifteen seconds.

Q. Does not the fact that that one combination is distinguished by the presence of two revoluble structures and a revoluble transfer means from the other structure, which has but one revoluble structure, signify anything to you from the standpoint of these mechanisms as structures?

A. Considering them barely from the standpoint of structures possessing so many tangible elements, of course the Sumner and Wilson device is different from the Dugan device; but considering the results obtained, I say, as before stated, that in my mind I have endeavored to find a reason for two turrets where one appears to do the work of the two.

[1614] Q. Is not your mental problem at all assisted by the fact that the defendant has chosen two revoluble structures for the respective seaming

(Testimony of James Melville Abbett.)

operations with a revoluble transfer means between them? Does not that supply to your mind any possible solution of the problem presented to it?

A. It hasn't, for, as I say, I have been familiar with this machine ever since the drawings were made, and have been familiar with the Guenther machine for some time, and have also seen in operation a machine quite similar to the Dugan, that was carrying on a very high speed seaming operation on one turret, and I have continued up to the present time to ask myself the question as to what advantages are obtained by two turrets doing an operation that is done on a single-turret machine.

Q. You, however, will concede, will you not, that the defendants in their 24–P machine follow the principle and construction of the machine of the Sumner and Wilson patent 1,203,295 in that they utilize two separate revoluble structures and a revoluble transfer means for the cans and caps rather than the single revoluble structure type of the Dugan patent?

Mr. TOWNSEND.—I object to the inference. The defendant does not follow the Wilson and Sumner principles.

Mr. BLAKESLEE.—I said "in that," and qualified it.

The MASTER.—Objection overruled.

A. It of course must be admitted that the defendants' [1615] machine is a continuous two-turret machine with an intermediate transfer, and that the

(Testimony of James Melville Abbett.)

separate seaming operations are successively performed on the two turrets.

Q. (By Mr. BLAKESLEE.) How many Dugan machines, or machines substantially like the Dugan patent under consideration, have you seen in operation?

A. I cannot say that I have seen the Dugan machine in operation, but I have seen a machine that impresses me as being much like the drawing of the Dugan patent, in operation at the plant of the American Can Company, at which time it was seaming in the neighborhood of 180 cans a minute.

Q. How did you know it was seaming that number of cans a minute?

A. The cans were not counted by myself, but the foreman of the can shop and the superintendent of the American Can plant advised me that that was the speed of the machine, and its regular speed.

Mr. BLAKESLEE.—We will have to move to strike that part of the answer out, then, as to the speed, inasmuch as the witness has not testified from his own knowledge.

The MASTER.—The answer may be stricken as to the exact rate of speed.

Mr. BLAKESLEE.—He didn't state it; he estimated it and said it was what was told him.

The MASTER.—I opine that he knew how fast it was going, from his experience.

[1616] Mr. BLAKESLEE.—I don't think any of these witnesses probably are wild about these speeds, but I think that an answer based purely on

(Testimony of James Melville Abbett.)

what he was told, without his own estimation, is not proper.

A. All I can say is that this machine was in its regular operation on the line shaft and I stepped in where it was working seaming cans, and when I later asked the speed I was told that it was running about that speed.

Mr. BLAKESLEE.—I don't know what witnesses are going to tell us in the future, but so far I don't think the witnesses have tried to tell us what is wrong about these speeds.

Q. Was that machine closing cans with contents, or putting bottoms in cans?

A. In the American Can Company's plant they make cans.

Q. They put the bottoms in? A. Yes.

Q. Was it operating with the axis of the revoluble structure vertical or horizontal?

A. It was operating with the axis of the structure horizontal.

Q. So that the caps were applied to the bottoms of the cans in a horizontal direction?

A. Well, I wouldn't say that the caps were applied in a horizontal direction. That would imply that the caps were moved bodily in a direction parallel to the longitudinal axis of the can. The caps were automatically fed to the ends [1617] of the cans as the cans moved in a horizontal direction, but I cannot say as to the path of travel of the cap to the end of the can.

(Testimony of James Melville Abbett.)

Q. The cans in effect lay on their sides, so to speak? A. Yes.

Q. Aside from your own mental query as to what the advantages are in utilizing two revoluble structures with a revoluble transfer means between, as in plaintiffs' and defendants' structures in this case, and utilizing a single revoluble structure as in the Dugan patent, you do find, do you not, in all of these six patents to Black, Johnson, Brenzinger, Dugan, Kruse and Nichols, distinguishing differences in the construction as compared with the construction of plaintiffs' patent 1,203,295; is that not correct?

A. Answering that question wholesale, I would say that there were undoubtedly structural details which were different in all the patents and plaintiffs' and defendants' structures.

Q. You don't find any one of those patents to contain fairly and substantially in structure and operation the substance of the combination stated in my question, which drew forth from you the citation of these six patents, do you?

Mr. TOWNSEND.—We object on the ground that the alleged statement of combination is not, in our opinion, a true combination if counsel uses that term in its legal significance. He specified an aggregated number of instrumentalities—

[1618] Mr. BLAKESLEE.—The patent has been allowed with that combination, in substance.

Mr. TOWNSEND.—And the further point might be made, although if you want to inquire along those lines further, well and good, that such an inquiry

(Testimony of James Melville Abbett.)

is not getting anywhere. It may be or it may not be that you will find those things, but that doesn't alter the matter of validity or invalidity, nor affect the matter of alleged infringement. There are so many other rules of application that come in that such omnibus questions don't arrive at any result.

The MASTER.—The objection is overruled. Read the question.

(Question read.)

Mr. TOWNSEND.—And may I say that the witness answered that at the very beginning. Now, are you going to start the same examination all over again?

Mr. BLAKESLEE.—He has said a lot since then.

A. I believe in response to a question a few minutes ago I said that I felt the substance of the combination was found in Johnson, Black and Dugan.

Q. (By Mr. BLAKESLEE.) With the elements of my question carefully considered and the mode of operation of these patents considered also carefully.

The WITNESS.—A. As to substance do you mean the substance of the structural details or substance of the invention?

Q. I mean the presence of the elements I have specified [1619] and their method of performance and action.

Mr. TOWNSEND.—That is the same question

(Testimony of James Melville Abbett.)

that has been asked three times now and he has always answered, and I think it is repetition.

The MASTER.—Overruled.

A. It is my opinion that the substance of the elements which you have previously testified can be found in these three patents.

Q. (By Mr. BLAKESLEE.) Separately considered?

A. Separately considered.

Q. Then you want me to understand that, in substance, two revoluble carriages with separate seaming operations and a revoluble transfer means between them is in substance the same as a single revoluble structure upon which two seaming operations are performed?

Mr. TOWNSEND.—That is an unfair question. That is a variation, or an attempt to vary the witness' testimony.

Mr. BLAKESLEE.—Of course it is. It is an attempt to find out what his testimony is.

The MASTER.—Objection overruled.

A. I consider them in substance alike when the same seaming operations are performed.

Q. (By Mr. BLAKESLEE.) Can you consider it conceivable that any skilled mechanic could construct the combination of elements I have specified in my question, which drew forth the Dugan and other five patents, with merely the drawings and [1620] specifications of the Dugan patent as his source of information and guide?

Mr. TOWNSEND.—That question is objection-

able as calling for a mere conjecture. If you want to measure the doings of what the plaintiff has done by the prior art, our contention would be that is what he has done.

Mr. BLAKESLEE.—If your Honor please, it goes directly to the teaching of these patents, whether that teaching could be followed to produce the combination of the patent in suit. All a patent is good for in the prior art is as to its clear teaching, and if from that teaching one could not construct the thing of the patent in suit it is very, very material.

Mr. TOWNSEND.—I think the Patent Office answers that pretty well in the file wrapper of the Wilson patent and noted what it thought was a distinction. I don't see that a conjecture or guess of this witness on the matter is material.

The MASTER.—It seems to me it is purely hypothetical.

Mr. BLAKESLEE.—But, if your Honor please, the claims have been allowed in spite of all these patents, and I want to know now whether the thing of the plaintiff's patent could in this witness' opinion be constructed with merely this Dugan patent before him.

The MASTER.—Suppose the answer is no, how much ahead are you?

Mr. BLAKESLEE.—Well, it shows that teaching isn't the invention [1621] of the plaintiffs' patent. In other words, was this prior patent a pub-

(Testimony of James Melville Abbett.)

lication of plaintiffs' invention, and if it wasn't it isn't anticipatory.

Mr. TOWNSEND.—Let me suggest that this inquiry being immaterial counsel will be bound by it, and under the rules of course he will have to take the consequences.

Mr. BLAKESLEE.—The whole question here is could anyone glean from Dugan, for instance, what has been given to the world by the plaintiffs in this case. If the witness can't say that that were possible, that is not the teaching of plaintiffs' invention. Patent subscriptions and drawings are included in the patents to teach the public so when the patent monopoly has expired one skilled in the art can follow them.

The MASTER.—Objection overruled.

A. May I have the question read?

Mr. TOWNSEND.—Counsel having made the witness his own on an immaterial question, he is bound by it.

Mr. BLAKESLEE.—Oh, nonsense.

The MASTER.—I have overruled the objection because I can't conceive myself that anybody could take that Dugan patent and make the plaintiffs' machine.

Mr. TOWNSEND.—That includes several patents.

Mr. BLAKESLEE.—I refer specifically to Dugan now. Read the question.

(Question read.)

(Testimony of James Melville Abbett.)

[1622] A. Will you go back a little further and give me those elements?

Mr. BLAKESLEE.—Go back and read the question as to the several elements, Mr. Reporter.

A. Oh, you mean the question at the beginning of this session?

Q. Yes, the question that brought forth these six patents. If you didn't understand that question you may re-answer it.

Mr. TOWNSEND.—Oh, let the answer stand. But you put a trick question there.

The MASTER.—He hasn't answered the question.

Mr. BLAKESLEE.—I thought he said yes.

A. No, I haven't.

Mr. BLAKESLEE.—Mr. Townsend, what did you understand the answer to be?

Mr. TOWNSEND.—I got the answer as "Yes."

The MASTER.—He may confine himself to the Dugan patent in his answer.

Mr. TOWNSEND.—But, Mr. Master, that question is not confined to the Dugan patent at all.

The MASTER.—I so construe it and I think the witness does also, and I will instruct him to construe it that way.

Mr. TOWNSEND.—I think counsel should be called upon to restate the question because he said, "Taking the Dugan patent and all the five others."

Mr. BLAKESLEE.—No, no.

[1623] Mr. TOWNSEND.—I think we ought

(Testimony of James Melville Abbett.)

not to trifle with these matters, and we ought to have a definite question and a fair answer to it.

Mr. BLAKESLEE.—The six patents were mentioned simply to specify what they were, was all.

The MASTER.—Let the reporter read the question again.

Mr. TOWNSEND.—Or, Mr. Master, have the reporter write it out.

The MASTER.—Read the question to him.

(Question read.)

A. Let me understand the question thoroughly. You say a person skilled in the art. Do you mean that he shall not know anything but the Dugan patent? Is that your question? That his skill shall be ignorance as far as the prior art or what has been done around him?

Mr. BLAKESLEE.—Well, of course, one skilled in the art is skilled in the art.

The MASTER.—And he would have to know the other patents?

Mr. BLAKESLEE.—Yes.

Q. Let it be assumed, then, that he knew of everything that had transpired in the art before he had placed before him the Dugan patent. Do you think then that, with all his prior art knowledge and with the Dugan patent as his pattern to go by in constructing a machine, he could construct a machine with the combination of elements in which I have specified?

[1624] Mr. TOWNSEND.—If the Master

(Testimony of James Melville Abbett.)

please, counsel has not fairly answered the witness' question.

The MASTER.—I don't think we are getting anywhere with this question.

Mr. BLAKESLEE.—It is the same kind of a question that I have many, many times asked and heard asked, just to test that very question of what the teaching of the patent is.

[1625] Mr. BLAKESLEE.—I am asking him what the art was in 1907, that art and the art prior to it, of course.

Mr. TOWNSEND.—Then the question is surely incompetent.

Mr. BLAKESLEE.—I am considering the art as developed by Dugan, to that point he developed it.

The MASTER.—All right, we will take that as a starter. The objection is overruled.

A. Why, it is conceivable, as your question asks, that a man skilled in the art, if he had some reason for believing that he could obtain the same result by segregating the [1626] two seaming structures and allotting them to two adjacent rotary turrets, could take the Dugan structure and make a continuous two-turret machine.

Q. (By Mr. BLAKESLEE.) Would you consider that such a continuous two-turret machine with rotating transfer means between, if so constructed by such a man skilled in the art, would be a compliance by him with instructions to build a ma-

(Testimony of James Melville Abbett.)

chine in accordance with the Dugan patent disclosure?

Mr. TOWNSEND.—Now, where is that going to get us? These plaintiffs were notified of infringement of the Dugan patent, and if you want an answer there, their machine was evidently made under the Dugan patent.

Mr. BLAKESLEE.—Why, does that notice mean any such thing? It is ridiculous.

Mr. TOWNSEND.—If you will read the claims you will find out where you stand on that.

Mr. BLAKESLEE.—They are not before the Court at all.

The MASTER.—Overruled.

(Question read.)

A. Well, that puts the question on another foot, again, as I understand it. There can be no dispute between us that the Dugan patent is for a single-turret machine. The former question, as I understood it, was, Could a skilled mechanic, who had an idea that by segregating those seaming elements on two turrets, get a better result? and the question was, Is it conceivable that he could build the two-turret machine [1627] from this patent? But, turning around and viewing the mechanical elements of the two-turret patent and comparing them with this, we would at once be confronted with the fact that we had two turrets in one and one in the Dugan.

Q. (By Mr. TOWNSEND.) You mean following the drawing designs of the Dugan patent?

(Testimony of James Melville Abbett.)

A. Yes.

Q. (By the MASTER.) Dugan is your first continuous operating machine, isn't it?

A. I believe so.

The MASTER.—Black is July 2, 1907.

A. And Dugan is May 26, 1907.

Mr. TOWNSEND.—And Nichols, you stated also—

The MASTER.—And Nichols is 1914.

Mr. TOWNSEND.—Livingston was a continuous machine.

Mr. BLAKESLEE.—But it is not cited here in this group.

Q. Turn now to the Kruse patent 1,152,188. This is the Kruse patent which we have previously discussed, is it not? A. Yes.

Mr. BLAKESLEE.—I will examine the witness on this patent subject to the objection upon which the ruling has been reserved, that its date is subsequent to the date of application of Wilson patent 1,203,295 in suit, abiding the ruling of the Master to the objections made.

Q. As I understand it, this patent has two revoluble structures I and G and a revoluble transfer structure J between [1628] them? A. Yes.

Q. The course of travel of the cans is from the structure G to the structure I through the structure J, is it not? A. Yes.

Q. The revoluble structure G is merely a structure for feeding cans to the transfer structure J, isn't it? A. Yes, it is a can-feed disk.

(Testimony of James Melville Abbett.)

Q. No seaming operation of any kind is performed while the cans are upon the structure G?

A. No.

Q. And no caps are supplied to the structure G or the cans thereon, are there? A. No.

Q. The caps are applied to the cans while they are being moved by the transfer structure J, are they not? A. They are.

Q. And then what takes place as to caps and cans when they are carried by the revoluble structure I?

A. After the cap is delivered from the cap-feed on to a supporting ledge of the outer curved rail H and a ledge occurring at the top of and being concentric with the can-receiving pocket of the rotary member J, the can and its associated cap are advanced to the position as indicated as x–1 in figure 2 of the Kruse patent. At this point the first seaming operation takes place while the can is on the [1629] so-called feed table I. The can and the partially seamed cap are then advanced by the rotary member K to position x–2, at which time the cap seam is completed and the cans thereafter ejected from the machine along a curved rail directing the seamed cans onto carrier N.

Q. How many seaming operations take place on the carriage I? A. Well, I is the feed table.

Q. I mean K.

A. During engagement of the can by the member K and while the can is in position in one of

(Testimony of James Melville Abbett.)

the pockets of this rotary member, two seaming operations take place.

Q. Those seaming operations take place while the can is stationary, don't they?

A. Yes. This is an intermittent machine.

Q. They take place, do they, at the same station or point in the machine and in their motion?

A. The machine has two fixed stations, one for each seaming action.

Q. Did you ever see a machine substantially constructed in accordance with the drawings and specifications of this Kruse patent?

A. I have never seen a so-called Kruse machine although we readily recognize that this construction is along the same general line as the Angelus 14–P.

Q. Turn now, please, to the Nichols patent 1,096,-937. [1630] This patent to Nichols, No. 1,096,-937 does not disclose more than one revoluble carriage for completing a seaming operation, does it?

A. Yes. The seaming operation in this case is produced by a series of carriages, referring to Figure 1, these carriages being lettered A, B, C and D.

Q. Does a separate seaming operation take place at each carriage?

A. The seaming operations which we have previously recognized as taking place in a double-seaming machine, that is, first a curling operation and then an operation to mash the seam down, take place without any interruption in the Nichols ma-

(Testimony of James Melville Abbett.)

chine. By that I do not mean that the seaming operation is continuously performed, but that the can is acted upon at stations A, B, C and D to completely roll and finish the same.

Q. And that is done at one station, is it, in one of these carriages A, B, C and D?

A. The complete seam formed in one station?

Q. Yes.

A. No. The seam is not completed until the can has left D.

Q. Is part of that seaming operation performed while the can is upon each of those carriages?

A. Yes.

Q. Part on A, part on B, part on C, and part on D? [1631] A. That is correct.

Q. And what sort of transfer means have you between those carriages?

A. The various units, A, B, C and D, rotate and a portion of the seam is formed in the unit as the can advances, after which the cans are delivered to transfer chutes 22, 25 and 26, along which the cans move to the next succeeding seaming device.

Q. Those chutes are not revoluble members, are they? A. They are merely transfer means.

Q. In other words, they have no motion but the cans slide along them?

A. I presume that the cans roll along them as they are inclined and the can would have more tendency to roll than to slide.

Q. And it requires all of these four seaming op-

(Testimony of James Melville Abbett.)

erations at these four respective carriages to complete the seaming operation *in toto,* does it?

A. Before answering that definitely I prefer to substantiate my statement in the patent, if possible. (Examines patent.) Quoting from the patent, the description is as follows, referring to page 1, beginning with line 104: "In performing the can-seaming operation I preferably use four machines, indicated as A, B, C and D, respectively, shown in Figure 1." Then referring to page 2, beginning with line 15, it states that: "As will be described in detail hereafter, [1632] the can bodies 21 are first flanged in machine A, then pass through the chute 22 to the machine B. The can caps 24 are fed to this machine and the first operation of fastening the caps to the can body is performed in this machine. The can bodies with their attached caps pass through the chute 25 to the machine C, where a further seaming operation is performed, and they then pass through the chute 26 to the machine D, where the final seaming operation takes place. From this machine the finished seamed cans are delivered through the chute 27."

It would appear that my former statement should be modified to the extent that the first unit A forms the flange on the can, and the three succeeding units perform the seaming operation.

Q. The cans, then, are not fed to the first element A coincidentally but rather the cans are fed to that element and the caps fed to the element B

(Testimony of James Melville Abbett.)

after a flanging operation at the element A has been performed, is that not correct?

A. That is correct.

Q. Do you understand this is a continuously operating machine?

A. That is my understanding.

Q. Are the seaming operations performed while the elements A, B, C and D are in motion?

A. Yes, and the cans are being spun while supported by complementary chucks 39 and 84, more clearly shown in Figure [1633] 11 in the patent.

Q. Each of these elements, A, B, C and D, rotates, does it?

A. Yes; that is, there is a rotating carriage embodied in the element carrying a plurality of complementary chucks between which the cans and caps are clamped.

Q. Has any one of these carriages a vertical reciprocal can-supporting means for raising the can?

A. Aside from the limitation of the word "vertical," it has reciprocating can-supporting means for moving the can into engagement with the cap.

Q. What direction or motion does that take?

A. It has a motion parallel to the axis of the rotary carrier.

Q. In what turrets does that take place, or what elements, A, B, C and D?

A. That takes place on all of the elements. It takes place in all of the units A, B, C and D.

Q. Then I understand it requires these four elements, A, B, C and D, to operate in order to seam

(Testimony of James Melville Abbett.)

the cap to the can and produce a finished seaming operation, which is performed on two revoluble carriages in Wilson patent 1,203,295, is that not correct?

A. I don't know how many it will require. The patent shows four units, the first one forming an element of the seam and the next three making the lock seam between the cap [1634] and the element formed in the first unit.

Q. There is no suggestion in the patent, is there, that any one of these units A, B, C and D might be dispensed with in the operation of completely doing the work of the machine, is there?

A. As previously read, the patentee states that he preferably used four machines, and in addition he states that: "It will be apparent to those skilled in the art that many changes could be made in the detail mechanism of the machines which I have described, without departing from the spirit or scope of my invention."

Q. But no suggestion is made specifically of eliminating one of those elements A, B, C and D, is there?

A. In the present examination of the patent I find no such suggestion.

Q. And no suggestion is made anywhere of feeding cans and caps coincidentally to the first element A, is that not correct?

A. No; the caps, as has been stated, are fed to B.

Q. After a flanging operation has been performed on the cans alone in the element A?

(Testimony of James Melville Abbett.)

A. That is correct.

Q. Then, in order to approximate the combination which we have under discussion, as to which you have cited this Nichols patent and the five others with it, it would be necessary, would it not, to eliminate two of the four elements, [1635] A and B, to feed the can tops to one of the remaining elements with the cans, and to perform a seaming operation for initially joining the cans and caps in such first element?

A. I can only answer that the patent shows the use of units B, C and D in forming the seam between the cap and the can, and I have no idea as to what the capabilities of operation or adjustment of the units might be.

Q. The cans roll by gravity from the unit A to the unit B, and the cans and caps roll by gravity from the unit B to the unit C and from the unit C to the unit D, don't they? A. Yes.

Q. And this machine operates with the axis of each of the units, A, B, C and D, positioned horizontally, is that not correct?

A. Horizontally and parallel.

Q. So that the cans lie, in effect, upon their sides in these units, don't they?

A. Yes; they lie upon their sides and are parallel to the axis of the units.

Q. Do you find anything else, that is, anything else reflected in your affidavit, other than these six patents, which would apply to the combination

(Testimony of James Melville Abbett.)

under discussion, that is, any prior public use, knowledge, or publication?

A. There are, of course, a number of patents which show fragments of the combination, which reflect the crowded condition of the prior art, and which I have mentioned in the [1636] affidavit as being pertinent to the elements of the combination; as, for example, can-encircling means for forming a seam, and transfer means and means for spinning cans and the like.

(Thereupon an adjournment was had until Tuesday, May 1, 1923, at ten o'clock A. M.)

[1637] 811 Washington Building,
Los Angeles, California, Tuesday, May 1, 1923,
10:00 A. M.

(Appearances as heretofore noted.)

JAMES M. ABBETT recalled.

Cross-examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Referring to the question previously propounded to you, which drew forth the patents cited by you, and applied by you to the patent of Exhibit 3, No. 1,203,295, the patent in suit, if I had omitted from that question the limiting or qualifying or descriptive or otherwise definitive word "encircling" as applied to the means utilized in performing the first seaming operation, would that have made any difference in your citation of such patents per-

(Testimony of James Melville Abbett.)

tinent to such question, and would you have cited any other patents in that connection?

Mr. TOWNSEND.—The question is objected to as hypothetical. If counsel has a question he should ask it.

[1638] Mr. BLAKESLEE.—I am asking him how far those patents would go if I changed the proposition by eliminating that one word.

The MASTER.—What is it you are eliminating?

Mr. BLAKESLEE.—The word "encircling" as definitive of the means of performing the first seaming operation.

Mr. TOWNSEND.—That question is an extremely involved one, and it was presented several days ago. If counsel has a new question which he wants to propound with changed wording, the proper way, of course, is to reframe the question. It is an unheard of thing to say, "What would your answer be if I said it differently."

The MASTER.—Do you understand the question?

A. I have the elements before me.

The MASTER.—The witness has the elements before him of that question, and I think he understands the question, so I will overrule the objection.

Mr. TOWNSEND.—May I make this suggestion, Mr. Master, please: My objection is directed to more than that; it is to a proper and orderly procedure; a reviewing court should not be compelled, nor should the Master be compelled, to go back through four or five hundred pages of testimony and see what the question is.

(Testimony of James Melville Abbett.)

The MASTER.—Let's restate it, then.

[1639] Mr. BLAKESLEE.—I will find it in the transcript.

The WITNESS.—It is on page 1558.

Q. Referring to the Wilson et al. patent No. 1,203,295, do you, by your affidavit, mean us to understand that you have found and designated therein any prior patent or prior device or thing which contains or exhibits the following combination of parts and elements and accompanying operation, to wit: First, a first revoluble carriage and a second revoluble carriage; second, means for transferring cans from the first revoluble carriage to the second revoluble carriage; third, means for delivering simultaneously or coincidently can tops and cans to the first revoluble turret while it is rotating; fourth, means for forming seams between such can tops and cans while the cans are on the first revoluble turret and while they are being moved through a part rotation of the first carriage; fifth, can-supporting means for the first carriage; sixth, can-supporting means for the second carriage, and, seventh, means controlled by the rotation of the second carriage for rolling or completing the seam mentioned as formed while the can tops and cans are advancing on the first carriage?

Mr. TOWNSEND.—The question is objected to as it is framed in substantially the terms of original Claim 2 which was rejected by the Patent Office, and the matter omitted from the question as originally put to this witness at page 1558 of the record

(Testimony of James Melville Abbett.)

being substantially the matter inserted by [1640] amendment while the application was pending in the Patent Office, and therefore the question becomes immaterial, the record in the Patent Office fully meeting the question; and, secondly, it is an attempt to call upon this witness for a legal construction and not proper by way of developing the art. Furthermore, the question is multifarious.

The MASTER.—Overruled.

A. I would have cited the same set of patents in answer to the present question that I cited in the previous question, in which previous question the limitation by the phrase "means encircling the can top" was a part.

Q. (By Mr. BLAKESLEE.) And you would cite, would you, any further prior art or thing mentioned in your affidavit, [1641] that is, further than cited in connection with the patents referred to?

A. The answer to that question involves considerable. As has been stated before, prior to making this affidavit I obtained the entire art relating to the present subject matter, and in fact I had before me between seven and eight hundred patents. The patents which have been selected and presented in this affidavit seem to me to in a representative way show the state of the art with its reference to the present issues. I would not care to say that there might not be other patents in that large collection, which might not have a bearing on the present issue; but I believe that the patents which have

(Testimony of James Melville Abbett.)

been cited are sufficiently important and representative to cover the subject.

Q. In other words, you culled out from the prior art as you found it those six patents which you considered to be the closest of the six or eight hundred to the structure, including the combination of elements we have been discussing?

A. I hesitate to make that answer positive for the reason that there might have been patents which were closer; but I am willing to stand on the patents which have been selected as being in a class intimately concerned with the present issue. We all know in making Patent Office searches that sometimes the value of a patent is under-estimated or mis-estimated; but I believe that the patents which have been cited are satisfactory.

[1642] Q. You mean satisfactory from your viewpoint, as being the closest approximations to the combinations under discussion, do you?

A. As being among the closest.

Q. Referring to the patent of Plaintiff's Exhibit 3, patent 1,203,295 in suit, and to the defendant's machine, P–24, will you please state whether or not you agree with me in the following statement comparative in the respects mentioned of those two structures, or combination of features, to wit:

First, the means for producing the first seaming operation and centering the can in the patent; revolve and compress or roll the material of the can progressively around its cylindrical structure;

Second, in defendants' machine the means center-

(Testimony of James Melville Abbett.)

ing the can and performing the first seaming operation, revolve and compress or roll the can material progressively around its cylindrical structure;

Third, in both the means mentioned surround the can;

Fourth, the can is stationary in defendants' machine during this operation while the can rotates in this operation in accordance with the patent;

Fifth, the flange in defendants' machine surrounds the upper edge of the can during the seaming operation as does the cam ring in plaintiffs' said patent;

Sixth, the can material at its upper rim is compressed between [1643] the cam ring in plaintiffs' patent and the internal disk, while in defendants' machine the can material is compressed between the chuck body and the opposed rollers which move inwardly through slots in the encircling ring and bear upon the can material;

Seventh, the rollers rotate in defendants' machine and the can is actually still, or at rest, excepting to the extent that it turns in the rotary path it takes in the revolution of the first carriage or turret, while in plaintiffs' patent the can axially turns and the cam disk which actuates the can ring is stationary.

Mr. TOWNSEND.—I object to the question as unintelligible, particularly in regard to certain references to flanges being the alleged equivalent of a can-encircling ring. We don't know what that means, referred to in the fourth or fifth element.

(Testimony of James Melville Abbett.)

Second, the question is argumentative and it is multifarious.

Mr. BLAKESLEE.—I didn't use the word "equivalent," and I am asking him as a definition of a structure.

Mr. TOWNSEND.—And the question is objected to as an attempt to construe a claim of the patent in suit under the guise of a present form of argumentative inquiry.

Mr. BLAKESLEE.—I didn't refer to a claim. I referred to the patent disclosure.

The MASTER.—Read the question.

(Question read.)

[1644] The MASTER.—I will sustain the objection. I think it should be divided up; then you can bring it to a complete head.

Mr. BLAKESLEE.—I have defined two structures, one of defendant and one of the patent, and I want the comparison made of those two complete structures, not in detail. That is the reason I put it that way. I examined him in detail on many of those features on Friday; now I am grouping them together, and it seems to me the comparison could be made and the witness can state where he disagrees, if at all.

The MASTER.—It makes the question too long to be really intelligible.

A. I will have to answer it in sections, undoubtedly.

The MASTER.—The objection is sustained.

Mr. BLAKESLEE.—Read the first part of it.

(Testimony of James Melville Abbett.)

(Question read as follows: "Q. Referring to the patent of Plaintiffs' Exhibit 3, patent 1,203,295 in suit, and to the defendants' machine P–24, will you please state whether or not you agree with me in the following statement comparative in the respects mentioned of those two structures—")

The MASTER.—You better change your question there. I don't know what is meant by "those two structures."

Mr. BLAKESLEE.—I mean the two structures of those features. Read, Mr. Reporter, the first part of that question, so I can put a question with that matter in it.

(Question read as follows: "First, the means for producing the first seaming operation and centering the can in the [1645] patent, revolve and compress or roll the material of the can progressively around its cylindrical structure.")

Q. (By Mr. BLAKESLEE.) Do you not find in plaintiffs' patent 1,203,295 that the means for performing the first seaming operation, including the can disk 98, revolve with the can successively, acting upon upper marginal portions of the can to deform the material and press it between such ring 98 and the disk 96?

Mr. TOWNSEND.—I object to the question. In the first place, the patent is the best evidence of what it contains; secondly, the question calls the element 98 a disk in one instance and a ring in the other instance.

(Testimony of James Melville Abbett.)

Mr. BLAKESLEE.—Ring 98 and disk 96, I stated.

The MASTER.—I don't think you did. Let's hear the question again.

(Last question read.)

Mr. BLAKESLEE.—That should be "cam ring."

The MASTER.—Objection overruled.

(Question as amended read.)

A. With reference to the drawings and specification of plaintiff's patent, to the model of plaintiffs' patent, V–1, and from my personal knowledge of the operation of the machine, there has never been any intentional design made or any reference made to any beneficial result which might be obtained by relative movement between the ring 98 and the flange of the can. And in analyzing the structure I would [1646] say that the only relative movement which might take place between the ring 98 and the spindle, by which that ring is supported, is a movement which might be produced by the slip of the ring as it advances. It has always been my understanding that the ring had the same planetary movement as the can over which it is positioned and that as the can advances the frictional engagement of the can and the ring might produce movement of the ring relative to the axis of its supporting spindle, although this action would not be positive and could not be predicted as being the same with each can.

Q. (By Mr. BLAKESLEE.) Is that all?

A. I am just considering whether I made that

(Testimony of James Melville Abbett.)

as clear as you wish the question answered. I would like to have the answer read.

(Answer read.)

Mr. BLAKESLEE.—I move to strike out the first part relating to the beneficial results. I didn't ask him any question as to benefits.

The MASTER.—Motion granted.

Q. (By Mr. BLAKESLEE.) The ring 98 progressively pinches the upper margin of the can between it and the disk 96 in the first seaming operation, doesn't it?

A. That is the operation of the ring as set forth in the specification of the patent.

Q. And, as you understand it, the ring 98 and disk 96 [1647] both rotate during this operation in the same direction as the spindle 93 rotates?

Mr. TOWNSEND.—Let me suggest to counsel there that he is referring to the disk 96 and ring 98 now, whilst two questions back he referred to those elements as cam members, as I understood the question. Now, whether it is a disk or whether it is a cam—

Mr. BLAKESLEE.—The last question uses the exact terminology of the patent, "ring 98," "disk 96."

Mr. TOWNSEND.—I am speaking of your previous question where your language is at variance with the patent.

Mr. BLAKESLEE.—That has been answered.

The MASTER.—Proceed.

(Testimony of James Melville Abbett.)

A. Please read the question.

(Question read.)

A. The disk 96 is mounted on a sleeve which is positively rotated by gearing. The ring 98 floats relative to the disk and no positive means is shown in the patent or appears in the plaintiff's machine as we have examined it, for rotating ring 98.

Q. (By Mr. BLAKESLEE.) The ring 98 being pinched against the can, which is in turn pinched against the disk 96 under the pressure of the cam disk 107, such ring 98 must travel in rotation with the can being acted upon, must it not?

Mr. TOWNSEND.—The question is objected to as argumentative and a statement of something that may or may not be shown to [1648] be a fact.

The MASTER.—Overruled.

A. Referring to Figure 8 of plaintiffs' patent under discussion, it will be apparent that the can and flange of the cap will be squeezed between the ring 98 and the disk 96, or upper chuck, as it is known in the art, while the ring 98 is moving along the swell of the cam 107. As this movement continues, the can is being rotated and the flange of the cap bearing against the internal face of the ring frictionally engages the face of the ring. I am not able to state that this engagement is sufficient to overcome the frictional contact between the outer face of the ring and the cam 107 to cause the ring to move bodily with the can, and in fact my recollection of plaintiffs' machine is that the rings had

(Testimony of James Melville Abbett.)

no positive or certain movement on even the different spindles of the turret as the turret rotated.

Q. (By Mr. BLAKESLEE.) Do you take it, then, that there is a slip between the cam disk 107 and the ring 98 as the can turns, or is there a slip between the ring 98 and the can itself as the can turns?

A. I don't know what the frictional coefficients of those various faces would be relative to each other.

Q. Are you inclined to think that there is a slip at either surface mentioned?

A. It is conceivable that if the gearing for rotating the disk and the gearing for rotating the cans were properly [1649] designed relative to the circumference of the cam 107, along which the ring 98 travels—

Q. On the swell?

A. Yes, on the swell—along which the ring 98 travels, that the ring 98 would in effect merely roll along the swell as it advances, thus having a true planetary motion, and that this movement would agree with the rotation of the can around which the ring is positioned, so that the curling action would merely be a progressive crimping without relative movement between the various parts, but I am unable to state that this is the result which would be obtained.

Q. You are not able to state, are you, that the ring 98 of the patent, or as utilized in plaintiffs' machine which you observed at the plant of the Pacific Clos-

(Testimony of James Melville Abbett.)

ing Machine Company, does not in fact move circuitously somewhat?

A. Around what point?

Q. Around the axis of the spindle 93.

Mr. TOWNSEND.—How do you define circuitous? You use it in an apparently unusual sense.

Mr. BLAKESLEE.—So as to move in a circuit around that center.

A. It is my recollection of the machine that as the turrets passed in their rotation some of the rings were moving with the cans, and sometimes they were apparently stationary, and that there was a random movement of the rings.

Q. So that not always was the same outside surface portion [1650] of the ring 98 presented to the same outside surface portion of the swell of the can; is that not correct?

A. If there was an operation in the relative movement of the ring to the can there would of course be differences at different points along the ring at which the contact with the can was made at different times and under different circumstances. For example, I could conceive that if the contents of the can would get up over the flange of the ring it might make some difference in the frictional engagement of the ring with the flange.

Q. In other words, it is your recollection that the rings 98 to some extent moved in entirety around the axis of the spindle 93?

A. My recollection was that they moved at random, sometimes appearing to move bodily with the

(Testimony of James Melville Abbett.)

can and sometimes having a relative movement to the can, or the can to them.

Q. The disk 96, of course, moves in rotation with the can, doesn't it?

A. That is the positive driving means for locating the can.

Q. In defendants' P–24 machine, or as exemplified in Defendants' Exhibit "P," the flange which surrounds the can top or can margin rotates around the can, doesn't it?

A. That flange is a part of the seaming head, and as such moves around the can when this head is in operation.

Q. And the chuck body within a concentric line with that [1651] flange likewise moves in rotation with the can? A. No, it does not.

Q. Are you sure that it does not at any time?

A. That is my recollection, but I will be glad to check it up with the drawings. Refreshing my memory from referring to Exhibit "B," forming a part of the bill of particulars, I will state that there is no positive means provided for moving the upper chuck plate or disk, as you have mentioned, but that the head rotates around a fixed spindle on which the chuck plate is positioned.

Q. Then there is relative axial movement between the chuck head and the flange we have just referred to, is there not?

A. Yes. The flange, which is a part of the chuck head, is designed to rotate around the spindle on which the chuck plate is positively fixed.

(Testimony of James Melville Abbett.)

Q. From your previous answers I would understand you to mean that unless the ring 98 bodily moves at the same speed as the rotating disk 96 there would be relative movement between the disk in its rotation and such ring 98, taken as an entirety; is that not correct?

Mr. TOWNSEND.—That question is argumentative in that it attempts to put a construction on the witness's testimony and it is not put fairly before the witness. It does not put fairly before the witness a question that is intelligible to everybody.

[1652] The MASTER.—Let's hear the question.

(Question read.)

The MASTER.—That is calling for an explanation; overruled.

A. In answering that question I must first consider the fact that the curling ring 98 is of larger diameter than the can around which it is positioned and that this ring is disposed eccentrically to the can and the chuck plate. As the chuck plate rotates the ring changes position relative to the plate, that is to say, the pressure between the cam disk 107 and the chuck plate as it rotates will cause the ring to successively slip in a plane at right angles to the axis of the chuck plate spindle, if the circumferential speed of travel of the can is the same as the speed of travel of the curling face of the ring, and that, if, due to varying frictional conditions, the ring remains stationary, utilizing a single point of contact for the curling, the can would continue to rotate without interfering with the seam-forming opera-

(Testimony of James Melville Abbett.)

tion. I would like to have the answer read, please, and read the question first.

(Question and answer read.)

Q. (By Mr. BLAKESLEE.) You don't take it that the ring 98 rotates bodily at the same speed that the disk 96 rotates, do you?

A. I am not able to predict that such would be the case for the ring is merely a floating member acted upon by two opposing forces, the face of the chuck plate and the cam disk [1653] 107 around which it rotates, and between these two members is a varying factor, which is the can and its cap.

Q. Then you understand it that there is a relative movement between the ring 98 and the disk 96 in terms of rotation, do you not?

A. There may be such relative movement, but I am not in position to state that it will positively take place and will always take place.

Q. As you understand it, if the ring 98 does execute a revolving motion it is not at the same speed as the rotation executed by the disk 96, isn't that correct?

A. No. It is possible for the ring 98 to move bodily with the can and the disk.

Q. And is it not also possible that it moves at a less speed bodily than the can and the disk 96?

A. It may.

Q. In which case you would have a relative movement in terms of revolution or rotation of the ring and disk, wouldn't you?

(Testimony of James Melville Abbett.)

A. Certainly. If the two didn't move together, it would be a relative movement.

Q. And you have, of course, a relative movement between the flange of the chuck head which surrounds the can in the defendants' machine and in Exhibit "P," and the chuck disk within it, haven't you?

A. Yes. In that instance you have a positive relative [1654] movement determined by the driving means of the head.

Q. Nevertheless a relative movement. That fairly states it, doesn't it? A. Yes.

Q. Until the rollers which impinge upon the can margin in defendants' machine and in Exhibit "P" engage with the can material they do not rotate, do they?

A. No. They are, of course, rotated by friction incident to the pressure of the roller against the flange and cap.

Q. And if there is any movement of the ring 98 in plaintiff's patent that is similarly due to frictional control, isn't it? A. Yes.

Q. There is no positive drive for either the ring 98 or these rollers just mentioned in the defendants' machine, is there?

A. No, not as I understand it. If there is any positive action between ring 98 of plaintiffs' machine and the chuck, I haven't been able to find it.

Q. And the can marginal portion is progressively pinched and acted upon in the first seaming operation by the ring 98 of the plaintiffs' patent and

(Testimony of James Melville Abbett.)

the opposed rollers of the seam-forming means of defendants' structure, is that not correct?

A. Yes. The point of progression, of course, in the two is different. The ring starts at one point on the circumference [1655] of the cap and moves around it, while the rollers begin on diametrically opposite sides and progress around the two halves of the cap.

Q. In other words, you have two concurrent impingements in defendants' machine and only one impingement in plaintiffs' patent, is that right?

A. Yes.

Q. The can in defendants' machine actually rotates upon its vertical axis to an appreciable extent as it travels with the first carriage, around the axis of that carriage, doesn't it?

A. No. It has no rotation around its vertical axis. It has a planetary action relative to the center of the turret. As an example, I am standing here with the can held between my two hands and I am the center of the rotating turret. Now, in defendants' machine, as I swing around there is no rotation of the can on its axis, but there is rotation around the axis of the turret.

Q. However, as you execute that movement, starting with the can facing east, and you turn to an arc of 180 degrees, the portion of the can facing east to begin with will be facing west, will it not, when you have completed that half circle turn?

A. It certainly would, but the can didn't rotate.

Q. You are quite positive, are you, that the can

(Testimony of James Melville Abbett.)

would not actually rotate upon its axis once in the complete circuit [1656] of 360 degrees, if you turned around completely?

A. Not on its axis. It would change relation relative to the axis around which it rotated.

Q. But would it not be necessary that it so turn completely on its axis in as much as any one face of it will be presented in every direction of the compass as the turn takes place?

A. As the can rotates around an axis remote to its axis the can will turn around once during the rotation around the remote axis.

Q. In other words, the side of the can first to enter the first turret in defendants' machine, assuming that it is carried through an arc of travel of substantially 180 degrees, is the side of the can last to leave that turret, isn't it?

A. It is the side of the can last to leave the turret, but there has been no movement of the can relative to the turret while the can has been carried thereby. There has been relative to its axis but not to the turret.

Q. (By Mr. TOWNSEND.) Relative to the turret's axis or relative to the can axis?

A. Relative to the turret's axis.

Q. (By Mr. BLAKESLEE.) But the can has turned halfway around, hasn't it, in order that it may leave the first turret?

Mr. TOWNSEND.—I submit you are misusing the term "the can turning half way around," and

(Testimony of James Melville Abbett.)

the witness has answered the [1657] question several times.

The MASTER.—Overruled.

A. Why, of course the can turns halfway around a half revolution, and it will turn a quarter way around during a quarter revolution.

Q. Of the turret?

A. Of the turret—and would be turning around its own axis one turret to one revolution of the turret on which it is carried, without having any movement relative to the turret.

Q. (By Mr. BLAKESLEE.) In other words, you get the can turned halfway around in its travel with the turret 180 degrees, identically in result as if you kept it stationary and turned it halfway around on its own vertical axis; isn't that correct?

A. If you are just going to consider the can, there is a half revolution of the can, whether it is rotating around a stationary axis or moving in a planetary manner; but as to saying that substantially the same results are obtained, I cannot state this without considering the reason for rotation of the can.

Q. By "result" I simply mean that a half revolution of the can takes place, and in using the word "result" I merely refer to this change of position of the parts of the can structure, as to the directions in which they face. That being so, are not the results the same under the conditions predicated [1658] in my last previous question?

Mr. TOWNSEND.—I submit that counsel by

(Testimony of James Melville Abbett.)

his question and confusing of the terms of rotation of the can is causing confusion in the record.

The MASTER.—I don't think so, Mr. Townsend.

Mr. TOWNSEND.—Well, if it is perfectly clear, as long as we understand at all times in speaking of the can being nonrotating on its axis, that is one thing; but if he wants to speak of a relative movement with respect to a turret axis eccentric to the can, that is another thing. I think we ought to have that clear. I don't care how far you go. Although I think it is a fruitless sort of an examination and repetition, if the Master wishes to continue I have no objection at all, if the wording is used so that ultimate confusion does not result.

A. My answer would stand as previously made.

Q. (By Mr. BLAKESLEE.) The results, then, as far as the turning of the can around on its vertical axis is concerned, are the same whether it be carried halfway around on a revolving turret or turned halfway around while stationary, isn't that correct?

A. Yes, as far as can rotation goes.

Q. In obtaining the movements of the parts which we have been referring to, to wit, the cans in plaintiffs' patent and defendants' machine, the ring 98 in plaintiffs' patent and the seaming head flange in defendants' machine, [1659] and the disk 96 in plaintiffs' machine and the chuck head disk within the flange in defendants' machine, and the rollers in defendants' machine seaming head and the cam disk 107 in plaintiffs' patent, we have a progressive

(Testimony of James Melville Abbett.)

forming of the first seaming structure while the can margin is within a surrounding circular part in both structures and while the said marginal portion is progressively pinched between opposing or external and internal pressure agencies in both machines, and while the can is actually to an extent turning around in both structures; isn't that correct?

Mr. TOWNSEND.—The question is objected to as unintelligible, argumentative, and multifarious.

Mr. BLAKESLEE.—It is a summation of his testimony just given, and it is a statement of structures.

The MASTER.—Overruled.

A. Do I understand that the manner in which you have associated the different elements in that question has any relation to the function of those elements relative to each other and should be so considered in my answer?

Q. (By Mr. BLAKESLEE.) I don't wish you to understand I am making any mental reservations as to functions at all in the question over and beyond the exact structures and actions specified in the question.

A. The reason I asked that is because you say "the ring 98 and the flanges of the seaming head," and you at another place say "the seaming rollers of defendant and the cam 107," [1660] and that was somewhat confusing as to how I was to view that.

Mr. TOWNSEND.—The Master will concede

(Testimony of James Melville Abbett.)

that my objection is well founded that the question is unintelligible, and, furthermore, it is immaterial. The witness has shown by his inquiry here that the question is unintelligible.

The MASTER.—He is now straightening himself out.

Mr. TOWNSEND.—Counsel at the same time has dodged the witness's question by leaving it open whether or not the witness is to consider the functions. Therefore that makes it vicious.

The MASTER.—I understood he was not to consider the functions except as stated.

Mr. BLAKESLEE.—As stated.

Mr. TOWNSEND.—Then the question is hypothetical and the answer given would be immaterial.

The MASTER.—Do I understand a hypothetical question cannot be put to an expert in a patent case?

Mr. TOWNSEND.—As a rule, not. That is very ably discussed by the authorities.

The MASTER.—I don't see any hypothesis in the question. He has mentioned different elements of structure there.

Mr. TOWNSEND.—I merely interpose the objection in the line of procedure, in trying to keep the record straight.

The MASTER.—Overruled.

Mr. BLAKESLEE.—I may say in further answer to Mr. Abbett's question that I included the cam 107 of the patent as one of [1661] the obvi-

(Testimony of James Melville Abbett.)

ously required working features of the structure, and only for that purpose.

Mr. TOWNSEND.—Let's hear the question again the way it is revised.

Mr. BLAKESLEE.—I haven't revised it.

The MASTER.—The statement leaves it wide open now. Go ahead.

A. I understand then that I can set parallel the two structures with the final idea in view as implied in the last of that question as to the movement, if any, of a can relative to its own axis during a seaming operation?

Q. (By Mr. BLAKESLEE.) Yes. You may state what you understand takes place in the two structures, without any limitation.

A. The two structures both have vertical spindles, one of which is fixed relative to the turret on which it is carried, as in the defendants' device; and in the plaintiff's this same spindle is provided with positive gearing to insure its rotation. At the lower ends of both of these spindles are chuck plates, commonly used in the can art, to seat within the recessed portion of a cap and to hold the cap down on to a can while a seaming operation takes place. In plaintiffs' device we have a floating ring 98 which is designed to perform two functions, the first to center the cap on to the can and the second to operate in conjunction with the chuck plate and the cam 107 to curl and seam between [1662] the cap and the can. In defendants' device we have a cup forming part of a rotary seaming head. This

(Testimony of James Melville Abbett.)

cup extends downwardly and has two arcuate flanges disposed in spaced relation to each other along the arc of a single circle, and for the purpose of centering the cap on the can by the ring 98 of plaintiffs' patent. Disposed between the spaced ends of these two arcuate flanges are a pair of radially and vertically swinging rollers which move with the head and are simultaneously moved inwardly to impinge against opposite sides of the can cap and to curl the same as the head with the rollers rotates. The can in defendants' device is designed to be held stationary relative to the turret, and the seaming head of defendant's device is designed to rotate around the can and cap after it has been centered by the two arcuate flanges of the seaming head. In plaintiffs' device the can is supported on a freely rotating chuck plate and at the top is engaged by a chuck plate which is designed to be positively driven by gearing at a speed of rotation greater than the speed of rotation which would be produced incident to the planetary movement of the can around the vertical axis of the spindle. In defendants' device the can, while gripped between opposing chuck plates and held against movement around its own axis, is advanced around the axis of the turret and will be rotated a portion of a revolution, agreeing with the length of travel of the can, while so secured and carried by the turret; while in [1663] plaintiffs' device the can not only advances and rotates around the axis of the turret, as described for defendants' machine, but is also provided with positive driving means

(Testimony of James Melville Abbett.)

for the upper chuck plate to insure that the can will perform an additional rotation aside from the planetary rotation incident to the carriage of the can with the turret.

Q. (By the MASTER.) What did we find that rotation was in plaintiffs' device? One and a quarter?

A. In plaintiffs' device the rotation of the can around its own axis during its advance, which advance represents substantially a half turn of the turret, was one and a quarter revolutions of the can around its own axis.

Q. (By Mr. BLAKESLEE.) As you understand it, the purpose of such rotation of the can around its own axis in plaintiffs' machine is incident to the curling of the marginal portion of the can progressively, isn't it? A. Yes.

Q. And you get a curling of the marginal portion of the can in defendants' machine progressively, do you not? A. Yes.

Q. In the interrupted flange in defendants' machine, with the rollers moved inwardly through the zones of interruption, it does encircle the top of the can during the curling action, is that not correct?

A. For practical purposes it is substantially so. Of course those flanges do not completely encircle the top of [1664] the can but merely encircle segments of the can.

Q. When the rollers are in inward position the rollers plus the portions of the interrupted flange

(Testimony of James Melville Abbett.)

approximately encircle the marginal portion of the can being curled, is that not correct?

A. That matter receives considerable discussion here. As before stated, the two arcuate flanges and the rollers are grouped around the chuck plate. They are not symetrically grouped and, from the standpoint of function, could not be considered to encircle the can.

Q. (By the MASTER.) What do you mean by "from the standpoint of function"? They certainly revolve around the can top and encircle it in that sense.

A. Yes; they travel quite an encircling path of travel around the top of the can.

Mr. TOWNSEND.—I don't think Mr. Abbett finished his answer.

A. Yes, I finished my answer.

Mr. TOWNSEND.—The Master asked you about the sense of encircling, or I understood the Master's question to infer that.

The MASTER.—No, I don't think so. What was my question?

(Question of the Master read.)

A. As I answered, they move in an encircling path of travel around the axis of the can, the same as Black and all the rest of these; but Mr. Blakeslee has asked me if I considered that these two flanges supplemented by the two seaming [1665] rollers encircled the can, and my reply was—

Q. (By the MASTER.) Your reply was that they didn't do it in point of function. A. Yes.

(Testimony of James Melville Abbett.)

Q. In other words, here the flanges have no function of encircling the can in forming the seam?

A. No; and the seaming rollers have no function in point of centering the can, either; in other words, we have two separate groups of elements in the seaming head of defendants'. One is a pair of arcuate flanges for centering the can. When that is done those flanges are of no more use. Then we have two rollers which take the centered cap and curl it, and when that is going on these flanges are of no use, and the term "encircling" can only be defined by me as referring to the fact that these members are grouped around a common center; but I don't feel that the term "encircling" is a proper term to describe the relationship of a group of miscellaneous elements around a common center.

Q. (By Mr. BLAKESLEE.) Do not what you have called the arcuate flanges, or the single flange with two zones of interruption in defendants' machine, the seaming head and the rollers which move inwardly through those zones of interruption and the flange, between them center and curl the can margin and move in a substantially circular path around the can?

A. Yes. That could be answered yes.

[1666] Q. And in plaintiffs' patent the ring 98 serves to center the can and also performs the curling operation, does it not? A. Yes.

Q. And in both plaintiffs' patent and defendants' machine this curling operation takes place while a centrally disposed part, to wit, the disk 96 in plain-

(Testimony of James Melville Abbett.)

tiffs' patent and the chuck disk in defendants' machine and in Exhibit "P" bear upon the can cap and hold it in place, such curling operation producing an initial association or joining together of the cap and the can body, is that not correct?

A. Yes, that is correct. Attention should be called to the fact, I believe, however, that this curling operation does not take place or would not take place merely by the planetary movement of a can relative to the axis of the turret.

Q. In which machine? A. In either machine.

The MASTER.—I don't understand that with reference to the defendants' machine.

A. It is not the fact that the can is being carried by a turret and that incident to that travel the can would rotate once in a revolution of the turret. It requires additional means or functions than those specified in the question and this planetary action rotation of the can to bring about a seaming result on either machine.

Q. (By Mr. BLAKESLEE.) In other words, it requires the rotation [1667] of the seaming head with the rollers and interrupted flange around the chuck disk, the rollers being forced inwardly, for impingement on the can in defendants' machine and requires the inward forcing of the ring 98 to rotate against the can to pinch it between such ring and the rotating disk 96 in defendants' machine, those parts in both machines likewise centering the can; isn't that correct?

(Testimony of James Melville Abbett.)

A. That question is directed to two subject matters, I would consider.

Q. Then you may separate them in your answer.

A. Will you read the question again?

(Question read.)

A. That is partially correct. In addition it requires some means to rotate the can in plaintiffs' machine.

Q. Or such means are provided anyway in the patent?

A. Yes, such means are provided but not included in the question.

Q. Aside from the distinctions you have made as to the particular action of the interrupted flange and rollers in defendants' machine and the particular operation of the ring 98 in plaintiffs' patent, do you attach any peculiar significance to the term "encircling means" which renders such rollers and disk in defendants' machine fundamentally different from the ring 98 in plaintiffs' patent, and I say keeping in mind the distinctions in the specific structure and action which you have testified to?

[1668] A. Yes; I consider them different. In the first place, during my study of the prior art we find two distinct classes of curling means, one being traveling rollers which move relative to the can, and the other being curling surfaces embodied in disks, and other members which act to curl a seam. In function the two are different in that the rollers are of small diameter, commonly used on both commercial machines—the friction between the

(Testimony of James Melville Abbett.)

parts is eliminated and the curling action produced by what we know in metal working as a spinning of the metal by minute steps. In connection with the encircling rings and other such devices we have a formed surface which moves relative to the can and tends to work the metal down as the members move relative to each other. The rollers of course operate with less power as they rotate around the can than would a fixed member which bears against the can and drags along it by friction. In addition to these comparisons, I have considered the differences emphasized by the file-wrapper in this case, which clearly infer the same distinction between seaming rollers which move in an encircling path of travel around the can and a curling member or die which physically encircles the can.

Q. When you have with the rollers an interrupted circular flange as an approximately complete circular structure around the can, doesn't that change the analogy between such structure and the ring 98 so as to bring them both truly within the general meaning of the term "encircling" as far as the circling [1669] act is concerned or encircling position, irrespective of the particular differences between them which you have mentioned?

A. I take it that the primary function of forming the seaming means of the plaintiffs' patent in the shape of a ring has been for the purpose of providing a continuous circular curling die which would operate upon the can in the same manner at any point along its curling face, and which at the same

(Testimony of James Melville Abbett.)

time lends itself to pressure from a fixed cam, as the die advances with the turret, and that the centering of the can by the ring is a secondary function of the ring; while in defendants' structure we have a means designed for the sole purpose of centering the can and its cap and means separate therefrom and acting wholly independent therefrom to move around the can and curl the seam.

Q. The rollers alone in defendants' machine and in Exhibit "P" would not serve to center the can in the chuck, would they?

A. They have of course not been designed with that purpose in view, although if we would remove the flanges the seaming operation would still take place, where with defendants' ring the removal of the centering means would remove the seaming means.

Q. But the flanges, or interrupted flange in defendants' machine, and the ring 98 in plaintiffs' patent, do both perform the centering of the can, do they not?

A. They both perform the centering of the can.

Q. And each one continues through approximately a complete [1670] circle in its formation, does it not?

A. Yes, approximately; although it is evident that where the flanges in defendants' device are fixed flanges remaining concentric with the chuck, that the centering means of plaintiffs' machine is a floating ring which moves out of its concentric

(Testimony of James Melville Abbett.)

position after the centering takes place and when the seaming begins.

Q. Normally the ring 98 of plaintiffs' patent is concentric with the axis of the spindle 93 and the disk 96, isn't it; and by normally I mean before any pressure has been exerted upon it to cause it to impinge upon the can in the curling operation.

A. From the time a partially seamed can is removed from the ring until such time as pressure is exerted by the cam 107 to begin a new seaming operation, the ring is concentric with the chuck plate.

Q. That is, while the can is encircled by the ring 98 and the ring 98 contacts with the dwell or negative portion of the cam 107 that such ring 98 is concentric with the axis of the spindle 93, isn't it?

A. Yes.

Q. You have never seen a defendants' P–24 machine operated without the interrupted flange of Exhibit "P," through the breaks of which the rollers pass, have you?

A. No, I never have. I understand that that is the common construction as used in the old 14–P.

[1671] Q. And as far as location of parts is concerned, do I understand you correctly that the interrupted circular flange, or as you call it, two arcuate flanges, with the curling rollers in defendants' machine and in Exhibit "P," are substantially circularly grouped around the can in the same general circular disposition that the ring 98

(Testimony of James Melville Abbett.)

surrounds the margin of the can in plaintiffs' patent?

A. I will say that the elements of defendants' seaming head are circularly grouped around the center of the can; but to say substantially as grouped around the center of the can in plaintiffs' patent, I am still reluctant to make such a statement.

Q. I am speaking purely now of position; and, bearing that in mind, is the comparison not correct?

A. Generally speaking, yes.

(Thereupon a recess was had until two P. M.)

[1672] AFTERNOON SESSION—2 o'clock.

JAMES M. ABBETT recalled.

Cross-examination (Resumed).

(By Mr. BLAKESLEE.)

Q. Does your affidavit refer to any prior patent, machine or thing, which includes in a machine for heading cans a first revoluble turret or carriage, means for curling the marginal portion of the can, and including a part which surrounds the can to center it, such curling means operating when the cap is in position to be united with the can, and a second revoluble turret or carriage to which the can and cap are transferred from the first revoluble turret or carriage by a revolving transfer means, together, further, with means for rolling down the seam curled by the curling means, effective when the can and cap are on the first carriage or turret?

Mr. TOWNSEND.—That question is objected to, if the Master please, on the ground it is need-

(Testimony of James Melville Abbett.)

less repetition. That same question in a variety of forms has been asked perhaps half a dozen times. In the recess since the adjournment I have looked over Friday's testimony and practically the whole morning has been taken up in going over the identical [1673] ground covered last Friday, and the same sort of questions and the same grounds. Now, there should be a limit when this witness has covered the field. We will be here all summer, otherwise.

The MASTER.—How does this differ, Mr. Blakeslee?

Mr. BLAKESLEE.—This question is limited to less elements than any previous question. It does not include can-supporting means on the turrets; it does not include the limitation of means for rolling down the seam operated by the revolution of the second turret; it simply brings out certain leading elements, the purpose being obviously to broadly state the combination, including encircling means.

Mr. TOWNSEND.—Then again you are trying to frame a question in the words or form of rejected claims, and that does not get us anywhere.

The MASTER.—I have been allowing these questions on the theory they were calling for structure. Objection overruled.

The WITNESS.—Will you read that question very slowly?

(Question read.)

(Testimony of James Melville Abbett.)

A. Mr. Blakeslee, that second element—I would like a little more enlightenment as to just what you mean. You state "means for curling the seam including a part for centering the same." What sort of a structure are you referring to there? Are you referring to a head that has curling means and centering means, as the 14–P had, or are you referring to [1674] a member which has at the same time a curling means and a centering means?

Q. (By Mr. BLAKESLEE.) I used the term "curling means" broadly, and define it more particularly by stating that it must include something to center the can, without specifying the exact structure.

Mr. TOWNSEND.—I object to the question as uncertain and ambiguous and also multifarious and a loaded question with a great many things there. I think you ought to split it up like was required before.

Mr. BLAKESLEE.—The question calls for a structure that is composite.

The MASTER.—The question we had split up this morning was a comparison of the two structures and all the elements put together. And now you are asking if all of these elements are included in any one patent?

Mr. BLAKESLEE.—Yes.

The MASTER.—Overruled.

(Question read.)

A. Nicholas provides two rotary turrets with intermediate transfer means for the can, the can

(Testimony of James Melville Abbett.)

being centered relative to a seaming means on the first turret at which curling action has taken place, and the seaming being completed on a turret to which the can is afterwards transferred. And in this connection I wish to state that my former list of most pertinent patents relative to the plaintiffs' patent No. [1675] 1,203,295, did not specify the Nichols patent as one of the patents in the class with Johnson, Black, and Dugan, and I wish this to be included.

The MASTER.—You have already included it.

Mr. TOWNSEND.—Give the number of Nichols' patent.

A. What I mean by this statement is that counsel for plaintiff required me to make a selection or preferred list of patents out of all the patents cited, which should be considered as being of special interest, and I didn't mention Nichols. The Nichols patent, 1,096,937, was included in my list of pertinent art, but afterwards plaintiffs' counsel asked me for a selection from all of the patents, which patents I considered to be of especial value in connection with the study, and I mentioned Brenzinger, Black, Dugan and Johnson, and to that I wish to add Nichols. The record will show what I am referring to. In addition to this, I consider Brenzinger as showing the general combination, although the transfer means in this case is a belt and is not a rotary disk. And, further, the patent to Johnson, No. 1,040,951, shows the seaming head having the substantial features of the

(Testimony of James Melville Abbett.)

14–P head which has been discussed, and which head centers the cap on the can and forms the seam. I am aware that in Johnson, as well as Black and Dugan, the complete seaming operation takes place on a single turret, but that, for example, in the patent to Black two continuous rotary turrets are provided, one of them initially acting on the can to [1676] flange it and the final turret acting to curl and finish the same. But in an analysis of the operating structure of the flanging rollers shown on the first turret in the Black patent, I consider that the centering and flanging device of Johnson and Brenzinger might be placed upon this turret without in any material degree disturbing the present operating mechanism thereof, and for this reason I include these patents in my answer to the question.

Q. (By the MASTER.) Then you have Nichols, Brenzinger, Johnson, Black, and Dugan.

A. Yes, sir.

Q. (By Mr. BLAKESLEE.) In the Nichols patent the caps are not fed to the first of the series of successively operating turrets or carriages, are they?

A. No; they are not fed to the first series of carriages.

Q. Wait a minute. Do you mean "series"?

A. The first of the series of carriages, but are fed to the first carriage on which the seam is turned.

Q. In the Black, Johnson, Brenzinger and

(Testimony of James Melville Abbett.)

Dugan patents, or in any one of them, do you find the two separate rotating carriages or turrets, to one of which the caps and cans are coincidentally fed, provided with means for initially associating the cap and can by a seam-curling operation on that same first turret, such curling operation being produced by the use of means including a member which surrounds and centers the can?

[1677] The MASTER.—You are going back to your original question. You haven't that element in this second group, of feeding the cans and can tops coincidentally.

Mr. BLAKESLEE.—I have added that now to this last question.

The MASTER.—Oh, I see.

A. The fair and proper answer to that would be, of course, that as shown in this patent the first turret of Black and Johnson does not show that cans and caps are intended to be fed coincidentally thereto, but in the same structure a revoluble disk is provided to rotate in synchronism with a turret on which the first seaming operation is performed, said disk being designed to receive a can and cap and deliver it coincidentally to a rotary turret upon which the two are seamed together, irrespective of whether this turret is the first turret in the machine or the second turret.

Q. Does the Johnson have two turrets?

A. Yes; Johnson has a first turret, an intermediate disk, and a second turret. On the first turret is a mechanism for—

(Testimony of James Melville Abbett.)

Q. This is the first turret for the flanging operation?

A. Yes. What I am trying to say is that, removing this turret number two, we have a mechanism, including a rotary disk, which receives the can, picks up a cap, and delivers the two coincidentally to a rotary turret, be it the first, second, or third, on which the seam is rolled.

Q. (By Mr. BLAKESLEE.) That third turret being 27?

A. That third turret being 27 and the delivery disk being [1678] numbered 14.

Q. (By the MASTER.) You haven't any patent in the prior art which has the two turrets, one of which performs the initial seaming and the other the rolling or compression rolling process, have you?

Mr. BLAKESLEE.—With a rotary transfer means between.

A. No, we have not two turrets which separately carry, one the rolling dies and the other the finishing dies or rolls, although the art is full of patents which show the two-station principle with an intermediate transfer; as, for instance, Guenther 14–P and Kruse here shown, in which the two seaming operations are separated from each other and the can merely carried from one to the other by a transfer means.

Q. (By Mr. BLAKESLEE.) Right on this Johnson patent, Mr. Abbett, you could not eliminate carriage number two with its flanging operation

(Testimony of James Melville Abbett.)

and rely upon carriage number 27 to give you a seam, because carriage 27 is not organized to produce a seam unless the flange has been produced by the parts operating on carriage two, is that not correct?

A. If you are going to use a can that has not been flanged, of course it is necessary to flange the can before it is seamed, although in most of the patents, and in plaintiffs' patent, we are using cans which have been previously flanged.

The MASTER.—Plaintiff has a separate machine, has he not, for flanging?

[1679] Mr. BLAKESLEE.—For putting a little bead on it.

A. As I understand, it is customary for the can manufacturer to furnish the canner with a flanged can.

Mr. TOWNSEND.—I don't suppose there can be any question but that that method of procedure of furnishing flanged cans goes back to time immemorial as far as the can-making art is concerned. If it is necessary to furnish proof of how long flanged cans have been used for these machines, that is something we will offer, unless the Master would take judicial notice of it.

The MASTER.—It doesn't cut any figure because the plaintiff uses the flanged can and therefore we must assume that they are flanged to begin with.

Mr. TOWNSEND.—Yes.

(Testimony of James Melville Abbett.)

Q. (By Mr. BLAKESLEE.) Turret 27 of the Johnson patent is not organized, is it, to both curl and seam between the can and the cap and then to roll it down?

A. Yes; it is intended to finish the seam, to perform all the operation necessary to double-seam a cap on to a can, the roller mechanism or seaming mechanism being so arranged as to perform those two operations in succession.

Q. And that is an intermittent Johnson machine, is it not?

A. Johnson is intermittent, but Black has a mechanism quite similar in that it uses seaming rollers, and in Black the operation is carried on continuously.

Q. Inasmuch as the Johnson Patent, then, has carriage 27 [1680] for doing the seaming, if you eliminated the carriage 2 would you use the intermediate carriage number 14?

A. Yes; I would use that the same as is used in plaintiffs' machine, to coincidentally deliver cans and caps to the carriage on which the seaming operation is carried out.

Q. Wouldn't the carriage 27 be as well served if it were directly supplied with cans and caps like the Dugan single-turret machine, patent No. 848,-296? A. You say wouldn't it be as well served?

Q. Yes.

A. It would be served; but as to how satisfactory the service would be by transposing a cap feed

(Testimony of James Melville Abbett.)

from the Dugan machine on to the Johnson machine, I am not at this minute able to state.

Q. As a matter of fact, a distinction between plaintiffs' machine of patent 1,203,295 and the Johnson patent comes in the fact that the Johnson patent machine is a combination machine for flanging a can and transferring it to a turret where it receives a cap, and then passing both to an element for seaming the can so flanged in the same machine, whereas in plaintiffs' patent the machine is a seaming machine without any flanging function; isn't that correct?

Mr. TOWNSEND.—That question is objected to as to the use of the word "combination" when referring to Johnson. He is referring to what is shown. Furthermore, it is wholly immaterial if Johnson can perform more than the plaintiff. [1681] That sort of question gets us nowhere.

The MASTER.—I think it is self-evident that they are not the same combination. I will sustain the objection.

Mr. BLAKESLEE.—May he answer subject to the ruling?

The MASTER.—Very well.

A. Generally considered, the Wilson machine is solely designed for uniting the can to a cap while Johnson is designed to flange the can, supply it with a cap, and then unite the can to the cap, both structures, however, embodying the use of two rotary turrets, an intermediate transfer disk and

(Testimony of James Melville Abbett.)

means for delivering the can and cap to the seaming means.

Q. (By Mr. BLAKESLEE.) And the Johnson machine being an intermittent or stop and start machine in its operations?

A. Johnson is an intermittent machine.

Q. (By the MASTER.) You don't get the speed in this Johnson machine that you do in plaintiffs' machine, do you?

A. Well, I don't know about speed.

Q. (By Mr. BLAKESLEE.) You have referred to the Black and Johnson patents. How about Brenzinger, Dugan, and Nichols with respect to this coincident feed of cans and caps to the first of two turrets and the use in the first of those two turrets of means for associating the can and cap in a seaming operation, including the part that surrounds and centers or encircles and centers the can? What do you find in those patents?

A. Brenzinger, as previously stated, is a two-station [1682] machine, the stations being fixed.

Q. And nonrotative?

A. Yes; the stations are fixed and nonrotative relative to each other, or the base plate, each of these stations embodying means for centering the cap on the can and rotating the seaming means around the can, the structure being further fitted with an endless conveyor for transferring the cap and can from one seaming station to the other. In Dugan we have a single turret machine to which cans and caps are coincidentally fed, after which they are

(Testimony of James Melville Abbett.)

gripped between chuck plates, and as the carriage rotates these chuck plates are rotated to give the cans an additional rotation other than the planetary rotation incident to the carriage, and during which rotation of the can and its advance with the carriage to sets of seaming means successively act upon the can and cap to form the seaming operation.

Q. And Nicholas?

A. In Nichols we have—

The MASTER.—Have you a drawing of Nichols?

A. We haven't an enlargement, but we have the patent drawing here. In Nichols we have a set of rotary turrets.

Q. (By Mr. BLAKESLEE.) Four in number?

A. Four in number, as shown in the drawing, the first of these turrets being provided to form a flange on the cap and the last three being designed to unite the cap to the can by the formation of a double seam. In Nichols each of [1683] these turrets rotates around a separate parallel axis, and are each formed with a plurality of chucks, one chuck for one end of the can and the other for the opposite end, between which pairs of chucks the can and its caps are gripped and spun as the can advances. During this time the flange of the can and the cap act against a curling ring or pair of curling rings, which act to curl over the flanges and form a seam as the can advances and rotates.

(Testimony of James Melville Abbett.)

Q. How about a part surrounding or encircling the can and centering it in the Nichols patent?

A. The can is centered in the Nichols patent by means which support the can relative to a chuck plate which fits within the recess of the cap and tends to move the counter-sunk portion of the cap into the mouth of the can.

Q. That is a head or plunger fitting against the cap, isn't it?

A. It is numbered 39 in Figures 8, 9, 10, and 11 particularly.

Q. In Defendants' machine 24–P you find, do you not, a first revoluble carriage and a second revoluble carriage? A. Yes.

Q. You find, do you not, means for transferring cans from the first revoluble carriage to the second revoluble carriage? A. Yes.

Q. Those means are rotative, are they not?

A. The two carriages and the transfer means rotate in [1684] synchronism the same as appears in Black and Johnson.

Q. You find in that machine means for delivering simultaneously or coincidentally can tops and cans to the first of the revoluble carriages while it is rotating, do you not? A. Yes.

Q. You find, furthermore, do you not, a means for curling a seam for initially uniting the can tops and cans in defendants' machine, such means operating while the can tops and cans are supported upon the first-mentioned carriage and such

(Testimony of James Melville Abbett.)

means being provided with a part which encircles the can and centers it?

Mr. TOWNSEND.—That is objected to in the use of the words "curling the seam on the defendants' device." It is according to what counsel may means by the word "curling." That is a term that recently seems to have crept into the questions, but on which we have not had any definite testimony that such an operation actually takes place in the defendants' machine.

Mr. BLAKESLEE.—The witness has used that term frequently, so I suppose he understands it.

Mr. TOWNSEND.—In reference to the plaintiffs' device your own witness used the term "curling die." We contend we don't use a die. Therefore, it may be that there are other distinctions there.

The MASTER.—What do you mean by "curling means"?

Mr. BLAKESLEE.—I mean means that initially roll the flange on the can so as to produce the first stage of a seam temporarily [1685] or preliminarily uniting the can and the cap.

A. By your definition you say that curling means means a means for rolling the seam?

Q. (By Mr. BLAKESLEE.) The first part of a seaming operation. In other words, preliminary and temporarily uniting the can and cap by rolling the flange on the can to a form for that purpose.

A. Shall I understand that you draw any distinction between rolling the seam by the means of seaming rollers and forming the seam by a curling die?

(Testimony of James Melville Abbett.)

Q. No distinction is intended in the question. It is intended to cover any device which would do what I have stated, in taking a first step in forming the seam so as to unite the can and cap.

A. Will you read the question please?

Q. That is the way I use the word "curling," and I simply mean by that the mechanical act of curling over the flange.

A. (Question having been read.) Before answering the question, I am confronted with this thing that appears in the question: There is the implication there that the means for forming the seam embodies centering means. On the other hand I have in mind a structure which includes a unitary head which embodies seaming means and centering means, and my hesitancy in answering the question was whether you were referring to a unitary seaming structure which had elements which centered and elements which seamed, or whether you were [1686] referring to a member which centered and seamed.

Q. No; I mean a seaming structure which has as an adjunct part or attachment a part or element, or elements, which surround or encircle the can and center it, not limiting myself to an integral structure or two-part structure.

Mr. TOWNSEND.—In view of the ambiguity and uncertainty of the question, I object to it on those grounds.

The MASTER.—Overruled.

(Testimony of James Melville Abbett.)

A. Will you read the question again, please?

(Question read.)

A. Yes; and the same would apply to the patents which I cited, such as Johnson and Black, as to meeting the specification of that question.

Q. (By Mr. BLAKESLEE.) Separately considering those features of the last question?

A. No, the general combination. They are provided, and also is Dugan, with a rotary turret and means for centering and seaming the can as carried on the turret.

Q. And this action of the means for forming the first part of the seam in defendants' machine, plus the action of the feature or features which encircle the can and center it, take place while the cans and can tops are being moved through a part rotation of the first carriage? That is correct, isn't it?

A. Yes, sir.

Q. Also in defendants' 24–P machine you find, do you not, [1687] can-supporting means for the first carriage?

A. Yes. It is common to have a chuck of some sort to support the can on.

Q. And can-supporting means for the second carriage? A. Yes.

Q. And means controlled by rotation of the second carriage for rolling or completing the seam mentioned as formed initially while the can top and cans are advancing on the first carriage? A. Yes.

Q. Also in defendants' machine the can support-

(Testimony of James Melville Abbett.)

ing means on the first carriage are vertically movable or reciprocal, are they not?

A. Yes, and in fact they were on the defendants' 14–P machine.

Q. In the defendants' 14–P machine the single revolving carriage or turret is required to stop six times during the transit of a can from the point at which a cap is supplied to it to the point of discharge from the carriage or turret of that can, is it not?

A. It so happens that in the turret as shown in Exhibit "Z–1" there are eight can-receiving pockets and the point at which the cap is delivered to the can is spaced two pockets away from the point at which the finished can is ejected from the machine, and under those conditions I would assume that the can would stop six times while in the machine.

[1688] Q. The defendants' 24–P machine is a continuously operating machine, including all of its operations from the reception of a can and cap to the discharge of the seamed can and cap, is it not? A. It is.

Mr. BLAKESLEE.—That completes the cross-examination.

[1691] Mr. TOWNSEND.—Let it appear that there is a mechanism now before the witness, which we shall offer as Defendants' Exhibit "A–2," and, unless it is conceded that this is a correct representation of defendants' commercial can-feed, we will of course have to call another witness to identify it. But in order to illustrate the testimony,

(Testimony of James Melville Abbett.)

let it be assumed that this is the exhibit number for the time being, "A–2."

[1703] Re-examination, in the Nature of Redirect Examination.

(By Mr. TOWNSEND.)

[1707] Q. Have you a model here illustrative of the plaintiffs' present-day cap-feed such as they have on the Pacific machine?

A. I can say we have a model which has been made pursuant to instructions, and which model is supposed to show plaintiffs' cap-feed, made according to the photostats which plaintiffs submitted, and which are Exhibits Nos. "J–1," "K–1," "L–1," "M–1," "N–1," and "O–1."

A. This model of course does not show all of the features but merely indicates the relation of the parts and very clearly discloses the manner in which the cap is ejected.

Mr. TOWNSEND.—This model, for the purposes of illustration and also for illustrating the testimony, I will ask be marked Defendants' Exhibit "B–2." We will offer, of course further proof as to its identity.

Mr. BLAKESLEE.—We object to it as not proving anything [1708] in issue, and immaterial, and it being of no use other than for the mere purpose of illustrating argument. It cannot illustrate testimony and can merely be used to supplement argument to such extent as it might be useful in that connection. It is entirely immaterial to any issue

(Testimony of James Melville Abbett.)

in this case. The plaintiffs' machine is in evidence. And, furthermore, it is fragmentary.

The MASTER.—It will be received for illustration.

Q. (By Mr. TOWNSEND.) You referred, Mr. Abbett, to a Johnson model representative of a cap-feed or a Johnson device, other than that of the Johnson patent No. 1,040,951, and I will ask you if you can identify that.

A. I have here a model which I identify as the commercial Johnson cap feed now used on machines furnished by the American Can Company.

Q. Can you identify the patent corresponding to that model or device, Mr. Abbett?

Mr. BLAKESLEE.—We object to that on the grounds previously urged, as calling for a conclusion and leading and not a proper method of proof and immaterial. The patent and model will speak for themselves as to any comparison or distinction between them.

The MASTER.—We will take the model with its identification for what it is worth, merely as illustrative. You didn't give the patent number yet.

A. No, I didn't. This model is an actual operating device [1709] which is supposed to be constructed along the lines of Johnson patent No. 1,055,467, of March 11, 1913.

Mr. TOWNSEND.—This device I ask be marked as Defendants' Exhibit "C–2"; we will in due time further identify it.

(Testimony of James Melville Abbett.)

Mr. BLAKESLEE.—The same objection to the offer of the model as previously made.

The MASTER.—We will receive it for illustration. We will take a recess until ten o'clock tomorrow morning.

[1710] 811 Washington Building,
Los Angeles, California, Wednesday, May 2, 1923,
10 A. M.

[1715] JAMES M. ABBETT recalled.

Q. (By the MASTER.) Let me ask Mr. Abbett, have you a Johnson patent showing a continuous operating machine? What is this Johnson patent 1,074,325?

A. That was confined to the cap-feed as represented by the disk 14 of patent 1,040,951 and the parts associated therewith. Then yesterday afternoon we presented a model of part of a Johnson machine, which was made according to the Johnson patent 1,055,467. Those are the only Johnson patents I have mentioned.

Q. That patent 1,055,467 is not a continuous machine, is it?

Mr. TOWNSEND.—That was an intermittent machine, I understand, but there is a Johnson patent—we may not have it here.

The MASTER.—It isn't in the affidavit.

Mr. TOWNSEND.—I don't remember whether it is referred to or not. However, that is a matter to be connected up by proof. I mention that merely incidentally.

(Testimony of James M. Abbett.)

Mr. BLAKESLEE.—The thing I am fearful of is not the Master's most undoubted circumspection as to weighing these [1716] matters, but the difficulty in untangling these modern machines, which have been installed and operated since the event of the Wilson invention, from what there was prior to those inventions, and with no foundation laid in the pleadings for any such alleged machines it seems to me the matter is not only perilous but immaterial; but if it be understood that the trip be merely for the purpose of seeing some modern machines operated, I would be glad to have the Master see them and see them myself.

The MASTER.—All right.

[1748] Q. (By Mr. TOWNSEND.) At that point, Mr. Abbett, will you give us the number of that upwardly-inclined supporting rail that you referred to as being shown in the plaintiff's patent 1,203,295 on a can-heading machine?

A. Referring to Figure 20 of plaintiff's patent for a can-heading machine, and to page 3 beginning with line 56, it will be found that "the can tops are thus supported clear of the contents of the cans, which frequently project above the upper edges of the cans, the cans, however, being gradually moved upward toward the can tops as it advances along the upwardly-inclined can-supporting rail 74 until the can and top therefor are discharged from engagement with the wheel 56, as will be presently described.

(Testimony of James M. Abbett.)

[1749] The MASTER.—Let the record show that, at the request of the Master, each of the parties paid $100, making a total of $200 on the Master's fees, which will pay the fees up to and including Friday of this week.

[1757] Q. (By the MASTER.) How do you define a disk?

A. We have during this examination used the term disk in a loose sense in that we have considered revoluble star wheels, circular members with pockets, and other similar devices, as being disks. My understanding of the term is that a disk is a substantially circular member, all points of its periphery moving at the same rate of speed and the disk itself being considered as a unit as to the relation of the parts to each other and their rotation around an axis.

Q. The conception of a disk with pockets on its peripheral edge includes the idea of their being spaced at all times in the same relation, is that right? A. That is my understanding of a disk.

[1764] 811 Washington Building,

Los Angeles, California, Thursday, May 3, 1923, 10 A. M.

(Appearances as heretofore noted.)

The MASTER.—Let the record show that the Master proceeded with the experts for both sides and counsel for both sides and Mr. Guenther and Mr. Wilson to the plant of the American Can Company at Los Angeles, California, and was shown

(Testimony of Oliver J. Johnson.)

through the plant and witnessed various operations in the seaming of cans and examined some of the can-capping machines in storage and not operating, illustrative of the continuous operating machines, which have two rollers in the seaming head, one to form the initial seam and the other to compress same and make the double seam. These were one-turret machines and the can did not pass from one chuck to another nor from one platform to another, but remained on the same platform with the seaming rollers, performing successive operations. The party then proceeded to the shop of the Angelus Sanitary Can Machine Company, except Mr. Wilson, and there again observed the operations of the commercial machine 24–P, particular attention being devoted to the can-seam mechanism, which I will leave to the expert to describe.

TESTIMONY OF OLIVER J. JOHNSON, FOR DEFENDANTS.

[1765] OLIVER J. JOHNSON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. Mr. Johnson, will you please state your age, residence, and occupation?

A. I am fifty-four years old, and a resident of Wheeling, West Virginia. I am retired. I have no business at the present time.

(Testimony of Oliver J. Johnson.)

A. I was President and General Manager of the Wheeling Can Company, at Wheeling, West Virginia.

Q. What was the general work of that company?

A. Manufacturing fruit cans principally, and also decorated [1766] cans.

Q. Can you give us an idea as to the extent of its business, or its acreage that it covered, or the number of employees it had, or something of that sort?

(Objection.)

Q. At the time you retired, I mean.

A. The plant had a capacity of about a million and a quarter fruit cans a day, and it manufactured about two hundred and fifty thousand lard pails and other cans at another plant per day.

Q. And at what period of time do you particularly refer to? A. 1917.

Q. That is when you retired as President?

A. Yes, sir.

Q. Did you retain connection with the Company as a member of the Board, or in any way?

A. Yes; I was a member of the Board for about two years following that, and I am still a stockholder in the holding company.

Q. Have you other plants than the one located at Wheeling?

A. We have two plants, one at Wheeling and one at Warwood, which is now a suburb of Wheeling.

[1767] A. I organized the Wheeling Can Com-

(Testimony of Oliver J. Johnson.)

pany in 1901 and became its President and General Manager, and remained in that position until I retired in December, 1917.

A. My first experience in the can making business was about 1898. At that time I was identified with the Union Can Company, of Hoopeston, Illinois, and also the Sprague Canning Machinery Company in the same city. I was employed by Daniel G. Trench, who held the controlling interest in both companies. My experience at that time was mostly in the sales department of the Can Company, but being a mechanical engineer and also a mechanic I was thoroughly familiar with all of the machinery in use at that time. In January, 1901, I decided to engage in the can business for myself. I *purchased machine* for this purpose from the E. W. Bliss Company, of Brooklyn, New York. In April, 1901, I organized the Wheeling Can Company at Wheeling, West Virginia. Some two weeks following that period the American Can Company entered into a contract with the E. W. Bliss Company which prevented me from securing the machinery I had purchased from them.

Mr. BLAKESLEE.—We move to strike that part out at this [1768] point as merely hearsay and not a proper method of proof.

The MASTER.—It will be so stricken.

A. I was not able to purchase any machinery for making fruit cans owing to the fact that the American Can Company had acquired all of the existing patents on can-making machinery.

(Testimony of Oliver J. Johnson.)

Mr. BLAKESLEE.—We will make the same motion again. He can't testify to what patent titles were acquired by any corporation.

A. That is only leading up to my statement.

The MASTER.—It will be stricken.

A. This made it necessary for myself to either produce the machinery or retire from the can-making field, and beginning in October, 1901, I designed and developed a full line of automatic can-making machinery and had my plant in operation with this machinery in April, 1903. From that time on until December, 1917, I repeatedly produced new can-making machinery and various attachments, and took out about eighteen or nineteen patents on can-making machinery in that time.

Q. (By Mr. TOWNSEND.) Are you acquainted with the parties to this suit, the plaintiffs, the Los Angeles Can Company and its officers, Mr. Stetson and Mr. Wilson?

A. I know Mr. Stetson. I don't know that I know Mr. Wilson.

Q. You know of the Los Angeles Can Company, do you? A. Yes, sir.

[1769] Q. And do you know the defendants, Mr. Guenther and the Angelus Sanitary Can Machine Company? A. Yes, sir.

Q. Have you ever had business dealings with either of the parties, plaintiffs or defendants?

A. I purchased a number of machines of the Angelus Company, double-seaming machines from

(Testimony of Oliver J. Johnson.)

the Angelus Sanitary Can Machine Company, over a period of about three years.

Q. Do you remember how many machines and what they were that you purchased from the defendants in that period?

A. I purchased seventy-four or seventy-five of the Angelus machines.

Q. Do you mean the double-seamers?

A. The double-seamers, yes, sir.

Q. That was prior to your retirement in 1917?

A. Those were purchased in 1915, 1916, and 1917.

Q. How was it you came to purchase the Angelus machines?

A. We were very badly in need of double-seamers that would close cans tight. At that time the only available machines were those manufactured by the Max Ams Machinery Company of Bridgeport, Connecticut, and the Troyer-Fox Company of Seattle, Washington. We had machines from both of these companies in use, but they were not satisfactory in every respect. We decided to try out the Angelus double-seamers and asked Mr. Guenther to place one or more of these machines in one of the canning factories where we were furnishing a [1770] great many millions of cans. It was tested out thoroughly before deciding to adopt the machine. The first machine was operated for about three months and gave excellent satisfaction. On the strength of the work done by this machine we purchased I think something like twenty-five to thirty-five machines for the next season.

(Testimony of Oliver J. Johnson.)

Q. Have you had any business relations with the plaintiffs or any of them in regard to double-seaming machinery, and, if so, what?

A. Mr. Stetson, of the Los Angeles Can Company, sent one of their Pacific machines to my company in 1916 to test it out. We operated that machine off and on experimentally for a period of about eight months.

Q. Tell us what was done and your results.

A. We were unable to make the seams absolutely tight. The machine was operated running from three to five hundred cans at a time through the machine. Every can that was seamed was tested out on a Lewis hand tester and we were unable to make the seam tight enough to hold products like peas and corn, where it required a heavy process. I might say that all of the cans we manufactured in our factory were subjected to a severe test. We had the Lewis hand testers in every line and a percentage of all cans was run through the machines. If the cans did not test tight, or if they showed any leaks, the line was shut down until the trouble was located and stopped. But with the Pacific machine we [1771] were unable to double-seam any cans that were tight enough to stand the pressure.

Q. Give us a little description of the Pacific so we may visualize the general type of the machine.

A. The other machines that we had used prior to that time and during that time used the double-seaming rolls for performing the first and

(Testimony of Oliver J. Johnson.)

second operation, seaming the can ends to the body. I want to change that. The first machines that we used the rolls were held stationary, the cans revolving at a high rate of speed. The rolls were pressed against the can end, performing the first operation of curling the end, and the second operation of closing this curl, so that it formed a tight seam. The Angelus machines used a rotary first operation head carrying two rolls, the can being held stationary. This head revolved around the can end performing the first operation of curling the end, and the second operation the can turned while the second operation roll was pressed against the end, closing the seam tight. On the Pacific machine the first operation was performed by an encircling head or ring with a groove made to curl the end. The can revolved very slowly while the encircling ring or curling head was pressed against the end.

Q. That curling die performed the first seaming operation on the Pacific?

A. Yes, the first operation on the Pacific.

Q. Did they have a second operation, and if so what was it?

[1772] A. The second operation was performed similar to other second operations on other double-seaming machines, by revolving the can and pressing a roll which was held stationary against the ends to close the seam.

Q. State, if you can, the reasons for your failure to obtain tight seams on the Pacific.

(Testimony of Oliver J. Johnson.)

A. The principal reason, from my own personal experience with the machine, why I couldn't secure a tight end was due to the first operation almost entirely. The encircling head or ring came in contact with a wide portion of the end. I guess I would say from around one and a quarter to one and a half inches of the end was in contact with the encircling ring and it depended upon pressure almost entirely to curl the end and tuck it in. The pressure exerted was so great that it enlarged the inside of the end which was formed by the die. I was never able to perform this operation so that the curl was made absolutely tight, as it would spring out invariably. To describe this more clearly I will have to go back to the seam operation performed by the seaming rolls. The seaming rolls come in contact with a very small portion of the ends and encircle the end a number of times during the revolution of the head, and with this method we were able to curl the end so that it was absolutely tight under the first operation. I have made a number of ends at various times with the first operation which would stand the water test without leaking. This I was never able to do with the Pacific [1773] machine.

Q. (By the MASTER.) How is your pressure applied on the curling rings?

A. In the Pacific machine?

Q. Yes.

A. It is a side pressure forced in against it.

Q. What is it? A cam or a roll?

(Testimony of Oliver J. Johnson.)

A. It is a sort of a cam, running against a cam, a cam around the machine, and this head is floating.

Q. You don't have any roll like this, did you (exhibiting model)? A. No, sir.

Q. Referring to Exhibit "Y–1".

A. No, sir; it was a floating ring setting over the chuck.

Q. The floating ring you refer to is the inner portion here, is it?

A. That is the chuck. The ring was encircling that and it was floating, and in the center of the machine is a large stationary cam and as it is revolved this floating ring was carried against that cam, and the cam was shaped so that it would start to pressing against that end very lightly, and as it completed its revolution it was clear home.

Mr. TOWNSEND.—Mr. Master, since you have called attention to the little model Exhibit "Y–1," you might direct his attention to the large model Exhibit "V–1." Perhaps he will recognize [1774] the cam on there.

Q. (By the MASTER.) Will you look at Exhibit "V–1" there and see if you find anything in it that corresponds to this cam you are speaking of.

A. This is the cam I refer to, this center portion.

Q. 107? A. Yes.

Q. And where is the floating ring?

A. And this is the floating ring, the encircling ring.

Q. 98? A. Yes.

(Testimony of Oliver J. Johnson.)

Q. (By Mr. TOWNSEND.) Had you ever seen either of these models, "V–1" or "Y–1," before?

A. No, sir.

Q. Until your attention was called to them a minute ago? A. No, sir.

Q. You referred to the necessity or difficulty of tight seams for cans for handling peas and corn. Is there any difference in the handling of peas and corn from the handling of syrupy fruits like peaches and apricots and so forth; and, if so, will you tell us what?

A. There is a very great difference between the two. Tomatoes and all fruits are generally processed in open kettles or vats at no pressure greater than 212 degrees Fahrenheit. If any of these are processed in closed retorts, it is done at a very low temperature. Corn and peas require [1775] a very high temperature, about 250 degrees Fahrenheit, which is equal to about 15 pounds pressure of steam, to thoroughly sterilize the contents. For sterilizing corn it requires at least seventy minutes; peas a little less time than that. The pressure exerted on the inside of the can is very heavy and in both corn and peas leaks will be developed if there are any there. With tomatoes ninety-nine per cent of the leaks are sealed by the tomatoes themselves, and with goods packed in syrup, like peaches, apricots and pears, the pressure exerted on the can is so light that small leaks are not developed and the syrup in those goods seals the leaks. It is my own experience in furnishing a sanitary can for tomatoes

(Testimony of Oliver J. Johnson.)

over a period of six years that I had no claims whatever on tomato cans. All of these cans were guaranteed against leaks exceeding two cans to the thousand. In the canning of corn and peas I refused to put out any sanitary cans for these products until about 1916, due to the fact that we did not have closing machines at that time that successfully closed the can end tight enough to stand the pressure exerted in packing these two products.

Q. What machines did you use then for closing cans of peas and corns?

A. We used the Angelus machine.

Q. For what reason?

A. In our tests, which we made in our own plant, we found that the Angelus machine would close the can absolutely tight.

[1776] Q. Just as a matter of information in regard to processing peas and corn, where you have that 250 degree Fahrenheit and fifteen pounds pressure, after the can is sealed hermetically in which direction is that pressure exerted: atmospherically on the outside of the can or internally, outward?

Mr. BLAKESLEE.—212 degrees Fahrenheit, wasn't it, that he said?

Mr. TOWNSEND.—250 degrees, I understood.

A. 250 degrees for corn and a little less than that for peas.

Q. Just explain whether that pressure is external or internal in the two instances, and the relative differences in pressure. We haven't had that point

(Testimony of Oliver J. Johnson.)

explained to us before, so it is a matter of information.

A. While the can is being processed in the closed retort the pressure is about equal inside and outside. At the beginning of the process the pressure is greater outside, but as the temperature on the inside of the can is brought up to the temperature in the retort outside of the can the pressure in the can is about equal to the pressure outside. After the can is taken from the retort all the pressure is exerted from the inside outside.

Q. (By Mr. BLAKESLEE.) That is due, is it, to the fact that the external heat is removed?

A. Yes, the heat and pressure.

[1777] Q. And therefore the only remaining pressure is an internal pressure outwardly expressed; is that right? A. Yes, sir.

Q. (By the MASTER.) That is fifteen pounds to the square inch, is it? A. Yes, sir.

Q. (By Mr. TOWNSEND.) And that processing takes place after the heads are sealed on the cans, does it? A. Yes.

Q. What would you say in regard to the relative pressures of processed corn and processed tomatoes?

A. The highest temperature used in processing tomatoes is 212 degrees, which is the boiling point of water; and as they are processed in open kettles no pressure greater than 212 degrees can be reached; while in the processing of corn and peas and other products that are processed in closed retorts under

(Testimony of Oliver J. Johnson.)

pressure, the internal pressure is multiplied several times more than that in the processing of tomatoes.

Q. I understand you to say that your experiments with this Pacific machine extended over a period of eight months? A. Yes, sir.

Q. Did you make any changes in the machine, or take the matter up with Mr. Stetson or his associates during that period, in an effort to arrive at better results, and, if so, what?

A. I wrote them that we were unable to get any satisfactory [1778] results with the machine and following that they sent us new seaming heads or the encircling rings, which they were sure would produce the results that we required. We tested out these new heads but were not able to make the first operation seam tight enough so that we would close it tight with the second operation.

Q. Will you state what percentage of failures per thousand or lack of tight seams you got per thousand on that machine?

A. We weren't able to make any of the seams tight. They all leaked in the hand test.

Q. Was it of advantage to your company to have succeeded with that machine if it could have met your requirements?

A. If the machine had performed its work in a satisfactory manner we could have greatly increased our sales. The American Can Company and the Continental Can Company both had at that time machines superior to those used by independents, and we were striving continually to find a better

(Testimony of Oliver J. Johnson.)

double-seaming machine that would not only satisfy our trade in every respect but enable us to increase our sales.

Q. By the independents you mean the independent can manufacturers?

A. Yes, sir, the independent can manufacturers.

Q. What eventually became of that machine?

A. I returned it to the Los Angeles Can Company.

Q. Do you remember when that was?

[1779] A. The latter part of 1916, either October, November, or December. I don't remember just exactly the date.

Q. At what rate of speed did you operate the Pacific machine?

A. From 100 to 125 revolutions a minute, or I mean from 100 to 125 cans a minute.

Q. Do you recall at what speed you operated the Angelus machine?

A. The highest speed was 78 per minute. We used 12 of the Angelus machines in one of our can factories, having two of them in each line. The body makers were running a little over 150 cans a minute and these two machines had to take care of all the cans.

Q. Are you familiar with the use of the paper lining as a sealing medium between the cap and the body flange and also with the use of compound as a sealing medium? A. Yes, sir.

Q. How long have you been familiar with those two media?

(Testimony of Oliver J. Johnson.)

A. I have been familiar with the sealing compound since 1900 and with the paper lining since about 1912 or 1913.

Q. At Wheeling what did you use with the Pacific? Compound or a paper lining in your experiments? A. We used compound.

Q. In the rest of your plants have you used paper linings? A. Not at that time.

Q. Did you ever at any time use paper linings?

A. Not during the time that I was in the business.

Q. Would you be able to state what the effect of the use of a paper lining on a Pacific machine would be?

A. It would make it much easier to perform the operations and make them tight. The paper has a tendency to swell and fill up small leaks that the compound does not reach. This is why the American Can Company has adopted the paper lining in most cases.

Q. Do you know whether the curling ring in the Pacific machine would have any effect on the paper lining in between the two flanges in the curling operation?

A. I cannot speak from any experience. I can only speak from my mechanical knowledge of the means in which the curling is performed by that particular encircling ring.

Q. What effect would that ring have on the paper, in your opinion?

A. I think it would cause the paper to cut and tear and push out of place because the paper will

(Testimony of Oliver J. Johnson.)

not curl like the tin under pressure. If pressure is brought against the end, covering a space of from one and a quarter to one and a half inches, I believe it would cause the paper to push out of place.

Q. Have you any interest in this controversy?

A. None whatever.

Mr. TOWNSEND.—That is all.

[1781] Cross-examination.

(By Mr. BLAKESLEE.)

Q. The Angelus machines you have referred to are on the intermittent operation type, is that not correct? A. Yes, sir.

Q. Do you remember the name or number of that machine? Was it the 14–P?

A. I understand that is the name they have applied to the machine now, but we always knew the machine as the Angelus machine at that time, because it was the only double-seaming machine he was manufacturing.

Q. The seaming of cans containing corn and peas I understand from your testimony offers the most severe test of a sanitary can closing performance, doesn't it? A. Yes, sir.

Q. There is nothing encountered in canning, within your experience, that offers as severe a test as to the prevention of leaks?

A. I believe that the corn and peas require better work in double-seaming cans than any of the other products. While there are a number of other products that are processed under [1782] high

(Testimony of Oliver J. Johnson.)

temperatures, I don't believe any of them give quite as much trouble as the corn and peas.

Q. This Pacific machine that you used in 1916 operated to produce seams at the rate of substantially 125 cans a minute, didn't it, and it actually did the seaming operations, both first and second?

A. Yes, sir.

Q. Did you have any other troubles with the machines than you have told us about, or with this machine?

A. I can't answer that definitely because our whole aim and time was spent on developing or trying to develop the double-seaming features. I worked with the machines myself repeatedly, along with my best mechanics, and as we only operated the machine with 300 to 500 cans at a time very little attention was paid to the other features of the machine.

Q. You don't recollect any troubles, do you, with the can-feed features of the machine or the cap-feed features?

A. Well, we couldn't feed the empty cans in the Stetson machine. I did not condemn it on that account, though, because the machine was purchased for use in the canning factories mostly.

Q. It fed the filled cans all right, didn't it?

A. We didn't try any of the filled cans in it, except with the water.

Q. Then what you did with the machine was to put the bottoms on the cans?

[1783] A. We put the tops on them. The bot-

(Testimony of Oliver J. Johnson.)

toms were put on the cans that we used with the Angelus machines, and we performed the last final operation of seaming the tops on with this machine.

Q. Those were filled cans, of course?

A. No, there was nothing in the cans more than water.

Q. You didn't pack any products on the Pacific machine?

A. The machines were tested out in our own can plant to find out whether or not we could produce a tight seam. That had been our practice with every machine we had put out in the field. Our experience in the canning of fruits and vegetables, or my own experience, covered a great many years. I am a practical canner, and I knew that certain leaks would not hold, as they had been tested out repeatedly, so this machine was operated in our own plant to develop whether it would seal the cans tight or not before putting them out to the can factories, and saving ourselves possibly a big claim.

Q. You didn't pack any products, then, and ship them, by means of this Pacific machine in 1916?

A. No, sir.

Q. Did you try the machine on any other products than corn and peas?

A. We didn't try the machine on corn and peas.

Q. You never ran the machine on any contents other than water or liquid? A. No, sir.

[1784] Q. You have seen Pacific machines operated successfully in the East, haven't you?

A. No, sir; I have never seen one of them operate anywhere.

(Testimony of Oliver J. Johnson.)

Q. Nowhere?

A. Except the one that I had in my own plant.

Q. Do you remember what the serial number of this Pacific machine was? Did you note it?

A. No, sir, I did not.

Q. You don't remember whether it was machine 4, 5 or 6? A. No, sir.

Q. When did you secure the first Angelus intermittent operation machine? A. In 1913.

Q. How long did you experiment with that before using it in actual packing?

A. Well, we had it in our can plant for probably a year.

Q. Testing it out?

A. No; we had it in the line running.

Q. Didn't you make any tests on it before commercially using it?

A. Not in that case, no, sir. We put this machine in a line for making sanitary cans and the cans were subjected to the same tests that the cans made on the Pacific machine were subjected to; and owing to the fact that we were able to make the cans tight we operated it in our line.

[1785] Q. How long did you test out the Angelus machine before you used it commercially?

A. As I stated, we placed it in a can factory and it was operated there continuously. We did not put the Angelus machine out in the field for canning fruits and vegetables until about 1915, I think.

Q. Up till that time it was used in your plant for seaming in the bottoms of cans, was it?

(Testimony of Oliver J. Johnson.)

A. Yes, sir.

Q. In your pressure tests by this hand tester, what pressure was indicated?

A. Fifteen pounds.

Q. To your knowledge did not your company or some of your interests of which you have told us, or some person connected with such interests, at some time make an offer to Mr. Stetson and his interests for the purchase of an interest in the Pacific machine or its patents?

A. Yes, sir; I did personally. I negotiated with Mr. Stetson, having in view the redesigning of the machine along lines that I had developed, which I felt sure would make the machine produce a tight seam. That had in mind making some radical changes in the machine.

Q. Were those changes directed at anything else than the seaming head including the floating ring?

A. That was the principal part of it I desired to eliminate from the machine at that time.

[1786] Q. Your plans for changing the machine, then, didn't contemplate changes in any other part of the general construction on the machine, did they?

A. No; I hadn't reached that point. I suppose it would have been if the machine had been redesigned, but I hadn't gone into that feature very thoroughly.

Q. No other feature than the first seaming operation means? A. No, sir.

(Testimony of Oliver J. Johnson.)

Q. When was it you made such offer to the Stetson interests?

A. It was made probably in June, July, or August, 1916.

Q. You recognized the machine had possibilities of high speed and good performance if the objection to the first seaming operation was eliminated, did you not?

A. Well, I knew that that would be one step to the perfection of the machine, I didn't know at the time whether other improvements would be necessary to be made or not, because, as I testified to before, I hadn't gone into the machine thoroughly enough to develop other parts under continuous operation.

Q. Before personally making this offer to the Stetson interests concerning the Pacific machine, you recognized, did you not, that the machine, generally speaking, as to this type, had good commercial possibilities aside from the objection which you have mentioned?

[1787] A. I recognized that the rotary feature of the machine was desirable. That was the one thing about the machine that interested me.

Q. That is the continuous rotary operation?

A. That is the continuous rotary operation.

Q. And also the use of the two revoluble carriages upon one of which the first seaming operation was performed and upon the other of which the final seaming operation was performed?

A. Yes, sir.

(Testimony of Oliver J. Johnson.)

Q. With the transfer means between the two carriages? A. Yes, sir.

Q. That continuous operation design appealed to you at that time? A. Yes, sir.

Q. Had you ever seen any such design of machine, or known of same, prior to your first acquaintance with this Pacific machine in 1916?

A. Yes, sir.

Q. Where the cans and caps were both fed to the revolving turret or carriage where the first seaming operation was done?

A. I found in the Black patent a double-turret rotary machine very similar to the Stetson machine.

Q. But in that case the caps were fed to the transfer rotating carriage, were they not?

A. I can't say as to that.

[1788] Q. And do you not remember that the operation performed on the first revoluble turret was a mere flanging operation and not a seaming operation in the Black patent type of machine?

A. I don't remember the details, except I know that the Black patent had the two rotary turrets with means for transferring the can from one to the other.

Q. You don't know whether the cans were transferred from the first turret through a transfer turret to the second turret with the caps, do you?

A. No, I don't remember.

Q. Did you ever see any such machine as typified in the Black patent? A. No, sir.

(Testimony of Oliver J. Johnson.)

Q. You never used one in your plant?

A. No, sir.

Q. Are you acquainted at the present day with the business of your Wheeling interests in which you are still interested?

A. Not directly; indirectly I am.

Q. Do you not know that your Wheeling Company or interests are now negotiating with the E. W. Bliss Company of New York for the purchase of about twenty-five Pacific machines?

A. No, sir. If I did I would write them immediately and advise them not to buy them.

Q. You have no knowledge of the recent operation of [1789] Pacific machines at all, I understand?

A. No, sir, except from what I have heard. I have had information coming to me, in the same way that I received information regarding my own company. My knowledge is that the Pacific machines haven't been used in the Baltimore district for the seaming of heavy processed goods such as corn and peas where the heavy pressure is exerted on the interior of the can. Very few of these products are canned in that district. The canning is confined mostly to tomatoes and other products which are processed in open kettles.

Q. You do not know that the Southern Can Company of Baltimore is canning peas and corn with Pacific machines at present, do you?

A. No, sir, I do not know. I know that Mr. Gibbs, who was president of the company some two

(Testimony of Oliver J. Johnson.)

years ago, told me that they had a lot of trouble with supplying cans and they didn't desire very much of that business; but I know nothing about their present situation for the past two years.

Q. Was the principal business of your Wheeling interests in 1916 the canning of peas and corn?

A. No, sir, it was not, that is, for the sanitary can. We were at the time supplying the all soldered can for these purposes and we desired a machine which had high speed that would handle both corn and tomatoes.

Q. What proportion of your business in 1916 consisted in the canning of corn and peas?

[1790] A. About sixty-five per cent, or seventy per cent.

Q. Do you know what machine your Wheeling interests are using to-day?

A. They are using their own machines, called the Wheeling 100, I believe.

Q. That is an intermittent type single-spindle, isn't it? A. Yes, sir.

Q. And seals about sixty cans a minute?

A. I should judge so; sixty or sixty-five. I want to change my answer to that one question. The Wheeling Can Company is still using the Angelus closing machine in their factory in all their lines and the Wheeling 100 machine is used in the canning factories.

Q. And the Angelus for the seaming in of the bottoms of the cans? A. Yes, sir.

Q. I understand that you have not witnessed the

(Testimony of Oliver J. Johnson.)

performance of a Pacific machine at any place since 1916, is that correct? A. Yes, sir.

Q. To your knowledge have the Wheeling interests disposed of some of the Angelus intermittent type machines?

A. I understand they sold quite a few of them, the ones that they had in the canning factories.

Q. Why was that, if you know?

A. Due to the canning trade requiring a nonspill machine. [1791] I wrote Mr. Guenther over a period of two years, during the time we were using these machines in the canning factories, asking him to apply a nonspill device to his Angelus machines. Mr. Guenther delayed bringing this attachment out until it was too late and we were compelled to replace the machines in the canning factories before he came out with the device.

Q. Do you know of your own knowledge that he ever did provide such a nonspilling feature for the intermittent Angelus machine?

A. Yes, sir. It was placed on a few of the machines that were still in operation, at the time he brought it out.

Q. When was that?

A. I think it was in 1917 or 1918. I think it was after I had left the can company.

Q. When were these Angelus machines sold?

A. I don't remember the year. I think, though, probably 1920 they were sold to the Canadian Packers Association, or I believe that is the name of the

(Testimony of Oliver J. Johnson.)

company, with headquarters at Toronto. I understand they are still using these machines.

Q. You don't know that from any observation of those machines, do you? A. No, sir.

Q. What machines were put in the place of the Angelus intermittent type of machines that you sold, for use in the canneries?

[1792] A. This new machine that the Wheeling Can Company controlled, called the Wheeling 100.

Q. Does the Wheeling Can Company sell those Wheeling 100 machines?

A. I have seen them advertised. I am not sure whether they have sold any of them or not.

Q. Are they making an effort, do you know, to put them into the canneries, to introduce them and push them?

A. I have no direct knowledge of it except that I have seen it advertised in "The Canner."

Q. Do you know the number of those Wheeling 100's that have been made and sold, or approximately the number? A. No, sir, I do not.

Redirect Examination.

(By Mr. TOWNSEND.)

Q. The Wheeling 100, did you say it was an intermittent machine also?

A. Yes, sir, a single-head machine.

TESTIMONY OF JAMES M. ABBETT, FOR DEFENDANTS (RECALLED).

[1793] JAMES M. ABBETT, recalled.

Re-examination (Resumed).

[1805] Q. Now continuing with the original question, you were [1806] about to take up the main Sumner and Wilson patent 1,203,295.

A. Referring first to the machine as disclosed in plaintiffs' patent, and illustrating this machine by way of example by the Model V–1, it will be seen that the can with a cap properly associated therewith is delivered to the first continuous rotary turret of this machine. The can has previously been raised along the elevated or inclined floor 74 to bring the mouth of the can within the circular flanged portion of the cap. The can with its cap is then delivered on to a lower chuck member which instantly operates to lift the can and cap and to project the mouth of the can with its cap into the open mouth or circular opening of the seaming ring marked 98 in plaintiffs' patent. The seaming ring is mounted in a floating manner to move horizontally relative to the spindle on which it is supported, and associated with this ring is a disk known as the upper chuck-plate. In mentioning the term "disk" I am reminded that reference to a standard dictionary last night showed that a disk is a flat circular plate. The upper chuck-plate corresponds to this description. This plate is so formed as to seat within the counter-sunk

(Testimony of James M. Abbett.)

portion of the cap and under pressure of the lower chuck-plate to hold the cap and can in fixed relation to each other. The upper chuck-plate is intended to be positively driven by gearing. This plate frictionally engages the cap and the can and rotates the can with its cap at a greater rate of speed than the rotation of the can incident [1807] to its planetary travel around the axis of the turret. During the advance of the rotating can the cam 107 acts against the ring 98 to move it from its concentric position and to cause a portion of the ring to impinge against the flange of the cap. I have had made a blue-print showing an enlarged view of a can-cap, can-chuck, and a seaming-ring, these members being substantially proper in size and in relative proportions for a 2½ pound can.

Mr. TOWNSEND.—Illustrative of that answer and so that the blue-print referred to may be identified, I will ask that that be marked Defendants' Exhibit "E–2."

A. The drawing has been made three times natural size. Figure 1 of this drawing shows the position of the eccentric ring while the seaming operation is taking place. We must bear in mind that the complete curling operation on the first turret takes place in what we have agreed is a revolution and a quarter of the can relative to the seaming means. That means that the entire flange must be curled over in substantially one revolution of the curling ring. The dotted line in Figure 1 of Exhibit "E–2" indicates the maximum distance or the

(Testimony of James M. Abbett.)

required amount of curl which must be effected during the operation. The outer white circle is the normal diameter of the cap flange and the distance between those circles indicates the amount of curl which must take place during the curling operation. It will be evident that, in order to produce this curl, the die must at once curl that entire [1808] amount of flange over, and this amount of flange is indicated by showing the contact of the dotted line ring with the black circle which represents the curling face of the Wilson seaming ring. It will be evident that the circular configuration of the engaging faces will be distorted and that the circle will be flattened down from the diameter of the top with its uncurled flange to the diameter of the finished seam. This, as I say, must take place completely and progressively in substantially one revolution of the can. While on that subject it might be more profitable to compare the same operation on the defendants' machines, both the 14–P and 24–P, in which the parts are indicated in their respective proportions in Figure 2 of Exhibit "E–2," and where it will be seen that the seaming rollers indicated by the black line circles act upon opposite sides of the can. These rollers go around the can from five to seven times during the seaming operation and gradually curl the seam under. The zone of contact in the case of the Wilson seaming ring is substantially 69 degrees, while the zone of contact in the Guenther machine is approximately 10 degrees.

(Testimony of James M. Abbett.)

Q. (By Mr. BLAKESLEE.) Of each roll, making a combined contact on the defendants' machine of 20 degrees of contact at any one time.

Q. Which, multiplied by five or seven for a complete seaming operation, would give you how many total degrees?

A. That is not a fair comparison, for the simple reason [1809] that this has been shown and brought out by plaintiffs' counsel in the questions that were asked me, as I understood it, to try to draw a parallel between engaging faces of the seaming means in both instances with the can and the progressive contact of ten degrees would not require the power and would not produce the friction as in the operation of either turning the can or advancing the rollers that would be required from a direct pressure contact of 69 degrees with the ring.

Q. (By Mr. TOWNSEND.) You were asked by plaintiffs' counsel on cross-examination if it wasn't a fact that in plaintiffs' curling die they had one point of contact, while in the defendants' two outside acting rollers they had two points of contact. Have you any comment to make on that subject? Could you get more than one point or one zone of contact at one time on plaintiffs' curling die?

The MASTER.—What difference does that make?

Mr. BLAKESLEE.—We concede you couldn't, of course, and mounted eccentrically and no floating ring, you couldn't have.

Mr. TOWNSEND.—That answers it, then.

(Testimony of James M. Abbett.)

Q. Go ahead with your answer, Mr. Abbett, unless you have something to add to it.

A. The curling ring of the Sumner and Wilson machine is, I understand it, intended to generate a seam as the ring and can roll together during the rotation of the can. This causes the curling to take place during a long area, and [1810] due to the fact that the tin has considerable spring the metal does not receive a permanent set and is not worked down as tight nor do the members of the seam cling as closely as when the metal is gradually worked down by a prolonged operation, and the rolling. The can-encircling ring idea has been pointed out in the various patents to Warme and others, where different types of can-encircling rings have been provided to curl the seam.

Q. Those patents are mentioned in your affidavit, are they?

A. Those patents are mentioned in my affidavit. Brenzinger takes a step in advance by providing an eccentric ring which has the additional advantage of carrying a plurality of seam-rolling rollers, which act against the can when the ring is in an eccentric position. After the seam has been formed on the first turret of the plaintiffs' machine the lower chuck-plate 86 drops and permits the can to be transferred on to a fixed table, where it is then moved by member 109 to the final turret of the machine.

Q. You referred to Brenzinger. As our previous testimony related to an earlier Brenzinger patent,

(Testimony of James M. Abbett.)

will you tell us whether that is the one or another one you have in mind?

A. I am referring to the Brenzinger patent mentioned in my affidavit and numbered 1,167,346, of January 4, 1916, filed July 5, 1910, which shows an eccentric ring carrying seaming rollers and operating during the eccentric positioning [1811] of the ring relative to the can.

Mr. BLAKESLEE.—We contend that is immaterial because it is not pleaded properly, and not pleaded in any way, but as an anticipation, which it is not.

The MASTER.—Overruled.

[1812] A. The plaintiffs' machine has no means for positively rotating the seaming ring 98. Any rotation of the seaming ring which might take place is produced merely by friction, but positive means are provided in plaintiffs' machine for rotating the can as it advances and the floating seaming ring adjusts itself to physical conditions as the can advances and pressure is applied from the seaming ring by the cam 107.

Q. (By Mr. BLAKESLEE.) And mechanical conditions? A. Yes, and mechanical conditions.

Q. (By the MASTER.) Does the pressure increase with the rotation of the turret?

A. The pressure increases with the rotation of the turret, as clearly shown in the patent. Well, that will have to be slightly modified. Referring to plaintiffs' patent, Figure 8, it will be seen that the cam 107 comprises two major portions, each

(Testimony of James M. Abbett.)

substantially representing one-half of the circumferential length of the cam and both portions being [1813] concentric with the shaft 42 around which the turret rotates. At the points of connection between the two portions, there are inclined faces. The portion of the cam being described by the shorter radius is so positioned as to permit the ring 98 to remain in its central position relative to its chuck, and the spring spindle, while the forward portion of the cam face, which appears to be concentric and described by a larger radius, acts against the ring 98 from the point at which the can is received and properly positioned within the ring to substantially the point where the can is removed from the ring. Analyzing this action it would appear that after the seaming-ring 98 has moved up the short inclined face from the cam face of short radius and the cam face of long radius, the pressure will be substantially constant and will be uniform until the can is released. Does that answer your question?

The MASTER.—Yes. There is just one thing more, and that is the floating ring, or rather the part 96, doesn't move around the can head in any way; it stays constant, doesn't it?

A. 96 is the chuck-plate.

Q. Yes, the chuck-plate stays constant, doesn't it?

A. The chuck-plate is supposed to frictionally engage the top of the can, and through that medium

(Testimony of James M. Abbett.)

produce the rotation of the can in unison with the plate.

Q. But it doesn't slip around the can head at all?

[1814] A. No. It isn't supposed to. It is supposed that the pressure between the upper chuck-plate and the lower one will be sufficient to cause the can and cap to rotate with the plates as the upper plate is driven.

Q. (By Mr. TOWNSEND.) There is no known way, however, of ascertaining whether there is a slippage inside of that ring or not, is there?

A. There is no way that I know of.

Q. (By Mr. BLAKESLEE.) Do you mean a slippage in between the chuck-centers?

A. The slippage between the upper chuck-plate and the can-cap.

Q. Couldn't that be done by marking the two and putting it in the machine and then noting it afterwards?

Mr. TOWNSEND.—I was referring to the slippage of the ring relative to the can. Was the Master referring to another element?

A. He was referring to the chuck-plate and wanted to know if the can had any movement relative to the upper chuck-plate.

Q. And what was your answer?

A. And the answer was that there was no movement intended. Referring to plaintiffs' patent No. 1,124,553, the exact construction of the ring and centering means is clearly disclosed. This is a patent on which suit has been retracted. Here it

(Testimony of James M. Abbett.)

will be seen that there is an annular groove in the [1815] top face of the curling ring or die and that ball-bearings are spring-pressed against this face so that when the ring is restored to a noncentric position relative to its spindle, these ball-bearings will temporarily hold the ring in its centered position, and until such time as pressure is exerted by the swell on the cam 107 to force the ring to an eccentric position and to begin the curling operation.

Q. (By Mr. BLAKESLEE.) Inasmuch as the ring 98 executes a complete turn, as I understand it, at the same time that the chuck-plate 96 and can execute a complete turn, and inasmuch as ring 98 is of bigger diameter than the can and its cap and the chuck, and only part of the internal surface of the ring 98 will be brought to bear in successive portions on the can, must there not be a relative rotational movement between the ring 98 and the can?

A. My understanding is that if the machine operated on the theoretical lines embodied in its design, the complete portion or maximum portion of the curling surface of the ring which contacted with the can during the seaming operation would be represented by the circumferential length of the can plus an additional one-quarter of a length due to the fact that the can rotates one and a quarter times in its revolution; and, as we understand it in mechanical drafting, the circumference of the can would be developed, or its length would be developed

(Testimony of James M. Abbett.)

along a portion of the curling surface of the ring against which it bears. That is the [1816] theory of it. And if that happened there would be no relative movement between the can and the ring but a progressive rolling of one surface along the other, but due to various conditions there may be slippage which cannot be predicted.

Q. Due to frictions between the can and the ring 98 on the one hand and the ring 98 and the cam 107 on the other hand?

A. And other co-efficients that enter into it, such as the material and the curl and a great many things that I can imagine.

Q. And pressures and various things?

A. Yes, sir.

Mr. TOWNSEND.—In connection with this part of the testimony, I have here one of the plaintiffs' curling dies that I will later further identify, but it may be instructive to have it now offered in evidence as Defendants' Exhibit "F–2."

Mr. BLAKESLEE.—If we can identify this, we will stipulate to it. How did you come to get it?

Mr. TOWNSEND.—Mr. Guenther informs me this is one of the original dies made in his plant when Mr. Wilson was in his employ, one of the original Wilson dies, and I believe it was tried on an Angelus machine and proved unsatisfactory.

Mr. BLAKESLEE.—Well, we would rather substitute a die of the machine as it is built rather than any original or early die that was put out before the

(Testimony of James M. Abbett.)

patent was issued and before [1817] the machine was commercialized.

Mr. TOWNSEND.—You are at perfect liberty to introduce your own exhibits.

Mr. BLAKESLEE.—I was only trying to save time by stipulating, if we could; but we will have to leave you to your proofs on that if it is material. It better be proved up, I think.

Mr. TOWNSEND.—If Mr. Abbett wants to refer to it, it will be of value.

The MASTER.—Proceed.

A. As stated this morning, and with reference to Defendants' Exhibit "E–2," which is the drawing showing the theory of the curling action, it may not be more readily appreciated as to the relative time required in plaintiffs' patent and defendants' machine to produce the curl or roll on the first turret. The entire roll must be made in one and a quarter revolutions of the can in the Wilson patent and is made by a very slow spinning operation in the defendants' machine. The spring of the tin is such as to make it practically impossible for the roll to remain tight without the tin having been worked down or spun into its curled position, and this difference is common to the curling operations which take place by sudden curling and curling mechanisms which perform the operation through a continuous period and while repeatedly working the metal down until a lock seam is formed and the members permanently interlocked. When the seam has [1818] rolled in plaintiffs' machine so that

(Testimony of James M. Abbett.)

the flange on the cap and the flared flange on the can have come to an interlocked position the can is transferred on to the final turret where the can is lifted so that it is again centered, this time by means of the upper chuck-plate. This chuck-plate also revolves, and as the can advances the seam of the can as previously rolled is pressed down by a roller 125 actuated by a bell-crank 137, which moves against another fixed cam similar to the cam 107 provided on the first turret. The can while on both turrets is rotated relative to its seaming means, and after the operation is completed the finished can is ejected from the machine by the pair of swinging arms 131 in plaintiffs' patent, which tend to sweep the can from the chuck-plate and carry it to other conveying means. The art which has been mentioned in my affidavit relates both to a continuous operating can-seaming machine performing the operation at two distinct stations as well as two machines performing this operation while on a carriage or turret and while the stations are advancing with the cans. In the affidavit one of the earliest patents along this line mentioned was the patent to Hipperling, which showed a rotary carriage and provided means for picking up the can and cap and spinning them together while successively presenting the can and its cap to two different seaming instrumentalities or stations disposed remotely to each other. Down through the art we find numerous modifications of this form until we [1819] come to the Norton patent men-

(Testimony of James M. Abbett.)

tioned in the affidavit, in which a table is provided for receiving cans, and disposed above this table are sets of seaming rollers substantially in operation as those shown on defendants' machine, each set operating by means of a moving cone which tends to simultaneously move the rollers in against the seam of the can. In this case the cans are stationary on the table and as the table rotates the seaming members circumscribe the can and roll down the seam. We then come to the Dugan patent, which provides a single turret and on which turret the can is spun while advancing and while two separate seaming members successively act upon the can to roll the seam and to mash it down tight. In the Dugan patent we have all of the elements of a modern high-speed seaming machine in that the cans and caps are delivered coincidentally to a moving carriage; that thereafter the cans and caps are engaged between chuck plates for holding the can and cap in proper relation to each other for subsequent seaming; that then the carriage continues to rotate while spinning the chuck plates and while the seaming mechanisms successively and automatically proceed to roll the seam and to mash it in. This machine may be more clearly visualized by reference to the machine viewed at the plant of the American Can Company yesterday, where a horizontal machine was provided having sets of complementary chuck members between which the can and cap were gripped and coincidentally delivered, and after [1820] which the two seaming

(Testimony of James M. Abbett.)

operations were performed as the carriage continued to rotate.

Q. (By the MASTER.) Is that Dugan patent a horizontal machine?

A. The Dugan patent is a vertical machine.

Q. (By Mr. BLAKESLEE.) That is, the carriage rotates in horizontal plane, does it?

A. The carriage rotates around a vertical axis.

Q. (By Mr. TOWNSEND.) Before leaving Dugan, will you read on page 4, beginning with line 25?

A. Referring to the Dugan patent 848,296 and beginning with page 4, line 25: "The feed chutes and the discharge table being stationary, the original reception of the can members and the cover in the machine as well as the discharge from the machine takes place at definite points but without diminution in the speed of travel of the machine. The operations of seaming, false wiring, and forcing the cover on to the can body take place not at a single point but during different portions of the travel of the parts. This allows the operation to be continuous and extremely rapid. The speed of rotation is not varied or interrupted and no time is lost, such as would be the case if the can parts were simply and successively brought into stationary positions at which the different operations were performed." That is the concluding statement in the Dugan patent and shows the contemplated continuous movement of the machine for forming [1821] the seam between a can top and

(Testimony of James M. Abbett.)

can body without interrupting the can during the seam-forming operation and while the can is advancing through the machine.

Q. (By Mr. BLAKESLEE.) Does it advance through the machine? Isn't it simply advanced by the machine?

A. By "through the machine" I was merely viewing it as going into the machine and coming out. It is advanced by the machine while being positioned on the carriage.

Q. And always positioned in the same place on the carriage when being operated upon?

A. There is no transfer of the can from one set of chucks to another while the seaming operations are being carried out. The same continuous principle works in other patents, as, for example, the patent to Black, which provides a rotary carriage having can-receiving means for clamping a can and its cap between chuck-plates and for operating the seaming heads as the cans are thus clamped.

Q. (By the MASTER.) That is like what we saw on the platform of the American Can Company yesterday, isn't it?

A. The Black patent discloses a slightly different mechanism for controlling the seam members than that viewed in the commercial machine known as the Johnson four-spindle machine. In the Black patent we have, as shown in Figures 5 and 6 of the patent, rollers mounted on levers which swing around horizontal pivots, and which levers are provided with means for alternately acting upon that

(Testimony of James M. Abbett.)

and alternately [1822] moving the rollers into engagement with the can. On the Johnson four-spindle high-speed machine, as it is known commercially, the two rollers are mounted on the opposite ends of an oscillating lever which is squarely pivoted, and which lever swings to cause the two rollers to be alternately moved toward the flange of a can and to successively form the two seaming operations. In the Black patent and the machine previously referred to, the seaming is carried on continuously as the carriage rotates. As shown in the Black patent it will be noted that the lower chuck member is provided with means for raising and lowering this chuck member so that the can and its cap will be clamped together, and that in addition the means for advancing the can comprise a rotary member formed with can-receiving pockets around its periphery for centering the can on the chuck member. Black has fairly well set forth the general idea embodied in his machine, considered from a descriptive standpoint, in Claim 8 of his patent.

Mr. BLAKESLEE.—A claim as such is not proper anticipatory matter, and being a technical summation of the structure the legal significance I don't think should be referred to, as it is not a part of the descriptive or drawing portions of the patent, in which, pursuant to Section 4888 of the Revised Statutes, the inventor has set forth his construction for the benefit of the art after the expiration of the patent. It is only for the purpose

of the legal monopoly that the [1823] claim is to be considered, and we think the witness should read from the specification and not from the claim.

The MASTER.—He is only reading from the claim as descriptive, and, as I understand it, the specification includes the claims, and the claims are very frequently referred to, I have noticed, in opinions for the purpose of defining what some particular part referred to in the specification is.

Mr. BLAKESLEE.—Yes; but not on matters of alleged anticipation, because there the claim is not pertinent to the question at all. It is only the disclosure of the description and drawing that is proper.

The MASTER.—Well, he is referring to it as description.

Mr. BLAKESLEE.—I don't think that is a proper way to apply it, as a publication, because the claim may be in language entirely different from that of the disclosure of the specification for the purpose of monopoly, and not fairly descriptive at all. It may be in generalities for the purpose of attempting to blanket other things.

Mr. TOWNSEND.—If you are using it merely for descriptive purposes, the Master is correct that it is a brief summary, without giving any legal significance to it, of course.

Mr. BLAKESLEE.—Summarization is not proper. The description is the proper thing. The claims are not before the Court at all.

The MASTER.—I will sustain the objection.

(Testimony of James M. Abbett.)

Q. (By Mr. TOWNSEND.) Omit any reference to the claim.

[1824] A. All right. In mentioning this I prefaced it by the statement I was merely reading it as giving the description, so I had no intention of using it as the claim.

A. The Black patent, as set forth in the specification and drawings, is for a machine having two continuously rotating turrets and an intermediate transfer, the first of said turrets being provided with roller means operating in combination with an annular or circular anvil which forms a flange or flare around the open mouth of the can body, after which the can is transferred from the first continuously rotating turret on to a second turret, during which transfer the can receives a cap, the cap and can then being delivered to a pair of complementary chucks which hold the cap and can in position, and the can continuing in its uninterrupted movement on the second turret while the two seaming operations are taking place. There is nothing in the mechanism of the Black seaming device which makes it imperative that the seaming means could not be disassociated from each other while at the same time retaining all of the functions as a seaming device. In other words, the second rotary turret of Black could be duplicated while using the identical seaming means for rolling the seam, as shown in Black on one turret, and the identical seaming means for finishing the seam [1825] as shown in Black, on the other turret, and still have

(Testimony of James M. Abbett.)

a continuously operating machine for performing the two functions of Black while the can is moving in an uninterrupted movement through the turrets.

Q. (By the MASTER.) What is the date of that Black patent?

A. The Black patent is dated July 2, 1907.

Q. (By Mr. BLAKESLEE.) But there is no provision for feeding caps to the first turret, is there?

A. There is provision for feeding the cap at the essential point and common point of feed, and that is directly in advance of the curling of the cap on to the can.

Q. But not at the first carriage?

The MASTER.—Well, that is not the reorganization that the witness was suggesting. Our application here was in 1914. It was seven years before somebody thought of doing that.

A. Yes, before this application was made.

A. Anticipating the idea and history of the two-station principle, we have a number of patents mentioned in my affidavit and analyzed, a representative one being the 1912 patent to Guenther which shows a two-station seaming machine, the stations being fixed relative to each other and remotely disposed in relation to each other, and a rotary means being [1826] provided for transferring the can and its cap from the cap-feed to the first station and from the first station to the final seaming station. Brenzinger, which was also cited as a reference during the prosecution of plaintiffs' patent, is a two-station machine, both stations being fitted with seaming rol-

(Testimony of James M. Abbett.)

lers which move in and out on sliding blocks. The Patent Office stated, as will be found in the file-wrapper, that they considered—

Q. And, by the way, before getting further away from Black, in view of the suggestion of reconstruction that was made, will you take Black and briefly summarize what you find in Black there that—

[1827] A. I believe after the discussion of Claim 8 that I set forth the construction of Black, dealing with the two turrets, the intermediate transfer, the operations which take place on the two turrets, as the can continues to advance—

Q. (By Mr. BLAKESLEE.) And the anvil construction and the flange and all of it.

Mr. TOWNSEND.—Just let the witness state it.

A. In the subsequent cap-feed and seaming operations.

Q. Did you state whether there was a no-can-no-cap feed there, and whether the parts were in motion or stationary when certain things took place?

The MASTER.—Yes. He said it was a continuous motion, without any stop in any part of the operation, as I understood him.

A. And that the caps were delivered while the cans were in motion and were carried coincidentally to the seaming turret. This comparison leads to a reference to the Johnson patent No. 1,040,951, in which we have substantially the same organization of elements as has been shown in the Black patent, that is, a first rotary turret on which a flanging operation takes place, a transfer carriage or disk,

(Testimony of James M. Abbett.)

and the final turret. In the Johnson patent we have the additional feature not shown in Black, of a no-can-no-cap feed mechanism which insures that for each can delivered to the seaming turret a cap shall be automatically supplied by the particular can being advanced.

[1828] Q. (By Mr. BLAKESLEE.) This being intermittent operating machine?

A. This being an intermittently operating machine.

Q. (By the MASTER.) The continuous operating machines are Black, Dugan, and what?

A. Nichols.

Mr. BLAKESLEE.—Nichols has the four elements, A, B, C, and D.

A. Yes. Nichols is a continuously operating machine which is especially interesting in connection with the present study, due to the fact that seaming rolls are not used on either the first or the second turrets. In Nichols we have shown four structures, each one comprising a rotary carriage provided with upper and lower chucks, or chucks for the opposite ends of the can, and which chucks rotate as the carriage revolves. In the Nichols patent the rotation of the chuck causes the seam elements of the can and cap to be acted upon by fixed curling dies or faces along which the cans and caps are carried. The Nichols patent, in addition to showing this continuous motion in a milti-turret machine, also provides transfer means from one turret to the other, the transfer means, due to the position

(Testimony of James M. Abbett.)

of the axes of the turrets in Nichols, being a gravity transfer, as compared to a mechanical transfer which would of necessity have to be used if the cans were moving along a horizontal plane.

Q. The axis of each turret being horizontal, is it not?

[1829] The axes of the turrets being parallel and all horizontal.

Mr. BLAKESLEE.—Mr. Townsend, I am interpolating here to save cross-examination on what I think are obvious things, if you have no objection. I have very little cross-examination if I can put a question or two as we go along.

Mr. TOWNSEND.—All right.

A. I have also found an interesting patent in the art which shows a two-turret continuous operating machine, this patent being issued on June 10, 1919, numbered 1,306,648, and issued to Warme and Taliaferro. The application was filed a month after plaintiffs' patent. The application was filed a month after the plaintiffs' patent and the two cases were pending together, by reference to—

Mr. BLAKESLEE.—We move to strike out any reference to this patent, inasmuch as it wasn't pleaded and both its date of issuance and filing date are subsequent to the date of the patents in suit.

Mr. TOWNSEND.—It is important in the construction of the plaintiffs' patent.

Mr. BLAKESLEE.—Not at all. The fact that no interference was declared is not a material matter in this case.

The MASTER.—It is a co-pending application. The objection is overruled.

Mr. BLAKESLEE.—But it doesn't raise any presumption.

The MASTER.—Well, that is another thing.

[1830] A. This application, as previously stated, was filed in September, 1914, and was co-pending with the Sumner and Wilson patent. The operation may be very clearly understood by reference to Figure 31 of the patent, which is a diagram indicating the sequence of operation and exactly stating what takes place as the operation progresses.

Mr. BLAKESLEE.—I want to urge a further objection and that is that it is not pleaded and that it is not prior art, and under neither theory can it be considered. If counsel wishes to refer to it on argument, or offer a copy of it, of course he can do that. There is no section of the statute under which it can be pleaded.

The MASTER.—I believe the fact that there are co-pending applications raises a presumption of some kind, but I have forgotten what it is.

Mr. BLAKESLEE.—The presumption is that in proving prior invention as between two persons having co-pending applications, the usual rule of proof beyond a reasonable doubt is not required in proving prior invention, where that defense is set up as between two persons claiming under the respective patents. But that is not the case here because this patent is not in issue at all. That was

(Testimony of James M. Abbett.)

the law as laid down in this circuit in a case where Wilson and Willard are engaged in a patent action.

The MASTER.—I think also the fact that there are co-pending applications raises the presumption that there is [1831] invention in both of them.

Mr. BLAKESLEE.—It doesn't raise any presumption, though, that one would not infringe the other as to the use of its invention; only that the structures are different; and that can't help us in this case because if this is presumed to be different from the Wilson patent in suit its usefulness as to any issue here is destroyed.

The MASTER.—We will receive the evidence subject to the objection.

Mr. TOWNSEND.—I understand the witness is merely referring to that for brevity, or description perhaps, to bring out what the Warme and Taliaferro patent disclosed.

A. The machine has two seaming turrets, marked in the drawing A and B, and an intermediate transfer. The cans are delivered to the first turret at the point b, after which the cans are lifted by a chuck plate. At the point c the can ends enter the groove in the seaming roll. As set forth in the legends on Figure 31 of the drawing in the patent it will be seen that the seaming operation continues for a considerable period of time. When the cans come out of the grooves in the seaming roll the cans drop and are then transferred onto the final seaming turret where the cans again rise.

(Testimony of James M. Abbett.)

They then engage the seaming means and are advanced with the turret until the seaming operation is completed and the can again lowered and moved from the machine. In this case the seaming means are faces rather than movable rollers. [1832] Do you understand what I mean by that?

Mr. BLAKESLEE.—No; and I really am not interested. I don't want to even see the patent, because my position is that it can't be used. There is no statute it can be pleaded under and there is no defense of Walker it can be pleaded under.

A. This seaming machine comprises a pair of rotary turrets with an intermediate transfer, the turrets and the transfer being geared together. The first turret carries seaming instrumentalities which move around the can and cap as they are fixed together, and are held by the movement and pressure of the lower chuck-plate towards the upper chuck-plate, and are held against relative movement to the turret upon which they are carried. While the cans are advancing the seaming rollers are moved inwardly against the flange of the cap and move around the flange of the cap from five to seven rovolutions during the advance of the can on the first turret. The metal is thus properly or satisfactorily worked so that the seam will have been progressively formed and properly turned in. After the seam is thus rolled it is transferred to the final turret where compression rolls act against it in the same manner as these rolls affect the cans seamed in Defendants' Exhibit 14–P, and

(Testimony of James M. Abbett.)

while the can is now rotated from five to seven revolutions the seam is flattened down and made tight.

Q. (By Mr. BLAKESLEE.) The second turret, did you say?

[1833] A. This flattening of the seam takes place on the second turret, and it is understood that the compression rollers are carried on this turret. The action of the compression rollers on the second turret is substantially the same action as is found in the Johnson four-spindle machine seen yesterday, where the compression means advances with the can and acts toward and away from the edge of the can during its advance.

Q. (By the MASTER.) That is operated by the rotating means that rotates the turret, isn't it?

A. Yes.

Q. (By Mr. TOWNSEND.) Could you compare that mode of operation and means of carrying compression rollers in the Guenther 24–P with the compression rolling mechanism in the Black 1907 patent?

A. In Black's 1907 patent the compression rollers, as well as the curling rollers, move around the can during the advance of the can. In the Johnson four-spindle machine viewed yesterday the compression rollers did not move around the can but the can rotated.

Q. And how did that compare with the 14–P Guenther machine?

(Testimony of James M. Abbett.)

A. Well, the same operation is found on the 14–P machine, also in the Dugan patent.

Q. In the Black 1907 patent you have stated the first operation rollers travel around with the constantly rotating turret.

[1834] A. Yes. The first operation rollers are being driven to move around the can as the can advances on the turret, the same as these first operation rollers of the Guenther 24–P machine are driven to rotate around the can as the can advances on the first turret of Guenther.

Q. Are there any other points of similarity that suggest themselves to you, between the Guenther 24–P and the Black 1907 patent?

A. They both are provided with two main rotary turrets with an intermediate can transfer, and on the first turret of Black we have means for positively driving a set of rollers. The rollers on the first turret of Black which are positively driven are flanging rollers, but the Guenther first turret rollers could be substituted for these rollers while utilizing the same drive and operation throughout.

Q. Do those flanging rollers of Black rotate on horizontal or vertical axes?

A. The flanging rollers of Black move around the vertical axis of the spindle on which they are carried, the same as the flanging rollers of Guenther move around the vertical axis of the spindle on which they are carried.

Q. But in Black it seems to appear that the

(Testimony of James M. Abbett.)

little rollers, called the flanging rollers, are on horizontal axes carried by the main spindle axis, and in Guenther the corresponding rollers you referred to are on what sort of pivots?

A. The corresponding rollers in Guenther are on pivots [1835] substantially vertical, due to the fact that in Guenther we move in and out toward the circumferential face of the can, where Black shows the rollers acting upon the edge of the can in a horizontal plane.

Q. In Black, while those little rollers on that vertical spindle on the first turret are operating, how is the can positioned? Is it held stationary or does it revolve?

A. It is held stationary.

Q. And in the 24–P, in the first seaming operation?

A. The can is held stationary by the pressure of the chuck plates.

Q. Does it appear that those little flanging rollers—

Mr. BLAKESLEE.—Do you refer to this as the first turret, the one with the gears on it?

A. In answer to the question, I am using it as the first turret.

Q. That is the turret the question last asked treated with, isn't it?

A. No; that is the flanging turret.

Q. (By Mr. TOWNSEND.) In Black do I understand that the cans are designed to be received

(Testimony of James M. Abbett.)

upon the first turret while it is continuously moving. A. Yes, sir.

Q. And how held against rotation?

A. The cans are held by a downwardly moving chuck-plate indicated in the Black patent at 20, and which in this case [1836] enters the mouth of the can. The can is further held by a semi-circular anvil number 35, which swings in and embraces the outer portion of the can not previously seated within the recess of member 35^1.

Q. Do I understand you have clamping chucks on the first turret of Black to hold the cans endwise? A. We do.

Q. And what do you have to hold them endwise in the 24–P on the first seaming operation?

A. We hold the can in its seaming position by the clamping chucks.

Q. Do the rollers on the revolving head on the first operation turret of Black come into play before or after the chucks have gripped the can endwise in Black?

A. They come into play afterwards. The head on which the rollers is mounted, indicated at 17 in the Black drawings, is provided with a shifting arm 16′, which is carried by a vertical operating rod 12. This rod and head move downwardly after the sleeve 18 carrying the chuck-plate 20 has moved to a clamping position relative to the can, there being movement provided between the head and the stem carrying the chuck-plate.

(Testimony of James M. Abbett.)

Q. And in defendants' device 24–P what is the action?

A. In defendants' 24–P machine we first grip the can between the two chuck-plates, after which the rollers swing inwardly and perform their seaming operation.

[1837] Q. You have referred in your previous testimony to the operation in Black, of these rollers operating on a seam element of a can. What is the seam element that you referred to in the can in that connection?

A. I refer to the flare marked 38 in Fig. 4 of the Black drawing, which is the so-called flange formed around the mouth of the can.

Q. Does that operation in Black of those rollers re-act or act upon that flare or flange in any way, to do anything with it, to deform it or otherwise?

A. It acts on the metal of the mouth of the can, or the raw edge of the projecting can, to flare this metal out and deform the flange.

Q. Turning that part of the metal through approximately what degree of arc? A. 90 degrees.

Q. In the defendants' device does any deformation or change take place in the operation of the first seaming rollers upon such so-called seam element of the can, and, if so, what?

A. Yes. The first seaming rollers on the first turret of defendants' machine operate on the flange to bend it down through an arc of substantially 90 degrees.

(Testimony of James M. Abbett.)

Q. (By Mr. BLAKESLEE.) And bend it inwardly so as to clinch it around the cap edge, is that right?

A. The flange of the cap is bent downwardly substantially [1838] parallel to the outer face of the can.

Q. The flange on the cap?

A. I mean the flange of the can.

Q. In this Black patent of 1907 there is no bottom chuck member, is there, for the can? It simply rests on the rotating turret?

A. On the first turret. On the second turret there is a chuck member.

Q. In the first turret of the P–24 machine how about the chuck formation?

A. The chuck formation is the same substantially as shown in Figures 5 and 6 of the Black patent where there is a lower chuck which raises and lowers and has interposed between its positively raising portion and the chuck proper a spring for permitting it to have suitable yield.

Q. Then in the first turret of the 24–P machine the operation of seaming there performed is performed upon a flange previously produced and similar to the flange which is formed on the first turret of the Black machine; is that not correct?

A. The flange produced on the Black is in anticipation of the rolling operation which takes place at the first seaming operation of a double seaming machine.

Q. The 24–P?

(Testimony of James M. Abbett.)

A. The 24–P, or any other.

Q. (By Mr. TOWNSEND.) Or Black's first seaming operation of [1839] 1907? A. Yes.

Q. Have you referred—and, if not, please do it—to any no-can-no-cap feeds prior to 1907 or prior to the application of the Black patent? I don't recall whether your consideration of the no-can-no-cap patent of plaintiffs referred to that art as anterior to Black.

A. Well, Black does not show any no-can-no-cap, but Johnson does.

Q. Johnson is later. I am referring to those earlier.

A. During the prosecution of the Sumner and Wilson application there were cited several devices having no-cans-no-caps.

Q. (By Mr. BLAKESLEE.) Which patent?

A. 1,250,406; the earliest of these being July, 1910.

Q. (By Mr. TOWNSEND.) I was wondering if you have some art there on no-can-no-cap feeds anterior to Black, for instance Jensen and an earlier Forry and some of those. I think you referred to them in your affidavit.

Mr. BLAKESLEE.—He referred to Forry under cross-examination.

Mr. TOWNSEND.—That is another Forry.

A. I have on page 48 referred to Forry, Livingston, Johnson, and Krummel as relating to the cap-feed, but I do not believe that any of these

(Testimony of James M. Abbett.)

patents show a cap-feed of earlier date than the Johnson patent of October 8, 1912.

[1840] Q. On page 47 of your affidavit you refer to Hodgson and Norton, 704,255, with a no-can-no-cap feed, and also on the next page other patents showing constructions quite similar to Forry 688,622, Livingston 690,593; and I call your attention also to the Jensen patent of earlier date, 443,445. What I am getting at, briefly, Mr. Abbett, is whether or not no-can-no-cap feeds were recognized in the art prior to Black.

Mr. BLAKESLEE.—Mr. Master, that is not any substantive proof of whether they were recognized. We have to have structures here and, attempting to build up all these various machines into a hypothetical one has been proceeded with at considerable length, and I don't think it gets us anywhere, and certainly when we get into generalities like this it can't meet anything.

The MASTER.—He is calling for some particular patent.

Mr. TOWNSEND.—I am merely going to show that a no-cap-no-can feed was notoriously old, even earlier than Black.

The MASTER.—That wouldn't help out any, would it? It is presumed to be old.

Mr. TOWNSEND.—And they were notoriously old prior to Sumner and Wilson, but I thought I would anticipate an objection of my friend here, by showing that even Black recognized the an-

(Testimony of James M. Abbett.)

tiquity of the no-can-no-cap feed. If you want to admit it, I am satisfied.

The MASTER.—Well, if he has any patent there, let him refer [1841] to it.

(Short recess.)

A. Certain of these patents show means for positively feeding a cap for each can, as for example the patent to Norton and Hodgson which has an automatic plunger for releasing a cap and feeding it to the can. Others of the patents mentioned under this class in my affidavit provide other means for insuring a positive delivery of a cap for each can as it moves to the delivery means.

Q. (By Mr. TOWNSEND.) Mr. Abbett, will you turn to the Jensen patent No. 443,445, of December 23, 1890, page 4, and read lines 10 to 39, please?

A. (Reading:) "The operation is as follows: When the machine is set in motion as previously described the filled can bodies are passed one or more at a time over the table B on to the revolving disk C between the arms J' of the fixed disk J and the guide rails B^2. The caps of the cans are passed with their flanges downward over the table F on to the disks E to be carried along by the latter until they strike against the stop pins L' and N'. The can bodies on the disk C move forward until temporarily interrupted in their forward movement by the levers J–4, J–5, and J–6, which serve to insure proper meeting of the can bodies with the fork K–5 of the arm K which moves the can

(Testimony of James M. Abbett.)

body from the disk C across the table B against the lever L–7 so that the releasing device L is actuated and at about the same time the [1842] lever N′ is operated on by the cam N–4 so that the cap held by the stops L′ and N is freed and moves forward at the time the can body moves on to the table D–2 over the respective plunger O or O′. The plunger R or R′ then overtakes the cap and pushes it forward while the plate E–9 is guiding it into and against the end of the passage D–9 over the conical guiding hole P so that it is just in time to receive the upper end of the can body which is pushed upward through the guiding hole P into the cap by the plunger O or O′."

Q. Does that describe a no-can-no-cap feed?

A. Yes, that is a no-can-no-cap structure.

Mr. TOWNSEND.—That is all.

[1857] 811 Washington Building,

Los Angeles, California, Friday, May 4, 1923, 10 A. M.

TESTIMONY OF JOSEPH CEREGHINO, FOR DEFENDANTS.

[1862] JOSEPH CEREGHINO, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Mr. BLAKESLEE.—In connection with this wit-

(Testimony of Joseph Cereghino.)

ness' testimony, Mr. Master, maybe I am not anticipating what is intended to be developed, but I do not think that any questions should be put to this witness which relate to anything developed or shown on the informal trip the other day; in other words, I hardly think it is proper for the Court to be preliminarily acquainted with certain things in an informal way and then have a witness produced to testify about the things developed on such informal acquaintanceship or trip. What I mean is, I don't think it is the proper way to first have the Court and counsel view certain things and then have a witness come forward and refer to things that were done on that occasion. I am objecting in anticipation to anything of that sort that may develop, and I hardly think it would be the proper way to prove anything.

The MASTER.—We will rule on the objection when we get to it.

Mr. TOWNSEND.—I can't anticipate the reason for plaintiffs' fears, but I think we will keep within the proper bounds.

[1863] Direct Examination.

(By Mr. TOWNSEND.)

Q. Mr. Cereghino, what is your age, residence and occupation?

A. I am forty-three years old. I am superintendent of the American Can Company; and I live at 3836½ Figueroa Street, Los Angeles.

Q. The plant is located here in Los Angeles?

A. Yes, sir.

(Testimony of Joseph Cereghino.)

Q. Where? A. At Santa Fe Avenue and 48th.

Q. You appear here to-day under subpoena?

A. Yes, sir.

Q. You were present, were you not, day before yesterday, Wednesday afternoon, when your plant was visited by the Master and counsel here present, and Mr. Abbett, Mr. Berry, Mr. Guenther and Mr. Wilson? A. Yes, sir.

Mr. BLAKESLEE.—We object to that as being immaterial.

The MASTER.—He was present, so proceed with the next question.

Q. (By Mr. TOWNSEND.) And you showed us, did you, through the plant? A. Yes, sir.

Q. And you were present to point out and explain the various machines and operations that were viewed by the parties [1864] mentioned?

Mr. BLAKESLEE.—We object to that as immaterial, what he pointed out.

A. Yes, sir.

Q. (By Mr. TOWNSEND.) Will you please tell us what we saw that day, and tell us what machines were in operation, various machines, in the making or handling of cans, and the speeds that they were operating at, and so forth.

Mr. BLAKESLEE.—That is just where I object your Honor. I think it is improper for this witness to attempt to put in the record what we saw.

Mr. TOWNSEND.—I said what we were shown.

The MASTER.—As a preliminary question only, I will allow it.

(Testimony of Joseph Cereghino.)

[1865] A. The first thing you came in contact with was our body-makers, from 180 to 200 a minute. Then we went along the line and came in contact with our flangers that operated at the same speed. Then from there we proceeded to our eight-spindle American Can horizontal double-seamer, and these machines also operated from 180 to 200 per minute.

Q. Is that machine a continuous or an intermittent machine? A. A continuous machine.

Q. (By the MASTER.) They all operate at the same speed, don't they?

A. Yes, sir. The speed is governed by the size of the can; in other words, a 2½ can, which is a little larger than a No. 1 eastern oyster can, the speed is slightly reduced. A 2½ can we make at the rate of 180 a minute, while a smaller diameter can is turned out at the rate of 200. From that station you were shown the American Can automatic air tester. From there we proceeded to the McDonald high-speed presses and also the paper ring liners. And from there we proceeded to the compound lining equipment. Then down to the warehouse, and we looked over the method of loading cans into the cars. From there we went over and we viewed the various makes of can-closing machines, including the four-spindle Johnson type and the single-spindle Johnson type and the Max Ams and Adriance machines.

Q. (By Mr. TOWNSEND.) Did that first horizontal continuous [1866] no-can-no-cap feed?

A. No, sir.

Mr. BLAKESLEE.—I think *preliminary* he has gone far enough. When it comes to stating the construction of anything we saw, I don't think that is the proper way to put it into the record.

Mr. TOWNSEND.—It is the only way to put it into the record.

Mr. BLAKESLEE.—The Master knows what he saw, and we are perfectly contented with the Master's impressions and have perfect reliance upon them. But for this witness to try to tell us in detail the things we saw is an attempt to reinforce, reconstruct or affect the Master's impressions. We are satisfied with the Master's impressions. If he is asked independently what he has in his shop, that is different.

The MASTER.—Isn't he asking him independently right now? He is asking about the mechanism.

Mr. BLAKESLEE.—That is just it; in other words, he is trying to bring out in detail what we are supposed to have seen that day, and I don't think that is proper. I think the Master's impressions should stand as they are, as to what we saw that day.

The MASTER.—He isn't disturbing my impressions yet. I don't think your objection is good.

Mr. BLAKESLEE.—I am only anxious, Mr. Master, to prevent any reading into your impressions by means of this witness [1867] what is at that shop, and I think that is a proper precaution. As I say, your Honor's impressions we are per-

(Testimony of Joseph Cereghino.)

fectly satisfied to rely upon as you got them, but for this witness to say what we saw and what your Honor saw is certainly an indirect way of informing the Master. I am perfectly willing to have him testify to what is at his shop.

The MASTER.—He may answer the question.

Q. (By Mr. TOWNSEND.) I asked you in regard to whether that continuous horizontal high speed machine had a no-can-no-cap feed and, if not, how were the cans and caps fed?

A. This machine when it first arrived at our shop had a no-can-no-cap arrangement, but inasmuch as this machine works as near to perfection as is possible—in other words one hundred per cent efficiently—we didn't think it necessary to retain that and we took it off.

Q. The caps and cans are each fed in by gravity, are they not? A. They are both fed by gravity.

Q. And in synchronism to the machine?

A. Yes, sir.

Q. In regard to the Johnson machines that you have, and which were pointed out to the Master and the others of us the other day, will you describe those machines a little more in detail and what you know about them?

Mr. BLAKESLEE.—We repeat our objection there. I think if he wants to describe Johnson's machines as they are, it [1868] may be all right.

Mr. TOWNSEND.—They are referred to in the record repeatedly, and this is a man who knows about them.

(Testimony of Joseph Cereghino.)

Mr. BLAKESLEE.—And the further objection is made that all this is immaterial, and this I think is a controlling objection inasmuch as there is no pleading as to anything in the shop of the American Can Company as anticipatory nor is there any showing as to anything in the prior art. Unless the witness is asked as to machines prior to 1914, it can't be material and it can't be prior art and nothing of that kind is pleaded that I know of.

The MASTER.—I think that objection is good.

Mr. TOWNSEND.—We can't show everything in one question. We have got to identify the machine.

The MASTER.—Well, lay a proper foundation, then, first.

Mr. TOWNSEND.—That is what we are getting at.

The MASTER.—Ask him if he has any machine made prior to 1914. I will sustain the objection, but the witness may answer.

(Question read.)

A. Well, there are two types of Johnson machines. One type is known as the D type, which closes a No. 10 can, and then there is the J type that closes from a 3-pound to a 2-pound can; and then there is the G type that closes from a 1-pound down to a No. 1 eastern oyster can. Then there is the four-spindle J–D type and a four-spindle type W. The [1869] single-spindle machines operate at a speed of approximately 35 cans per minute on what I

(Testimony of Joseph Cereghino.)

might term liquid goods. The same machine has been running on solid goods up to 40 to 45—

Mr. BLAKESLEE.—May I ask the witness a question?

Mr. TOWNSEND.—Don't interrupt him. I object to any interruption of my examination.

The MASTER.—Don't interrupt. Go ahead with the answer.

A. The Johnson single-spindle is an intermittent movement while the Johnson four-spindle types are a continuous movement, and the Johnson four-spindle machine has operated as high as 185 per minute.

Q. (By Mr. TOWNSEND.) For how long at a time and to what extent have those various types of Johnson machines been in use, to your knowledge?

Mr. BLAKESLEE.—We object to that, because in proving any anticipation or prior art it must be established or the proof must be directed to certain specific machines and not to types. In our *prima facie* proof we referred to other types of machines generally in use, not of course for the purpose of anticipation nor to show prior art, as the defendant has the burden of showing it. Therefore the proofs now must be directed at certain specific machines. It will not satisfy the rules to simply inquire as to a type. The inquiry must be as to a machine, and that machine must have been known to the witness prior to August 10, 1914.

Mr. TOWNSEND.— Well, this is all in the state of

(Testimony of Joseph Cereghino.)

the art, [1870] and this is all connected up with the previous question.

The MASTER.—Objection sustained. There is no proper foundation.

Mr. TOWNSEND.—Well, we can't get everything at once.

The MASTER.—You can ask him first whether there is any machine there prior to the date of this application.

Mr. TOWNSEND.—That is not, with all due respect to the Master, the only way of establishing what we will establish. We cannot do it all at once.

The MASTER.—Yes; but you can get a lot of immaterial evidence in here on commercial structures. The objection is sustained. You may answer.

Q. (By Mr. TOWNSEND.) The term "type," Mr. Cereghino, as you have used it, refers to the four different styles of machines that you have mentioned?

A. The Johnson J and D and G have been in use since 1908 or 1909.

Q. Just tell us again what those are.

A. That is the Johnson J, D, and G. That is the single-head machine. The four-spindle machines have been in use since 1915. That is the J, D and W machines.

Mr. BLAKESLEE.—That part we wish to move to strike out as it is later than the date of the application, unless the ruling made covers it.

The MASTER.—The ruling covers it.

(Testimony of Joseph Cereghino.)

Mr. TOWNSEND.—You will get the bearing of this in a little [1871] bit.

Q. What was your first connection with a high speed continuous double-seamer?

A. My first connection with a high speed continuous double-seamer was in 1908, and we operated that machine that you have right there.

Q. Referring to the Black model which is in evidence and marked W–1?

A. Yes; that machine was known as the Black—or the Johnson, a ten-spindle type, and it operated at our United Factory in San Francisco during the years 1908, 1910, and 1911, and it had a capacity of 140 cans per minute.

Q. Were you located at that factory at that time?

A. Yes, sir.

Q. In what capacity?

A. I was assistant superintendent.

Q. And did you see that Black machine operating at that time? A. Many times.

Q. Will you describe its operation?

A. It was a continuous machine that fed into the first section, or the first turrets, and as it fed into the first turrets it traveled along until it came to the transfer point, and at that point the end was fed on above the body and carried into the chucks and double-seamer. The idea of that construction at that time was that the can was supposed to be [1872] shipped without being flanged, and it was the understanding at that time that on the first section

(Testimony of Joseph Cereghino.)

the can was to be flanged while the can was in operation and being carried to the second station.

Mr. BLAKESLEE.—I want to move to strike out the answer unless it be understood that all of this line is directed to prior art and not anticipation, inasmuch as the machine and machines being referred to by the witness are not pleaded as prior uses. If it is understood this is all directed to the prior art—

Mr. TOWNSEND.—The testimony of this witness is all directed to showing the state of the art.

The MASTER.—Motion overruled.

Q. (By Mr. TOWNSEND.) You referred to the first section or first station of Black. Is that what you term the first turret here where you see the little cam underneath the roller?

A. Yes, sir, that is right. That is supposed to be the flanger.

Q. After your flanging you say it was delivered to the transfer wheel?

A. It was delivered to the transfer and then transferred into the second station, which consisted of ten heads.

Q. That second station with the ten heads was on what we designate here as the second turret?

A. Yes, sir.

[1873] Q. Where the can received its top was that a no-can-no-cap feed, do you recall?

A. Yes, sir, a no-can-no-cap.

Mr. BLAKESLEE.—We object further to the examination of the witness as to prior art going

(Testimony of Joseph Cereghino.)

back to a time over ten years and over fifteen years, with a model to assist his recollection before him, as to the weight of the evidence, at least.

The MASTER.—He is testifying the same as Mr. Abbett has already testified, so I don't think it makes any difference. Overruled.

Q. (By Mr. TOWNSEND.) Do you recall the other day when we were at the can plant you told counsel for plaintiff and some others of us present there about this very Black machine that you are now telling us about? A. Yes, sir.

Mr. BLAKESLEE.—That is immaterial, what he told us.

Mr. TOWNSEND.—He didn't have any model before him then.

Mr. BLAKESLEE.—But that can't be material, what he told me down there.

The MASTER.—The Master observed that the witness recognized the model at once. Have you seen that before?

A. I don't think I saw that model before.

Q. Did you know they had one up there?

A. I never knew they had one, no, sir.

Q. (By Mr. TOWNSEND.) How was the double-seaming performed on the second station or second turret in that Black machine [1874] at San Francisco in 1908?

A. It was a can stand-still machine with the first operation working similar to the present machines. It first came in and engaged the can for probably a revolution of three and a half complete

(Testimony of Joseph Cereghino.)

circles of the can and then the first operation would disengage itself and the second would come in and finish up.

Q. When you say the "can stand-still" type, you mean that the can did not rotate on its axis on the second turret? A. It did not, no, sir.

Q. Do I understand that the turret was continuously moving? A. Continuously moving.

Q. So that you were seaming the first and second operations while the can was in travel on the turret at all times? A. Yes, sir.

Mr. BLAKESLEE.—I think the witness should be allowed to finish his statement of operations without leading him.

The MASTER.—Proceed.

Q. (By Mr. TOWNSEND.) You may add anything further that you desire as to the seaming operation or the delivery of the can from the machine.

A. After the can was complete, or after the can was seamed perfectly, it was dropped down by gravity into the runway and continued on the regular line into other machines.

Q. How were the cans delivered to the first turret of Black?

[1875] A. I think they were delivered on a disk and the disk—well, I am not sure.

Q. Did you have some sort of a timing device to deliver the cans to the first turret?

A. Yes, sir.

(Testimony of Joseph Cereghino.)

Q. So that a can came in register properly with each holding means on the first turret?

A. Yes, sir.

Q. How were the rollers operated to form the flange on the first disk, do you recall?

A. In this particular machine the rollers were never applied in the can plant for the flanging operation. The head was there but the rollers were not applied.

Q. And the cans were fed through, received their caps, and then what?

A. And then transferred on to the second station and double-seamed from the flanger.

Q. You say the capacity of that machine was what? A. 140 a minute.

Q. Do you know where that machine is to-day? Is it in existence?

A. It has been ten years since I was there, and I don't know what has become of the machine.

Q. Have you ever seen any machines for double-flanging working similarly or like that Black machine worked, for placing the heads on cans and double-seaming them since then? [1876] Is my question clear?

A. I wish you would read that again. I didn't get it.

(Question read.)

A. I can't say that I have.

Q. You mean you havn't seen just that identical construction? A. No, sir.

(Testimony of Joseph Cereghino.)

Q. Will you compare the construction and operation of the Johnson four-spindle continuous machine that you have now, and such as we saw the other day, with the can feeding and capping and flanging of the Black machine that you had operating there in San Francisco in 1908?

Mr. BLAKESLEE.—We must object to that unless it be established that such a machine as to which the comparison is asked was to the knowledge of this witness used before August 10, 1914. It is not material. A comparison with the present machine that we saw to-day cannot be material because there is no showing that such a machine was in use before August 10, 1914.

The MASTER.—I don't see any materiality.

Mr. TOWNSEND.—I can't state what it is here or I will be charged with coaching the witness. I don't want to put in his mouth just what I have in mind.

The MASTER.—Suppose he says the present machine operated absolutely the same in every respect with the Black model, how far have we progressed?

[1877] Mr. TOWNSEND.—The Johnson machine is a replica or a duplicate of the Black double-seamer.

The MASTER.—Supposing it is?

Mr. TOWNSEND.—If it is conceded, we are satisfied.

The MASTER.—I don't see any materiality.

(Testimony of Joseph Cereghino.)

Mr. TOWNSEND.—I want to connect up the two.

The MASTER.—The objection is sustained, but he may answer.

Mr. TOWNSEND.—We have to show the history of double-seamers.

Mr. BLAKESLEE.—The history prior to August 10, 1914, may be material, but this is not material.

A. The four-spindle Johnson machine was a machine that was developed in later years, and it was a machine that cost a great deal less money. It was a continuous four-spindle machine that fed the ends a great deal different from the ten-spindle machine; in other words, the end was dropped on to a barrel which then revolved and carried the end down to the traveling can beneath, and the same entered the chuck at the same time and from then on the double-seaming took place continuously.

Q. (By Mr. TOWNSEND.) On the Johnson four-spindle machine the cap-feed is what you call a barrel, or like a Ferris wheel, where the caps go over? A. Yes, sir.

Q. How about the seaming operation and continuous movement [1878] of the turret? In what respects is that different, if any, from the seaming operation in the revolving turret that you had on Black?

Mr. BLAKESLEE.—The same objection.

The MASTER.—Sustained.

(Testimony of Joseph Cereghino.)

A. Shall I answer?

Q. (By Mr. TOWNSEND.) Yes.

A. The seaming operation is about the same on the four-spindle as it was on the ten-spindle; that is, the rolls perform the same amount of work and discharge in the same manner. The can discharges in the same manner, and it is double-seamed while the turret is revolving continuously.

Q. How do the rolls operate on the Johnson four-spindle continuous machine?

Mr. BLAKESLEE.—The same objections to this line, without repeating them.

The MASTER.—Sustained.

A. The movement of the rolls on the four-spindle machine are somewhat different from the ten-spindle machine. It was a cam movement. The rollers were operated by a cam movement.

Q. (By Mr. TOWNSEND.) On which machine?

A. On the four-spindle; while on the ten-spindle it had an up and down or vertical throw.

Q. Do you have rollers in Johnson?

A. Oh, yes, rollers all the time.

Q. How do those rollers work? In or out, horizontally, [1879] or how?

A. In and out. All rollers work horizontally, in and out.

Q. Did they on the Black ten-spindle?

A. On the Black and on the four-spindle.

Q. Was that true for both first and second operations? A. Yes, sir.

Q. On both Black and Johnson?

(Testimony of Joseph Cereghino.)

A. On both Black and Johnson, yes, sir.

Q. How long did you say that that Black two-turret continuous machine operated there in San Francisco? A. You mean the ten-turret?

Q. The two-turret ten-spindle.

A. That machine operated over the years of 1908, 1909, and 1910.

Q. And during all that period were you there?

A. Yes, sir.

Q. Were you sealing cans commercially on that machine? A. Yes, sir.

Q. Were those cans sold? A. Yes, sir.

Q. Could you estimate the number of cans that were turned out on that machine during those three years?

A. That machine over the period of those three years turned out probably twenty-five million cans.

Q. What size were they? A. No. 2½.

[1880] Q. Do you know the plaintiffs, Mr. Wilson and Mr. Stetson, or the Los Angeles Can Company, or Mr. Stetson in that Company?

A. Yes, sir. I have met Mr. Wilson several times.

Q. Do you know Mr. Guenther and the defendant corporation, the Angelus Sanitary Can Machine Company? A. Yes, sir.

Q. Do you recall whether any of the gentlemen we have mentioned ever saw that Black machine in the plant in San Francisco when you were there?

A. Why, in 1909 or 1910, or possibly 1911, Mr. Spencer and Mr. Stetson were both in the factory

(Testimony of Joseph Cereghino.)

—in our factory,—while this machine was operating. They were escorted through the factory, and in walking through the factory this machine, holding a very prominent place at that time, they no doubt saw it operating.

Mr. BLAKESLEE.—We move to strike that out as a mere guess, presumption, or conclusion on the part of the witness.

Mr. TOWNSEND.—The machine was there. That is all I want to establish.

The MASTER.—The rest will be stricken out.

Q. (By Mr. TOWNSEND.) How long have you been following the can business, Mr. Cereghino?

A. I have been following the canning business for about thirty-three years.

Q. And in what capacities have you acted?

[1881] A. I have probably acted in every capacity.

Q. From the ground up?

A. From the ground up.

Q. When did you first go with the American Can Company?

A. I went with the American Can Company in 1901, 1901 or 1902, when this particular company was first organized.

Q. Where were you located at that time?

A. At that time I was in San Francisco.

Q. Where was your plant?

A. The American Can Company's plant?

Q. Yes, the plant where you were working.

(Testimony of Joseph Cereghino.)

A. It was at Lombard and Battery Streets, San Francisco.

Q. What was it known as then?

A. It was known as the Union Can Company.

Q. Were you making cans then? A. Yes, sir.

A. At that time did you know of any no-can-no-cap feed devices?

A. In those days they were the hole and cap can. However, I have known of machines of that type, of no-can-no-cap.

Q. What is the first no-can-no-cap machine of which you have knowledge?

A. The Jensen topping machine, or Jensen heading machine, as we called it, but they specified it as a topping machine also.

Q. Did you ever see any of those machines?

[1882] A. Yes, sir. I have operated them.

Q. Where? A. At San Francisco.

Q. Could you describe the operation of that Jensen machine, that topper, as far as the no-can-no-cap was concerned?

A. That is pretty hard to do, to describe it.

Q. I will put it this way: Do you know whether there was a patent on that Jensen machine?

Mr. BLAKESLEE.—We object to that as calling for a legal conclusion.

The MASTER.—He can describe it.

Mr. BLAKESLEE.—We have no objection to his describing it.

Mr. TOWNSEND.—I am just getting at this in a short way.

(Testimony of Joseph Cereghino.)

Q. Describe it, if you can.

A. This particular machine was a topping machine that was made primarily for the purpose of putting an end on to the can after the salmon had been placed in the can. The cans were fed on to a rotary disk, as well as the ends, and as the cans traveled on it opened up a little lever and allowed the ends to enter, and if there was no can there naturally the lever would not open up. This machine was used for many years by the Alaska salmon people, principally by the Alaska Packers.

Q. (By Mr. BLAKESLEE.) Do you know that of your own observation? Did you see it used by the Alaska Packers?

A. Yes, sir. The Alaska Packers didn't use it at San Francisco, [1883] but the machine was built in San Francisco and we ran one in our shop for a period of about three years.

Q. You don't know from any observation that the Alaska Packers used them, do you? You didn't see them used, did you?

A. I didn't see them used, but I know they were sold to the Alaska Packers.

Mr. BLAKESLEE.—We move to strike out the part about the use by the Alaska Packers.

The MASTER.—It may be stricken.

Q. (By Mr. TOWNSEND.) Have you ever seen a patent in which that Jensen topping machine, a no-can-no-cap machine you have just described, was shown? A. I haven't seen it .

(Testimony of Joseph Cereghino.)

Mr. BLAKESLEE.—Well, we object to that—

The MASTER.—He said he hadn't seen it.

Q. (By Mr. TOWNSEND.) I show you the Jensen patent No. 443,445, December 23, 1890, which is bound in our exhibit book "Q–1," and ask you, by looking at those drawings, if you recognize anything familiar on it? A. Yes, I do.

Q. What is it that is shown there?

A. Well, that is a sketch of the machine as it was.

Q. Of the Jensen?

A. Of the Jensen topper, or heading machine, or whatever they want to call it. They call it a seaming machine here, but it was a topper or header. The ends were fed in here [1884] on this revolving disk and carried on to here, and the can was then transferred over to here somewheres, and there was a plunger raised up and engaged the cover here. That machine is thirty years old, to my knowledge.

Q. (By Br. BLAKESLEE.) Have you been constantly following drawings in your shop?

A. Slightly.

Q. Are you acquainted with patent drawings at all? A. Slightly.

Q. (By Mr. TOWNSEND.) Does the American Can Company sell double-seamers, or rent them to the trade?

A. To my knowledge we have never sold any.

Q. May I ask you what your rental rates are for your different machines?

(Testimony of Joseph Cereghino.)

Mr. BLAKESLEE.—I think that is rather immaterial under any issue here as to different machines than those involved in suit.

Mr. TOWNSEND.—We have had two kinds of rental charges, and we want to find out something else along the same line.

The MASTER.—The objection is sustained. You

A. Our Can Co. closing machine rents to the trade for $100 a year. That is our two-head, or two-roll Can Co. Our four-roll Can Co. we rent for $150 a year, and our Johnson machines rent for $50.

Q. (By Mr. TOWNSEND.) What are the respective valuations of those machines on those rentals?

[1885] Mr. BLAKESLEE.—The same objection. I can't see that it is adding anything to the proofs.

Mr. TOWNSEND.—We will show its connection later.

The MASTER.—The objection is sustained. You may answer.

A. The Can Co. machines are valued at about $1000 or thereabouts.

Q. (By Mr. BLAKESLEE.) That is the one that rents for $150 a year? A. Yes.

Q. And what is the valuation of the one that rents for $100 a year?

A. That is the Can Co. It rents for $100 and $150.

Q. The valuation of the $100 rental machine is what? A. That has a $1000 valuation also.

(Testimony of Joseph Cereghino.)

Q. And the $50 rental machine?

A. That is the Johnson.

Q. What is the valuation of that?

A. That is worth about $600.

The MASTER.—I think I will change my ruling on that.

Mr. BLAKESLEE.—I don't see where it is material, because it doesn't involve any machine of either plaintiff or defendant that is concerned here.

The MASTER.—It shows the plaintiff set his machine out at about the same terms as everybody else does.

Mr. BLAKESLEE.—Do you think it might go as to the merit of the invention, or something of that sort?

[1886] The MASTER.—Possibly.

Q. (By Mr. TOWNSEND.) Have you any interest in this controversy, Mr. Cereghino?

A. None whatsoever, other than to tell the truth.

Mr. TOWNSEND.—That is all.

Cross-examination.

(By Mr. BLAKESLEE.)

[1887] Q. Do you know a Mr. Weber who was at one time connected with the American Can Company?

Mr. TOWNSEND.—I object to that as not proper cross-examination.

The MASTER.—Merely as a preliminary question I will overrule the objection. It may have something to do with it. I don't know what it is.

(Testimony of Joseph Cereghino.)

A. I am acquainted with Mr. Weber.

(By Mr. BLAKESLEE.)

Q. Is he connected with the American Can Company now? A. No, sir.

Q. When did you last talk to Mr. Weber?

Mr. TOWNSEND.—I object to that as not cross-examination.

(Discussion.)

The MASTER.—Proceed.

(Question read.)

A. I haven't seen Mr. Weber for the last four months.

Q. (By Mr. BLAKESLEE.) Have you had any communications with him, by telephone, letter, or otherwise, during that time?

[1888] A. None whatsoever.

Q. Do you know whether he is connected with the American Can Company now?

A. I am quite positive that he was not.

Q. Was it suggested by anyone that you appear here and testify other than by the defendants and their counsel? Did anyone connected with the American Can Company suggest your appearing here? A. No, sir.

Q. You had no suggestion made other than the subpoena that was served on you?

A. Nothing whatsoever.

Q. Do you consider it to be to the interests of the American Can Company in any way that the defendants be assisted in this suit?

A. I don't think so.

(Testimony of Joseph Cereghino.)

Q. You have no personal view as to that?

[1889] A. Nothing at all. In other words, we have nothing to gain one way or the other.

Q. When you received us at the shop of the American Can Company day before yesterday, your object was to show us through the plant and exhibit to us your modern canning plant and its operations; is that correct? A. Yes, sir.

Q. You had no other object in view?

A. None whatsoever.

Q. What did you mean by testifying as to a machine having an efficiency of one hundred per cent at your plant to-day, a can-seaming machine?

A. Well, I mean by that that we endeavor to get as near the one hundred per cent mark on every machine as is possible. We start out in the morning with an idea of running 200 cans a minute, which would mean 12,000 cans an hour. Nine hours with that machine would run 108,000 cans. We make an effort, and a strong effort, to run as near that 108,000 cans as is possible. Some days it may only be 107,000 and some days only 106,000, but we always try and see it runs above 95,000, and if it is doing 95,000 or better we consider that as near 100 per cent as is possible to be gotten. And the reason I stated we removed the no-can-no-cap device was that this machine was running so near to perfection that it wasn't required on this machine, so we took it off.

Q. In other words, you mean you didn't re-

(Testimony of Joseph Cereghino.)

quire the no-can-no-cap [1890] attachment on that particular machine? A. No, sir.

Q. That is a single carriage machine; that is, what I mean is that is a machine which has a single rotating structure in which the capping takes place, isn't it?

A. It is a continuous one-station machine, you might call it.

Q. With a number of spindles?

A. With eight spindles.

Q. And that single station revolving with its axis on a horizontal plane? A. Yes, sir.

Q. Of the machines that are in your plant to-day here in Los Angeles, were any of the same in that plant prior to 1915?

A. Our local plant is only seven years old. It was established in 1915. That was our first operation here. Therefore there wasn't any plant previous to that time.

Q. So you don't know of the history of any of the particular machines themselves in that plant which are there now, or that we saw the other day, prior to 1915, do you? A. Yes, I do.

Q. I mean the specific machines themselves in that plant, not referring to type but to the machines actually in that plant to-day?

A. Yes; I am pretty well acquainted with the history of all the machines.

[1891] Q. I say as to those machines in your plant to-day, or that we saw the other day, none

(Testimony of Joseph Cereghino.)

of them to your knowledge, that is, those actual machines, were in existence before 1915, were they?

A. Yes; there were some, or a great many, that were in existence before that period.

Q. Do you mean these very identical machines?

A. Yes.

Q. That are now running down there?

A. Oh, no. The ones that are running I have no knowledge of.

Q. How about the other machines that we saw in the rear in the warehouse? Were some of those actually old and in existence prior to 1915?

A. Yes, sir; many of them.

Q. And they have been standing there idle since when? A. All within the last two years.

Q. Why were they retired from service?

A. The Johnson J machine and the D and the G machines have an outside capacity of about 35 per minute, which is considered to-day, in 1923, rather slow, and for that reason those machines have been retired.

Q. When were they put out of use?

A. They have been coming in gradually for the last two years; not all at one time, though.

Q. They are being replaced with machines that are built [1892] by the American Can Company, are they? A. In most cases.

Q. Referring to these Black machines, or this Black machine, which you say you saw operated in San Francisco, was there more than one such machine operated up there then?

(Testimony of Joseph Cereghino.)

A. There was only one machine operated in that plant.

Q. Did you ever see any other such Black machine? A. Yes, sir.

Q. In operation at that time? A. No, sir.

Q. When did you see such other Black machine like that?

A. During the same period, 1908, 1909, 1910, and possibly 1911.

Q. Where? A. Right in our own shop there.

Q. How many altogether during those three years? A. There were either three or four.

Q. Do you know what became of them?

A. One or two were shipped to Alaska.

Q. And that is the last you heard of them?

A. That is the last I heard of them.

Q. How about the remaining one or ones?

A. The remaining one, I don't know what has become of it now.

Q. While you were there were they replaced by any other machines?

[1893] A. Not while I was there. The replacement I understood took place after I left.

Q. Did you see the machines that took their place? A. Yes, sir.

Q. What machines were they?

A. The Johson J's.

Q. The Johnson J type? A. Yes, sir.

Q. Those were the single-station multiple turret type, or many turret type? A. One turret.

Q. I mean multiple spindle type single-turret.

(Testimony of Joseph Cereghino.)

A. No, single spindle and single-turret type.

Q. What was the speed of those machines?

A. Thirty-five a minute.

Q. And the thirty-five a minute can machine took the place of the 140 a minute Johnson, did it?

A. Yes, sir.

Q. (By the MASTER.) Why was that?

A. The only reason that I can state clearly on that is this: that the Johnson 10-spindle machine was not built for a can plant. It was the idea of the inventor that that machine be placed in the canneries. However, it proved to be at least seven or eight years ahead of its time; in other words, no canners at that time wanted a high speed machine, which afterwards I found out. As I stated the other day, we probably [1894] had five or ten thousand of the single type machines working throughout the United States and nobody wanted this high speed type machine; so we thought that, inasmuch as we were going to put out thousands of single-spindle machines, we would discard this 10-spindle machine in order for the canners to send their experts and various men to run their machines to be educated on these lines as they were running in the factory.

Q. (By Mr. TOWNSEND.) You said, I think inadvertently, "Johnson 10-spindle." You mean the Black 10-spindle, don't you?

A. Yes, they both mean the same thing.

Q. Both Black and Johnson were connected with the American Can Company, were they not?

(Testimony of Joseph Cereghino.)

A. The American Can Company bought out both Johnson and Black, and Black, as far as I know, was never connected with the American Can Company, while Johnson was.

Q. (By Mr. BLAKESLEE.) What do you mean by the American Can Company bought out Johnson and Black?

A. They bought out their patents.

Mr. BLAKESLEE.—We move to strike that out. The witness can't state that fact.

Mr. TOWNSEND.—That is a matter of common knowledge.

Mr. BLAKESLEE.—But those things can't be proven by common knowledge.

The MASTER.—I don't see the materiality. The motion will be granted.

[1895] Q. (By Mr. BLAKESLEE.) Then I understand that the American Can Company decided to do away with the Johnson or Black type and used this single-station slow machine?

A. The slower machine.

Q. And when did that take place—that decision?

A. About 1911, I should think, when it was definitely settled.

Q. The American Can Company is to-day making all of its can closing double-seaming machines, isn't it?

A. I can't answer that. I know they are making many, but I don't know whether they are making them all or not.

(Testimony of Joseph Cereghino.)

Q. You don't know of any other types they are using, do you?

A. No. Well, I do know of other types for rectangular cans, such as sardine and square cans.

Q. The seaming machines which are made by the American Can Company are referred to as the Can Co. machines, aren't they?

A. Yes, sir; that is one of the types.

Q, Where are those machines made?

A. At Newark, New Jersey; and they are made ing all of its can closing double-seaming machines Maine, also. There are three plants.

Q. You have two carloads of Can Co. machines due at your shop here in Los Angeles now, haven't you, or expect them, don't you?

[1896] A. Well, we have many more than that coming.

Q. These Can Co. machines are the intermittent type, are they, now being made? A. Yes, sir.

Q. What is their speed?

A. The latest Can Co. machine is supposed to have a speed of approximately 85 per minute.

Q. And does it run to that speed, to your knowledge?

A. Yes, sir; we have run at that speed.

Q. (By the MASTER.) I understand you are still handling the slower type of machine?

A. Oh, yes. It is a question of each individual canner's wants. For instance, if you had a small cannery and your capacity was very limited we would recommend a low speed machine, say 25 or

(Testimony of Joseph Cereghino.)

30 a minute; but if you had a large plant and wanted more speed, we would give you a Can Co. machine.

Q. (By Mr. BLAKESLEE.) You have at your plant in Los Angeles, where we visited the other day, a testing station where cans improperly double-seamed are rejected, do you not? A. Yes, sir.

Q. And you regularly test the cans that come through the seamer and reject those that are not properly seamed? A. Yes, sir.

Q. Then I take it that the American Can Company long ago entirely gave up the manufacture of Johnson or Black type double-seamers, did they not?

[1897] A. Well, they haven't made any since.

Q. How many years does that go back?

A. They haven't made any of that type of machine since, I should say, 1908.

Mr. BLAKESLEE.—That is all.

Redirect Examination.

(By Mr. TOWNSEND.)

Q. Did you get that question right, Mr. Cereghino?

A. Yes, sir. He is talking about the multi-spindle machine there.

Q. The black two-turret multi-spindle machine?

A. Yes, the two-turret, and we haven't made any since 1908 or 1909.

Q. He was asking about the Johnson machines, and I thought his question referred to the John-

(Testimony of Joseph Cereghino.)

son machine such as we saw the other day over in your warehouse.

Mr. BLAKESLEE.—I am not referring to the machine such as they make to-day, which are called Johnson, but the type which the witness told us about, that, as I understand, was last used in 1911.

A. Yes, in 1911. We haven't made any since.

Q. (By Mr. TOWNSEND.) That means this Black two-turret ten-spindle machine? A. Yes.

Q. Counsel's question, though, Mr. Cereghino, was directed [1898] to the Johnson type machine, and I thought you had become tripped on the question.

A. No, sir. The Johnson machines have been made continuously.

Q. (By Mr. BLAKESLEE.) I am not referring to the machines you are making to-day called Johnson, which are the single-turret type. I am referring to the machines that you have referred to, and in your direct examination said were somewhat similar to Exhibit "W–1," this model before us.

A. Yes, sir.

Q. And any Johnson features or Johnson contributions which were made to that machine, and which you said was used in San Francisco in 1909, 1910, and 1911? A. Yes, sir.

Q. Now, of that type none have been made to your knowledge since 1911, have they?

A. No, sir.

Mr. BLAKESLEE.—That is all.

Q. (By Mr. TOWNSEND.) Mr. Cereghino, I

(Testimony of Joseph Cereghino.)

forgot to ask you if you ever knew of a so-called Johnson two-turret intermittent machine and combined flanger and double-header having been made during your career. A. Yes, sir.

Q. Where was that made, and when?

A. That was made at our Robbins factory at San Francisco. A machine was operated also at our United Factory.

[1899] Q. How did that differ from the Black two-turret machine you have described?

A. That was an intermittent machine while the Black was a continuous machine.

Q. Could you describe the Johnson two-turret intermittent machine?

A. It is quite hard for me to describe that as it is so far back and the machine was only in the plant over a period of a couple of weeks and was then transferred out, and I don't recollect where it went to.

Q. Do you recall when that was?

A. That was about 1910 or 1909.

Q. If you saw a drawing of that machine do you believe you would recognize it?

A. I believe I would.

Q. Will you just look at a patent drawing there on the wall. A. That appears to be it.

Mr. TOWNSEND.—The witness refers to the Johnson patent 1,040,951, sheet 2.

Q. (By the MASTER.) What enables the Black machine to operate continuously?

(Testimony of Joseph Cereghino.)

Mr. TOWNSEND.—Pardon me, Mr. Master, do you mean the two-turret Black machine?

The MASTER.—The one he has been talking about.

A. It is the construction of the machine.

[1900] Q. What is the particular feature of the construction that allows it to operate without a stop and start and so forth?

A. Well, it is a continuous machine. That is the only reason. You understand, while the can is being carried around continuously, while the can is making that circle we will say on a turret about —or we will say fifty inches in diameter—while that can is being carried on that turret making that circle the head is going around, the head is traveling with the can, but the can is standing still until it makes a complete circle, or we might say seventy-five per cent of the circle.

Q. Then would you say it is because the same head makes both operations?

A. The same head makes both operations, yes. The first operation is engaged for a certain period, and after it completes a part of the circle it releases and engages a second and then lets go, and all the time the can is revolving with the machine.

Q. All of these other machines that are intermittent move from one station to another, do they?

A. Yes, sir; they are carried forward, and then a certain amount of work is done, and then they are carried forward again.

(Testimony of Joseph Cereghino.)

Q. (By Mr. TOWNSEND.) Referring to the fact that the Johnson single-spindle machine was brought on the market along in [1901] 1910 or 1911, and no more of these Black double-turrets were made, how did the cost of construction and maintenance of the little Johnson single-spindle machine compare with the cost of construction and maintenance of a two-turret Black machine?

A. Well, I would state that the maintenance on the single-spindle Johnson was much less than any high-speed or multi-spindle machine that was ever built.

Q. And how about the original cost of the Johnson? Would that be much less, too?

A. The original cost of the Johnson machine was under $500 but that was in pre-war days of course.

Q. Have you any of the high speed four-spindle Johnsons in use to-day? A. Yes, sir.

Q. Any hereabouts? A. Yes, sir.

[1902] Q. Do you mind stating what the daily output of your plant here is, Mr. Cereghino?

A. The daily output, which would mean nine hours a day—is that what you refer to?

Q. Well, as it appeared to be working when we were there the other day.

A. Figuring on fruit in sanitary cans it would mean about 750,000 cans a day.

Q. By the way, didn't we see one of your machines operating on paper liners? A. Yes, sir.

Q. Have you abandoned the use of paper liners?

A. No, sir.

(Testimony of Joseph Cereghino.)

Q. Are you turning out any considerable quantity of cans with paper liners for this season?

A. Quite a number.

Q. And for what sort of canning do you use the paper liners on sealed cans?

A. We use the paper liners for every can that is made, and we also use rubber cement.

[1903] Q. That is cement compound?

A. Yes, sir.

Mr. TOWNSEND.—I asked the witness to hand me a can sealed with a paper liner the other day and also to give me a cap with a paper liner, and I would like to have those offered in evidence in connection with the witness' testimony as Defendants' Exhibits "G–2" and "H–2."

Mr. BLAKESLEE.—I don't think it is material if it was made on a machine of the type in dispute here. That is not in issue.

Mr. TOWNSEND.—That is all.

The MASTER.—We will receive them.

Q. (By Mr. BLAKESLEE.) You have not used any dope in sealing cans at your plant until the last three years, have you? And by that I mean rubber compound for the cap.

A. Well, we have used dope probably for the last four years.

Q. But not prop*r* to that time?

A. Not at this plant, but we have at other plants.

Q. How long before that did you use it at any plant?

A. We have used dope at our San Francisco plant continuously since it has been constructed.

(Testimony of Alfred F. Luthi.)

Q. When was that? A. 1907 and 1908.

Q. Why didn't you take up the use of it here in your plant prior to three or four years ago?

[1904] Mr. TOWNSEND.—I object to that as immaterial and not proper recross-examination. We have learned that they use it, and it may be prying into their private affairs.

The MASTER.—Objection sustained. I don't see that it makes any difference. You may answer.

A. The fact is this: There are many customers that claim the paper is the best, and there are many customers that claim the compound is the best, therefore, as we are the sellers, we are compelled to furnish what is wanted.

[1905] AFTERNOON SESSION—1:30 o'clock.

TESTIMONY OF ALFRED F. LUTHI, FOR DEFENDANTS.

ALFRED F. LUTHI, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. And will you please state your age, residence, and occupation?

A. My age is thirty-eight; I live at 241 East 43d Street, Los Angeles; my occupation is road man for the American Can Company.

Q. You appear here by subpoena, do you not?

A. Yes, sir.

Q. What are your duties as road man?

(Testimony of Alfred F. Luthi.)

A. Well, my duties as road man is to make investigations of claims of customers, demonstrating a double-seamer that we rent to customers, and keeping them in running condition, and repairing them when they get in trouble.

Q. How long have you followed that work, particularly with regard to demonstrating double-seamers and repairing them and so forth?

[1906] A. Six years for the American Can Company.

Q. And where before that?

A. I worked for the Max Ams people in Bridgeport, Connecticut, and Mt. Vernon, New York.

Q. Had you had any other mechanical or machine experience in connection with double-seamers prior to six years ago?

A. I am a machinist by trade and I worked at different times at the Max Ams people for a period of about four years.

Q. When did you first go to work for the Max Ams people? A. The first of August, 1910.

Q. And since then has your work in connection with the can machinery business been practically continuous, or has it been intermittent?

A. Continuous, with the exception of about—at two different times I broke away from it, went out for about a year, and another time for a year and a half.

Q. When did those interruptions take place?

A. The interruption took place in 1910, in the fall, until the spring of 1911, and then again in the

(Testimony of Alfred F. Luthi.)

summer of 1912—or in the fall of 1912 or along in the late summer—and I was away about a year then.

Q. What work did you do with the Max Ams Company when you went there in 1910?

A. Well, first I just worked as a general machinist, and then after I worked on experimental work.

Q. What sort of machines were they manufacturing?

[1907] A. First I was working on double-seamer heads; then I worked on a clincher; and then again on the double-seamers in general—the whole machine.

Q. What kind of double-seamer did they have in 1910?

A. In 1910 they were working on a hand double-seamer—or a semi-automatic—Max Ams 68 and Max Ams 58.

Q. Were those sanitary machines?

A. Those were sanitary machines.

Q. What was the seaming mechanism: how was the seam turned?

A. Well, they were semi-automatic in such a way that you take the can and put the cap on, put it under a rail; then have a chain convey it to a certain station where there was a set of jaws grasping the can and putting it under the double-seaming chuck, and from there having a steel ring with first and second operation rollers attached to it, and the seaming head worked on a differential proposition. In other words, the seaming ring was making one

(Testimony of Alfred F. Luthi.)

revolution less than the revolutions of the head, which, working on an eccentrical motion, would give the movement of the seaming rolls to come in and out—first the first operation and then the second.

Q. What was that known as; did it have a name other than the number you have given it?

A. Just numbers.

Q. What other machines did you become acquainted with, [1908] double-seamer machines, while there with Max Ams?

A. Well, later on, in 1913, they had a four-spindle machine at the canners' convention. I couldn't remember just what the convention was, because I didn't went to the convention, but that machine came back and I worked on that machine myself making improvements under the direction of Mr. Brenzinger, and we had their machine on the testing floor there and running it with bodies, and we ran it at the rate of about 120 cans a minute.

Q. Will you describe the construction and operation of that machine?

A. Well, it was quite a while ago, and I don't just remember exactly all the movements, but I know that we made a new cap-feed for it, and I don't know but it is possible that this was the reason that they discontinued to make that cap-feed. Of course they went and made another one afterwards. And that cap-feed was working on a worm proposition. There were three worms. The cap will drop on it, and then those worms make a full revolution and drop the cap down on top of the

(Testimony of Alfred F. Luthi.)

can, and then they follow a rail and go together under the chuck, and the worms were connected with the chain drive. I remember that very well. And whatever happened after that to that machine I don't know. Of course they took me off of that department and put me in the square and oval can department to do experimental work on that.

Q. But you don't know what happened to the machine after [1909] you quit work on it?

A. No; they kept on manufacturing the machine, but I didn't work in that department any more. Just about the time when I was through with those features they took me off and put me in the square and oval can department.

Q. Now describe the operation of the double-seaming in that first machine.

A. Well, that machine had identically the same head as on these single-spindle machines, 58 and 68; and then they had another machine they made on the same principle of head, and that is the 98, and that four-spindle machine had identically the same principle, with the seaming ring and differential principle, and there was a big gear in the center —two gears in fact—one a little smaller than the other—that were driving the mechanism of the head.

Q. Did it have a turret?

A. It had pockets in the base-plate. A centering pocket, and then the base-plate, and the base-plate would come up from a cam motion from the base of the machine.

(Testimony of Alfred F. Luthi.)

Q. Did that pocket arrangement, with the cans, travel around? A. No the can was stationary.

Q. Well, did the carrier for the cans revolve, the carrier that carries the cans?

A. Yes; the whole head was traveling together—the base-plate, part of it, with the pocket on it, and the head up [1910] above. They were all traveling together.

Q. Was that continuous or intermittent?

A. Continuous.

Q. And the seaming heads traveled with the cans while the turret was revolving? A. Yes, sir.

Q. Now just briefly follow a can and a cap through the machine for us.

A. Well, the can was fed into a chain drive, and from there then to the pocket, and there was a star shoving the can, with the cap up above on the guides, to push it into the pockets of the machine. Then from the pocket it went around with the head revolving on top of the can with the seaming mechanism and with the base-plate, and when the base-plate reached a certain position the base-plate came up and hit the chuck with the can, and after this the seaming mechanism would start to seal the can.

Q. (By the MASTER.) How did you get the initial roll—the curl?

A. The initial roll, Mr. Master, is a can eccentric cup on the inside of the head. That eccentric cup was held by a little piece in a slot. The cup was slotted, and there was a piece fastened on the

(Testimony of Alfred F. Luthi.)

inside of the head, and this cup would not revolve, it would just slide back and forth, although it would revolve with the head continuously, naturally, but the eccentric movement, on account of having an [1911] eccentric shaft on the inside there, it would bring the eccentric movement of that cup, which would also, being connected with the seaming heads to which the rollers fastened on, it would also bring in and out with the eccentric motion of that cup.

Q. You had rollers in the cup?

A. No, the rollers were on the head down below, but that head was connected with that cup. If I had the head here I could explain it better.

Q. (By Mr. TOWNSEND.) Was that the first or second seaming operation that was performed in that way, or both operations?

A. Both operations. First the second came in, and when the first operation started to come back then the second came in at the same time. After the first operation was coming out the second operation was going right in.

Q. You used this same cup for both operations?

A. Yes. That cup is right in the heart of the head.

Q. And then you simply move one roller on at one time and another roller at another time?

A. Yes, sir.

Q. (By the MASTER.) What did you say this machine was?

A. That is a Max Ams 58, and then the Max

(Testimony of Alfred F. Luthi.)

Ams 98, and then the four-spindle machine. I am not sure, but I think they had two types, the older and the newer model. One of them was called the 498. But the model I worked on, I am not sure, but I think it had a different number. But I don't remember [1912] the number any more.

Q. These were all Max Ams machines, were they?

A. Yes, sir. You mean Mr. Max Ams'?

Q. No, I say they are Max Ams machines.

A. The old Max Ams machines; yes, sir.

[1913] Q. (By Mr. TOWNSEND.) Referring to sheet 2 of Brenzinger patent No. 1,167,347?

Q. Now look at sheets 4 and 5.

A. Now, this is a double-seamer head, and this has the appearance of having three double-seamer rolls, which makes me believe that this head has been specially designed for some special cans, like paint cans and so forth, because I know that they did make a three-roll double-seamer head, because I worked on it myself.

Q. Is this Mr. Brenzinger you refer to, and whose name appears in that patent, connected with the Max Ams Company?

A. Yes; he was general manager at the time I was working for them.

Q. You knew him personally, did you?

[1914] A. Yes, sir.

Q. You say in that four-spindle continuous machine—what was the rate of speed of making cans or of putting heads on cans?

(Testimony of Alfred F. Luthi.)

A. We had it running on the testing floor at the time at the rate of 120 cans a minute.

Q. Do you know whether that machine was ever put out commercially? A. Yes, sir.

Q. Did you know of any other machine that Mr. Brenzinger ever designed?

A. Well, since I left there I saw some pictures of some machines that he designed, but I couldn't say anything, because I never worked on them, and I never saw them in action, with the exception of the square and oval double-seamers that I was in charge of the department for a certain length of time.

Q. When did you see those pictures?

A. I saw those pictures about, I guess, two years ago. And a year ago I saw them advertised in the "Canner" and in the "Canning Age."

Q. You saw them about two years ago in the "Canner" and "Canning Age"? A. Yes.

Q. They were reproduced there?

A. In the advertisement sheets. I think it is the "Canning [1915] Age." Well, I am positive I saw it in the "Canner."

Mr. TOWNSEND.—I don't know whether this is important or not, your Honor, and if counsel objects to his attempt to tell what the pictures are, or their existence, of course it will have to be sustained; but I was going to ask him if he could briefly tell us what those pictures showed.

Mr. BLAKESLEE.—We certainly object to detailing what a picture showed two years ago, as

(Testimony of Alfred F. Luthi.)

not material, not the proper method of proof of publication, and in no wise probative of anything.

The MASTER.—I understand you do not care to urge the question over the objection.

Mr. TOWNSEND.—No.

Q. (By Mr. TOWNSEND.) Have you ever operated or seen in operation the American Can Company's four-spindle Johnson machine?

A. Yes, sir.

Q. That, I understand, is their continuous high-speed machine. A. Yes, sir.

Q. At what rate of operation have you observed it heading cans?

Mr. BLAKESLEE.—We object to it unless it is prior to August 10, 1914, as immaterial and not within the issues, and it cannot be prior art.

The MASTER.—The objection is overruled.

[1916] A. I saw that machine run anywhere from 120 to 185 cans a minute.

Q. (By Mr. TOWNSEND.) In heading cans?

A. Yes, sir.

Mr. BLAKESLEE.—We do not understand the record couples this up with anything prior to that time, and on that ground I move to strike it out.

The MASTER.—It will go to the question of weight, I think. The motion is denied.

Q. (By Mr. TOWNSEND.) Well, take any machine with which you are familiar during all your experience that has a single-seaming head to perform both operations; are there any means by which you can throw out the second seaming oper-

(Testimony of Alfred F. Luthi.)

ation rolls to observe what the condition of the initial seam is?

[1917] A. We have that on our Can Co. machine—the American Can Company machine.

Q. Just describe what mechanism is employed and how that is done.

A. Because we have the two-roll type of the Can Co. machines, and the two-roll type has an eccentric bushing. You take the pin out, and the seaming lever, and turn over an eccentric bushing, which will throw out the action of the second operation roll, and just give you a view of the first operation only; and then on our improved Can Co. machine, what the four-roll has, we have a means there that we can throw all the rolls out regardless of which —first or second. We can run it with one, two, three or four rolls.

Q. How long have you known of seaming heads of that description where both operations are performed on one head by separate sets of rollers, whereby you could temporarily eliminate the operation of one set so as to observe the action of the other set upon the seam?

Mr. BLAKESLEE.—We object to it as immaterial because in the machine concerned here there are two separate turrets upon which the different seaming operations are performed, and we cannot see the materiality of it.

Mr. TOWNSEND.—We will connect it up later.

The MASTER.—The objection is overruled.

A. Since 1917.

(Testimony of Alfred F. Luthi.)

Q. (By Mr. TOWNSEND.) That is your own personal connection [1918] with it?

A. Yes, sir.

Q. Did you have any means in connection with your Max Ams machine by which you could observe either set independently?

A. Well, you had to take the second operation roller out by removing the pins and take the roller clean out.

Q. Was it customary to do that if you wanted to see what was going on with the first operation?

A. Yes, sir.

Q. Are you familiar with the Johnson single-spindle machine? A. Yes, sir.

Q. I have forgotten what you call them—what number you give it.

A. Type D, Type J, and Type G.

Q. Are you familiar with the cap-feed that you have on those machines? A. Yes, sir.

Q. Will you describe that cap-feed?

Mr. BLAKESLEE.—That is objected to as immaterial; present time testimony.

Mr. TOWNSEND.—We will have to step back one step at a time.

The MASTER.—Why not begin at the beginning and step forward?

Mr. BLAKESLEE.—I understand he is asking him as to present [1919] day practice.

Mr. TOWNSEND.—I want to ask him if he knows about it, and then I will ask him how long he has known about it.

(Testimony of Alfred F. Luthi.)

The MASTER.—The objection is overruled. You may ask him if he knows about it.

A. Yes, I know the can-feed on those machines well.

Q. (By Mr. TOWNSEND.) Will you describe it, please?

A. Well, the cap-feed—there is a knife that goes in between the bottom cap—after the cap drops in the turret, drops at the same time on the guide on the opposite side of the turret; and then the knife comes in and separates this cap from the rest of the stack by lifting the stack up—the stack of covers—and this knife is brought in action by the action of a tripper on the side of the cap-feed which connects—I will call it a trigger—with the knife, and this lever again is brought in action by an angle-enclosed can which works from the bottom of the machine. That is the seaming cam. Underneath the turret, I guess would be better. Then whenever there is no cans this tripper that I referred to before is brought in action by the cans as the can goes by, which means that when there is no can there is no cap.

Q. Then what happens to the can and cap after the cans drop from the knife?

A. Well, the can and the cap, after they drop from the knife, as the turret is intermediate, it travels on to another station where it is stationary for a while, and then [1920] on to the chuck where the seaming action takes place.

(Testimony of Alfred F. Luthi.)

Q. And at what point is the cap deposited on the can?

A. Right under the chuck. In fact the can comes up and meets with the cap and then they go up together on the chuck, on the upward motion of the can.

Q. What carries the cap?

A. The turret carries the cap, supported on the outside of what we call the can-guide.

Q. And on the inside?

A. And on the inside by the upper edge of the turret—of the pockets of the turret.

Q. Now, this Johnson cap that you have just described, how long have you known of that construction?

A. I have known of that construction since—it was either 1912 or 1913.

Q. How do you fix the date?

A. Well, I was working for the Max Ams people, and the [1921] Max Ams people had a contract with the American Can Company to build a certain amount of those machines.

Q. Were those machines equipped with that particular cap-feed you have described?

A. Yes, sir.

Q. And you say that was in 1912 or 1913?

A. Yes, sir.

Q. How many of those machines with cap-feeds of that sort did you see under construction there?

A. Well, I couldn't say the amount. I know that the American Can Company had several con-

(Testimony of Alfred F. Luthi.)

tracts with the Max Ams people, and that the amount of machines constructed amounted into the hundreds. It may be three or four hundred, and may be more.

Q. Among the models or exhibits around here on these tables do you see anything that you would recognize as having any connection with the Johnson cap-feed you have just described?

A. Yes, sir; there is a perfect model here.

The MASTER.—Referring to Defendants' Exhibit "C–2."

Q. (By Mr. TOWNSEND.) How does it correspond with or differ from the cap-feed you put on the American Johnson machines there at Max Ams in 1912 and 1913?

The WITNESS.—(Examining Exhibit "C–2.") You have got something missing here. There is a hole here underneath. Through this hole there is a pin goes down here. On this pin [1922] there is a trigger connected that projects here. That goes on the inside. This here goes in there like that. There is that lever that comes from down below and connects with this trigger here and then this here always moves in and out. This is the loose link, or the tripper. This here goes back and forth all the time, and when the can comes it pushes the trigger over here; this trigger again connects with that pin, and then it pushes this in, which will lift that thing up it lifts that trigger up, and this trigger here connects with this piece here and then pulls the knife back; and then the can itself is con-

(Testimony of Alfred F. Luthi.)

nected with this, but at the same time it is hitting on the back here and pushing that feed in. In other words, this here is doing nothing else but pulling this back and connecting with it by the action of the can.

Q. That is, the link acting on the blade, to reciprocate the blade?

A. Yes, sir. The blade is stationary, and the only time it gets in connection is, when the can gets by, to connect the two of them together.

Q. And how does this construction here you have described compare with the one you had in 1912 and 1913?

A. Identically the same. This is where the pin connects here. There is a champ here, and that tin is champed on here too, and that is the action that brings it up and down. Then when this comes back it pushes that tin out again, which disconnects [1923] the action of the link with the blade, and of course the link drops down again (demonstrating); it stops at this station here and the base-plate comes out.

Q. At the end of the brass top plate marked "G–121"? A. Yes.

Q. And is that where the double-seaming takes place?

A. And there is a base-plate that comes out and pushes the can up until the can and the top come together. Then the double-seaming head is about that much higher there—oh, I would say about three-quarters of an inch above the turret, and that

(Testimony of Alfred F. Luthi.)

is where the double-seaming action takes place, right there.

Q. (By the MASTER.) That is your first operation? A. The first and second, both.

Q. Then what happens?

A. Then after the first and second operation is done, with the top double seam down, she goes down again until the plunger reaches the bottom of the stroke, and then the turret starts off again, and there is a guide that takes off the can to let it go around the column.

(Witness continues demonstration for Master.)

The WITNESS.—You see, the link ought to be connected with the knife. This here never goes any further than about that far. That is about as far as that goes. That plays back and forth. That is why we had that space there on the side of the knife, to clear the stroke. But that knife always [1924] stays on the front like that; then the pin comes in and pushes this trigger up like that; then the stroke of the lever pulls the whole thing back.

Q. (By Mr. TOWNSEND.) What is the means on the turret that you refer to here, Exhibit "G-2," that carries the can forward with the cap from the point where it is dropped from the cap mechanism?

A. This is what carries the can, that lower ledge.

Q. Which lower ledge appears to be about half an inch from the top?

A. Yes, sir. Then the upper ledge is what carries the cap.

(Testimony of Alfred F. Luthi.)

Q. That upper ledge is formed by a sort of a U-shape projection between the pockets?

A. No. On a small diameter can we have to have a support for our cap, and this is the reason why this is cut out. And here we screw a little piece underneath here—you see these holes made for that purpose—a little piece that will project here about three-sixteenths of an inch on the interior there; then that is why, before you gentlemen can turn the cap,—of course she was catching on the bottom of that ledge; but by having a little piece projecting in there it acts as a support, and then naturally she will drop down on the back, where, before, if you dropped it the other way, she would catch this way.

A. At the small diameter of the can we have to cut that [1925] out to put a support down here; but on all the other machines this is solid; it is just a turret with an upper ledge for the support of the cover.

Q. This small perforation you have at this point that I am indicating, adjacent to the cap column, is to receive that little support you speak of?

A. Yes, sir.

Q. And to hold the cap level with the surface of the blade? A. Yes, sir.

Q. And you would only have that perforation and that little projection on the small size cans?

A. On the small size cans.

Q. Now, when you got off a cap, what is there on the turret that carries the can forward?

A. It is that ledge that carries the same can, only

(Testimony of Alfred F. Luthi.)

widened out a little bit to take care of the bigger diameter of the cap, that carries the cap forward.

Q. Now to make the record clear, will you describe the ledge or projection, or whatever it is, that propels the cap, by the appearance of it here? I have attempted to call it a U-shape part, but what do you call it?

A. No, I would call it the upper ledge of the turret—of the pockets of the turret. The upper ledge of the pockets of the turret is what carries the cap forward with the can.

Q. In this particular instance this upper ledge seems to be cut away in the center back portion of the pocket.

[1926] A. Yes, sir; to give us a clearance for the adaption of that little support of the cap on the cover feed bracket.

Q. Now when you have engaged the cap by these upstanding ledges after it is dropped from the knife, what is the cap carried forward on?

A. It is carried on the upper ledge of the pocket of the turret.

Q. And how about this outer part here you have previously described?

A. And supported on the outside by what we term the can guide.

Q. And that can guide here appears to be—

A. It also has a ledge to act as a support for the outside of the cover.

Q. Is that ledge curved concentrically with the turret at all times?

(Testimony of Alfred F. Luthi.)

A. It is curved in radius form to follow the circle of the cover as the turret carries it around.

The MASTER.—This is an intermittent machine, I understand.

Mr. TOWNSEND.—Yes, this is an intermittent feeder. That is all.

Cross-examination.

(By Mr. BLAKESLEE.)

Q. Is the American Can Company, to your knowledge, putting out any of the Johnson four-spindle single-turret machines to-day in canneries?

[1927] A. That is the four-spindle machine that we mentioned before?

Q. Yes; the one that I think you mentioned before. A. Yes, sir.

Q. That has been used by the American Can Company during the last ten years?

A. We still have them in use at the California Packing Corporation in Los Angeles, and they also have them in use at some of the plants of the California Packing Corporation in the northern part of California, and they have some in Alaska, too.

Q. How long has that type been in use?

A. In my knowledge it has been in use since 1915.

Q. Is the American Can Company building any of that Johnson type machine to-day?

A. Not now any more; no, sir.

Q. What machine is taking its place?

A. It is the Can Co. machine.

Q. And you are putting those out in place of the

(Testimony of Alfred F. Luthi.)

Johnson four-spindle type where you furnish new machines to-day, are you? A. Yes, sir.

Q. And in instances where you take the Johnson type out you put the Can Co. in its place?

A. Yes.

Q. Why is that being done?

[1928] A. Well, the single-turret Johnson machines, the J, the C, and the D, were getting to be too slow for the capacities of the canneries. In other words, they went and got bigger equipments, —the cooker and exhaust boxes—and wanted to have a machine to co-operate with the speed of their machinery.

Q. What has been the highest speed of that Johnson four-spindle single-turret type machine that you know of?

A. Well, we had it going in some of the canneries, on fish cans especially, at the rate of 185 cans a minute.

Q. And was that considered too slow a speed?

A. No; on fish machinery we never had too slow a speed; we had a high speed all the time; but it was mainly the fruit canneries that did have too slow speed. Of course the majority of the fruit canneries were equipped with a single Johnson machine, types G, J, and D.

Q. And what was the highest speed of that?

A. On a D type machine about 20 to 22 cans a minute; and on the J's and G's if you had a liquid product you could run them about 25 a minute, and

(Testimony of Alfred F. Luthi.)

with a solid product I have seen them run as high as 48 a minute.

Q. Why is it that the Can Co. machine has taken the place of the 185-can machine, four-spindle single-turret Johnson?

A. Well, I would say it was a little harder machine to handle, and it took a good expert to run them, and the canneries were having kind of trouble sometimes in getting [1929] the right kind of men to get those kind of machines, so the Can Company decided to take them back.

Q. They had grief and trouble in the canneries with the four-spindle Johnson?

A. Not if a man understood it. We had some canneries where they ran them very, very successfully.

Q. Did you have to make repairs on those machines from time to time? A. Yes, sir.

Q. What were the principal troubles you found?

A. Well, I would say that ninety per cent of the troubles were *like* of lubrication.

Q. Were not the machines provided with the usual lubricating means?

A. Yes; but it is the same as an automobile: If you try to run an automobile without any oil she is going to get hot on you and burn out the bearings, and it is the same case with the high speed machines.

Q. Did they have trouble with other machinery in the canneries due to poor lubrication?

A. Yes, sir.

(Testimony of Alfred F. Luthi.)

Q. As much trouble as with the Johnson four-spindle?

A. Well, no, I won't say with the Johnson machines especially. On account of being a slower running machine, we didn't have much trouble in this line, but the higher the speed the more lubrication trouble you will get.

[1930] Q. How about the seaming operations on the Johnson four-spindle: were many cans rejected for poor seams?

A. No, the four-spindle machine can make an exceptionally good seam.

Q. But the Can Company machine is now taking the place of those entirely?

A. Yes, sir. I will say the reason why is because the Can Company machine is easier to manipulate, and it doesn't take such a high class expert to run them and keep them going.

Q. Have you ever seen a Pacific continuous operation two-turret machine? A. Yes, sir.

Q. Have you seen it in operation? A. Yes, sir.

Q. How recently?

A. Well, the last I saw was just about ten days ago.

Q. That was operating successfully when you saw it, was it? A. Yes, sir.

Mr. BLAKESLEE.—That is all.

Redirect Examination.

(By Mr. TOWNSEND.)

Q. How recently have you seen an Angelus machine working?

(Testimony of Alfred F. Luthi.)

A. That was last season, on the tomatoes, for the California Packing Corporation.

Q. Was that working successfully?

[1931] A. Yes, sir; very good.

Q. And when you speak of trouble with the Johnson four-spindle high-speed machine being on account of lack of lubrication, what does lack of lubrication indicate—proper attention of the part of the operator or—

A. That is it.

Q. —or inattention on the part of the operator?

A. Well, it is just lack of attention of the operator to lubricate the machine.

Q. (By the MASTER.) Is that Can Company machine a continuous operation? A. Yes, sir.

Q. And it goes how fast?

A. The two-roller model, I advise them to run them anywhere from 45 to 60 a minute. Say 45 on 2½ and 60 a minute on a small diameter can like 2 11/16 diameter; and the four-roller head, we can run it 75 cans a minute on fruit and 90 cans a minute on fish.

Q. (By Mr. BLAKESLEE.) Those are both intermittent machines, are they not: the two-roller and the four-roller?

A. Well, yes, it is intermittent in one way. The can stops while she is seamed. But the chain is a continuous movement, by passing underneath the can while she is under operation.

Q. But the can stands still?

(Testimony of Alfred F. Luthi.)

A. The can stands still while she is seamed.

[1932] Q. That is, its vertical axis stands still while it is being seamed? A. Yes, sir.

Q. And the modern Can Co., the latest type, is a single-turret machine?

A. It is identically the same as the older model.

Q. (By Mr. TOWNSEND.) Have you ever seen any lubrication trouble with any other machines than the Johnson high-speed four-spindle?

A. Well, we get it on all the machines. Of course I know in some places that they didn't have no oil in the cannery for a week. I asked why they didn't. "Well, I told the boss several times and he didn't get it, so I have got to run them." And they run them until they break down, and then we must go and fix them.

Q. Did you ever see any other machine than the Johnson machine, or the makes of any other people besides the Johnson, that suffered from lack of lubrication?

A. I think I saw it on an older machine, probably. Of course it is more or less trouble, and he always falls back on the operator. I think, myself, that every machine that is put out is generally put out with the idea of getting proper lubrication, and the majority of times this is done, and if the operator of the machine takes good care of the lubrication as per instructions there is never any trouble with the machine. Now that is what I have run across. Lots of [1933] times I go in a cannery and the

(Testimony of Alfred F. Luthi.)

machine will not run. I take a lubricator and lubricate it all the way through and turn the hand wheel a few times and it starts off and the machine is fixed.

Q. For what size cans were most of the four-spindle high speed Johnsons built?

A. They were built from a 2 11/16 diameter can up to 4¼ inch diameter.

Q. Is my information correct that a great many of them were built for a two-pound can?

A. Yes, sir.

Q. And what is the usual size of can used by the canners?

A. Well, the fish cans is generally the ½-pound tuna. That is the most cans that are run through that machine. And they use that same can on a half-pound salmon. And then we have the 1-pound flat, which is 4¼ inches diameter, and the half-pound is 3⅜ diameter, and then the quarter-pound tuna, 2 11/16 diameter.

Q. Well, the fruit canners use mostly what?

A. The fruit canners use the 2½ and the number 2 and the 1-pound tall, and the eastern oyster size, the No. 1 eastern oyster.

Q. Did the fact that the fruit canners mostly use say the 2½-pound cans make any difference in the use of the Johnsons that were adapted for 2-pound cans?

A. Well, no, that didn't make any difference. you could [1934] use them for either one or the

(Testimony of Alfred F. Luthi.)

other. They were just as good for one as for the other. Only the single Johnson machine and the four-spindle machine, when they are set for one size, we don't like to change them over to another size because it is too much of a job.

A. (Continuing.) No, the high speed machine, I think, on some of the products is going to come back. For instance, on tomato sauce, on peas, on pineapple and things like that where they can shoot the fruit through at a great speed, they are going to come back to the high speed machine.

Q. (By Mr. BLAKESLEE.) Is this modern Can Co. machine a continuous or intermittent machine in operation?

[1935] A. I couldn't say because I have never seen it.

Q. That is, you have never seen this last one?

A. No, sir.

Q. How about the one that is being put in the place of the Johnson, is that intermittent or constant motion?

A. The chain is constant motion, but the can stops while she is seamed on the vertical shaft.

TESTIMONY OF E. C. ORTEGA, FOR DEFENDANTS.

[1936] E. C. ORTEGA, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. Please state your name, age, residence, and occupation or business.

A. E. C. Ortega; age about sixty-five; residence Burbank, California; and my occupation is that of a canner.

Q. Where is your cannery located?

A. At 6th and Santa Fe Streets, Los Angeles.

Q. And what is your cannery or business known as—under what name?

A. E. C. Ortega Company, Incorporated.

Q. How long have you been in the cannery business? A. Twenty-three years.

Q. What class of goods do you can?

A. Chili peppers and pimentoes and tomatoes.

Q. Do you use double-seaming machines in your business? A. I do.

Q. What kind of machines?

A. The Angelus. I think it is called the 14–P, or something like that.

Q. That is the single-turret intermittent machine? A. Yes, sir.

[1937] Q. Two-station? A. Yes, sir.

(Testimony of E. C. Ortega.)

Q. How many of those machines have you in your factory?

A. Six, I believe I have, all together.

Q. How recently have you operated them?

A. Well, since last November. About the latter part of November we got through with the operations.

Q. The canning season closed in the latter part of November, 1922? A. Yes, sir.

Q. How soon will the canning season open for 1923?

A. I expect it will be in the neighborhood of the 20th of August.

Q. How long is your usual canning season—from what month or part of a month to another month?

A. From about the middle or latter part of August until about the 1st of December. Rarely over that.

Q. Have you any other double-seamers in that plant except these Angelus machines?

A. No, sir.

Q. Do you mind stating about what your annual output in cans is, seamed by these machines?

A. Between one and two million the last three or four years. I have not been up over two millions for some time before.

Q. How long have you been using these machines?

[1938] A. I am not very certain, but I think since 1912 or 1913. Perhaps it would be a year earlier.

(Testimony of E. C. Ortega.)

Q. That is when you got your first Angelus machines? A. Yes, sir.

Q. And you have added to them from time to time? A. We have.

Q. Where have you secured these machines? Have you purchased them or rented them, and if so from whom?

A. I have rented them from the Los Angeles Can Company. They furnish me with them as they furnish me with cans.

Q. And have you purchased any outright?

A. Later on I did.

Q. How recently have you purchased any?

A. I think last August or so.

Q. From whom did you purchase them?

A. Direct from the Angelus Company.

Q. Do you remember the price you paid for them?

A. In the neighborhood of a thousand dollars—between $900 and $1000—I am not sure.

Q. What success have you had with the Angelus machine, particularly in the matter of forming the seam?

A. Very good success. Very satisfactory.

Q. Have you at any time had trouble with it, and if so what, and how recently?

A. There are times when the machines are not attended to properly or the parts that wear continually are not changed [1939] or renewed, and then we have quite a little trouble until those things are adjusted.

(Testimony of E. C. Ortega.)

Q. How many machines are you renting from the Los Angeles Company? A. Four.

Q. Do you mind stating what your annual rental is at present for those machines?

A. $50 each now.

Q. Do you have to do your own servicing on those that you rent for $50, or does the Los Angeles Can Company service them?

A. I do my own service. That is the agreement, that for $100 a year they used to attend the service themselves; they would furnish the parts; while at $50 I would furnish my own parts and do the repair work.

Q. How recently has the Los Angeles Can Company done any servicing work on them, and of what character?

A. I requested them that they either give me new machines or replace some of them, as they were getting kind of what we call wobbly; they were not true, I suppose, or were a little worn in some places; but they sent their men over there and looked them over, and had parts put in them, and they declared they were all right.

Q. Did they make any replacements for you recently of any sort?

A. Not recently; that is, not since last year.

[1940] Q. Do you recall what the nature of the last replacements made for you were?

A. There were some parts replaced, but personally I was not in a position to know, as I had a

(Testimony of E. C. Ortega.)

man attend to that. My general superintendent was attending to that.

Q. Do you know who did the work on behalf of the Los Angeles Can Company in the way of replacing or for replacements or repairing or overhauling?

A. I think the name is Murray.

Q. He is their trouble-man, is he?

A. Yes, sir. He had the men there and they were working on them.

Q. Well, after they worked on the machines were they satisfactory?

A. Oh, we had a little trouble after that.

Q. And what did you do in order to remedy that trouble?

A. I called Mr. Guenther, and he came and adjusted something or other, and they went all right with me. They made some changes there.

Q. Have they been all right since Mr. Guenther serviced them? A. Yes, sir.

Q. And what have you to say, if anything, in regard to the character of the seam that is formed on the Angelus machine?

A. It is very good. We have tested them. The general foreman [1941] that I had was an expert at that, and he would show me the seams every time and request any change if they were not satisfactory. Of course I had a man to attend to the machines especially, you know, to regulate the seams.

(Testimony of E. C. Ortega.)

Q. Your experience, though, would tell you whether a seam was good or not?

A. Oh, yes; certainly.

Q. Do you identify the signature to that letter, Mr. Ortega (handing to witness Defendants' Exhibit "E–1" for Identification)?

A. Yes. 1911 is when I began to use it. That is mine.

Q. Do you remember the occasion of writing that letter? A. Yes, I wrote it myself.

Q. Are you willing to state whether the facts as stated in that letter are true and correct?

A. They are true and correct, yes, as far as I know.

Mr. TOWNSEND.—That is all. Thank you.

Cross-examination.

(By Mr. BLAKESLEE.)

Q. At what speed have you operated the 14–P Angelus machine?

A. I think we are operating them at 55 a minute now. We have had them up to 60.

Q. You receive your cans from the L. A. Can Company? A. Yes, sir.

[1942] Q. Are those cans satisfactory as to the bottom seam? A. Well, mostly; yes, sir.

Q. What kind of guarantee do you receive from the L. A. Can Company? How many defective cans are permitted under that guarantee per thousand?

A. There is no written guarantee or any promise. Whatever cans are not good are returned

(Testimony of E. C. Ortega.)

and they make them good. We have never had any trouble in that respect.

Q. You don't have any trouble in that respect?

A. That is, in getting the cans replaced.

Q. At what pressure are your cans processed?

A. Well, the thermometer shows 214 on the cookers.

Q. Can you state your reason for purchasing the 14–P machine for $1000 when you could rent them at $50 a year?

A. Well, since I have to pay the cost of repairing it, I thought I had better repair my own. At the same time I wanted to be independent if I should want to use it on any other cans.

Q. Have you need for any further double-seaming sanitary can machine at your plant now?

A. Not this year. I think I have enough.

Q. If you were to purchase a double-seamer today what type would you purchase?

Mr. TOWNSEND.—I object to that.

A. I would purchase the Angelus.

Q. (By Mr. BLAKESLEE.) Which type?

[1943] A. The 14–P.

Q. Do you know the 24–P Angelus?

A. I have seen it, yes, sir.

Q. You would not purchase one of those instead?

A. Not hardly, because they are too fast in my place. I haven't got the equipment for exhausting fast enough.

(Testimony of E. C. Ortega.)

Q. You know about the Pacific machine too, do you? A. Yes, sir.

Q. And that is too fast also for your purposes?

A. Well, in some instances it may be.

Q. And the same criticism as to speed which you made with reference to the Angelus 24–P would apply to the Pacific, would it, as far as the needs of your plant are concerned? A. Yes, sir.

Mr. BLAKESLEE.—That is all.

Q. (By Mr. TOWNSEND.) Will you state the reason why you called Mr. Guenther into service on your machines rather than to call on the L. A. Can Company's operatives to service them?

A. Well, because I thought Mr. Guenther would know the machine. He built it. I had more confidence in him, and when I was really in trouble I would always depend on him and he would always help me out. That is why. And I knew whatever parts he put in there he would guarantee they would work right. The Los Angeles Can Company would do the same, but they had so much work to attend to that perhaps we [1944] couldn't get them sometimes, for just our machine. And my men are good men at it, but sometimes they have to stop, and I had to apply to headquarters for assistance, and Mr. Guenther was always ready to send a man to me. He was very good that way.

Mr. TOWNSEND.—That is all.

Mr. BLAKESLEE.—Now, as to this testimonial, I don't understand that has been offered yet.

(Testimony of James M. Abbett.)

The MASTER.—It is offered, but it is only received for identification.

Mr. TOWNSEND.—I formally offer it now.

Mr. BLAKESLEE.—We object to the offer as not the proper method of proof for the witness to testify by a memorandum made ten years or more ago. The proper method of proof is the testimony of the witness.

The MASTER.—Well, he has adopted the letter without objection. It will be received in evidence as Defendants' Exhibit "E–1."

TESTIMONY OF JAMES M. ABBETT, FOR DEFENDANTS (RECALLED).

[1945] JAMES M. ABBETT recalled.

Recross-examination (Resumed).

[1965] Q. (By Mr. BLAKESLEE.) The defendants' can feeding mechanism is particularly adapted for use with a double-seaming machine by which filled cans are sealed, is it not?

A. Yes, sir.

Q. And it delivers the cans to the seaming machine in an upright position, does it not?

A. Yes.

Q. The object being to prevent spilling the contents? A. That is one of the objects.

Q. And so that a can lid may readily be placed upon the can and sealed to it?

The MASTER.—I really think that is more a matter of argument; is it not? He has described the operation.

(Testimony of James M. Abbett.)

Mr. BLAKESLEE.—On this proposition of equivalence it seems to me both sides may be inquired about. For instance, take the litigation that both counsel have been in, under the Lane patent, there it was very material as to whether the defendants' machine accomplished the many objects set forth in that patent, to trace equivalence.

Mr. TOWNSEND.—It did not require evidence to show those things external to the structures themselves.

[1966] (Last question read.)

A. I frankly confess that I do not see what a can-feed has to do with any other operation that may take place.

The MASTER.—Well, you have to have your can upright to get the lid down on it, don't you?

A. Oh, yes, that is what it means.

The MASTER.—That is what it means.

Q. (By Mr. BLAKESLEE.) Is not a further accomplishment of defendants' machine the feeding positively of the cans so that they are consecutively delivered from a source of supply to the seaming machine irrespective of an excess number of cans supplied to the feeding mechanisms so that there will be prevented a choking of the machine and mutilation of the can if the cans become crowded into the feed mechanism?

Mr. TOWNSEND.—That is objected to as confusing and unintelligible.

The MASTER.—Perhaps you can simplify it by

(Testimony of James M. Abbett.)

stipulating that all these objects of defendants' machine are accomplished; can you not?

Mr. TOWNSEND.—Well, I didn't write this language; and it is so apparent, what we do and how it works, that I do not see that this gets us anywhere, as to what written language means to somebody else.

The MASTER.—You may proceed.

Q. (By Mr. BLAKESLEE.) A further object in defendants' machine is to provide a can-feed mechanism with means for engaging [1967] and advancing the cans, which means will operate in synchronism with a can-receiving member on the seaming machine so that a can will be delivered to the seaming machine at the same time that the can-receiving member of said machine engages the can and carries it into the machine. Is that not correct? A. That is correct.

The MASTER.—Did he answer the former question?

The REPORTER.—I don't think so.

(Previous question read, as follows: "Is not a further accomplishment of defendants' machine the feeding positively of the cans so that they are consecutively delivered from a source of supply to the seaming machine irrespective of an excess number of cans supplied to the feeding mechanism, so that there will be prevented a choking of the machine and mutilation of the can if the cans become crowded into the feed mechanism?")

A. Yes.

(Testimony of James M. Abbett.)

Q. (By Mr. BLAKESLEE.) A further object of defendants' machine is to provide by its can-feeding mechanism that it would be impossible for cans to be mutilated as they are passed through it and at the same time provide the advancing can with positive movement. Is that not so?

Mr. TOWNSEND.—Same objection.

A. That is so.

Q. (By Mr. BLAKESLEE.) And another object of defendants' machine [1968] in service is the provision of automatic engaging means by which the cans will be positively engaged at a rate of speed corresponding with the capacity of the seaming machine, and which mechanism will disengage the can at the time it is engaged by the can-receiving member of the seaming machine; is that not so?

Mr. TOWNSEND.—Now, I want to call attention to one thing in connection with this patent that I have not mentioned before. The comparison now brings the matter out in more striking fashion than it would otherwise. This No. 14 is said to be the can-receiving member of the seaming machine. We do not deliver the cans to the seaming-machine; we deliver them, as the evidence all shows, to a can capping mechanism; and there, when you try to make comparisons, again you are calling attention to objects in this patent of plaintiffs which have a different meaning when applied to defendants' machine.

(Testimony of James M. Abbett.)

Mr. BLAKESLEE.—I refer to the can-receiving member in Exhibit "P."

Mr. TOWNSEND.—That can-receiving member of Exhibit "O" or any particular device is not a can-receiving member of the seaming machine, and that is what your patent is talking about.

Mr. BLAKESLEE.—It is built into the 24–P seaming machine.

The MASTER.—The objection is overruled.

(Last question read.)

[1969] A. Well, the cans are not positively engaged in defendants' device at a rate of speed corresponding with the rate of capacity of the machine; and the cans are not delivered to the can-receiving member of the seaming machine.

Q. (By Mr. BLAKESLEE.) Are not received by can-receiving member of the seaming machine that is built into that machine, P–24?

A. They are received by the arm of the cap-feed mechanism.

Q. And in plaintiffs' machine and in the patent Exhibit 3 they are received by a member which carries the cans around while they receive a cap, and are fed on further, are they not?

A. Exhibit 3—was that the main patent?

Q. Yes.

A. There is no intimation here (referring to volume of patent copies) that the present device under discussion is to be used with the device shown in the patent No. 3.

Q. In patent No. 3 the cans are received by a

(Testimony of James M. Abbett.)

rotating member and supplied with caps while being used by that rotating member; is that not so? I refer to the member being the disk 56.

[1970] A. Yes.

Q. Defendants' machine likewise carries out the object, does it not, of having a can-feeding device of few moving parts so that it is possible to run the seaming machine at a high rate of speed without being limited by a can-feeding machine which will not properly perform its function at such a speed without danger of crushing the cans or interfering with their timing?

Mr. TOWNSEND.—Same objection.

[1971] The MASTER.—The objection is overruled.

A. As far as the function is concerned, I suppose that is proper.

Q. (By Mr. BLAKESLEE.) A further object of defendants' machine in operation and use is to provide a can-feeding mechanism for seaming parts, and which is adapted to be applied to most of the can seaming machines now generally in use. Is that not correct?

A. I don't know. That would take more knowledge than I have of the—

Q. Is it not a further object of defendants' machine in use and service to obviate the objection of spilling of can contents by retarding the can without abruptly stopping it and thereby keeping it in a continuous forward movement through the machine without danger of spilling?

(Testimony of James M. Abbett.)

Mr. TOWNSEND.—Same objection.

A. There is no provision in defendants' machine whatsoever for retarding the can.

Q. (By Mr. BLAKESLEE.) Do you mean to say that if a can becomes improperly pinched between the lower end of one of the fingers of Exhibit "A–2" and the outside rail it will not be caused to move relative to the end of that finger so that it will be taken up properly by the next succeeding lower finger end?

A. It will move relative to the end of that finger as that finger advances, but there is nothing shown in a detailed [1972] study of the model of defendants' machine which indicates that there is a means provided for retarding the can.

Q. Is it not a further object of defendants' machine in service to provide a can-feed and timing mechanism which will operate to properly deliver the cans to the can-seaming machine irrespective of the movement of the cans to the feed, thus making it possible for cans delivered in a continuous flow or intermittently to be properly carried forward to the seaming machine?

Mr. TOWNSEND.—Same objection.

The MASTER.—Same ruling.

A. Yes.

[1973] Mr. TOWNSEND.—I will ask counsel for plaintiffs again to [1974] state what he considers the equivalent of the rubber wheel 22 of plaintiffs' patent to be present, if at all, in defendants' device Exhibit "A–2." Is it the fingers,

which you seem to point to now, or is it the hub which you seemed a little while ago to point to?

Mr. BLAKESLEE.—Well, we will come to our argument in due time. We do not intend to allow the witness to be tipped off here in any manner.

Mr. TOWNSEND.—Mr. Master, we have gone clear through this trial until we are nearly ready to argue this case, and I think the Court is entitled to know and we are entitled to know what their position is that they are going to maintain. [1975] It is an unheard of thing to say that we are not going to indicate to your Honor what the features are that we think are equivalents when he has specified now two individual and separate things having different functions as being at one time an equivalent and at another time an equivalent.

Mr. BLAKESLEE.—I have not specified anything as an equivalent in terms. I have compared structures for the purpose of establishing equivalents, which is a matter of argument.

The MASTER.—What is the purpose of stating it now? They certainly could not fix up the machine to operate any differently.

Mr. BLAKESLEE.—No; but with all the generally demonstrated frankness of Mr. Abbett, I don't care who the witness is, if he is given information as to what we are going to contend prior to the completion of his cross-examination as to comparison of structures, it appeals to his ingenuity to serve his clients as best he can in the light of such information. I say that with no criticism of Mr.

Abbett at all, but on general principles. And it is not necessary to elect what the equivalents are until argument. That is a matter that follows the proof. If they wanted particulars in this case they could have asked by bill of particulars under the rules, and they didn't do it.

Mr. TOWNSEND.—We could not inquire as to the claims. That is improper practice.

[1976] Mr. BLAKESLEE.—Yes; in 275 Fed. our court has ruled here that you can inquire specifically in what respects plaintiffs' patent is infringed.

Mr. TOWNSEND.—We demand now that the plaintiff make clear his position as to what he is going to claim is an equivalent of the rubber wheel of plaintiffs' patent that we are talking about as found or alleged to be present in the defendants' device as represented by Exhibit "A–2."

Mr. BLAKESLEE.—We have so repeatedly refused to do that, for the reasons mentioned, that—

Mr. TOWNSEND.—I only want to put the plaintiff of record in making the refusal.

The MASTER.—Well, he has refused several times.

(Testimony of James M. Abbett.)

[1984] 811 Washington Building,
Los Angeles, California, Tuesday, May 8, 1923,
10 A. M.

(Appearances as heretofore noted.)

JAMES M. ABBETT recalled.

Recross-examination (Resumed).

(By Mr. BLAKESLEE.)

[1991] Q. To your knowledge is any one of the machines reflected in any manner in the patents you have discussed in your testimony, or any machine referred to by you as in use prior to the filing dates of the patents in suit in use at the present time?

A. Are you referring to all the patents that I have mentioned?

Q. Yes. Can't you refer to any of them which, as substantially set forth in your affidavit, is in use at the present time?

Mr. TOWNSEND.—That is immaterial.

The MASTER.—I think a paper patent may be considered an anticipation if it shows the features. Overruled.

Mr. BLAKESLEE.—It goes to the weight.

The MASTER.—Yes. Overruled.

A. The construction embodied in the Black machine is in use at the present time to my knowledge. The construction embodied in the 1912 Guenther patent is in use. The construction embodied in the various Fleischer patents is in use. The construction embodied in the Dugan patent is in use.

(Testimony of James M. Abbett.)

[1992] The construction embodied in the Forry patent is in use, to my knowledge. The construction embodied in the Kruse patent substantially is in use. The construction embodied in the Norton patent is in use. The constructions embodied in the Johnson patent and the Warme patents are in use. There may be more, but I do not remember them just now.

Q. (By Mr. TOWNSEND.) How about Livingston?

A. Yes. In connection with the Dugan patent construction the construction embodied in the Livingston patent is in use, particularly the construction shown in the Livingston reissue patent. In my affidavit this patent was mentioned but did not appear to be bound with the rest of the copies presented with the affidavit, and I have therefore obtained a copy of the Livingston patent reissued, No. 11,989, of May 13, 1902.

Q. A reissue of what originally?

A. Well, this is a reissue of the original patent No. 690,593, dated January 7, 1902. This is particularly interesting in connection with Dugan as the construction of the horizontal rotary can machine viewed by us at the plant of the American Can Company embodies the important features of the two patents as particularly disclosed in the Livingston reissued claims 20 to 23, inclusive, in which the combination with a series of continuously traveling rotary can chucks is made with a series of double-seaming rollers arranged in the paths of

(Testimony of James M. Abbett.)

the cans and engaging the cans [1993] successively as they pass, to provide continuous seaming operation as the chuck rotates, Dugan making the other step of advance in carrying the rollers with the cans while the chucks and cans rotate. This construction, as I say, is embodied in the horizontal multi-spindle American Can machine that we saw operating at 200 cans a minute at the American Can plant.

Mr. BLAKESLEE.—We move to strike out the portion of the answer which refers to the claims of the patent in an anticipatory sense, as not being responsive.

The MASTER.—Motion granted.

Q. (By Mr. BLAKESLEE.) In each one of these instances lesser or greater departures have been made in the machines you have referred to from the teachings of the patents, have they not?

Mr. TOWNSEND.—That question is indefinite and ambiguous.

The MASTER.—Overruled.

A. The machines in many cases do not identically conform to the drawings of the patent, a condition which is quite common in the development of any device.

Q. (By Mr. BLAKESLEE.) Take the Black patent, for instance, the machine embodying that construction, which you say you know of to-day, does not have a first turret with means for flanging a can on it, does it?

(Testimony of James M. Abbett.)

A. No; not for any lack of mechanical perfection but for a change in conditions in the can industry.

[1994] Q. And the same is true of the Johnson patent, isn't it?

A. As to the flanging operation, the remaining mechanism being substantially the same.

Q. You don't know of any two-turret machine in use to-day with a transfer means between the turrets and cap-feed means for supplying caps to the cans at the transfer means, do you, as typified in the Johnson and Black patents?

Mr. TOWNSEND.—That question is immaterial, and is objected to for that reason.

The MASTER.—Overruled.

A. No, not with the transfer means between the two can-seaming turrets.

Q. (By Mr. TOWNSEND.) Do you mean a transfer or the cap-feed between the two turrets?

A. Well, I mean to imply by that that I knew of no machine in which two turrets were provided with an intermediate transfer and the cap was delivered to the transfer means.

Q. Do you mean to the intermediate transfer means?

A. To the intermediate transfer means.

Q. (By Mr. BLAKESLEE.) The Dugan machine you speak of as typifying, or exemplifying, rather, the Dugan patent, double-seams the cap on to the can and puts a wire rim into the cap and can at the top, doesn't it? A. It does.

Q. It doesn't double-seam the top of the can

(Testimony of James M. Abbett.)

on to the can the way it double-seams the bottom on, does it?

[1995] A. Well, it double-seams the cap on to the can, which agrees in its physical details with the bottom or top of the ordinary can. This in the Dugan patent is referred to particularly as the seaming operation when the bottom of the can is applied to the can, while the type of cans is such as to require a bead to be formed around the mouth and to be reinforced by wire.

Q. Could that machine be used for capping cans with contents, the way that the plaintiffs' machine or defendants' P–24 machine operate?

A. The machine as it stands could not be used for capping full cans for the simple reason that the bottoms are put on on this machine; but the entire construction could be adapted by reasonable mechanical skill to put on either top or bottom.

Q. You don't know of a single machine in use to-day, other than plaintiffs' machines and defendants' P–24 machines, which comprises two rotating turrets or carriages with a transfer means between them and a double-seaming mechanism mounted upon the first turret for performing a first seaming operation, and a double-seaming mechanism mounted upon the second turret for forming the second seaming operation, do you?

Mr. TOWNSEND.—That is objected to, and the previous questions along that line are objected to, as incompetent, irrelevant, and immaterial.

[1996] The MASTER.—Overruled.

(Testimony of James M. Abbett.)

A. No. I am not familiar with any other machines which fill that specification, unless it is the machine disclosed in the patent to Warme and Taliaferro.

Q. (By Mr. BLAKESLEE.) Does that satisfy that specification? A. Yes.

Mr. TOWNSEND.—Mr. Master, I have a couple of witnesses here, busy men, who have just come in, and I would like to get through with them. They are on other matters entirely, and not knowing just how to fix any time for them to come I asked them to be here this morning, and if we can just interrupt Mr. Abbett again we can finish with them shortly.

The MASTER.—All right.

Mr. BLAKESLEE.—May I have a question or two to finish this line up? I have no objection, only I want to follow this up for a minute.

Q. Where is that Warme machine operated now?

A. I haven't that information at hand at the present moment.

Q. Do you know of your own knowledge, then, that it is operated to-day, from observation of it?

A. Not from observation. It is an eastern machine and I never have seen it.

Q. From the best information you have, does that machine have means for feeding the caps and cans coincidentally to the first carriage?

[1997] A. Yes.

Q. And it is continuously operating, is it?

A. Yes.

(Testimony of James M. Abbett.)

Q. And the seaming means for the second carriage are operated by the rotation of the second carriage? A. Yes.

Q. And what sort of first seaming operation rollers are used, to your best information?

A. To my best information the first seaming operation is performed by a sort of a curling die and not rollers.

Q. When, to your best information, was such machine first operated? A. I don't know.

Q. What is the date of that Warme patent you referred to?

A. The date of the patent is June 10, 1919.

Q. 1919? A. Yes.

Q. (By Mr. TOWNSEND.) When was it filed?

A. It was filed September 19, 1914.

Q. (By Mr. BLAKESLEE.) Because of the fact of those dates being respectively later than the filing dates and the dates of issuance of the patent of Plaintiffs' Exhibit 3, you did not cite that patent as one of the group which you stated in your opinion showed the substance of the disclosure of the patent of Plaintiffs' Exhibit 3; is that correct?

A. I did not cite the patent at that time. I cited it [1998] at a later date when I was asked to compare the art with the machines.

Mr. TOWNSEND.—The Court understands that patent was copending and that its bearing is for the purpose of interpretation of the Sumner and Wilson patent in suit.

The MASTER.—Yes.

(Testimony of Virgil K. Morgan.)

Mr. BLAKESLEE.—We contend that that is entirely immaterial because there isn't the slightest presumption that in any respect could the inventor of that patent have invented the subject matter prior to the invention by Sumner and Wilson, and there is no section of the statute under which it can be pleaded and no rule of Walker under which it can be pleaded. It is entirely immaterial and is not pleaded. Now if you wish to put your other witnesses on, you may do so.

TESTIMONY OF VIRGIL K. MORGAN, FOR DEFENDANTS.

[1999] VIRGIL K. MORGAN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. (By Mr. TOWNSEND.) Will you please state your age, residence, and occupation?

A. I am not like the women, but I think my age is thirty-five, as far as I know.

Q. And your occupation?

A. By occupation I am a building contractor.

Q. And your residence?

A. 1563 North Lake, Pasadena.

Q. Were you ever in the canning business, Mr. Morgan? A. Yes, sir.

Q. When, and under what name, and for how long?

(Testimony of Virgil K. Morgan.)

A. I began operations in a very small way in October of 1913, and I gave it up about the 1st of October, 1920.

A. At first it was just V. K. Morgan. Later it was the V. K. Morgan & Company cannery.

A. At El Monte.

[2000] Q. Did you use double-seamers in your business? A. Yes, sir.

A. First we had the Max Ams. Then we had what I think they called a Wilson at that time. Then later we had the Guenther machine, or I think it was called the Guenther.

A. Yes, that is it, the Angelus machine.

Q. And the Wilson, is that the machine that is known by the name of the present plaintiff, Mr. Wilson, who is here in court?

A. Yes. Now I think it is called the Pacific.

Q. How long did you continue to use the Angelus machine, do you remember?

A. About three years, or three seasons.

Q. Did you have more than one Angelus?

A. Yes; we had two.

Q. Do you mean two operating at the same time?

A. Yes.

[2001] Q. Where did you get those Angelus machines; did you buy them or rent them?

A. We rented them from the Los Angeles Can Company.

Q. When did you get the first so-called Wilson machine?

A. At the beginning of the season of 1915; and

(Testimony of Virgil K. Morgan.)

by the beginning of the season I mean the tomato season. That would be along about September—or August, rather, of 1915.

Q. What sort of goods did you handle in those days? Tomatoes and everything else?

A. Just tomatoes that year.

Q. What success did you have with the Pacific machine or Wilson machine in 1915?

A. In 1915 in comparison to the old Max Ams we thought we had a wonderful machine, but Mr. Garwood, who set it up and worked with it, had quite a time keeping the cans rolled properly so that they would hold.

Mr. BLAKESLEE.—We move to strike that out as hearsay, on the ground the witness is not qualified as to any personal contact with the machine; he is testifying as to the experience of other parties.

The MASTER.—We will allow it to stand, subject to the objection.

Q. (By Mr. TOWNSEND.) Let us have your personal experience with that, as to what you know about the kind of seams that [2002] were formed in 1915 and any time after it was operated.

A. During the canning season of tomatoes I cut personally a great many seams, and the trouble we had was that the chucks on the first operation didn't make the proper turn, as I call it.

Q. Do you mean it didn't properly roll the seam?

A. Yes. May I make a statement. I don't know anything about court proceedings, and this is the

(Testimony of Virgil K. Morgan.)

first I have ever been in. I want to qualify that by saying that we changed the rolls several times, and that the real reason in my mind that we didn't get perfect success out of Wilson's machine was that it was an old machine when we first got it.

Q. Did these imperfect seams formed on the Wilson machine in 1915 result in any loss to you?

A. I can answer that and be perfectly truthful in this way: that at that time we had a lot of swelled cans, but being rather young in the canning business—some of them we knew positively were on account of the seams and some of them we knew positively were because they were not cooked, but the proportion of the bad seams and the proportion of the poorly cooked I couldn't tell you.

Q. Do you know whether your loss from bad seams exceeded five cans to the thousand?

A. I can't say that. But I can say this: that the cans going through the seamer—the seamer spoiled more than that proportion because in the office each day we kept an exact [2003] record of the number of cans that went through the machine and were spoiled going through, though we kept no record at that time of the amount of cans that were spoiled in the warehouse on account of swells, leaks, etc.

Q. Including in my question the spoilage that you had from running the cans through the Wilson machine, what would be your answer as to the relative number per thousand, either from poor seams or

(Testimony of Virgil K. Morgan.)

from spoilage while running through the machine itself?

A. Well, I can answer more truthfully about what was spoiled as they went through, from the records that I kept in the office. In those days we used to run about ten or twelve thousand cans per day, and I have had records in there of two hundred to twelve hundred cans spoiled in a day.

Q. On that one machine?

A. Yes, on that machine.

Q. You say that was run in 1915? A. Yes, sir.

Q. Do you remember what kind of a can-feed it had on it in 1915?

A. It had a flat disk, probably about that big around (indicating). We made a can-run that took the can on to that disk. Then after going on the disk it was carried around and hit a little trigger down here (indicating), and this trigger regulated those cans in such a way that they went into the [2004] chuck at the proper time.

Q. Do you recall the shape of the trigger on that disk?

A. No, I don't. I remember there was a trigger there, but I don't remember how it was.

Q. You don't recall the details at this time?

A. No.

Q. At the end of the season of 1915 what did you do with that machine?

A. Mr. Stetson took it back to the Can Company.

Q. You returned it to the plaintiff, Mr. Stetson?

A. Yes.

(Testimony of Virgil K. Morgan.)

Q. And to the L. A. Can Company? A. Yes.

Q. Did anyone from the Can Company, Mr. Stetson or Mr. Wilson, come out to see what the machine was doing during the season of 1915, do you remember?

A. Yes; I think Mr. Wilson was out there several times that year.

Q. Trying to help you out? A. Yes.

Q. In 1916 what did you have in the way of seaming machinery?

A. I think in that year at the beginning of the season they sent us another machine of a little bit later model.

Q. And what success did you have that year?

A. Some of it was pretty rough sledding for this reason, [2005] that we got another machine that was an old one. I think it was made over. I want to state this fact about that: that along with this grief we had some wonderful days with that machine.

Q. (By Mr. BLAKESLEE.) Which was that: 1915 or 1916?

A. 1916. 1915 was pretty rough sledding all the way through, but we got by the season all right.

Q. (By Mr. TOWNSEND.) You got by the season of 1916? A. 1916, yes.

Q. Do you know whether it was the same machine you had in 1915, overhauled, or a different machine?

A. No, I don't think it was the same machine. I think it was another one, one that they had worked over.

(Testimony of Virgil K. Morgan.)

Q. Did you rent that one that year?

A. Yes, sir.

Q. What did you have in 1917?

A. The same machine.

Q. Was it returned for overhauling or anything, or did you keep it there in the plant over the winter of 1916–1917?

A. I think that remained there in the factory and that we used it in 1917 without being removed.

Q. What was your success with it in 1917?

A. In 1917 we had to return the chucks several times during the season and get new ones.

Q. When you say "chucks," just what do you mean?

A. Those round things, those things that went over the [2006] top of this (indicating), and were on an eccentric roll. If I could see one of them I could tell you. (Defendants' Exhibit "F–2" shown to witness.) Yes, that one.

Mr. TOWNSEND.—The witness refers to the can-encircling means and illustrates it by Defendants' Exhibit "F–2."

Q. Were these the devices, like "F–2," that you had to have replaced a number of times during 1917? A. Yes.

Q. Did anything else happen to that machine in the year 1917?

A. In that year—I can't recall the mechanical terms that were used, but if I can illustrate it on that thing I can show you.

(Testimony of Virgil K. Morgan.)

Mr. TOWNSEND.—The witness refers to the wooden model V–1.

Q. Yes, please do it.

A. These things down in here (indicating)—

Q. Referring to the turret, shafting and chuck-carrier.

A. Yes. They got very much worn from the action of the acid of the tomatoes on the metal.

Q. Did any of these machines break down completely so you had to send them back and get another one? A. Yes.

Q. When was that?

A. I think that was in the middle of 1918.

Q. And they sent out another machine for that one, I suppose? A. Yes.

[2007] Q. I understand that all of these different Pacifics you had in different seasons were all rented from the L. A. Can Company, were they?

A. Yes, sir.

Q. Did you ever have any trouble with the Angelus forming seams? A. Yes, sir.

Q. What were those troubles and how did the Angelus seam compare with the seam rolled on the Pacific?

A. The trouble we had on the Angelus was a trouble caused—and this also applies to the Wilson machine—that the trouble on the Angelus and some of the trouble on the Wilson was caused by the cans that came from the Can Company not having enough flange, like this (indicating).

(Testimony of Virgil K. Morgan.)

Q. That is, the can flange was not properly formed? A. Yes.

Q. Otherwise, how did the seam formed on the Angelus hold up?

A. Why, we never had much trouble with the Angelus in making the seams.

Q. Could you represent in money value the losses that were occasioned in 1915, or later, by the use of sealing or attempting to seal the goods on the Pacific machine?

A. I wouldn't attempt to put a value of that kind on it because we kept no accurate records in those days of the exact number of cans that were spoiled, so at this late day [2008] I would hate to make a wild guess.

A. I can explain it in this way: that the biggest loss in 1915 was occasioned when the cans went through the seamers. That stands out in my mind for the reason that we kept track of those things, but we didn't keep track of those spoiled in the warehouse.

Q. About how many days did the canning season last in 1915, during which you used that machine?

A. That is hard to state, but I can state this: that for three years we commenced canning tomatoes on the 24th day of August. Those operations continued until frost. One year frost hit us, I remember, on the 19th day of October, and the next year we ran up to the middle of November, and another [2009] year was about the first of November; but which of those years was which, I couldn't

(Testimony of Virgil K. Morgan.)

recall now. That was about the extent of the canning of the tomatoes and the average all during my operations.

Q. Can you state what was your normal output in 1915 in numbers of cases?

A. In 1915 I think that our total pack was about 14,000 cases.

Q. That is exclusive of the number of cans you would have spoiled each day? A. Yes.

Q. From two hundred you said to how many?

A. Twelve to fifteen hundred.

Q. A hundred a day?

A. That is what would get out into the warehouse.

Q. You got 14,000 cases out into the warehouse?

A. Yes.

Q. Have you any interest in this controversy?

A. Well, I would like to make a little statement here, if I might.

Q. Yes; go ahead.

Mr. BLAKESLEE.—We have no objection.

A. It is that I have known Mr. Stetson and Mr. Wilson and Mr. Guenther and I feel that they have all helped me during my life as a canner, and whatever I have to say here is not for one side or the other.

[2010] Cross-examination.

(By Mr. BLAKESLEE.)

Q. How much of the 14,000-case pack in 1915 did you put up on the Wilson or Pacific machine?

A. All of them.

(Testimony of Virgil K. Morgan.)

Q. All of them? A. Yes.

Q. In other words, you got out your pack with that machine? A. Yes, sir.

Q. And you knew, did you not, that if you needed it you could get an Angelus 14–P machine that year? A. No, sir.

Q. You didn't know of the Angelus machine in 1915? A. Yes, sir.

Q. You knew it was available so you could get it that year, didn't you? A. No, sir.

Q. You didn't know it was? A. No, sir.

Q. You didn't know it was in existence then?

A. Yes, sir. But I didn't know I had the privilege of going to the Can Company and asking for an Angelus machine, [2011] because I was young at the business, and I went to Mr. Stetson and asked him for a machine, and I was ignorant as to canning machinery, and he sent me out a Wilson which we thought would be fine.

Q. Didn't you know that the L. A. Can Company was furnishing Angelus 14–P machines that year and could furnish them? A. I imagine that I did.

Q. As far as you recollect, you did? A. Yes.

Q. You used that machine in 1915 right through the season and got out your whole pack on it, didn't you? A. Yes, sir.

Q. Just what, to be a little more particular, was the trouble you had with the seaming mechanism in that machine in 1915, from your best recollection?

A. This thing right here (referring to Defendants' Exhibit "F–2")—

(Testimony of Virgil K. Morgan.)

Q. You mean the seaming mechanism of the first seaming operation? A. Both of them.

Q. Well, that machine didn't have a similar mechanism both for the first seaming operation and the second seaming operation?

A. No; but we had trouble with both the first and second operations.

Q. Just what was your trouble in the first operation, as [2012] nearly as you can recollect it, to be specific?

A. It didn't roll them over far enough.

Q. It didn't roll the flange down far enough?

A. No.

Q. It didn't roll it tight enough? A. No.

Q. And that occurred part of the time?

A. Part of the time.

Q. You wouldn't say that the mechanism refused to work, would you?

A. Oh, no. It never did refuse to work.

Q. What you complain of now and found fault with, then, was the fact that at times it didn't do quite all that it should do? A. Yes, sir.

Q. What was your trouble with the second seaming operation? A. The same thing.

Q. I mean the second seaming operation on the second turret? What was the trouble there—that it didn't roll tight enough?

A. It wouldn't go tight enough.

Q. Most of the time it did, didn't it?

A. It did, if we kept after it by testing the cans

(Testimony of Virgil K. Morgan.)

constantly and tightening the rolls constantly during the day.

Q. When the rolls were tight it worked all right, didn't it?

[2013] A. Yes, sir. But the trouble was you couldn't keep them tight enough.

Q. Then you had to tighten them up from time to time, but when they were tight they worked, didn't they? A. Yes, sir.

Q. Did you have to adjust the seaming means on the first turret from time to time? A. Yes, sir.

Q. And when that was tightened up and adjusted it worked all right, didn't it?

A. Yes, sir.

Q. You used the Wilson or Pacific machine right down through 1919 each year from 1915, didn't you?

A. And 1920.

Q. And right through to 1920? A. Yes, sir.

Q. And you knew during all of those years about the Angelus 14–P machine, didn't you?

A. Yes, sir.

Q. And you knew at least part of that time that you could obtain an Angelus 14–P if you wanted to, to replace the Wilson?

A. After I began to get my education in the canning business I knew that, and Mr. Wilson sent me out an Angelus machine. But the reason we couldn't replace the Wilson with an Angelus was the fact that we couldn't run the Angelus fast [2014] enough for that line.

Q. In other words, you needed a machine in the

(Testimony of Virgil K. Morgan.)

line that would keep pace with the cookers and the other machines in the line? A. Yes,

Q. And the Angelus 14–P wouldn't keep pace?

A. No, sir, it wouldn't go fast enough.

Q. At no time while you operated the Angelus 14–P did you get as much speed as you did out of the Pacific or Wilson, did you? A. No, sir.

Q. Did you have any trouble with the Wilson machine in 1918?

A. Yes, sir. We had to replace it right in the middle of the season.

Q. That was the time you returned the machine that got acid-eaten? A. Yes, sir.

Q. Did the Angelus ever get acid-eaten also?

A. No, sir.

Q. That wasn't due, to your knowledge, to any defect in the machine, but was due to the action of the acid on the parts, wasn't it?

A. I am making this statement myself because it was discussed in our factory between the man who had charge of those machines and myself a great many times, and we went in to Mr. [2015] Wilson and probably gave him some ideas. In this part of this machine here, V–1, the acid would get down in, and we took it up with Mr. Wilson to put some kind of a cap on there; and whether that was our suggestion or Mr. Wilson's own suggestion we don't know nor care, but later he put a cap on there, which should have been on there always.

Q. And if that had been on the machine in 1918

(Testimony of Virgil K. Morgan.)

you wouldn't have had to have returned it, would you?

A. Well, that I can't say, because we never used one during that time.

Q. Well, you had no other troubles with it during 1918, did you?

A. Not except it broke down, and the troubles I mentioned.

Q. You had trouble on the first seaming operation and had to keep adjusting it? A. Yes, sir.

Q. How about in 1919 with the Wilson machine?

A. From the middle of 1918 until the cannery was shut up for good in 1920 we used an Angelus, which was very good.

Q. An Angelus? A. I mean a Pacific.

Q. You had no trouble with it from the middle of 1918 until you quit in 1920, did you?

A. No; it ran very good.

Q. (By Mr. TOWNSEND.) Was that the new machine? A. That was a brand new one.

[2016] Q. (By Mr. BLAKESLEE.) That was the brand new one you obtained in 1918 after you returned the one that was acid-eaten? A. Yes.

Q. You had no trouble with the seaming means or anything else?

A. Well, there is the trouble with all of them, but there was no more trouble with that than the ordinary run of them.

Q. Than the ordinary run of any canning machines? A. Yes.

Q. Then I understand from your testimony that

(Testimony of Virgil K. Morgan.)

the Wilson machine in your experience kept improving from year to year, is that correct?

A. Yes. Well, I wouldn't say that. I wouldn't say there wasn't much improvement in the first one we got until the last, but there was as much difference as between daylight and dark.

Q. You mean as to the results you got?

A. Yes.

Q. But the last one had the same first seaming means that the first one had, didn't it?

A. It had the same kind of a device, but it was gotten out differently.

Q. You don't remember what the differences were, do you?

A. No, because that wasn't my part of the running of the cannery.

[2017] Q. But you know it had the same sort of a seaming device, that is, a ring around the chuck? A. Yes.

Q. With some agency for pushing the ring in so as to put it into an eccentric position to form the first seaming portion? A. Yes, sir.

Q. You don't remember any difference there was?

A. No, because I wasn't much interested in that part of it.

Q. Then there wasn't any difference in the different Wilson machines in those particulars that you have any recollection of or that impressed you sufficiently so that you can recollect?

A. In that particular device, F–2 of the Wilson—

Q. You mean the first seaming device?

(Testimony of Virgil K. Morgan.)

A. The first seaming and the second seaming—there was no difference to me, not being a mechanic. All I knew was the difference in the results in the warehouse.

Q. The results you got? A. Yes.

Q. Do you remember why it was you returned the chucks in 1917, the first seaming part as I understand you? A. The things wouldn't work.

Q. They needed adjustment?

A. No, sir. They needed new chucks.

[2018] Q. Were they worn? A. Yes, sir.

Q. You have had new chucks provided for your Angelus haven't you, new seaming parts?

A. I don't think so.

Q. No new seaming rollers? A. No, sir.

Q. You never had a new part provided for either the first seaming or second operation in the Angelus?

A. Not that I recollect.

Q. Did you have to return any parts of the machine you got in 1918 from the Wilson people, during its use from then on through to 1920?

A. I think that we got new first seaming devices like F–2, but how many I couldn't say.

Q. And that was because they were worn?

A. Yes, sir.

Q. Not because they broke down but simply were worn on their surfaces and you needed fresh ones that were not worn? A. Yes, sir.

Q. What was your pack in 1918 on the Wilson machine? A. That is a hard statement to make.

(Testimony of Virgil K. Morgan.)

Q. Well, approximately.

A. I had three machines running at that time. My total pack was, it seems to me, about 70,000 cases.

Q. In 1918? [2019] A. Yes.

Q. What proportion of the work was done on the Wilson? A. Half.

Q. How about 1919: What was the pack and what proportion was done on the Wilson?

A. That is the year I thought you were talking about.

Q. I was talking about 1918.

A. Well, that would go for 1918, too.

Q. How about 1919?

A. That would go for 1919.

Q. What would be the figures for 1920?

A. It would be about 20,000 cases.

Q. On the Wilson?

A. About half and half it was that year.

Q. What would you say as to the percentage of cans that were poorly seamed on the Wilson in 1915 due to insufficient flanges on the cans?

A. I would say there was quite a proportion of them.

Q. Quite a proportion? A. Yes.

Q. Would you say as much as half?

A. Well, I wouldn't make any statement on that at all.

Q. You couldn't approximate it?

A. No. I will tell you why: The man who has

(Testimony of Virgil K. Morgan.)

charge of that I think can tell you more about that particular detail than I could tell you at all.

[2020] Q. Your recollection is that a good substantial part of the trouble in 1915 was due to the insufficient flanges on the cans, isn't that correct?

A. No, sir. That was due to the machine.

Q. When was it that the flanges gave you the trouble? A. About 1916 or 1917.

Q. That was due in part to insufficient flanges or poor flanges? A. Yes, sir.

Q. You made up your mind, did you not, even in 1915, that the Pacific or Wilson machine if kept adjusted on the seaming stations was the machine you wanted and was a satisfactory machine, didn't you?

A. We figured out that if it could ever be perfected,—and it was far from perfected at that time —that it would be the machine we would like to have.

Q. The imperfections you noted were the ones you noted in the seaming devices, weren't they?

A. Yes, sir.

Q. And when those were perfected or improved so that you got continuous service as in 1918 and from then on, you decided it was the machine you wanted, didn't you?

A. From the middle of 1919 or 1920 it was a good machine.

Q. The machine that was given you in 1918 in place of the acid-worn machine was all right,

(Testimony of Virgil K. Morgan.)

wasn't it? And the rest of that season it was all right wasn't it?

[2021] A. We never overcame the trouble with that thing there (referring to Defendants' Exhibit "F-2"), or the trouble with the Wilson seamer, until the last one we got.

Q. That was the one that was sent you in the middle of 1918, wasn't it?

A. Yes. Well, wait a minute—1919. We stopped canning in 1920, and it was the middle of 1919 that we got the new one.

Q. Which year was it you returned the machine that was acid-eaten and got the one in place of it?

A. That must have been in the middle of 1919.

Q. And from that time on you were satisfied with the operation of the machine, weren't you?

A. It was very good, yes.

Q. And your objections, to sum them up, to the Wilson machine prior to that time, had to do with the necessity of adjusting up the two seaming devices to keep them making the seams tight, isn't that it, and the fact that the seaming devices of the first station wore and at times had to be replaced; is that correct?

A. That was partly correct. The rest of it was that it was so worn in those turrets that we couldn't keep the turning straight.

Q. What was it that wore?

A. That spindle there in the middle, that shaft.

Q. You mean the shaft of the first revolving carriage? [2022] A. Both of them.

(Testimony of Virgil K. Morgan.)

Q. Those shafts wore also and made a somewhat wobbly action? A. Yes, sir.

Q. And those shafts had to be replaced?

A. No, sir. We couldn't use the machine.

Q. That was the time you returned it in 1918?

A. Yes.

Q. Then those are the three things that you found fault with and that gave you trouble, were they?

A. Yes. And back in 1915 on that old machine we had considerable trouble with the cap-feed and the way the cans were taken onto the disk. They hit that finger and they didn't always hit the right place. The can didn't always get into this chuck properly. That can would get here (indicating), and that is why we had six hundred to a thousand cans sometimes in a day that were spoiled.

Q. That was due to the fact that the caps didn't always come into place right?

A. The caps were all right, but the cans didn't.

Q. They didn't feed accurately at all times?

A. No.

Q. Did that trouble with the cap-feed occur right along or was it only at times it occurred?

A. No. The last machine was a dandy, but with that one there was trouble from beginning to end.

[2023] Q. Did that cap-feed trouble you every day or only part of the time?

A. Very nearly every day.

Q. But you made no change in that cap-feed until 1918?

A. Are you talking about the 1915 machine?

(Testimony of Virgil K. Morgan.)

Q. Yes.

A. We got another machine in 1916.

Q. That had the same cap-feed?

A. Yes; and the same trouble.

Q. But you kept on and made your pack up with it just the same? A. Yes, sir.

Q. I suppose you had trouble with the shafts wearing and other parts wearing and giving out and needing replacing in other canning machinery you had from 1915 on, didn't you?

A. We did in the cooker, but I don't recall any other serious trouble we had.

Q. Such troubles as that wearing, and trouble requiring adjustment, and shafts getting out of center, are common in canneries, aren't they?

A. Oh, very; yes.

Q. The machines operate at high speed and under tremendous exaction and require tuning up and replacement in many parts, don't they?

A. Yes, sir.

Q. All of them? [2024] A. Yes, sir.

Q. Do you know whether or not this 1915 Wilson machine was the first machine of that type that was put out?

A. When that came out there it was our understanding that it was the first one that they made. It was marked No. 1 on it.

Q. At all times that you used the Pacific machine or Wilson machine, from 1915 on, taking a day's run as a day's run, you got a better speed with it

(Testimony of Virgil K. Morgan.)

than at any corresponding time you used an Angelus, didn't you?

A. Oh, yes, it had more speed.

Q. At all times? A. Yes.

Mr. BLAKESLEE.—That is all.

Redirect Examination.

(By Mr. TOWNSEND.)

Q. And which machine did you get the better seam on? A. The Angelus.

Q. (By Mr. BLAKESLEE.) Until what year?

A. Always.

Q. (By Mr. TOWNSEND.) Of the 14,000 cases that you packed in 1915 on the Pacific, did you have any losses from swells, leakage, or other causes; and, if so, to what extent?

A. We had quite a lot of losses and they mounted up to a number of cases. But, as I say, at that time we kept no [2025] record.

Q. Do you know in dollars and cents what that loss amounted to? A. No.

Q. Did you ever make any claims to the L. A. Can Company for losses caused by the use of the Pacific machine? A. Yes.

Q. Do you remember during what years that was?

A. It seems to me about 1916.

Q. You referred to Mr. Garwood, the gentleman who was excused from attendance here a few minutes ago or at the beginning of your examination. Do you recall when he went to work for you?

A. Yes, sir. He went to work for me along about I would say September of 1915. That may vary a

(Testimony of Virgil K. Morgan.)

month, as I am not just sure, although I am sure it was 1915.

Q. Was he with you in 1916 or any season after that?

A. He was with me until the day we shut down.

Q. Did you at all times buy your cans from the L. A. Can Company, or did you get them from other sources?

A. No, sir. I always bought them from the Can Company.

Q. You rented the machines and bought the cans from them? A. Yes, sir.

Mr. TOWNSEND.—That is all.

Q. (By Mr. BLAKESLEE.) The seaming that you got from the Wilson or Pacific machine after the new machine was furnished [2026] you in 1919 was a satisfactory seam, wasn't it?

A. It was satisfactory, providing you didn't use any high pressure. If you had goods that had to be processed under high pressure, like spinach, in a retort, it couldn't hold them.

Q. At times there would be a leakage?

A. Not at times, but all the time.

Q. Did you use it on spinach? A. Yes, sir.

Q. And what else?

A. Pumpkin and string beans.

Q. Those are the most exacting kinds of materials to pack, aren't they? A. Yes, sir.

Q. You packed spinach and pumpkin on the Wilson, didn't you, in 1920 and 1919?

A. No; in 1918.

(Testimony of Virgil K. Morgan.)

Q. And it didn't spoil, did it? A. Yes, sir.

Q. It did spoil? A. Yes, sir.

Q. How much of it? A. About half of it.

Q. How about 1919? A. I didn't pack them.

Q. You didn't pack on that?

[2027] A. I packed some pumpkin that year.

Q. Did that keep? A. Yes, sir.

Q. That requires tight seaming, doesn't it?

A. Yes, sir; but it wasn't packed on the Wilson. It was packed on the Angelus.

Q. You didn't pack pumpkin on the Wilson?

A. No, sir.

Q. Did you have any trouble with the contents keeping when canned with the Wilson machine on other substances other than pumpkin and spinach?

A. Yes, sir.

Q. What other substances? A. Tomatoes.

Q. What year? A. Every year.

Q. 1919 and 1920? A. Yes, sir.

Q. Some of it leaked, you mean? A. Yes, sir.

Q. How about the other materials you packed?

A. In 1920 I packed nothing except tomatoes. In 1919 I packed a lot of fruit, and that all held.

Q. That all kept? A. Yes, sir.

Q. What was that; apricots?

[2028] A. Apricots and peaches.

Q. And you didn't have any spoils from leaks through the seams made on the Wilson machine?

A. Oh, it was very small.

Q. Very few, if any? A. Yes, sir.

(Testimony of Virgil K. Morgan.)

Q. And in 1919 and 1920 you packed with the Wilson machine mostly fruit?

A. Mostly fruit; but a lot of tomatoes, too.

Q. With the Wilson machine? A. Yes, sir.

Q. And the fruit all kept?

A. The fruit kept, yes, sir.

Q. Had you ever had any previous experience in packing spinach or pumpkin? A. No, sir.

Q. Do you know that to-day Wilson machines are used for canning pumpkin and spinach?

A. No, sir. When I gave up I forgot that there was such a thing as a cannery.

Q. You are not acquainted with the packing game since 1920? A. No, sir.

Mr. BLAKESLEE.—That is all.

Q. (By Mr. TOWNSEND.) How many cases of spinach did you pack in 1918 on the Wilson machine at the time you had that [2029] big loss?

A. 4,000. Well, no, wait a minute; it wasn't that many. There were 4,000 all told, but some of them were in gallons.

Q. Gallon spinach? A. Yes, sir.

Q. What did you pack the gallon on?

A. On the Angelus.

Q. Did you have any trouble with those?

A. Yes, sir.

Q. You had trouble with those two?

A. Yes, sir. If anyone packs gallon spinach and don't have trouble with it, I will take my hat off to them.

Q. During 1919 and 1920, when you say half of

(Testimony of Virgil K. Morgan.)

your pack was done approximately each year on the Pacific, just what were you using the Angelus machine on during those years?

A. The same materials.

Q. That is, fruit as well as vegetables?

A. Yes, sir.

Q. Spinach and pumpkin? A. Yes, sir.

Q. But you were not packing any spinach or pumpkin on the Pacific in 1919 or 1920? A. No.

Q. How about on tomatoes? Did the Angelus run on tomatoes, too? A. Yes, sir.

[2030] Q. Then you were packing during the apricot and peach season on Pacifics during 1919 and 1920?

A. Yes, sir. I might make this statement: I always felt that when we ran anything through the Angelus and put it in the warehouse that it was there, that that was the end of it.

Q. That is, you mean that it was satisfactory?

A. Yes.

Q. That you didn't have to worry about it after that? A. Yes, sir.

Mr. TOWNSEND.—That is all.

Q. (By Mr. BLAKESLEE.) What was your process of cooking your spinach and pumpkin? Was that the same process that you knew was used in other places? A. Yes, sir.

Q. What was the process?

A. In packing pumpkin I had a pumpkin cutter; you would take a whole pumpkin and dump it into this thing and it would come out all shredded, and

(Testimony of Virgil K. Morgan.)

into tin or galvanized iron square boxes, approximately that big square (illustrating) full of holes. We would shove that into a retort and bring that retort up to 250 degrees and leave it there for I think it was forty-five minutes. We would bring it out of the retort and put it into a machine called the cyclone, which ground it all up to pulp. That was all boiling hot. Then from there we would put it into the can by dumping the receptacle that was underneath this cyclone up high into [2031] a copper tank that was steam jacketed and full of steam, in order to keep it hot. Then from that copper-jacketed kettle we would let it run down into the cans as the cans passed underneath, the idea being to keep it as hot as it was possible to keep it. Then we ran it through the exhaust box, and from there seamed it, and from there in the sealed cans back into the retort and ran it up to 220 degrees, and I think it was in there two hours. That last two hours I am not sure of, although I think that is the approximate time.

Q. After you got the new Wilson machine you had no substantial spoils on fruit packed on the Wilson machine, did you? A. No, sir.

Q. And when that went into the warehouse it was all right, wasn't it?

A. Yes, sir. It is hard to spoil fruit when it has got syrup on. It is the easiest thing there is to pack.

Mr. BLAKESLEE.—That is all.

Q. (By Mr. TOWNSEND.) Did you make any

(Testimony of George W. Garwood.)

claims for that spinach in 1919, to the Los Angeles Can Company? A. Yes, sir.

Mr. TOWNSEND.—That is all.

TESTIMONY OF GEORGE W. GARWOOD, FOR DEFENDANTS.

[2032] GEORGE W. GARWOOD, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. Mr. Garwood, will you please state your age, your residence, and your occupation?

A. I am twenty-eight years old. I live at 309 Granada Street, Elmonte, and at the present time I am a manufacturer.

Q. Were you ever in the canning business, or engaged in the running of canning machinery?

A. Yes, sir.

Q. If so, when, where, and for whom?

A. In the last part of 1915 I went to work for the V. K. Morgan Cannery, but I did not run any machinery until the year 1916. It was just can runs and the can turns and such like. But in 1916 I ran the machines.

Q. What kind of a machine were you running in 1916?

A. They had the Wilson double-seamer at the time.

Q. Mr. Wilson is present here in court?

(Testimony of George W. Garwood.)

A. Yes, sir.

Q. Do you refer to the machine that he is reputed to have gotten up? A. Yes.

Q. Do you know where that machine came from?

[2033] A. I couldn't say as to that.

Q. You relied on what Mr. Morgan told you, I suppose, about that? A. Yes.

Q. You say you didn't run any double-seamers in 1915? A. No, sir.

Q. What time did you come to work, do you recall, at Mr. Morgan's place?

A. I remember that Mr. Morgan asked me to run the machinery for him in 1915, but my wife was sick at the time and I told him I didn't know when I would have to be called away and that he had better get somebody else to run it in 1915. Then in the last part of 1915 I went over and made some can turns and runs.

Q. Was there any seaming machine or double-seamer in the plant when you went to work there, or had it been returned?

A. I don't remember whether it was on the floor then or not, but if I remember correctly he had the machine in there the year of 1915.

Q. He had told you so, had he? Did you see it or were you just depending on what he told you?

A. I was just depending on hearsay.

Q. In 1916 you had this Wilson machine, did you?

A. Yes, sir.

Q. What sort of a can-body feed or can-feed did it have on it?

(Testimony of George W. Garwood.)

[2034] A. Well, as I remember it, it had a plane disk with a casting with two arms sticking out from it that fed the cans into the star wheel here (indicating).

Q. That is the star wheel that carried the cans on the cap-feed mechanism? A. Yes, sir.

Q. Do you see anything that looks like that can-feed device on this model V–1?

A. That is the same apparatus there, except, if I remember rightly, here this had two arms out here instead of pockets.

Q. You are referring to the can-feed device 55 on the model V–1, are you? A. Yes, sir.

Q. How long did you continue to operate it with that sort of a can-feed device like 55, only extended?

A. If I remember correctly, we run it through the season.

Q. How did that cap-feeder operate, or what satisfaction did it give, if any?

A. The main trouble that we had was that it only had one separating knife in there for the caps to feed down, and it would let the front end of the cap project down too far sometimes, and the catcher that pushes the cap along would hook on to a cap that it shouldn't have.

Q. Finger 73 on the turret disk 56 you say would catch the cap? [2035] A. Yes, sir.

The MASTER.—Catch the wrong cap, he said.

Mr. TOWNSEND.—Yes, catch the wrong cap.

A. It would catch the wrong cap. When it fed no-can-no-top and an empty space came it would

(Testimony of George W. Garwood.)

hook that cap and carry it part way into this run here and then pass it and let it stay there. Then when the can came in it would feed a top down and come around and overlap this other one and put two caps on the one can, one offset this way and the other supposedly centered, and it would mash this one down.

Q. That was the trouble you had in the cap-feed?

A. That was the trouble we had in the cap-feed by only having one blade in there for separating.

Q. In other words, you weren't sure of feeding a can to every pocket 58 in the disk 56?

A. No, you weren't.

Q. Were you ever able to remedy any of those difficulties, and if so how was it done, do you recall?

A. Well, you had to adjust the separating knife in there a good bit according to the caps, according to the condition of the caps. Sometimes the flange on them, or the rim, was a little thicker than at other times, and you had to set your knife accordingly in order to get any results out of it.

Q. Did the Wilson people, or the L. A. Can Company, or anyone from whom the machine was obtained, ever substitute [2036] the cap-feed or put a different cap-feed on for you, or were you left to your own devices to work the thing out the best way you could?

A. Well, Mr. Wilson had come out and worked on it, as well as myself.

Q. That was during the season of 1916, was it?

A. Yes, sir.

(Testimony of George W. Garwood.)

Q. How about the year 1917? Did you have any trouble with the cap-feed that year?

A. If I remember correctly, they changed during the break between the two seasons, and they had in a different machine with a little different cap-feed.

Q. How about the can-feed in 1917? Did you still use the two fingers on the disk?

A. No. They had a disk with cam blades, or blades that cammed up through the face of the disk, that delivered the cans into the star wheel that entered under the cap-feed.

Q. Do you recall anything else in connection with those blades that cammed up through the disk?

A. Well, as I remember it, we had trouble part of that season about the cans dumping over.

Q. Dumping over. How do you mean?

A. Well, these blades would strike them and they were retarded by being held further up from the bottom of the can. When the blade came against the bottom rim of the can now and then it would dump a can over backwards.

[2037] Q. And that would spill the contents?

A. That would spill the contents, and it went on through the machine and dropped out on the floor, that is, went through the run until it got to the first spindle on the first turret.

Q. That was the year 1917, was it?

A. I think so.

Q. Was that ever remedied, to your knowledge?

A. It was remedied when they put in the four-point spotter, the rubber spotters with the caps

(Testimony of George W. Garwood.)

screwed on to the end of the shaft that projected through the disk that the cam knives were on. Those four rubber spotters—when a can would come to it, if it was too far ahead, it would retard the can and let it place itself back to the next blade that cammed up. Then they would carry on into the star wheel under the cap-feed, correctly timed.

Q. Do you recall what season that change was made in, when they put the rubber spotters on to prevent the cans from upsetting?

A. It was some time during the season of 1918.

Q. (By the MASTER.) Where was that rubber spotter located?

A. It was located on top of the disk, centering the disk that had the cam knives in it, the first entry of the can into the machine.

Q. You mean you put it on at the same place the rubber wheel was?

A. Right here (indicating).

[2038] Q. That is a substitute for the rubber wheel, then? A. Yes, sir.

Mr. TOWNSEND.—Referring to the Model U–1.

The MASTER.—The spotter is on a separate disk now.

Mr. TOWNSEND.—Yes. That is all.

Q. (By the MASTER.) Did you ever use the star wheel on there in place of the spotter?

A. I believe that must have come in on a later model of the machine, if they had a star wheel.

Q. You never used the spotter on a separate disk?

(Testimony of George W. Garwood.)

A. No, sir. This was the last that I was in the canning end of it, which was in the fore part of 1920.

Cross-examination.

(By Mr. BLAKESLEE.)

Q. How many years were you with the Morgan Cannery there?

A. I started running the machinery in the season of 1916, and stayed with him until they closed the plant, after it had run three weeks or a month in the season of 1920.

Q. Do you know whether up to that time any spinach or pumpkin was canned out there?

A. Yes, sir.

Mr. TOWNSEND.—Just a minute. I think we should restrict the cross-examination here to the matter inquired of on direct. I have tried to bring out by this witness matters not overlapping necessarily the other witness' testimony, [2039] Mr. Morgan, and in order to keep this matter on proper cross-examination he ought to follow the direct and not go into various excursions.

Mr. BLAKESLEE.—The door was opened wide, wasn't he, when he said he operated the machine during that year?

The MASTER.—Overruled.

Q. (By Mr. BLAKESLEE.) To what extent was spinach and pumpkin packed there?

Mr. TOWNSEND.—The same objection.

The MASTER.—Overruled.

A. If I remember correctly, they packed pump-

(Testimony of George W. Garwood.)

kin two different seasons and the spinach three different times in the plant.

Q. (By Mr. BLAKESLEE.) What amounts of spinach and pumpkin were put up those years? Larger amounts or as small part of the pack?

Mr. TOWNSEND.—May it be understood that the same objection runs to this whole line of examination, that it is outside of the direct examination?

The MASTER.—Yes. And it is understood also that the Master overrules it as not being outside of the boundaries of the direct examination. Proceed.

A. It would be small in comparison with the main packs of tomatoes and such like, for pumpkin and spinach is a slow process and it takes a long time to retort it, to cook pumpkin.

[2040] Q. (By Mr. BLAKESLEE.) And it was more or less of an experimental run, wasn't it, on the spinach and pumpkin?

A. The first run on the spinach was more or less of an experiment.

Q. How about the pumpkin?

A. Well, pumpkin had been canned quite extensively before by other canners.

Q. To your knowledge?

A. Well, you could buy it at the stores all the time, I know that.

Q. You don't know how it was canned, though, or on what machines?

A. Well, they would can it with most any kind.

(Testimony of George W. Garwood.)

They would put it up in sanitary cans with most any kind of seamers.

Q. You hadn't seen it put up before, had you?

A. No, sir.

Q. You never had seen spinach canned before that first run out there at Mr. Morgan's cannery, had you? A. No, sir.

Q. And pumpkin and spinach required very tight sealing of the cans?

A. They do; very tight.

Q. Much more so than tomatoes? A. Yes, sir.

Q. And much more so than fruit?

A. Yes, sir.

[2041] Q. And most of the packing out there during the years you were with Mr. Morgan was fruit and tomatoes?

A. They didn't have any fruit until I think Mr. Morgan put up some berries—it was 1919 that he packed the fruit.

Q. All the time you were there this Wilson or Pacific machine was operated each season, wasn't it?

A. We had three or four different machines in there, and changes on the same line, replacing different machines where the others were.

Q. You used the Wilson each season, didn't you?

A. We did on that line, because that was the fast line.

Q. And you got out the pack each season with the Wilson, didn't you?

A. We got out pack out, yes, sir.

(Testimony of George W. Garwood.)

Q. When you had trouble with the can feed did you make adjustments on the machine?

A. Most certainly.

Q. What did you do?

A. Well, I re-set my blade so as to try and keep the caps up away from the little pusher that pushed the caps around through the first operation.

Q. You re-set the blade so as to raise it a little bit? A. Yes.

Q. And then your caps went through all right?

A. Well, not always. It was according to the condition of the tops.

[2042] Q. Your caps, after you made that adjustment—you had a period of run or operation when the caps would feed in all right, didn't you?

A. Well, with only one knife. There you didn't have much chance for an adjustment, only on one side of the lid.

Q. What I mean is after you did what you say you did there in the way of adjustment you would start the machine up and run it, wouldn't you, and the caps would feed?

A. Well, we had trouble with the feed all during the season on that can.

Q. Which season? A. 1916.

Q. What I mean is after you made this adjustment the caps would feed and you would go on running the machine, wouldn't you?

A. We would go on running the machine and maybe it would help it and maybe it wouldn't, and we would try something else on it.

(Testimony of George W. Garwood.)

Q. But you did run the machine and each day got out a good pack on it?

A. We got out our pack.

Mr. BLAKESLEE.—That is all.

[2043] AFTERNOON SESSION—2 o'clock.

TESTIMONY OF JAMES M. ABBETT, FOR DEFENDANTS (RECALLED).

JAMES M. ABBETT recalled.

Recross-examination (Resumed).

(By Mr. BLAKESLEE.)

[2052] Q. In these considerations, to wit, two separate revoluble carriages or turrets, each with separate means for performing one of two consecutive seaming operations; second, a rotary transfer mechanism between the two carriages or turrets; and, third, means for coincidentally or simultaneously feeding cans and caps to the first of said turrets for an initial association on said turret, do you find defendants' machine to more closely approximate any other of the patents or machines that you have stated in your affidavit or testimony, more closely than the combination of features I have just recited in this question?

Mr. TOWNSEND.—That question is objected to as repetition. I suppose it has been answered and asked a dozen times and aside from that it is immaterial.

Mr. BLAKESLEE.—I don't think it has been asked yet.

(Testimony of James M. Abbett.)

Mr. TOWNSEND.—The structures have been described over and over again.

The MASTER.—Overruled.

A. If you merely take your specifications as set forth in this question for its face value and ignore the teaching of Black, Nichols, Kruse, Brenzinger, Johnson and Livingston, the two structures are similar in that they have a pair of [2053] rotary turrets performing the two seaming operations, the can being transferred from one turret to another and the can and cap having previously been coincidentally delivered to the first turret.

Q. (By Mr. BLAKESLEE.) And no one of the other patents you have mentioned shows such combination, does it, in the words and terms stated in my last question?

Mr. TOWNSEND.—That question is further immaterial because there is no claim in the patents in suit which would entitle the plaintiff to any such interpretation or scope as he seeks to put on it.

Mr. BLAKESLEE.—It is for the purpose of comparison.

The MASTER.—Overruled.

A. As stated this morning, none other, save the patent to Warme and Taliaferro.

Q. (By Mr. BLAKESLEE.) The issue date of each of those is subsequent to the date of application of the Exhibit Patent No. 3, is it not, that is, each of those you have in mind? A. Yes.

Mr. BLAKESLEE.—That is all.

(Testimony of James M. Abbett.)

Further Re-examination.

(By Mr. TOWNSEND.)

Q. You referred to Livingston reissue patent No. 11,989 of May 13, 1902, being the reissue of original 690,593 of January 7, 1902.

[2054] A. Yes, sir.

Mr. TOWNSEND.—In order to make the record complete, and through inadvertence the reissue having been omitted in the bound volume, I offer this reissue now as Defendants' Exhibit "I–2."

Q. (By Mr. TOWNSEND.) Mr. Abbett, please read from page 1 of this Livingston reissue patent, lines 30 to 45 inclusive.

A. (Reading:) "The object of my invention is to provide a machine of greater capacity than is ordinarily possessed by the devices in use. Also to furnish a machine that is practically self-operating for only thereby is it possible to turn out the cans in sufficient quantity. With this device I am able to seal and deliver 3500 cans an hour and this number is even capable of greater increase; further, coupled with this ability of increased output, to furnish cans whose joints are as near absolutely perfect as possible, for without the qualifications of a perfect joint a can is not only worthless to the user but renders the maker liable to very considerable damages for loss arising from its use."

Mr. BLAKESLEE.—The statement as to the number of cans is a mere self-serving declaration, I was going to say. There is no proof that the machine would operate to that extent, nor is it a

(Testimony of James M. Abbett.)

statement of objects. It is a statement of alleged accomplishment of which we have no evidence here.

[2055] Mr. TOWNSEND.—I may say that I wrote the specification from the machine in that matter and I know what it is, although I don't offer that as evidence, of course.

A. I might make a statement here, in view of my other discussion: This Livingston patent shows a rotary can advancing means with a pin projecting therefrom, as indicated in Figure 1 of the Livingston patent and numbered 7, which engages the cap and carries it along above the can and along a rail.

Q. Will you refer to the Gillette patent 770,803 on page 2, and read lines 5 to 8, inclusive?

A. "Consequently, I am able to rotate the parts very rapidly and cap from 180 to 200 bottles per minute."

(Mr. BLAKESLEE.)—We make the same observation as to that statement.

Q. (By Mr. TOWNSEND.) Will you turn to the Adriance patent No. 747,671, page 1, and read lines 10 to 29, inclusive?

A. (Reading:) "This invention relates to machines in which the seam is between the ends and sides of sheet-metal cans are squeezed between two co-operating parts. One part is a roller which rolls against the inner or concave side of the seam. The other part rolls against the outer or convex part of the seam and opposes the roller. This part is preferably a die ring or chuck, which

(Testimony of James M. Abbett.)

encircles the end of the can. The chuck and the roller are supported by separate and parallel bearings. The two bearings are jointed together [2056] and the axis of the joint is parallel and eccentric to the axis of both bearings. In consequence, by one rocking of the bearings about this joint the chuck and roller are thrown into eccentric relation, their distance apart varied, and they are both brought into engagement with the seam to be rolled."

Q. Turn to the Conradi patent, will you please, No. 1,077,393, and read from page 1, lines 9 to 20.

A. (Reading:) "This invention relates to improvements in can-capping machines, and the object of my improvements is the provision of means whereby the connecting of the caps and can bodies by what is known as double-seaming is facilitated and accomplished with great rapidity and at a minimum of cost. The invention consists in a rotary frame carrying a plurality of members, between which the can bodies and caps are clamped and then rotated while being acted upon by accompanying joint-forming devices."

Q. On page 3 will you read lines 23 to 36, inclusive?

A. (Reading:) "In uniting the can shells with both ends the same would be run through the machine twice, once for each of the respective ends, and with the ends which are being acted upon uppermost. From the foregoing it is seen that the can parts, that is, the rolls or bodies, and an end

(Testimony of James M. Abbett.)

therefor for each shell, are delivered to and then revolved with respective pairs of spindles, and while so carried the joints between such parts are formed through the co-operation [2057] of pairs of forming wheels which revolve coincidentally with respective pairs of spindles."

Mr. TOWNSEND.—In connection with the evidence we have heretofore heard respecting the paper liners for caps, I offer the patent to Young, No. 1,100,005, June 16, 1914, as Defendants' Exhibit "J-2."

[2064] Further Recross-examination.

(By Mr. BLAKESLEE.)

[2066] Q. One more question referring to the patent of Plaintiffs' Exhibit 3: Do you understand or wish us to understand that in the general mode and law of operation of the combined first and second turrets and transfer means and can and cap-feed means to the first turret and seaming operations respectively [2067] upon the first and second turrets, that any change is or would be introduced in such general mode and law of operation by substituting in plaintiffs' patent the seaming mechanism of Exhibit "P" of defendants' machine for the seaming mechanism of the first station of plaintiffs' patent?

Mr. TOWNSEND.—The question is involved and ambiguous, and in so far as it is not ambiguous the plaintiffs are estopped to now assert or attempt to assert a position contrary to the proceedings in

(Testimony of James M. Abbett.)

the Patent Office, represented by the file wrapper of the patent in suit.

The MASTER.—Isn't that a matter of argument rather than objection?

Mr. BLAKESLEE.—I think so. Our reply is this: that in view of the testimony of this witness there is no reason for any interpretation of the combination or claims of this patent to limit the same to any specific encircling means, in the very face of the prior art as discussed by this witness.

Mr. TOWNSEND.—The witness' answer one way or the other could not vary the written proceedings themselves, which speaks louder than words.

Mr. BLAKESLEE.—And those don't limit the patent.

The MASTER.—Objection overruled.

A. It is my contention that even though plaintiffs' patents and defendants' machine both show a pair of rotating turrets and intermediate transfer means with seam forming means on the two turrets, that the mode of operation of the [2068] turrets and the seaming means thereon and the manner in which the cans are held by the turrets during the seaming operations draws a marked line of distinction between the two structures.

The MASTER.—I don't understand that.

Mr. BLAKESLEE.—We move to strike it out as not responsive.

The MASTER.—Motion granted.

Q. (By Mr. BLAKESLEE.) I have pointed out

(Testimony of James M. Abbett.)

certain definite purposes in that question, if you will follow those.

A. All right. Read the question again and I will try to answer it.

(Question read.)

A. Yes.

Q. Now why, bearing in mind those particularities I have recited in the last preceding question?

A. The cans and caps are delivered coincidentally to the first turret while the turrent is in motion. These machines are designed for high-speed work. It is assumed for the point of comparison that the cans are filled with any desired material. In defendants' device the can is moved at an accelerated rate of speed to the first turret, and delivered thereto at the speed of the turret, immediately clamped and held stationary relative to the turret while the can advances, and well known seaming means are provided for effectually rolling down the seam thus formed. Prior to the time when [2069] the seam has been formed between the cap and can, defendants' machine has been designed with the precaution to see that the cap and can are held as near stationary as possible, and that the contents thereof are not set in motion, and the can is thus held while it moves until such a time as a satisfactory first seam has been formed between the can and cap, after which the can is transferred to a second seaming means where the can is spun, as is ordinarily done, and compression rollers brought in to mash down the seam thus

(Testimony of James M. Abbett.)

formed. The seaming means provided in the first turret of defendants' machine and the manner in which the can is held on this turret during this operation is in my mind a decidedly different mechanism than is embodied in a structure where a can filled with contents is moved forwardly under a cap-feed while traveling at the speed of rotation of the first turret, and at which time it catches its cap and carries it forward into the machine without accelerated movement, and thereafter immediately begins to advance the can and rotates the can, due, as we have observed in our inspection of the plaintiffs' machine, to frictional engagement of the seaming head structure with the cap and resultant engagement of the cap with the mouth of the can, this taking place prior to the time when the cap and can have been brought in a clamped relation to each other and while the can is moving, and after which the seaming operation is carried on by curling the seam, by the use of a ring, which has a large contact area bearing on [2070] the seam being formed, and which curling operation can only be prolonged in plaintiffs' structure for a period during which the seam is encircled substantially once by the seaming means, and acted upon at each point around the can but practically one time during the curling operation, and after which first curling operation the cans are then delivered to a second turret where the seam is compressed and the can removed from the machine.

(Testimony of James M. Abbett.)

Q. You have previously and at length compared Plaintiffs' Exhibit No. 3 and defendants' machine from can and cap feed to closed cans discharged. What I inquire now is whether in respect to that law of operation of plaintiffs' patent, which contemplates the simultaneous feed of caps and cans to a first revoluble turret, the seaming of the cans and caps together by seaming means, or initial seaming means in the first turret, the transfer of such initially seamed cans and caps to the second turret, the second seaming operation of the cans and caps on the second turret, the substitution of the first seaming means of Exhibit "P" as in defendants' machine for the seaming means on the first turret of Plaintiffs' Patent Exhibit 3, changes the general mode and law of operation which I have just set forth. A. And my answer is yes.

Q. Referring merely to the substitution of one first seaming means for the other—

Mr. TOWNSEND.—The question is objected to as argumentative [2071] and ambiguous, and it is further objected to as an attempt of counsel to state what the law of action of his machine is with respect to any first turret.

Q. (By the MASTER.) What is it that gives the plaintiffs' machine continuity of motion?

A. The continuity of motion is obtained by the two continuous rotating turrets and intermediate transfer, geared to move in synchronism.

Q. Does the substitution of Exhibit "P" for the

(Testimony of James M. Abbett.)

seaming means that are there change that mode of operation?

Mr. TOWNSEND.—If the Master please, that is answered by the file-wrapper.

The MASTER.—I am asking him.

Mr. TOWNSEND.—I have no objection to his answering, but that can't alter the written document.

The MASTER.—We will take up the file-wrapper.

A. The continuity of motion of the two turrets and the intermediate transfer would be the same with the substitution or elimination of all seaming means.

Q. Or the substitution, either one?

A. Or the substitution. But the comparison cannot stop with the mere matter of continuity of motion between the two turrets and the intermediate transfer. This is a seaming machine—

Q. (By Mr. BLAKESLEE.) Well, take into the question of continuity of motion, then, the performance of a first seaming [2072] action on the first turret, the transfer to the second turret, and the performance of the second seaming operation there. How can the substitution of the exhibit "P" type of the first seaming means in defendants' machine for the first seaming means of plaintiffs' patent vary or affect or alter such continuity so considered?

Mr. TOWNSEND.—I object to that on the same grounds, as immaterial, because the Patent Office

(Testimony of James M. Abbett.)

has expressly stated that that is a material matter, any such substitution, if validity is to be given to the claims. The Patent Office has read into those claims, or required the patentee to read into those claims, the life-giving elements, so therefore it is fruitless to argue substitution when the Patent Office has taken that out of the hands of all of us to decide.

The MASTER.—I don't know as the Patent Office necessarily precludes judicial determination of those matters except as a matter of estoppel.

Mr. BLAKESLEE.—Not only that, but the limitation put into the claim 2, for instance, was merely the term "encircling," and the defendants' device has encircling first seaming means.

Mr. TOWNSEND.—I think this is purely argumentative and we are not getting anywhere.

Mr. BLAKESLEE.—Well, let us have an answer to the question, then.

The MASTER.—What is the question?

(Last question read.)

[2073] A. Wasn't that the question you asked, Mr. Master?

The MASTER.—No. He has added some elements to the question I asked.

A. A variation in the seaming members used on either turret will not have any effect on the continuity of movement of the two turrets relative to each other, and transfer means. I am answering now with the understanding this merely refers to continuity of motion.

(Testimony of James M. Abbett.)

Q. (By Mr. BLAKESLEE.) And that continuity of motion has such a first seaming operation and a second seaming operation? A. Yes.

The MASTER.—He has answered it on that basis.

Mr. BLAKESLEE.—That is all.

(Short recess.)

Q. (By Mr. TOWNSEND.) Mr. Abbett, I overlooked asking you before to read lines 11 to 29, inclusive, of the Warme patent 1,115,840.

A. (Reading:) "The invention relates to new and useful improvements in machines for placing an end or cover on a can, and more especially to machines of this character for double-seaming a cover on a filled can. An object of the invention is to provide a machine of the above character wherein the filled cans may be placed on a continuously moving carrier or turret and the cover or end secured to the filled can during the travel of the carrier or turret by double seam, which is formed by a seaming member which operates [2074] simultaneously upon a plurality of cans. A further object of the invention is to provide a machine of the above character with means for receiving a filled can and a can cover, which cover is seated in the can during the continuous rotation of the carrier."

Mr. BLAKESLEE.—All of which we move to strike out, as the date of the patent is subsequent to August 10, 1914, and the patent is not pleaded to evidence prior invention.

(Testimony of James M. Abbett.)

The MASTER.—We will receive it subject to the objection.

Mr. TOWNSEND.—I will call Mr. Abbett as a fact witness.

JAMES M. ABBETT, a witness previously sworn on behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. TOWNSEND.)

Q. You have previously testified, Mr. Abbett, as specially set out in your affidavit, that you made the drawings for the patent in suit, and at such times as you were making these drawings you were called upon to investigate an experimental apparatus then undergoing construction by the patentees. I suppose that refers to the patentees Sumner and Wilson, of the patents here in suit? A. Yes.

[2075] Q. Where did you see that experimental apparatus first?

A. At the plant of Smith-Booth-Usher down on Third Street.

Mr. BLAKESLEE.—We object to the use of the term "experimental" in direct examination, as leading and creating a presumption, and not calling for facts.

The MASTER.—Overruled. You have to have an experimental machine to start with.

Mr. BLAKESLEE.—Of course that term has a particular significance in patent law.

Q. (By Mr. TOWNSEND.) What was the con-

(Testimony of James M. Abbett.)

dition of that apparatus and what was the occasion of your seeing it?

A. I was employed as a patent draftsman by the firm of Hazard & Strause in the old Central Bank Building at Sixth and Main, and Mr. R. S. Berry was the specification writer. He came into the drafting-room and stated that he had—

Q. Don't state what he stated, but just what he told you to do.

A. He asked me to go with him down on Third Street to see a new machine for which we were to prepare an application for letters patent. We went down there after noon and met Mr. Wilson, who took us into the machine shop of Smith-Booth-Usher and showed us a machine which appeared to be newly constructed, and this machine was provided with a hand wheel similarly mounted as the hand wheel on Defendants' Exhibit "V–1"; and while the explanation of the machine was given to Mr. Berry and I the machine was operated to run several cans [2076] through, I think three or four, and to show us particularly the manner in which the seaming operation was carried on. After viewing the machine, Mr. Wilson gave me a roll of drawings made on what we know as detail paper, which is brown or yellow drafting paper, and this roll contained a complete set of details of the parts. There was no assembly, but all of the parts were there with their dimensions, each part being disassociated from the others, and the drawings were dirty and apparently had been the ones employed

(Testimony of James M. Abbett.)

in building this machine. From the observation of the machine at that time and the drawings, I began to construct a layout of the invention as shown in plaintiffs' patent. In referring to a personal diary that I had to keep at that time in order to make charges for my work, which, by the way, was done on a piecework basis—we were paid so much a sheet—I found that about a week was spent on these drawings at one time and a week was spent at another time in inking them in. It may be possible that Mr. Berry gave me guidance in connection with some of the layout work as we had nothing to go by except the disassociated parts of the drawings; and it also is highly possible that Mr. Berry did some of the shade work on the drawings as he had been a patent draftsman for many years and was assisting me to begin to do patent work, where before I had been for a number of years making patent drawings. In examining these drawings I recognize different parts of the shading which I believe were made by Mr. Berry.

[2077] Q. (By Mr. BLAKESLEE.) I don't believe you fixed the year, did you, in your answer?

A. The year was 1914, and the first visit was in May, as I remember it—along about May or the first of June. Then the next entry that appeared in my diary was along in the early part of July, which was the time the drawings were inked.

Q. (By Mr. TOWNSEND.) Did you ever see that machine at Smith-Booth-Usher's connected up to a power line?

(Testimony of James M. Abbett.)

A. I didn't see it but the one time, and at that time it was driven by hand, and I don't think there was any power connection on it that day.

Q. When did you next see that machine, if at all, and where was it?

A. Just one inspection of the machine was not sufficient before the making of the drawings, as these sheets did not show how the parts were assembled, and I went on one or two occasions to the plant of the Los Angeles Can Company and viewed the machine there. At this time the machine was in a frame building at the back of the can brick plant. I remember we went down the loading platform along by the railroad tracks and then into a building which was partly filled with cans. This building also had, as I remember, some canning equipment in there, such as steam boxes and the like, and over near the center of the building the machine was positioned. At this time it was on a belt and had apparently [2078] been in some operation with filled cans, as there was quite a bit of slop around it and the machine showed use.

Q. Did you see it operate under power?

A. I saw it operate at that time. Mr. Wilson was with me and also Mr. Sumner. The operation was not prolonged, however, as the machine was just connected up and a can or two fed through from the front end of the machine. The cans were not coming in from a line or in a continuous flow, but these cans were fed through for my observation, as it was

(Testimony of James M. Abbett.)

the first time that I had ever seen the machine operate on a belt.

Q. Did you ever see that machine again, to your knowledge?

A. No, I don't remember of ever having seen that machine again, although I saw others of the same general construction at later times.

Q. When was this that you saw the Wilson machine in the L. A. Can Company after Smith-Booth-Usher's? Was it shortly after, or when?

A. It was before the patent drawings were completed, because I had to go out there to get a little more light on the construction of the machine.

Q. Did you make the drawings for the cap feed and can feed applications of the patents here in suit? A. I did.

Q. What did you see at the time you went to view, or did you go out to view those devices, or a machine on which those devices were used or to be used?

[2079] A. Mr. Berry and I had at this time gone to the Central Building at Sixth and Main, at his dissolution from partnership with Mr. Strause. Most of the communication between the firm and Mr. Wilson was carried on by Mr. Berry, and at this time Mr. Berry came in with another detail paper, on which was an assembly layout of a cap-feed and also an assembly layout of a can-feed, which had been made by Mr. Wilson. I later went out with these drawings and looked the machines over.

Q. When was that and what did you see?

(Testimony of James M. Abbett.)

A. The applications were filed in January of 1916, and this was in the time just preceding that. At that time Mr. Wilson showed me the devices embodying these inventions, as I remember it.

Q. Do you know whether you saw the same machine you had seen before, or another machine?

A. No, I don't know whether it was the same one or another machine. We didn't pay any attention at that time to the machine because we were all busy on the cap-feed end of it.

Q. Later did you see the machine?

A. Yes, I saw the machine at a later date. This visit was made necessary because there were some errors in the drawing and the Patent Office had raised a question about it, and in order to correct the errors that I had previously shown I went out to the plant and talked with Mr. Wilson and Mr. Sumner and found them in a new machine-shop. I remember [2080] talking with Mr. Wilson and he said they had moved into place, which was up near the middle gate of the can plant and on the north side of the brick building. This machine-shop apparently was devoted exclusively to the Wilson machines. One of these machines was in there at that time, and the cap-feed mechanism was torn off. Wilson and Sumner explained that they were having some difficulty with this and were working out a new cap-feed. That was in the evening, and we all had to take the same car home, and at five o'clock we left together, I remember.

Q. Do you recall any other conversations with

(Testimony of James M. Abbett.)

Mr. Wilson or Mr. Sumner regarding the operation of the machine itself, or the cap-feed or can-feed, on any of these various visits?

A. When the machine was back in that room where all the cans were stacked—I think that was part of the Stetson canning factory, but I never did know—they were having trouble with the can-and cap-feed so they told me, and I asked them if the machine had been running; in fact, it looked in such mechanical shape down at Smith-Booth-Usher's that I had expected to see it on a line; and they said it had been running but there were some defects in that part of the machine and it was not in operation now, and stated that those were the troubles that they were having. And then at this later date when they were in their own shop I don't remember the sort of a feed mechanism that they were working [2081] on. I remember that Mr. Wilson had one of the parts in his hand—he had been filing it—and we stood there and talked about the feed, and agreed that it was going to be better than the cap-feed they had; but I have no recollection as to what that feed was.

Q. At any subsequent time did you have any talk with Mr. Wilson about the machine or patent matters generally?

A. At that time, as I remember it, Mr. Sumner and Mr. Wilson—

Q. What time was that—can you fix the year?

A. I went to San Francisco in the fall of 1917, and this may have been the spring of 1917. I think

(Testimony of James M. Abbett.)

possibly it was, or the fall of 1916. The case had been pending some little time. The file-wrapper would about establish that as to when I had to send in those corrected drawings. At that time they told me that some man had been down here from the Continental Can Company looking over their machine, and had told them that he thought it infringed.

Q. Infringed what?

A. Thought that their machine was an infringement of a patent owned by the Continental Can Company. This patent they said was the Dugan patent.

Mr. BLAKESLEE.—We move to strike that reference to the Dugan patent out as hearsay, what somebody else told them.

The MASTER.—Granted.

Q. (By Mr. TOWNSEND.) Did Mr. Wilson or Mr. Sumner tell you [2082] that, or did someone else tell you that?

A. Mr. Wilson and Mr. Sumner told me that, and they had a copy of the patent there.

Mr. TOWNSEND.—That isn't hearsay.

Mr. BLAKESLEE.—I don't see the materiality of it. It is immaterial and hearsay, what somebody told them.

Mr. TOWNSEND.—We couldn't bring in the testimony of what somebody said not in the presence of the parties, but where there is a declaration against interest it is admissible.

(Testimony of James M. Abbett.)

Mr. BLAKESLEE.—The infringement of the Dugan patent is not involved here.

The MASTER.—As I understand the law, even if they did infringe the Dugan patent, that doesn't permit anybody else to infringe theirs. Does it?

Mr. TOWNSEND.—Oh, no; but it has a bearing on the status of the plaintiffs' patent in the art.

Mr. BLAKESLEE.—Why, not at all. They might infringe it by the use of a certain shaped gear or a certain shaped cam.

Q. (By Mr. TOWNSEND.) When did you first meet Mr. Guenther, the defendant, Mr. Abbett?

A. To my knowledge I never met Mr. Guenther until after I had gone to San Francisco and had become associated with Mr. Townsend in his office and was sent to Los Angeles in the summer of 1918 by Mr. Townsend at Mr. Guenther's request, to discuss patent matters with him.

[2083] Q. And you met him at that time, did you?

A. I met him at that time for the first time.

Q. Did he ever at any time, and prior to the beginning of this suit, disclose to you any inventions or ideas of his relating to a double-seaming machine, particularly the subject matter of this litigation?

Mr. BLAKESLEE.—That is immaterial. There is no defense here of prior invention by Guenther of the invention in the patents in suit.

The MASTER.—What is the materiality?

Mr. TOWNSEND.—The materiality will be

(Testimony of James M. Abbett.)

shown, if you please, by connecting up—I think it ought to be apparent, and yet I would rather not enter into a discussion of it. It is meeting certain of the contentions and allegations of the plaintiffs.

Mr. BLAKESLEE.—But it is immaterial because there is no pleading of that sort.

Mr. TOWNSEND.—It doesn't require a pleading to rebut unwarranted assertions.

The MASTER.—I will receive it subject to the objection.

Mr. TOWNSEND.—We must connect it up, of course, or it wouldn't be pertinent.

A. In this first visit we discussed various can machines and during the discussion Mr. Guenther pulled out of his desk a large number of patents. It seems that he had made a practice—

[2084] Q. Well, you don't know what his practice is.

A. All right. A large number of patents, among them, as I remember, being a patent to Hipperling, and his own 1908 and 1912 patents, and a patent to Dugan, the patents to Black and Johnson, and the Sumner and Wilson patent, and he discussed these patents at that time. I told him that I had prepared the drawings in the Sumner and Wilson case, and he said well, since I was familiar with it, to come out into the shop and he would show me what he was intending to do.

Q. (By Mr. BLAKESLEE.) What date was this?

A. This was about June, 1918. And he showed

(Testimony of James M. Abbett.)

me his 14–P Angelus machine. I had never been familiar with one before. He showed me the two seaming operations on the machine, and stated that he intended to make a continuous operating two-turret machine, utilizing these two seaming operations as disclosed in that machine in front of us. There were other matters discussed.

Mr. BLAKESLEE.—We move to strike it all out as immaterial and not probative in any possible way.

Mr. TOWNSEND.—It is material in this: they claim that Mr. Guenther stole their invention after they gave him those blue-prints with which to build a lot of machines in the latter part of 1920, and we are showing here that two years earlier there was a disclosure of Mr. Guenther's idea to Mr. Abbett.

Mr. BLAKESLEE.—But the answer doesn't state that. The answer states an intention to make a machine with the two [2085] seaming means.

Mr. TOWNSEND.—It goes to the motives which the plaintiff has tried to attach in Mr. Guenther's case.

Mr. BLAKESLEE.—His acts speak for themselves. His dreams of 1918 don't mean anything.

The MASTER.—I will let the answer stand.

Q. (By Mr. TOWNSEND.) Will you state where the first seaming operation would be performed on this two-turret continuous machine?

The MASTER.—He hasn't described any; he simply said he was going to do that.

Mr. BLAKESLEE.—If there is going to be any

(Testimony of James M. Abbett.)

description here of anything, let's have it complete from the witness and not by leading questions. If the witness remembers anything, let him tell it if it is material.

Mr. TOWNSEND.—All right. My question is directed to that. Read the question, please.

(Last question read.)

Mr. TOWNSEND.—Change that to "did he," Mr. Reporter, instead of "will you."

(Amended question read, as follows: "Did he state where the first seaming operation would be performed on this two-turret continuous machine?")

Mr. BLAKESLEE.—Objected to as leading and assuming facts not testified by the witness.

The MASTER.—Objection sustained. I think you had better [2086] re-frame your question.

Q. (By Mr. TOWNSEND.) Just tell us what bearing, if any, the Angelus 14–P machine has to this contemplated two-turret continuous machine.

Mr. BLAKESLEE.—That is purely a matter of deduction.

The MASTER.—Let him tell the conversation.

Q. (By Mr. TOWNSEND.) Tell us all that was said, Mr. Abbett.

A. All that was said, in brief, was the fact that Mr. Guenther intended to make a two-turret continuous motion machine, and he intended to use the seaming means of the 14–P machine, as we know them here in Exhibit "P," on the first turret and the compression roller that he uses on the 14–P at the second turret.

(Testimony of James M. Abbett.)

Q. (By the MASTER.) When did you say this took place? A. This took place in June, 1918.

Q. (By Mr. TOWNSEND.) When next did you discuss the matter personally with Mr. Guenther?

The MASTER.—Wait a minute. Let's not leave that conversation. I am not quite satisfied yet as to what was said there. Can you give us a little more of the language?

Mr. TOWNSEND.—Well, if the Master please, I don't suppose that anyone who was seeking—

The MASTER.—He can tell whether there was more conversation or not. Of course if that is the best he can tell, all right, we will let it go there.

A. Might I again recount just how this took place?

[2087] Q. Yes. Tell us how it took place and what he said about it.

A. Mr. Guenther got out the patents that he had, that I enumerated a minute ago, which included Johnson, Black, Dugan and Guenther's 1908 patent and his 1912 patent, and Hipperling, and quite a stack of them there, and including the Sumner and Wilson patent; and I told him that I had made the drawings of the Sumner and Wilson patent and asked him how the machine was operating, how the first seaming operation was holding up. And after we had looked at the drawings there he took me out to the shop and showed me his Angelus 14–P and told me some place between his office and the machine that he intended to make a two-turret continuous machine, and then he showed me what sort

(Testimony of James M. Abbett.)

of seaming means he was going to have, by showing them to me on the machine, and he showed me the first seaming head which he said he intended to put on the first continuous turret and the compression rolls on the second. That was all that was said at that time.

Mr. BLAKESLEE.—We move to strike that out as not material in any respect, and he had the Wilson patent before him, and the only materiality could be, judging from later events, that he even then thought of using the Wilson patent invention.

Mr. TOWNSEND.—I object to that as grossly improper on the part of counsel, and as misconduct.

Mr. BLAKESLEE.—I repeat it, and it is misconduct on your [2088] part to even make any such implication.

Mr. TOWNSEND.—It is misconduct to state alleged facts and a deliberate misstatement.

Mr. BLAKESLEE.—The witness stated that he had the Wilson patent before him.

The MASTER.—Proceed.

A. I can settle that by telling why we had the Wilson patent before us.

Q. Why?

A. Mr. Guenther wanted to know if the Wilson patent infringed his 1908 patent.

Q. Did you tell him it did?

A. We took it under advisement.

Mr. TOWNSEND.—They brought suit against them and the suit is now pending.

Mr. BLAKESLEE.—We move to strike all that

out because it is absolutely immaterial to this issue, and calls not for a matter of fact.

The MASTER.—Well, it won't affect the Master in this case.

Mr. BLAKESLEE.—I would like to move to strike out the entire examination of this witness as a witness on fact, as immaterial to the issues under the pleadings.

The MASTER.—Overruled.

[2089] 811 Washington Building,

Los Angeles California, Wednesday, May 9, 1923, 10 A. M.

(Appearances as heretofore noted.)

Mr. TOWNSEND.—If the Court please, the Court will take judicial cognizance of the fact that there is now pending in this court within this District the following suits: The Angelus Sanitary Can Machine Co. vs. Pacific Closing Machine Co., being suit in Equity G–9, for the alleged infringement of the Guenther patent 891,163, of June 16, 1908; and also the following suit in this court and District: The Angelus Sanitary Can Machine Co. vs. Los Angeles Can Co., being suit in Equity G–21, on the Forry patent 1,092,706, of April 7, 1914, for a can-top-feed. I would say in connection with this last suit of the present defendant Angelus Company against the plaintiff L. A. Can Company, based on the can-top-feed, that the defendant in the G–21 Forry suit has agreed to settle by payment of damages in a sum which we have agreed to accept. The

infringement grew out of contributory infringement in furnishng parts of the patented Forry can-feed. And I will say now on the record, and for the purpose of disposing of that litigation, that we accept the Los Angeles Can Company's offer and agree to the dismissal of the suit. There is nothing else at large in that suit and that has been settled, or will be, by the payment of damages which [2090] are acceptable to us, and apparently cover the instances of infringement. There is really no need of carrying that litigation further, so we accept the defendant Los Angeles Can Company's offer. The other suit of course is awaiting trial. We brought a motion, which we thought proper, to consolidate all these cases and try them at once. It has become more manifest than ever that if that consolidation had been permitted we would have saved a great deal of time and no doubt future expense to the parties by trying all of the issues in one. However, your Honor is not concerned at all with determining any issues in that Pacific suit G–9. I mention that, though, as a matter of record, that you may not have had your attention called to otherwise.

Mr. BLAKESLEE.—This suit which counsel has said has been settled was settled in the hall in thirty seconds or so just now, based upon a previous understanding, and the suit is to be dismissed, and we are to pay the plaintiffs the munificent sum of $100. The charge involves infringement contributorily, as counsel states, for certain cap-feed feat-

ures applied to certain machines that emanated from the defendant in this suit. As soon as I saw Mr. Townsend after that suit had been commenced we talked it over, last January, and we came to the conclusion the best thing to do was to get it off of the docket rather than waste a lot of time and fuss over it, which would mean to grant the sum involved, being on, I think, thirteen and a half pairs, or something like that, [2091] of little parts which were evidently made by the L. A. Can Company and furnished to be put on machines furnished by defendant. And, as I advised Mr. Stetson, probably it was a clear act of contributory infringement. Counsel suggested that we allow a decree to be entered sustaining the patent, and I told him, and I guess he agreed with me afterwards, that he couldn't do that because the patent was not going to be litigated. I don't think it is material in this case one way or the other, but inasmuch as reference was made to these other suits, which we always have contended could not be consolidated with this suit and which Judge Bledsoe ruled could not be consolidated, we think the whole matter is entirely immaterial, and we are settling this not to recognize the patent but to dismiss the suit and get rid of it for an amount of money which would be less than a day's work on it. The record, however, may show that it has been done. It leaves this other suit. That has been dragging along now and nothing has been done. There is a stipulation as to particulars

(Testimony of James M. Abbett.)

in that, although I think that stipulation has expired. It is lying dormant anyway.

Mr. TOWNSEND.—It was only on the calendar the first time in January.

Mr. BLAKESLEE.—I agreed with counsel it could be continued over the term, as a matter of fact, but that is an entirely independent issue and we will meet that when we come to it. I leave that to you, Mr. Townsend, to call my [2092] attention to it again and to draft a decree of dismissal.

Mr. TOWNSEND.—Yes; I will draft a decree of dismissal and you give me a check and we will call it square.

Mr. BLAKESLEE.—And that dismissal should be with prejudice, where there is a settlement.

JAMES M. ABBETT recalled.

Direct Examination (Resumed).

(By Mr. TOWNSEND.)

Q. Mr. Abbett, when we adjourned you were telling about a visit we had, and a conference with Mr. Guenther here in Los Angeles in June, 1918. Did you have any other talk with him at that time on the subject?

A. Yes. As indicated in my last answer, Mr. Guenther discussed his 1908 patent and his 1912 patent, and the question was brought up as to the possibility of infringement of these patents by the Sumner and Wilson machine. We also discussed certain other patent matters in which he was interested and discussed various improvements and de-

(Testimony of James M. Abbett.)

velopments that he was making in connection with can machinery. Mr. Guenther had a great many patents on the subject there, and appeared to be well informed in all branches of can-making machinery, and freely displayed this knowledge, and also stated on that—

Mr. BLAKESLEE.—We move to strike that out. The witness [2093] can't testify as to the mental acquirements of another person. It is immaterial.

The MASTER.—Motion granted.

Q. (By Mr. TOWNSEND.) State what you did and what he said.

A. As we discussed the collection of patents that he had there he stated that he didn't want to make any improvements in his machines and go to the trouble of manufacturing them if they were infringements of any patents of which he was aware.

Q. Did you discuss the matter later with him, and, if so, when next?

A. The matter was next discussed with Mr. Guenther when he visited our office in San Francisco and met Mr. Townsend and myself. This was in possibly the summer of 1919. Well, it was in 1919.

Q. Can you fix the month?

A. It was the late summer, as I remember it, or the early fall of 1919. At that time this matter—

Q. Have you a memorandum on the matter? If so, you may fix that date a little more definitely.

A. Yes. We keep a daily diary in the office of all calls, and I went through that to get these dates, and made a memorandum on them. That was June

(Testimony of James M. Abbett.)

19, 1919, that Mr. Guenther called at our office in San Francisco and discussed these matters with Mr. Townsend and myself. Prior to that time we had been instructed to make what we term a validity report [2094] in connection with the Guenther 1912 patent and the Sumner and Wilson patent and kindred patents, at which time we had obtained the files of the Patent Office proceedings and had made a report, this report having been made in January of 1919, and the meeting in June of 1919 was a personal discussion of that matter.

Q. Do you recall the subject of Mr. Guenther's idea for a two-turret continuous machine coming up at that discussion in June, 1919.

A. That subject came up in each of the personal interviews that I had with him during the years from 1918 up to date.

Q. And did Mr. Guenther say anything about the patent situation further?

Mr. BLAKESLEE.—I don't see where anything material can come out of the discussion of the patent situation in 1918. It is what the defendants did; it is not what they discussed that is interesting here.

Mr. TOWNSEND.—It shows the business policy of this defendant was not to appropriate other men's ideas.

Mr. BLAKESLEE.—We object to that. There is nothing in the record that shows that yet.

Mr. TOWNSEND.—That is just exactly it, and there have been nothing but accusations to the contrary, and we want to show what the facts are.

(Testimony of James M. Abbett.)

Mr. BLAKESLEE.—The accusation stands, and there has been [2095] nothing developed yet to show any difference in that situation.

The MASTER.—Overruled.

A. At this discussion with Mr. Townsend Mr. Guenther made the statement that he didn't want to infringe any one patent and wanted to respect any patents which might cover machines, and that any construction which he brought out he wanted to see that it was not an infringement as his business depended on this, and that he didn't care to get into any litigation with the machines that he developed.

Mr. BLAKESLEE.—We move to strike that out. It must be apparent that these attempts of counsel and his associates, including the witness, to attempt to excuse the defendant Guenther by showing some statements that he made are not proper.

The MASTER.—I think it would have some slight bearing on wilfulness.

Mr. TOWNSEND.—That is the sole point on which the matter is offered, otherwise I would concede it would be wholly immaterial.

Mr. BLAKESLEE.—Guenther at that time knew of the Wilson machine. That is a point we must remember, as well as the Wilson patent. Mr. Abbett testified that in 1918 when he came to his place here he saw Mr. Guenther produce the Wilson patent.

The MASTER.—The motion is denied. Proceed.

Q. (By Mr. TOWNSEND.) Were there any other patents discussed [2096] at that time, at

(Testimony of James M. Abbett.)

that interview, with yourself and me, in June, 1919, besides the 1912 Guenther patent and the Wilson patent? A. Yes, there were.

A. Yes, there were.

Mr. BLAKESLEE.—The same objection. I don't see the *materiality of particularly* as to what patents were discussed.

The MASTER.—Overruled.

A. The Black patent and the Dugan patent were very carefully discussed.

Q. (By Mr. TOWNSEND.) Do you know what next was done in regard to Mr. Guenther's invention here in controversy?

Mr. BLAKESLEE.—We object to that particularly as assuming facts not testified. There has been no testimony yet that Mr. Guenther had any invention in controversy here, and there is no defense that Guenther claims to have invented this machine which we claim is a piracy.

Mr. TOWNSEND.—Well, you understand that I am talking about the 24–P.

Mr. BLAKESLEE.—The 24–P machine wasn't in existence at any time testified by the witness.

Q. (By Mr. TOWNSEND.) After the 24–P began to come into existence, tell us what you knew about it.

Mr. BLAKESLEE.—That is immaterial, what he knew about it. If counsel wants to prove infringement it might be material. But we think there is enough in the record to show what happened after the machine was put on the market.

(Testimony of James M. Abbett.)

[2097] The MASTER.—Overruled. What did he do?

A. The next thing I knew of the development on the part of Mr. Guenther of a two-turret machine was when we received a letter in the office in the summer of 1920, stating that he had made—

The MASTER.—You can't state the contents of the letter.

Q. (By Mr. TOWNSEND.) You received a letter? A. Yes.

Q. What was done?

A. Mr. Loftus, of our office, was sent to Los Angeles for the purpose of—

Mr. BLAKESLEE.—We must object to that.

Q. (By Mr. TOWNSEND.) Did you know what Mr. Loftus went to Los Angeles for? Do you know the purpose he went?

A. Yes, I knew the purpose he went, because I talked to him concerning the matter before he left.

Mr. BLAKESLEE.—Anything he heard is hearsay from Loftus.

Q. (By Mr. TOWNSEND.) Just what you did yourself, that is all.

The MASTER.—Confine it to that.

A. Loftus came down for the purpose of—

Mr. BLAKESLEE.—We object to that. You can't testify to what purposes Loftus had. It is not shown that this witness had anything to do with his coming down.

Q. (By Mr. TOWNSEND.) When did Mr. Loftus come down?

(Testimony of James M. Abbett.)

A. He came down in the late summer of 1920.

[2098] Q. (By Mr. BLAKESLEE.) You know that much?

A. I know that much, and also, as I had had the case or the matter in hand, I had a very extended conference with him before he came.

Q. (By Mr. TOWNSEND.) And after his return? A. And after he returned.

Q. Then what was done after he returned? What was done in the business, to your knowledge?

A. When Mr. Loftus returned he reported—

The MASTER.—You can't tell what he reported. What did he do?

A. All right. When Mr. Loftus returned—

Q. (By Mr. BLAKESLEE.) What did you do?

A. —we went over all of the data we had accumulated relative to the double-seaming art and the file-wrappers of the Dugan and Sumner and Wilson and Black patents, and considered these patents again in view of the construction of the machine or drawings which Mr. Loftus described as having seen at Mr. Guenther's plant.

Mr. BLAKESLEE.—We move to strike that out as hearsay and not the proper method of proof of any drawings.

The MASTER.—We will strike out that portion.

Q. (By Mr. TOWNSEND.) Did Mr. Loftus have anything to do with formulating that report on that subject? A. Yes.

Mr. BLAKESLEE.—That calls for a conclusion that there was [2099] a report.

The MASTER.—That may stand.