

No. 11680

United States
Circuit Court of Appeals
For the Ninth Circuit

WEBSTER-BRINKLEY COMPANY,

a corporation,

Appellant,

vs.

THOMAS R. BELFIELD,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

SEP 10 1947

PAUL P. O'BRIEN,

No. 11680

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

Attorneys for Appellant:

MESSRS. CATLETT, HARTMAN, JARVIS
& WILLIAMS,

1410 Hoge Building,
Seattle 4, Washington.

Attorneys for Appellee:

MESSRS. CHARLES H. HEIGHTON AND
LEO W. STEWART,

1021 Northern Life Tower,
Seattle 1, Washington.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 1530

THOMAS R. BELFIELD and
JOHN G. FOSTER,

Plaintiffs,

vs.

WEBSTER-BRINKLEY CO., a corporation,
Defendant.

COMPLAINT

The plaintiff, Thomas R. Belfield, for first cause of action, complains of the defendant and alleges:

I.

That he is a resident of King County, Washington.

II.

That the defendant Webster-Brinkley Co. is a corporation organized and existing under the laws of the State of Washington with its principal place of business at Seattle, King County, Washington.

III.

During all the time herein mentioned this plaintiff was employed by the defendant as assistant chief inspector under the chief inspector; that the said defendant corporation was engaged in making parts for the Maritime and Navy Service of the United States of America and for vessels con-

structed in connection with the service of the United States of America. That the United States statute provides that in this particular type of work that all time which the plaintiff worked over 40 hours a week shall be paid for at the rate of time and one-half for overtime.

IV.

That on or about November 20, 1944 and continuing until and including May 13, 1945, this plaintiff was so employed by the defendant and during said period he worked 591 hours overtime for the defendant; that he has not been paid for the same, or [1*] any part thereof; that a copy of employment record therefor is hereto attached, marked Exhibit "A", and made a part of this complaint, which shows the amount of overtime put in on the respective dates named: that plaintiff's pay per hour at rate of time and one-half would be \$3.68 per hour; that the defendant is indebted to plaintiff in the sum of \$2174.88 by reason of the matters herein stated. That he has made demand for the same and has been refused payment.

V.

That the obligation of the defendant arises under the statutes of the United States of America.

VI.

That under the Federal Statute plaintiff is entitled to double the amount of wages earned and unpaid, or a total of \$4349.76.

* Page numbering appearing at foot of page of original certified Transcript of Record.

VII.

That \$1500.00 is a reasonable sum to be allowed this plaintiff as attorney's fees herein.

* * * (Second Cause of Action omitted on request.)—Clerk.

WHEREFORE, the plaintiff Thomas R. Belfield prays that he have judgment against the defendant in the sum of \$4349.76, together with attorney's fees in the sum of \$1500.00, or such other sum as the court may allow, and for his costs and disbursements herein.

* * * (Prayer on second cause of action omitted on request.)—Clerk.

GEORGE F. HANNAN

Attorney for Plaintiffs,
1021 Northern Life Tower,
Seattle, Washington.

State of Washington

County of King—ss.

Thomas R. Belfield, being first duly sworn on oath deposes and says: That he is a plaintiff above named; that he has read the foregoing complaint, knows the contents thereof and that the same is true as he verily believes.

/s/ THOMAS R. BELFIELD.

Subscribed and sworn before me this 17th day of April, 1946.

[Seal] GEORGE F. HANNAN,

Notary Public in and for the State of Washington, residing at Seattle.

(Note—Affidavit of John Foster and Exhibit "B" omitted on request.)—Clerk.

[Endorsed]: Filed April 19, 1946.

EXHIBIT "A"

Overtime covering period November 20, 1944 to
May 13, 1945:

Date	Number Hours Over- time Worked	Date	Number Hours Over- time Worked	Date	Number Hours Over- time Worked
1944		1944		1945	
Nov. 20	2.5	Dec. 29	2.5	Feb. 6	2.0
" 21	2.0	" 30	8.0	" 7	6.0
" 22	3.0	1945		" 8	2.0
" 23	3.5	Jan. 2	2.0	" 9	1.0
" 25	8.0	" 3	1.5	" 10	8.0
" 26	7.0	" 4	2.0	" 12	2.0
" 27	4.0	" 5	2.0	" 13	2.0
" 28	2.0	" 6	8.0	" 14	2.0
" 29	2.0	" 7	9.0	" 15	4.0
" 30	1.0	" 8	3.0	" 16	8.0
Dec. 1	4.5	" 9	3.0	" 17	7.0
" 2	8.0	" 10	2.0	" 18	3.0
" 4	3.0	" 11	3.0	" 19	3.0
" 5	4.5	" 12	5.0	" 20	5.0
" 6	4.5	" 13	8.0	" 21	2.0
" 7	3.0	" 15	3.0	" 22	1.0
" 8	2.5	" 16	2.0	" 23	8.0
" 9	8.0	" 17	2.0	" 24	3.0
" 10	6.0	" 18	5.0	" 26	2.0
" 11	3.0	" 19	4.0	" 27	2.0
" 12	7.0	" 20	8.0	" 28	2.0
" 13	4.0	" 22	3.0	Mar. 1	2.0
" 14	3.5	" 23	3.0	" 2	3.0
" 15	6.5	" 24	2.0	" 3	8.0
" 16	8.0	" 25	1.0	" 4	6.0
" 17	6.0	" 26	5.0	" 5	2.0
" 18	1.0	" 27	8.0	" 6	2.5
" 19	4.0	" 28	7.0	" 7	3.0
" 20	4.0	" 29	4.0	" 8	2.0
" 21	3.0	" 30	2.0	" 9	1.0
" 22	5.0	" 31	1.0	" 10	8.0
" 23	8.0	Feb. 1	3.0	" 12	2.0
" 26	2.5	" 2	1.0	" 13	1.5
" 27	2.0	" 3	8.0	" 14	1.0
" 28	2.0	" 5	2.0	" 15	3.0

EXHIBIT "A" (Continued)

1945		1945		1945	
Date	Number Hours Over- time Worked	Date	Number Hours Over- time Worked	Date	Number Hours Over- time Worked
Mar. 16	2.0	Apr. 5	6.0	Apr. 25	7.0
" 17	8.0	" 6	2.0	" 26	3.0
" 18	6.0	" 7	8.0	" 27	1.0
" 19	1.0	" 8	8.0	" 28	8.0
" 20	3.0	" 9	2.0	" 29	6.0
" 21	5.0	" 10	3.0	" 30	2.0
" 22	1.0	" 11	3.0	May 1	2.0
" 23	2.0	" 12	2.0	" 2	1.0
" 24	8.0	" 13	3.0	" 3	1.5
" 26	3.0	" 14	8.0	" 4	2.0
" 27	5.0	" 16	1.0	" 5	8.0
" 28	3.0	" 17	1.0	" 7	1.0
" 29	2.0	" 18	3.0	" 8	2.0
" 30	1.0	" 19	2.0	" 9	2.0
" 31	8.0	" 20	2.0	" 10	1.0
Apr. 2	3.0	" 21	8.0	" 11	3.0
" 3	2.0	" 22	6.0	" 12	1.0
" 4	3.0	" 23	3.0		
		" 24	2.0		
				Total	591 hours

[Title of District Court and Cause.]

APPOINTMENT AND NOTICE AND CON- SENT TO SUBSTITUTION OF ATTORNEYS

To the Honorable John C. Bowen, Judge of above entitled Court, and to the above named defendant and to Catlett, Hartman, Jarvis & Williams, Attorneys for Defendant.

You and each of you will please take notice that the undersigned plaintiffs have retained and appointed Charles H. Heighton and Leo W. Stewart to represent them in the above entitled action, and consent to the substitution of such attorneys for

George F. Hannan, attorney of record for plaintiffs herein, who has passed away.

Dated this 29th day of May, 1946.

THOMAS R. BELFIELD,
JOHN G. FOSTER,
Plaintiffs.

[Endorsed]. Filed July 2, 1946.

[Title of District Court and Cause.]

NOTICE OF SUBSTITUTION
OF ATTORNEYS

To the Defendants above named, and to Catlett, Hartman, Jarvis & Williams, your attorneys:

You, and each of you, will please taken notice that the undersigned attorneys, Charles H. Heighton and Leo W. Stewart, enter this appearance for and on behalf of the plaintiffs Thomas R. Belfield and John G. Foster, and that hereafter all motions and pleadings be served upon them at their office, 1021 Northern Life Tower, Seattle, Washington.

Dated this 27th day of June, 1946.

CHARLES H. HEIGHTON,
LEO W. STEWART,
Attorneys for Plaintiffs.

Copy received: Catlett, Hartman, Jarvis & Williams, July 1, 1946.

[Endorsed]: Filed July 2, 1946. [6]

[Title of District Court and Cause.]

ANSWER

Now comes the defendant in the above entitled action and in answer to the complaint of the plaintiff Thomas R. Belfield alleges as follows:

I.

Admits the allegations of Paragraphs I and II.

II.

As to the allegation of Paragraph III, it admits that on November 16, 1944, plaintiff Thomas R. Belfield was in the employ of the defendant as Assistant Chief Inspector; that it was engaged during certain periods of time in manufacturing steering devices and parts for the Maritime Commission and United States Navy as prime contractor and subcontractor; it denies each and every other allegation in said paragraph.

III.

As to the allegations of Paragraph IV, it admits that the plaintiff Thomas R. Belfield was employed by it as Assistant Chief Inspector on November 16, 1944 and continued in its employ until the 15th day of May, 1945, at a salary of \$425.00 per month; it denies each and every other allegation in said paragraph.

IV.

As to the allegations of Paragraphs V, VI, and VII, defendant denies each and every one.

For a separate and affirmative defense to the complaint of Thomas R. Belfield, it alleges as follows:

I.

That in August of 1944, the Webster-Brinkley Company commenced the reorganization and enlargement of its Inspection Department, and on October 9, 1944, it filed an application to establish the proper salary for the position of Chief Inspector and Assistant Chief Inspector with the Salary Stabilization Unit of the Bureau of Internal Revenue which, under presidential order governing the administration of wage stabilization regulations, had jurisdiction over salaried employees occupying [7a] executive, administrative or professional positions and receiving salaries of more than \$200.00 a month; that after investigation and in November, 1944, the Salary Stabilization Unit approved the application to fix the salary of the plaintiff Thomas R. Belfield in the position of Assistant Chief Inspector at \$425.00 a month, and on November 16, the plaintiff Thomas R. Belfield entered upon his employment as Assistant Chief Inspector at the salary fixed; that the position of Assistant Chief Inspector was a supervisory position and classifiable as an executive

or administrative position under the regulations of the Administrator of the Wage and Hour Division of the Department of Labor issued pursuant to Sec. 13(a) of the Fair Labor Standards Act, being the act of June 25, 1938, 29 U. S. Code, Secs. 201-219, and that plaintiff Thomas R. Belfield was therefore exempt from the provisions of Secs. 6 and 7 of said Act; that his employment was on a monthly basis and without overtime.

For a second separate answer and affirmative defense to the complaint of Thomas R. Belfield, defendant alleges:

I.

It repeats the allegations of Paragraph I of the first affirmative defense; it alleges further that the plaintiff Thomas R. Belfield fully understood that in the position of Assistant Chief Inspector, he was acting in an executive or administrative capacity and would not be entitled to overtime; that he was fully informed of the application to the Stabilization Unit and its action thereon, and that he accepted the employment with the understanding that he would not be paid for overtime, and continued in such employment from the 16th day of November, 1944, to May, 1945; that he received checks semi-monthly in payment for his services at the rate set forth during the whole period [8] of his employment in such position; that during that period, he never suggested or claimed that he was entitled to any overtime; he

never asserted or claimed that his position was a non-exempt position; that because of the bona fide belief of the defendant company that the position of Assistant Chief Inspector was an exempt position, and by reason of the fact that plaintiff never at any time made any claim to overtime or any objection to the checks received, defendant kept no record of the hours worked by Mr. Belfield, as it did not of its other executive and administrative employees; that by reason of the foregoing facts, the defendant Thomas R. Belfield is now estopped to claim that he occupied a non-exempt position or to claim any overtime in connection therewith. [9]

Wherefore the defendant prays that the above complaint be dismissed and that it have judgment against the plaintiffs for its costs and disbursements herein.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,

Attorneys for Defendant.

State of Washington,
County of King—ss.

Harold H. Hartman, being first duly sworn, on oath disposes and says:

That he is Vice President of the Webster-Brinkley Company, a corporation; that he makes this verification on its behalf; that he has read the fore-

going answer, knows the contents thereof, and believes the same to be true.

/s/ HAROLD H. HARTMAN,

Subscribed and sworn before me this 17th day of July, 1946.

[Seal] /s/ MIMA P. BENSON,

Notary Public in and for the State of Washington, residing in Seattle.

July 18, 1946, Leo W. Stewart, Attorney for Plaintiff.

[Endorsed]: Filed July 22, 1946.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be tried before the Court, sitting without a jury, on December 18, 1946, at 11:00 o'clock a. m., the plaintiffs being present in person and being represented by their attorneys, Leo W. Stewart and Charles H. Heighton, and the defendant being represented by its attorney, Fred W. Catlett, of the firm of Catlett, Hartman, Jarvis & Williams; witnesses having been sworn and testi-

fied, documentary evidence having been adduced on behalf of the plaintiffs and defendant, and the trial having been held on the merits, the Court makes the following

Finding of Fact

I.

That the plaintiffs Thomas R. Belfield and John G. Foster brought the above entitled action to recover from the defendant overtime compensation and additional equal amount as liquidated damages pursuant to Sec. 16(b) of the United States Fair Labor Standards Act of 1938, hereinafter referred to as the Act; that jurisdiction is conferred upon the court by Section 14 (8) 28 United States Code.

That the defendant Webster-Brinkley Company is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Seattle, King County, Washington.

II.

During all the times mentioned in the complaint on file [12] herein defendant was engaged in making of various parts for the Maritime and Naval Service of the United States of America, and for vessels constructed in connection with the service of the United States Maritime service; during all the times mentioned the said defendant was engaged in interstate commerce.

III.

That during said period from November 20, 1944 to May 13, 1945, plaintiff Thomas R. Belfield worked for the defendant as assistant chief inspector a total of 591 overtime hours for which said plaintiff has not been compensated, and that under the Act the said Thomas R. Belfield was entitled to one and one-half times his compensation for said overtime, and the rate of pay for the said Thomas R. Belfield for overtime purposes is the sum of \$3.678 per hour for said 591 overtime hours worked by said Thomas R. Belfield or the sum of \$2173.70, together with an additional equal amount as liquidated damages.

The Court further finds that the said Thomas R. Belfield was during his employment as aforesaid engaged in interstate commerce and in the production of goods for interstate commerce.

Done in open court this 4th day of January, 1947.

/s/ JOHN C. BOWEN,
Judge.

From the foregoing Findings of Fact, the Court finds the following:

Conclusions of Law

I.

That this court has jurisdiction over the causes of action set forth in plaintiff's complaint and the parties to the action.

II.

That upon the first cause of action in favor of the plaintiff Thomas R. Belfield, he is entitled to judgment in his favor and [13] against the defendant in the sum of \$4347.40, together with attorneys' fees in the sum of \$500, and costs of suit.

Done in open court, this 4th day of January, 1947.

/s/ JOHN C. BOWEN,
Judge.

Presented by: Charles H. Heighton and Leo W. Stewart, Attorneys for Plaintiffs.

[Endorsed]. Filed January 4, 1947.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 1530

THOMAS F. BELFIELD and
JOHN G. FOSTER,

Plaintiffs,

vs.

WEBSTER-BRINKLEY COMPANY,
a corporation,

Defendant.

JUDGMENT

This cause came on regularly to be tried before the undersigned Judge of the above entitled Court, sitting without a jury, on December 18, 1946, to and including December 21, 1946, the plaintiffs being present in person and represented by their attorneys, Leo W. Stewart and Charles H. Heigh-ton; the defendant being represented by its attorney, Fred W. Catlett, of the firm of Catlett, Hartman, Jarvis & Williams, and opening state-ment on behalf of plaintiffs and the defendant having been made by respective counsel, and evi-dence on behalf of both of the parties, plaintiff and defendant, having been introduced, and closing arguments of respective counsel having been heard;

And the Court having entered herein its Find-ings of Fact and Conclusions of Law, in conformity

with which the following judgments are hereby rendered:

It Is Hereby Ordered, Adjudged and Decreed, that the plaintiff Thomas R. Belfield do have and recover judgment against the defendant Webster Brinkley Company, a corporation, on the first cause of action set forth in plaintiffs' complaint in the sum of \$4347.40, together with attorneys' fees in the sum of \$500.00 and the costs of suit herein to be taxed.

It Is Further Ordered, Adjudged and Decreed, that the second cause of action in favor of plaintiff John G. Foster, be and the same is hereby dismissed with prejudice, [15] and that the defendant have judgment against the said plaintiff for its costs and disbursements herein to be taxed.

Done in open Court this 4th day of January, 1947.

JOHN C. BOWEN,
Judge.

Presented by

LEO W. STEWART,
CHARLES H. HEIGHTON,
Of Attorneys for Plaintiffs.

Approved: as to judgment against John G. Foster.

FRED W. CATLETT,
Attorneys for Defendant.

[Endorsed]: Filed January 4, 1947. [16]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Now Comes the defendant in the above entitled cause and moves the court to set aside the findings of fact and conclusions of law and judgment so far as they affect the plaintiff, Thomas R. Belfield, entered herein on the 4th day of January, 1947, and to grant defendant a new trial so far as the plaintiff, Thomas R. Belfield is concerned, for the following grounds materially affecting substantial rights of the defendant:

1. Insufficiency of the evidence to justify the decision of the court.
2. Error in law occurring at the trial.

I.

The evidence was insufficient to justify the court in concluding that Thomas R. Belfield was not employed in an executive and administrative capacity and was not exempt from the Federal Fair Labor Standards Act but was subject to said Act and entitled to overtime under it.

II.

The evidence was also insufficient to justify the court in finding that Thomas R. Belfield was employed at \$425.00 a month upon the basis of 40 hours of work per week, and is insufficient to justify any finding by the court that the basis of employment was other than \$425.00 a month for

such number of hours per week as the job might take or as he might work; in other words, that [17] the employment was for no definite, but for a fluctuating, number of hours per week.

III.

The evidence was also insufficient to justify the court in finding that Thomas R. Belfield actually worked 591 overtime hours or any number of overtime hours.

IV.

The evidence was insufficient to justify the court in adopting the formula it adopted to calculate the overtime due Thomas R. Belfield, if any, and the award to Thomas R. Belfield of the sum of \$2,174.88.

V.

The evidence was also insufficient to justify the court in allowing to Thomas R. Belfield an additional equal amount of \$2,174.88 as liquidated damages.

The errors in law occurring at the trial, among others, were as follows:

I.

The finding by the court that Thomas R. Belfield, in his employment by the defendant as assistant chief inspector, was not an executive or administrative employee and therefore exempt from the Federal Fair Labor Standards Act, and the finding by the court that he came under the operation of said Act and was therefore entitled to overtime.

The court also erred in finding that the said Thomas R. Belfield was employed on a basis of a 40-hour week or on any other basis than for an indefinite and shifting number of hours per week, and the court therefore erred in finding that, under the Act, Thomas R. Belfield was entitled to 1½ times his compensation for said overtime, if any overtime at all were worked, and the court also erred in finding that the amount due [18] said Thomas R. Belfield, if he worked any such overtime, was the sum of \$2,174.88, and also in allowing to Thomas R. Belfield an additional equal amount as liquidated damages. The court erred in making and entering its findings of fact in favor of Thomas R. Belfield and specially in respect to the matters just specified, and the court further erred in entering its conclusions of law No. II and in entering that portion of its judgment contained in the first paragraph thereof, granting to Thomas R. Belfield a judgment against the defendant, Webster-Brinkley Co., in the sum of \$4,349.76, together with attorney's fees in the sum of \$500.00 and the costs of suit herein to be taxed.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,
Attorneys for Defendant.

Copy received Jan. 10, 1947.

LEO W. STEWART,
CHAS. H. HEIGHTON,
Attys. for Plaintiff.

[Endorsed]: Filed Jan. 10. 1947. [19]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the defendant, Webster-Brinkley Co., a corporation, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that portion of the final judgment in the above entitled case affecting the plaintiff Thomas R. Belfield, and awarding him judgment against the defendant company in the sum of \$4,347.40, together with attorneys' fees in the sum of \$500.00 and the costs of suit, said judgment having been entered in this action on the 6th day of January, 1947.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,
Attorneys for appellant,
Webster-Brinkley Co.

[Endorsed]: Filed March 11, 1947. [20]

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men By These Presents, That we, Webster-Brinkley Company, a corporation, as principal, and Hartford Accident & Indemnity Co. as surety, are held and firmly bound unto Thomas R. Belfield in the full and just sum of \$5,000.00, to be paid to the said Thomas R. Belfield, his executors, administrators or assigns; to which payment,

well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of March in the year of our Lord One Thousand Nine Hundred and Forty-seven.

Whereas, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in said court between Thomas R. Belfield, plaintiff, and Webster-Brinkley Company, a corporation, defendant, a judgment was rendered against the said defendant and the said Webster-Brinkley Company having filed in said court a notice of appeal to reverse the judgment in the aforesaid suit, so far as it affects the plaintiff Thomas R. Belfield and awards a judgment to him against the defendant, Webster-Brinkley Company, on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden in San Francisco in the State of California.

Now, the condition of the above obligation is such, That if the said Webster-Brinkley Company, a corporation, shall prosecute [21] its appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if the defendant fail to make its plea good,

then the above obligation to be void; else to remain in full force and virtue.

[Seal] WEBSTER-BRINKLEY
COMPANY,

By H. R. WASHINGTON,
Asst. Treas.

[Seal] HARTFORD ACCIDENT &
INDEMNITY CO.,
Surety.

By GERALD L. PERRY,
Attorney-in-Fact.

Presented by:

FRED W. CATLETT,
Attorney for Defendant.

Approved as to form and amount:

LEO W. STEWART,
CHARLES H. HEIGHTON,
Attorneys for Plaintiff.

Approved, 3/11/1947.

LLOYD L. BLACK,
U. S. District Judge.

[Endorsed]: Filed March 11, 1947.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

This matter coming on regularly for hearing on March 3, 1947, on motion of the defendant for a new

trial as to the cause of action of the plaintiff Thomas R. Belfield, the defendant being represented by its attorney, Fred W. Catlett of the firm of Catlett, Hartman, Jarvis & Williams, and the plaintiff, Thomas R. Belfield being represented by his attorneys, Leo W. Stewart and Charles H. Heighton, and the Court having listened to the argument of counsel, and being fully advised in the premises,

It Is Hereby Ordered that defendant's motion for a new trial as to the cause of action of the plaintiff Thomas R. Belfield be and the same is hereby denied.

The defendant excepts to the entry of this order and its exception is allowed.

Dated this 14th day of March, 1947.

JOHN C. BOWEN,
Judge.

Presented by:

CHARLES H. HEIGHTON,
Of Counsel for Plaintiff.
Thomas R. Belfield.

Approved as to form:

FRED W. CATLETT,
CATLETT, HARTMAN,
JARVIS & WILLIAMS,
Attorneys for Defendant.

[Endorsed]: Filed March 14, 1947. [23]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD AND DOCKETING APPEAL

It appearing to the Court that notice of appeal was duly and regularly filed in the above-entitled cause and the transcript of the testimony immediately ordered but that it has been impossible for the clerk to complete the preparation of the record on appeal herein for the reason that the court reporter has not been able to complete the transcript of the testimony and that it is necessary that the time be extended within which the record on appeal may be filed and the appeal docketed in said Circuit Court of Appeals, the court being fully advised in the premises,

It Is Hereby Ordered that the time within which the record on appeal may be filed and the appeal docketed in said Circuit Court of Appeals be and it is hereby extended for a period of ninety days, or until and including the 9th day of June, 1947.

Done In Open Court this 17th day of April, 1947.

JOHN C. BOWEN,

Judge.

The above order is consented to and approved.

LEO W. STEWART,,
CHARLES H. HEIGHTON,

Attorneys for Plaintiff and
Respondent.

Order presented by:

FRED W. CATLETT,
Attorney for Defendant and
Appellant.

[Endorsed]: Filed April 17, 1947. [24]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES

Appellant, Webster-Brinkley Co., relies on this appeal upon the following points, to-wit:

1. The evidence was insufficient to justify the court in concluding that Thomas R. Belfield was not employed and worked for the Webster-Brinkley Co. in an executive or administrative capacity and was not exempt from the Federal Fair Labor Standards Act but was subject to said act and entitled to overtime under it.

2. The evidence was also insufficient to justify the court in finding that Thomas R. Belfield was employed at \$425.00 a month upon the basis of forty hours of work per week and it was insufficient to justify any finding by the court that the basis of employment was other than \$425.00 a month for such number of hours per week as the job might take or as he might work; in other words, that the employment was for no definite but for a fluctuating number of hours per week.

3. The evidence was also insufficient to justify the court in finding that Thomas R. Belfield actually worked 591 overtime hours or any number of overtime hours.

4. The evidence was insufficient to justify the court in adopting the formula it adopted to calculate the overtime due Thomas R. Belfield, if any, and the award to Thomas R. Belfield of the sum of \$2174.88.

5. The evidence was also insufficient to justify the court in allowing to Thomas R. Belfield an additional equal amount of [25] \$2174.88 as liquidated damages.

6. The court erred in making and entering its findings of fact No. III and IV, its conclusion of law No. II and its judgment against the defendant in the sum of \$4349.76 together with attorneys' fees in the sum of \$500.00 and the costs of suit.

Dated this 19th day of May, 1947.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,
FRED W. CATTLETT,

Attorneys for Webster-Brink-
ley Co., Appellant.

Copy received May 19, 1947.

LEO W. STEWART &
CHARLES H. HEIGHTON,

By CHARLES H. HEIGHTON.

[Endorsed]: Filed May 24, 1947. [26]

[Title of District Court and Cause.]

ORDER

It appearing to the Court that an appeal has been duly and regularly taken in the above-entitled case so far as Thomas R. Belfield is concerned and that the record on appeal is being prepared by the clerk of this court for transmission to the Circuit Court of Appeals of the Ninth Circuit and that the original exhibits are a necessary part of a proper record on appeal, the clerk of the above-entitled court is hereby

Ordered and Directed to transmit to the Circuit Court of Appeals of the Ninth Circuit as part of the record in the cause the original exhibits connected with the case of Thomas R. Belfield, to-wit: Plaintiff's Exhibits 1, 3 and 6, and Defendant's Exhibits A-1, A-3, A-8, A-9, A-10 and A-11.

Dated this 23rd day of June, 1947.

JOHN C. BOWEN,
Judge.

Approved:

CHARLES H. HEIGHTON &
LEO W. STEWART.

FRED W. CATLETT,

Attorneys for Plaintiff,
Thomas R. Belfield.

[Endorsed]: Filed June 24, 1947. [27]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between Thomas R. Belfield, plaintiff and appellee, by his attorneys, Leo W. Stewart and Charles H. Heighton, and Webster-Brinkley Co., defendant and appellant, by its attorneys, Catlett, Hartman, Jarvis & Williams and Fred W. Catlett, as follows:

That the following parts of the record of the above case shall be included in the record on appeal:

1. The first cause of action of complaint (that relating to Thomas R. Belfield), first part of prayer, first part of verification, and Exhibit A.

2. Appointment and consent to substitution of attorney (June 27, 1946, File No. 7).

3. Answer, first part (that relating to Thomas R. Belfield), prayer.

4. Findings of Fact and Conclusions of Law (Belfield, File No. 18).

5. Judgment (File No. 19).

6. Defendant's motion for new trial (File No. 20).

7. Notice of Appeal (File No. 23).

8. Supersedeas bond (File No. 24).

9. Order denying motion for new trial (File No. 25).

10. The reporter's transcript of the oral testimony or a condensed statement in narrative form of such testimony to be [28] filed herein by appellant and, if the appellee be dissatisfied with that narrative statement, the testimony in question and answer form to be substituted for all or a part of said condensed statement.

11. Order extending time for filing record and docketing appeal.

Dated this 19th day of May, 1947.

THOMAS R. BELFIELD.

By LEO W. STEWART,
CHARLES H. HEIGHTON,
His Attorneys.

WEBSTER-BRINKLEY CO.,

By CATLETT. HARTMAN,
JARVIS & WILLIAMS,
FRED W. CATLETT,
Its Attorneys.

[Endorsed]: Filed May 24, 1947. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States
District Court for the Western District of Wash-

ington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 29, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above-entitled cause as is required by stipulation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the foregoing, together with the condensed statement in narrative form of evidence at the trial December 18, 1946, before Honorable John C. Bowen, United States District Judge, transmitted as part hereof, constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparing the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit: [30]

6 pages at 40c	\$2.40
25 pages at 10c (copies furnished)	\$2.50
Appeal Fee	\$5.00
	———
Total	\$9.90

I hereby certify that the above amount has been paid to me by the attorneys for the appellant.

tion is the machinery business, my trade is machinist's. I have acquired all the knowledge and skill for a rating in that department. I am known in the trade as a journeyman machinist and was such before the late war for about 14 years. I am married and have a family now living in Spokane. At the time the action was commenced, I was a resident of Seattle. I started to work for Webster-Brinkley Co. sometime in January, 1943. I was hired for shop inspector. My duties were to inspect machine parts and castings in the shop before parts went out for assembly. The Webster-Brinkley Co. was at that time, and particularly in November, 1944, and May, 1945, engaged in the manufacture of deck machinery for the Maritime and Navy. It was sent to different shipyards in all parts of the country. I worked directly upon those machines. During the overtime period, my work was mostly on the cargo winches. I also did inspecting work on anchor windlasses, planetary capstans and hydraulic steerers. I went to work in 1943 as an inspector. At that time, I think there were five other inspectors who did the same work as I. The executive officer in charge was Bill Lewis, Chief Inspector. I did no work outside the plant at that time as assembly inspector. Later on, I was transferred to the outside as outside inspector. An assembly inspector watches these different machines being assembled and sees that they are assembled right and that they work free. The plant was located in Seattle on Airport Way. The assembly inspection was inside that plant. Outside work was

the inspection of parts being made by machine shops and foundries on the outside, some in Tacoma, Portland, Aberdeen and Hoquiam, Port Angeles, Port Townsend, Shelton and Everett, and other places in Seattle outside of the Airport plant. Between January, 1943, and August, 1944, I did some work at those outside plants away from the main plant and at those various towns. I did inspecting work there of castings and parts to be assembled at the Webster-Brinkley Co. in Seattle. In August, 1944, there was a change made in the personnel of the Inspection Department of the Webster-Brinkley Co. I was brought in from the outside, at first to help out Mr. Fogman to reorganize the Inspection Department, that is, to acquaint him with the procedure. His title was Chief Inspector. I was known as the Assistant Chief Inspector. Mr. Fogman's first name was Harold. There was no other assistant chief. In August, 1944, and after I had been designated as Assistant Chief Inspector, my primary basic duties in the plant were more or less to look over the inspection reports in the morning when they came in and to work with the other inspectors inside the plant and outside the plant. If I remember right, there were around 14 or 15 other inspectors at that time. My ordinary day's work was as follows: I would generally come in at around 7 o'clock. Most of the salaried men came in around 8 o'clock, if I remember right, but I was always there around 7 and looked over the inspection reports that came into the office from the day before and sorted out

the ones that were in question and chased some of them down for engineering or handed them in to Mr. Fogman and he would take care of them. He had the final say-so on all of them. When I went there in the morning there were in the box rejected reports and OK'd reports—material coming in from the outside and also from our own shop.

Q. "Now, what independent, discretionary authority did you have over these reports, if any?"

A. "None."

Q. "Did anybody else do the same thing that you did with regard to these reports?"

A. "Yes."

I merely separated the ones that were OK from the ones that were rejected. They eventually went to Mr. Fogman, the Chief Inspector, from the girl. Her name is Mrs. Elliott. That probably took half an hour to one hour, at the most, in the morning. Then I went out in the plant and worked with the rest of the inspectors in the assembly line in the shop and in the warehouse. I covered mostly the plant, but was on the outside.

Q. "When you say you did the work of inspector, was it manual work or not?"

A. "Yes, it was inspecting tools."

Q. "The same as the other 10 or 12 inspectors?"

A. "Yes."

Q. "And you put in the length of an ordinary day doing that work?"

A. "Yes, a regular working day."

Mr. Catlett: "I object to the question as leading."

The Court: "Sustained."

Q. "What percentage of the day would you say was spent doing the work of the other regular inspectors in the shop?"

A. "90%."

At that time, I had the title of Assistant Chief Inspector. At that time, they had green tags, yellow tags and red tags. They had red tags for the rejected material. Any inspector could tie a red tag on any part that was in question. With reference to the acceptances, the inspectors merely stamped an OK on the parts and sent them through, made out an OK inspection report and sent that through.

Q. "Mr. Belfield, regarding your authority upon accepting and rejecting, what were your primary duties or obligations thereto?"

A. "Well, if a part were too much in question, it was referred to the Chief Inspector. If he didn't give us an answer, he would go to the Engineering Department and get the answer directly from them. I was furnished with blue prints to guide me as to the way to inspect and what inspection should be made and what allowance should be made. There was also a manual furnished each inspector for the inspection of parts. He was required to be able to use it. The manual was set up by Mr. Thacker. I had nothing to do with the making of the blue prints. After August and up until November 15,

I worked for \$1.50 an hour, the same rate I was on on the outside, and then they put me on a monthly salary. Prior to that time of changing from the \$1.50 rate to the monthly rate, a Mr. Minning was working on the outside with me. After I had gone inside, Mr. Burdge and Mr. Wallaston were working on the outside. They were classified as inspectors and paid on the hourly rate. I worked at various times with all of them. I did the same type of work that they did. We had certain parts to inspect at different shops in town that were being machined or being poured in those foundries—castings and weldments being welded up. We would merely go around and inspect them with the drawings, with our tools. When I arrived at a plant with, say, Burdge, we got our tools—the ones we needed to inspect with. We generally had our tools along and we inspected the parts to the drawing. I took some parts and he took other parts. Sometimes we would work together half a day and sometimes maybe it wouldn't be only an hour or so. On both the outside trips and those in Seattle, I was paid for my expense and I got car mileage for the operation of my car. I kept track of my mileage and turned in accounts for it. On about November 15, I had a discussion with Mr. Fogman relative to changing from this \$1.50 rate to the rate of a per month salary. He was the Chief Inspector from August on to November 15, 1944.

Q. “At that time, what conversation did you have with him relative to your salary?”

A. "Well, I didn't see where I was going to benefit from a monthly salary. Before that time—they had talked it over with me, and Mr. Fogman—if I would come inside for two or three months and then later I could go back on the outside. That was later on changed. They put me on a monthly salary anyway."

Q. "The conversation that you had with Mr. Fogman in November relative to your changeover to the inside, what was said by him as to the amount of hours you would work and what would be the basis of your working?"

A. "First, he wrote some figures down on a piece of paper—as to how much I was going to get an hour. He said there wouldn't be no overtime with that. Before I had been working long hours on the outside and inside after they had called me back in from the outside."

Exhibit 1 is my checks during August, September and some of the October checks prior to the time I went on a monthly salary.

The witness, asked to designate a few of the checks and the amount of hours and wages, said:

Here, it starts in the 9th month in 1944: 11 hours, 15½ hours, 12 hours, 15, 10 and 10. The 11th month, 1944: 11½ hours, \$19.88; 10 hours for the 7th, \$16.50; on the 8th, 11.3 hours, \$23.25—my mistake, that was 13 hours. And on the 9th, 13 hours, \$23.25; the 10th, 13 hours, \$23.25; the 11th, 10 hours, \$22.50; and the 12th, 11 hours—no, that is not right.

Q. "Mr. Belfield, how much overtime work did you work on the average?"

A. "Not quite so much as other weeks. Then, sometimes, I would be there until 10:00 or 12:00 o'clock at night and probably some nights longer."

Q. "What did he say to you and what did you say to him about your salary?"

A. "That I didn't have to work overtime, that the job would be easier than the outside and I could be home every night and I would get \$2.00 and something an hour. He figured it out. I don't know how he did it. It was a little more than \$2.00 an hour. At that time, I was getting pretty tired. I had been working long hours for about two years. From the time I went to work in January of 1943 until I retired in May of 1945, I missed but a few days but during the last year I never missed a day—during the time we were making the winch job. That was the hottest job. They needed that job out. I had a perfect attendance record that year."

Q. "After you went on the salary basis, what were your duties?"

A. "Well, more or less, just coming to the office in the morning and going through some of the reports and passing them on. I talked with Mr. Fogman and then worked with the other fellows during the day in the plant."

Q. "What was the difference in your work in the plant after August to what it had been before?"

A. "None. It was the same type of work outside of sitting there in the office for about an hour in

the morning, or half hour to one hour. That started in August. The duties after November 15 were just the same as prior to that. I was asked by Mr. Fogman to work overtime after November 15 and I had to do so. At that time we were frozen in our jobs.”

At that time, a statement of salary overtime starting November 19, 1944, was marked plaintiff's Exhibit 2 for identification and a Work Clearance and Referral was marked plaintiff's Exhibit 3 for identification.

The Witness (Continuing): With regard to signing inspection reports, I did sign reports of rejections and exceptions. Other inspectors did the same thing. I did not have authority to hire and fire employees in the Inspection Department. I was not consulted as to who should be hired and who should be fired. When I was away from the plant with Mr. Burdge, I did not tell him what to accept and what to reject. He followed the general direction himself. He knew more about the work on the outside at that time than I did. He worked constantly at that. After November 15, I did work overtime. If I remember right—I am pretty sure—I protested to Mr. McCarthy and several times to Mr. Fogman about it. I kept a record of the time I worked overtime. I did not ask the company officials to keep any record or to give me any record. Mr. Fogman and his secretary knew I was keeping a record of the overtime. I turned my overtime in to his secretary. I talked it over with her that I wanted her to keep track of my overtime and for her to turn it in—to me—from time to time. I

showed it to Mr. Fogman several times. He said he was going to take it up with Mr. McCarthy or Mr. Washington. They were officials of the Webster-Brinkley Co.

Plaintiff's Exhibit 2 is the overtime record in my handwriting. Plaintiff's Exhibit is an overtime record for the amount of overtime I worked. It is kept on the exhibit by the day, the month and the amount of overtime. I kept that record myself personally. During the time I was with Webster-Brinkley Co., I kept a record of my overtime even before I was on a salary. All hourly men generally carry a timebook or keep their overtime record from week to week.

Mr. Stewart: "I offer plaintiff's Exhibit 2 in evidence."

Mr. Catlett: "I object to its admission. In the first place, I would like to ask some questions with reference to it before your Honor even passes upon the question of admissibility."

The Court: "I will let you do that now, if you want to."

Mr. Catlett: "Mr. Belfield, what was the primary record that you made of your overtime?"

A. "Well, on one I kept a desk calendar, a loose leaf calendar and also a timebook."

Q. "Where is the desk calendar and where is the timebook?"

A. "We have got part of it. The wife had part of it. We took it all together and put it on this sheet."

Q. "That sheet, then represents a tabulation taken from other enteries?"

A. "Yes."

Q. "Where are the original enteries?"

A. "I have the timebook at home in Spokane. The other one the kids tore up—painted pictures on them and different things."

Mr. Catlett: "If your Honor please, I am going to object to the entry of this secondary evidence. We are entitled to have the original enteries if they can be produced and part of them can be produced."

The Court: "When did you make this record, you and your wife?"

The Witness: "That was right after I quit Webster-Brinkley and went to Western Gear."

The Court: "You didn't make up this daily as a part of your daily work and routine, this record?"

The Witness: "No."

The Court: "The objection is sustained."

Mr. Stewart: "Do you know how many hours of overtime you worked, Mr. Belfield?"

A. "Yes."

Q. "Will you please state how many hours of overtime you worked between November 15, 1944 and May 15, 1945?" [8]

Mr. Catlett: "Of course, that question means, I assume, how many he worked as he can testify now of his own knowledge, separate and apart from any record of figures that he has there."

The Court: "It is so ordered—that he can re-

fresh his recollection from figures of the character mentioned a few moments ago.”

A. “There were three days that I remember in one week that I had worked—on one day I had worked the clock around. I worked 24 hours.”

The Court: “Mr. Reporter, will you read the question?”

Q. “Will you please state how many hours of overtime you worked between November 15, 1944 and May 15, 1945?”

The Court: “If you know, state that and not something else.”

Q. (By Mr. Stewart) “State the number of hours you worked.”

A. “I have 300 and some hours in the timebook at home.”

Mr. Catlett: “Now, your Honor——”

The Court: “The objection is sustained. You will have to answer the question—not some other question.”

Q. (By Mr. Stewart): “Just state how many hours you worked, the total number of hours you worked.”

A. “I can’t answer that.”

Mr. Stewart: “Your Honor, I will have to ask to withdraw the witness from the stand at this time.”

The Court: “You may do so.”

Mr. Stewart: “Will you step down, please?”
(Witness excused.)

Mr. Stewart: “I will recall the same witness.”

Mr. Catlett: "If your Honor please, I object."

The Court: "There was no request made to have the witness resume the stand after conferring with the witness."

Mr. Stewart: "The witness is a working man. He does not know the workings of the law. When I asked if the witness could step down, I thought it was understood that I could interrogate him."

The Court: "I didn't so understand."

LLOYD M. BURDGE

called as a witness by the Plaintiff, being first duly sworn, testified as follows: My name is Lloyd M. Burdge, my address 3907 Morgan St., Seattle, my occupation machinist. I have worked at that 20 years. I am acquainted with Mr. Thomas Belfield. I was employed by the Webster-Brinkley Co. for 5 years from 1941 to 1946. Originally, I worked in the shop as a machinist for a period of about 2½ years, then I worked as a leadman in the shop for a little better than a year and the last of my time I spent as an inspector. Chiefly, my work was with the outside inspectors. Most of them were located here in Seattle, some of them were out. I made trips to Tacoma and to Everett. I was paid an hourly rate of \$1.50 an hour. I got overtime after eight hours a day, regardless of the week. There was nobody over me when I went away from the plant to inspect. I was my own boss when I was away from the plant. When I went away to the outside jobs I

always took with me the necessary blueprints of the parts we might have to inspect and the necessary tools or instruments we would need to check the measurements with. I had the responsibility of accepting or rejecting on my own as to whether it would pass or not. If it didn't pass, I tagged it with a reject tag and made a report to that effect. I had that authority from the company. There were a number of occasions that Mr. Thomas Belfield went with me.

Q. "What percentage of the time do you believe between November, 1944 and May, 1945 he might have been with you on these jobs?"

Mr. Catlett: "If your Honor please, I submit that that is an unintelligible question. He testified that Mr. Belfield went with him on a few occasions. He didn't say anything that would give us a base for estimating the percentage—such a percentage as we have in this case."

The Court: "The objection overruled."

A. "Well, there were times when Mr. Belfield would go with me and we might work an entire day together. There were other times that we might call on the supplier and there would be a couple of hours work. I would say that possibly 10% of the time he spent with me."

I would say that would be about right on these outside jobs. When he went with me, if they were large, cumbersome parts, we would work on the same part to check. At other times, he would be checking the same identical part, doing the same

thing I was doing. That practice was followed each time we went on these jobs.

Q. "Will you explain how you inspected, if you will—how you used your instruments."

A. "We had prints. Tolerances were given on the prints that the parts were to conform to. We would measure with micrometers for the sizes to determine if they were within the specifications."

Lots of pieces were large and it wouldn't be possible for one man to turn them over, to pick them up or do any handling that you might have to do to check them. Mr. Belfield was engaged in the same kind of work that I did in lifting and turning these parts around. When I was handling a large cumbersome piece, he helped me in turning and testing it. He followed that practice during all of the time that we would be on the job together. On these trips away from the plant, I was allowed costs for operating my own car from the plant. Sometimes I rode with Mr. Belfield and sometimes he rode with me. It would just depend upon whose car was handiest. If it was my car, I turned in an expense account. If I used Mr. Belfield's car, I would turn in his account.

On cross-examination, Mr. Burdge testified: I worked with Mr. Belfield when he was an inspector. My testimony was concerned with the time he was inspector. From the time that I came into the Inspection Department, he had the title of Assistant Chief Inspector. When we made an inspection, we did not always make a report. The reports were made only on rejected material. When made on rejected material, I signed them. I placed them in

the office. They had a basket to place the reports in. On the rejected materials, they were usually next considered by Mr. Belfield. So far as I know, he checked them over to see if they were made out correctly, that is, whether I had made an error in my pencil work on them, and they then went to the girl to be typewritten on another form. Very rarely did Mr. Belfield check to see whether or not the materials really should be rejected. I can't say I recall of him ever doing that."

Q. "Didn't questions frequently arise as to whether or not materials should be rejected or were usable?"

A. "Yes, sometimes, if they were very near to the tolerances on the print, the discussion did come up as to whether they could be used or passed."

Q. "When you say that your judgment on a matter was final, isn't it true, as a matter of fact, that many cases did go beyond you to Mr. Belfield or to his superior for further action?"

A. "That is true, if it was a questionable part. If it were definitely beyond print dimensions, why, I would write a reject on it and it was accepted that way without any further question."

There were also government inspectors on these jobs from time to time. They also might reject. If they rejected, the part was scrapped then. We had no recourse after the government inspectors rejected it.

Q. "Let me ask you if Mr. Belfield didn't frequently check up on parts rejected by the govern-

ment inspectors to see whether or not they agreed with them or whether the parts could be used?"

A. "Well, I wouldn't know about that because most of my time was spent with the outside inspectors and if they had any such discussions with the Navy or Maritime inspectors, they were at the plant and I wasn't present."

Q. "The inspections you made were what might be called original inspections, weren't they?"

A. "Yes."

Q. "That would be the first inspection made by anyone connected with the Webster-Brinkley Co.?"

A. "Yes, that is true."

Q. "It was necessary to keep your inspectors in these suppliers' plants in order to see that the materials that came down to the Webster-Brinkley Co. were satisfactory, wasn't it?"

A. "That is right."

Q. "They frequently had a good deal of trouble over defective parts or parts that did not come up to specifications, isn't that true?"

A. "Occasionally, there was not an awful lot of that."

Q. "Did you ever see Mr. Belfield coming down to reinspect parts?"

A. "I believe I have asked him to come down. We used to get castings sometimes that were faulty—that had cracks or were poor castings and I was doubtful as to whether they could be used. I used to ask Mr. Belfield to come down and look at it."

On redirect examination, Mr. Burdge testified: I had authority to talk with the Engineering Department. I was free to go to the Engineering Department at any time with questions. If a part didn't come up to specifications, I could go direct to them and ask them whether to pass it or not. I have done that on a number of occasions.

Q. "Did you say that frequently you have done that?"

A. "Well, those things didn't come up too often, but I have done that."

On recross-examination, Mr. Burdge testified: I was using the blueprints made by the Engineering Department.

Q. "So that would be the natural place to inquire concerning the blueprints and whether or not a particular part would qualify, wouldn't it?"

A. "Well, not always, if the Chief Inspector was in the office I would go to him. Quite often, maybe, this thing had been acted on in the shop with this same identical piece or had been acted on by the engineers."

Q. "But you weren't under the Engineering Department at all?"

A. "No."

Q. "You were supervised entirely by Mr. Belfield?"

A. "And Mr. Fogman. Mr. Fogman was the Chief Inspector."

ROBERT S. EDMISTEN,

called as a witness by the plaintiff, being first duly sworn, testified as follows on direct examination: My name is Robert S. Edmisten. I am a mechanic. I am acquainted with Thomas R. Belfield and worked with him for quite some time. I did not work for him for the full period in the Webster-Brinkley plant between November 15, 1944 and May, 1945. I worked for him part of that time—with him and when I went on as a leadman, they asked me to work with him on inspection, due to the fact that I had worked on inspection and when I went on as a leadman we could work along with each other. I did work as inspector then in the Webster-Brinkley plant for a year. Then I was transferred to the leadman of machinists. While I was leadman, they asked to me work also with the inspector. When I was working in the Inspection Department, there were approximately 10 men and one or two women in it. I was working inside the plant as an assembly inspector. My job was to inspect the assembly of machines and see that they would pass the Maritime or Navy inspection properly assembled. While I worked as assembly inspector, I saw Mr. Belfield engaged in the same thing. I have never seen him walk through the shop that he didn't have some work of that type before he went through. I was there practically every day during the period from November, 1944 to May, 1945.

Q. "Did you see Mr. Belfield there practically daily during that time?"

A. "Well, at first he was on the road and I would see him about three or four days a week, possibly, around the plant."

By on the road, I mean outside the plant. When he was working in the plant on the days I was there, he would be doing the same class of work I would be doing which would be accepting or rejecting parts that went into the machinery. While he was in plant, he would be engaged in that kind of work about 75% of the time, as near as I could figure out. When he inspected as I did, he used our precision tools used to check depth and tolerances. I had authority to put a reject on an article if it didn't meet specifications. All the other inspectors had that right. If it didn't pass inspection or I was doubtful about it, I had two things I could do. On some inspections, like the gears of the winch jobs, if the Maritime inspector was there and if he thought it could be reworked on the floor, why, he would give me authority to go ahead and have it welded or fixed or whatever the procedure would be on it. On some things that he had no connection with, I would just send my rejects through and then it would go into the inspection office. I would give it to the secretary. I had authority to consult the Engineering Department upon the result of my inspection and I did so. I had in my possession each day that I worked in the plant blueprints and a manual of works procedure. With those, I guarded myself as to my inspections. When I first went to work, the Chief of the Inspection Department was Earl Rulofson. Later on, I worked for Hal Fogman. I consulted

Mr. Fogman. I sometimes consulted Mr. Belfield on allowed tolerances to see if they would pass.

Q. "If a novel question came up and you requested Mr. Belfield what would be the result of that inspection; what did he do about it?"

A. "Well, he would say, 'Well, let's go over and take a look at it', and he would take his prints and tools required. He would look at it and say, 'Well, maybe we had better make a report on it and have Fogman or Engineering come down and take a look at it or the Maritime inspectors'."

On cross-examination, Mr. Edmisten testified: I worked at Webster-Brinkley Company about seven months. I was in the Inspection Department for about five months and then went in with the winch job in June, 1944. I was in the Inspection Department beginning in 1943 and until June, 1944. At that time, I became a leadman and was asked to work with the inspectors, and I rejected and worked in gears after that time, too. As leadman, I was posted on the assembly. I would not know only about inspections that were made there in the assembly. We had the opportunity to walk through the shops into the machine shops and were called in by Inspection and asked by Inspection to go over and look at a part, and see if we could use it on any piece of equipment; go right straight to the inspection table or to the machine at any time we wanted to. My instructions did come from Hal Fogman. I never did have an order from Belfield. Fogman was often absent but I never had to get instructions

from Belfield. I was asked to work with Inspection, carrying a leadman's rate. I did make inspections myself and I did sign inspection reports. There is more than one type of inspections. There is the inspection of a machine product coming off the the machines or there is the inspection of the completed machine after it is ready and being assembled. After it has passed the first inspection, if it is rejected, whether it goes up to the inspection, if it depends upon whether that rejection can be reworked in the machine shop and not have to go to the inspection. For instance, we may find a crooked shaft or something like that. Anybody that was a machinist could figure out whether it can be reworked or not. I could or a machine shop foreman or anybody could determine whether or not a piece was to be reworked. Anybody was entitled to rework. I didn't have to have any written authorization on small cases. On larger cases, the Maritime mostly on my deal, would come around and say, "Well, we can rework this," or "Let's have it thrown out", then I would make my report, put the red tag on it and send it to the girl in the inspection office. I wasn't with Mr. Belfield all of the time, but when he was in the plant, a large part of the time. He was, however, often out of the plant. On two or three different trips I went with him to Seattle to see if something could be used in the line or not for tolerances, to see if something which had been a reject could be used on the line. Say something had a tolerance of a 2 thousandths in the machine shop. I had worked on this prior to my time in inspection. I had been a machinist on the floor. Sometimes they would ask me to ride along with

Belfield to see if that part could be used. I did not go along really as the expert specialist. There are a lot of those things where you might be working on one thing here and I am working on something else over here. You might be asked to look at something that goes on my line. It wouldn't work so they would ask me to go over and help you out and ask me if that would work. When, seeing Mr. Belfield on the floor a lot of times, I would ask his advice—should we use it or shouldn't we use it. That would be about all.

Q. “Weren't there always questions of rejections and reworks where you would have to come out and decide the matter for the Inspection Department?”

A. “No.”

THOMAS R. BELFIELD,

recalled as a witness on his own behalf, testified as follows on direct examination: I have never been a witness before. I was on the stand here this afternoon and was asked a question regarding the overtime that I worked.

Q. “Were you confused as to the questions that were asked you pertaining to it?”

A. “Yes, sir, I was.”

Q. “What was the confusion in your mind?”

A. “Well, I thought I couldn't answer that question on that overtime—the total amount of overtime that I had. I didn't think I could answer that the same as it was on the paper.”

Q. “From the ruling the court had made and from what was said?”

A. "That is right."

Q. "Well, did you know personally and of your own knowledge without reference to the exhibit before you what your overtime was?"

A. "Yes."

Q. "Did you know?" A. "Yes."

Q. "And you know now, do you?" A. "Yes."

Q. "What is it?" A. "591 hours."

Q. "Would you say what period of time that was?"

A. "That was from November 15 until along about May 15."

The Court: "What year, November 15 of what year?"

The Witness: "1944."

The Court: "To May——"

The Witness: "1945."

The Court: "The total was what, as you stated just now?"

The Witness: "591 hours."

Q. "What was your basic week, Mr. Belfield?"

A. "Well, while I was at \$1.50, it was supposed to be 40 hours. We got paid for overtime over 40 hours. After we went on salary, I think it was supposed to be 44 hours."

Q. "A 44-hour week?"

A. "Yes."

Q. "This overtime is computed on that basis, is it?"

Mr. Catlett: "If your Honor please, I object to that as leading."

The Court: "Sustained. You may ask him how it is computed."

Mr. Stewart: "You may cross-examine."

On cross-examination, Mr. Belfield testified:

Q. "Mr. Belfield, can you tell us the total number of hours you worked in any single day or in any single week between November 20, 1944 and May 12, 1945?"

A. "Any single day or any single week?"

Q. "The question is any single day or any single week."

A. "Yes, from that paper that I turned in."

Q. "You have no recollection apart from that paper, have you, of the time that you worked?"

A. "No, I don't believe I could. That has been quite a while ago."

As inspector, it was one of my functions to make inspection reports. In August, 1944, I was brought in to the Inspection Department merely to help Mr. Fogman out—to acquaint him with inspection. The department was reorganized but not by me. I would say there were between 10 and 15 inspectors in the department, not more than 15. I don't know whether or not there were any junior inspectors. I have never seen any classifications. There was one helper that I know of. I think there was only one clerical helper. Mr. Fogman was absent at times. I was not the acting chief of the department when he was absent. I think Mr. McCarthy was. I mean Mr. McCarthy, the General Manager of the plant. As Assistant Chief Inspector, my functions were that I

would come in in the morning and look over the inspection reports. Inspection reports that had been typed up and wrote up the day before made by other inspectors and by myself. There was a difference in the type of report made by me that I signed and the type of report made by the inspector. The difference between those two types of reports was that some of them were typed and some of them were pencilled. One was what they called a pencilled form and the other was a typewritten form. I didn't make reports where I reinspected parts—machinery, unless it was something that was pretty bad. Generally, we would get the Engineering Department in on it or the Chief Inspector. The inspectors generally signed their reports. When I made an ordinary inspection report, I signed it. The files and records ought to contain the ordinary inspection reports which I made during this period of time. There was different treatment if the report came in reporting the part OK or if it rejected the part. The difference was that most all of the OK'd reports were sent through to the girl to be typed up without even looking at them. The rejected reports were gone over by Mr. Fogman and myself and Engineering at different times. The reports that were favorable were typed up by the girl and signed as a mere formality.

Q. "Did you ever sign any of those?"

A. "Yes."

Q. "In fact, you signed all of those when Mr. Fogman was absent, didn't you?"

A. "Yes, and there were other inspectors that signed those, too. Mr. Wallace signed them."

Q. "Mr. Wallace would approve them, do you mean?"

A. "Yes, also the secretary there. She would OK them."

Q. "You were talking about the OK'd reports?"

A. "Yes."

Q. "All of the others came to you or Mr. Fogman?"

A. "No."

Q. "Where did they go?"

A. "Well, sometimes Mr. Fogman would have them. Sometimes I would have them. Sometimes expeditors would come in and get them and take them directly up to Planning or Engineering and they were taken care of there."

Q. "Well, you would necessarily on matters of that sort have to take the advice of Engineering, wouldn't you, especially as to whether they could be reworked?"

A. "Not necessarily Engineering. We could take the advice of the shop men or the leadmen in assembly or the assembly foreman."

It was the function of Mr. Fogman and myself to adjust that matter in some fashion and determine whether or not rejected parts could be reworked or whether anything could be done with it or whether it should be simply cast aside.

Q. "Now, of course, would you go out sometimes and reinspect these parts yourself to see if you thought the original inspection was an error?"

A. "No, not necessarily. I never had the time to do that."

Q. "You never did that all?"

A. "Well, on certain occasions I did, yes."

Q. "And, of course, if you did that, you had to take the measurements, didn't you?"

A. "I hardly ever reinspected other inspectors' work. Most of them there, that we had working for us, were men that could read prints."

No disputes ever arose between our inspectors and the government inspectors. No disagreements as to whether or not a particular part qualified. That would be up to the assembly man or the assembly foreman or the plant superintendent.

Q. "Do you mean to say there were no differences of opinion between the inspectors of Webster-Brinkley Co. and the government inspectors over parts?"

A. "Well, yes, there would be certain things come up like that but on assembly that was handled by the leadman or the plant superintendent or the assembly foreman. Parts that we got into the warehouse from the outside or the shop, that was handled by Mr. Fogman or Engineering—mostly Engineering, whatever engineer was assigned to that particular job."

Q. "Didn't they at times get up to you, too, especially in Mr. Fogman's absence?"

A. "Yes, but we never had any final say-so on that. It would be up to Engineering."

Q. "Were you ever in on any conferences with the General Manager or the Works Manager or the

heads of these other departments in connection with some of these difficulties which arose?"

A. "Yes, once."

Q. "You remember one. Only one?"

A. "Yes."

That arose over a statement that I made that a jig should be built to set these gears into to get your clearance and the Maritime man misunderstood me. He said, "We built some jigs that way and decided to throw them away because the gears weren't any good; it wouldn't match on the jigs." I have been in ill health for the last three years. It has not been continuous. It started before I left Webster-Brinkley.

Q. "There was nothing in the world to prevent you from resigning from Webster-Brinkley, was there?"

A. "Yes."

Q. "Well, you know perfectly well a lot of men did quit?"

A. "Yes, I did. I asked to get out of there two or three different times, from Mr. Fogman, and he told me Mr. McCarthy wouldn't give me a referral."

Q. "You were now asking for a referral to some other job. You could have quit any time you wanted to?"

A. "Yes, but I couldn't take on another job unless I had a referral."

Q. "You could, however, under the regulations of the Manpower Commission, have forced a referral, couldn't you—especially on the reason of ill health?"

A. "That is what I was going to do until they told me I could go to Western Gear. Rusty Callow told me if I could go to Western Gear, he could get a referral for me."

Q. "But you know you could have forced a referral at any time that you wanted to go to the Manpower Commission and present your case, didn't you?"

A. "I had heard about so many going up there and presenting a case like that and they never got anywhere."

Q. "Did you say that you protested the fact that you weren't getting overtime to Mr. McCarthy?"

A. "No, to Mr. Fogman."

Q. "Oh, to Mr. Fogman. What did you say you protested to Mr. McCarthy?"

A. "I protested to Mr. McCarthy just about every day there for about two months."

Q. "For what?"

A. "Well, for different things in the Inspection Department."

Q. "Oh,—other matters, not this question of overtime?"

A. "Overtime, yes."

Q. "Isn't it a fact that you never made any claim to overtime until you made it after you quit work and quite a time after, as I recall it, to Mr. Gregson?"

A. "Yes. If I remember right, it was six months after I had left Webster-Brinkley and was working for Western Gear."

Q. "That was the first time that you had ever had presented a request for overtime, wasn't it?"

A. "That was the first time I had made any request under this law."

Q. "You testified, I think, on your direct examination, that Mr. Fogman told you when he made the arrangement with you to be Assistant Chief Inspector at \$425.00 a month, there would be no overtime."

A. "Yes."

Q. "As a matter of fact, you took the job knowing you would have to spend whatever amount of time the job called for to do it right, didn't you?"

A. "No, because they were reorganizing the Inspection Department and they were going to get better and more men all of the time."

Q. "Nevertheless, you knew that you would have to work some overtime, didn't you?"

A. "No, I didn't know anything about it at that time."

Q. "Well, you anticipated it, didn't you? You had been being paid by the hour?"

A. "But I was working on the outside when I was paid by the hour—outside and inside part of the time."

Q. "But you did work overtime of your own free will, didn't you?"

A. "Well, yes, the work had to be got out of there. There was a certain amount of work that had to be gotten out so it wouldn't stop the line. Somebody had to do it."

Q. "Surely. Didn't all the supervisory officials work overtime?"

A. "No."

Q. "Are you sure? About that?"

A. "Yes."

Q. "You are quite sure of that?"

A. "Yes."

Q. "You came and went as you pleased during the day, did you not?"

A. "No. I had to have a slip signed by Fogman to get out of the place."

Q. "Supposing Fogman wasn't there?"

A. "He signed them and gave the office girl a bunch of them to keep in her desk drawer to be issued when we went out after we told her what it was for: We had to put our reason and what time we went and what time we returned."

Q. "You could readily do that, couldn't you?"

A. "I suppose we could."

On redirect examination, Mr. Belfield testified: I think everybody in the plant knew I was working this overtime and I protested to everybody I seen there, toward the last, to Mr. McCarthy and Mr. Fogman, mostly Mr. Fogman. After I left the company, I went to Western Gear. Mr. Bannan was president of Webster-Brinkley and he was also connected with Western Gear. After I was out of that, I brought this action for overtime and made demand in that fashion.

On recross-examination, Mr. Belfield testified: I did not get my pay or paychecks from Mr. Fogman. He was my superior, though. I didn't ask Mr. Fogman to pay me for any overtime.

The plaintiff rested.

Mr. Catlett: "I desire to make a motion to dismiss the case as to Mr. Belfield. I don't think there

has been sufficient evidence presented by Mr. Belfield himself to justify your Honor in granting any judgment of overtime for Mr. Belfield. I think you might dispose of it now and shorten this matter and then proceed with Mr. Foster's case."

The Court: "I am not prepared to take that view of it at this state, and the motion is denied."

HERBERT R. WASHINGTON

a witness on behalf of the defendant, being first duly sworn, testified as follows on direct examination: My full name is Herbert R. Washington. I reside at Medina, Washington. I was during the time in question in this case and am still Assistant Treasurer of Webster-Brinkley Co. As Assistant Treasurer, matters of securing authority from the governmental departments such as the Stabilization Unit and the Bureau of Internal Revenue fell within my jurisdiction.

Letter and application marked defendant's Exhibit A-8 for identification was then produced. The witness, continuing: Defendant's Exhibit A-8 for identification is an application made to the Salary Stabilization Unit by the Webster-Brinkley Co. It affects John Foster and Thomas Belfield. On the reverse side is the official action of the Stabilization Unit. It is the original received by Webster-Brinkley Co. from the Stabilization Unit.

(The court reserved ruling on admissibility.)

The witness, continuing: I did not have any direct

connection with Mr. Belfield. I have secured and brought up here the inspection reports made by our inspectors during this period of time. They are contained in two large cases which you see here in the courtroom. At Mr. Catlett's request, I went over personally those inspection reports. They are the official records of the Webster-Brinkley Co. I think they are the actual and original inspection reports submitted to Webster-Brinkley by its various inspectors during this period of time. I checked all of those reports to ascertain how the inspection reports were signed by either Mr. Fogman or Mr. Belfield during the period from November 16, 1944 to May 15, 1945.

(A tabulation of inspection reports marked defendant's Exhibit A-10 for identification was produced.)

Mr. Catlett: "As I stated before, if your Honor please, I have the originals right here in the courtroom. Of course, they are so numerous it isn't feasible to introduce, I suppose, the whole bunch. For that reason, I asked Mr. Washington to make this personal check and tabulation for the benefit of the court."

The Court: "Do you now tender these records which you claim are original records to inspection by plaintiffs?"

Mr. Catlett: "Yes, I do. Plaintiffs are quite at liberty to inspect the original records."

(At his request, Mr. Stewart was permitted

to make preliminary examination of the witness.)

On examination by Mr. Stewart, Mr. Washington testified: I examined the inspection reports only from November 16, 1944 to May 15, 1945. The report shows the original inspector. I have got a number of these inspection sheets that are signed by other inspectors in the department. The inspection reports showed that where the lot of goods inspected was approved, it was then not signed for approval by either Mr. Belfield or Mr. Fogman personally but was initialled only with the initials "HF" by the secretary, as Mr. Belfield testified. It was only those inspection reports that showed rejections that were then actually signed by either Mr. Fogman or Mr. Belfield and this list refers only to the rejected reports signed personally as approved by Mr. Belfield or Mr. Fogman. It does not refer to the inspection reports that were OK but were not signed personally for approval. I would not know the number of inspection reports in the period of time worked. It is about a case and one half of them there. I have no idea how many. I have gone through the file but I did not take out the Fogman and Belfield reports. I have tabulated only those reports which, because they showed rejection, had to come before either Mr. Belfield or Mr. Fogman for their approval. So far as the procedure down in the Inspection Department, I know only what I have learned from the file. The other inspectors in the department besides Mr. Belfield

did not sign approval of rejection slips. I understand that they did not have the same authority as Belfield to sign rejections.

On further examination by Mr. Catlett, Mr. Washington testified: I will step down and take out of the file one of these reports to which I refer so that we may all know what we are talking about.

The Court: "Pick out a group of them."

Q. (By Mr. Catlett): "Yes, pick out a group of them."

The Court: "And display them in the presence of counsel for plaintiff."

The Witness, continuing: This document which I have in my hand and have just removed from the filing case is a folder containing a quantity of inspection reports. The top one is numbered 28000 dated December 2, 1944. It contains information as to the material, the number, the vendor—Pacific Wire & Steel Co.—our job number, the purchase order number, the receiving report number and shop rejection on four parts. It shows that the first inspection was made by inspector O'Neil. Because it is a rejection, it is initialled in Mr. Belfield's handwriting "TB". The next one is number 28001. It shows dated 11/30/44. It shows from Pacific Wire & Steel, that it was a brake band assembly, that six were inspected, that the inspector was Holt. The Chief Inspector was supposed to sign it and because it was accepted, the girl had signed "HF"—Harold Fogman. The next one is 23003. It shows "acceptance", also signed with the initials "HF" and shows the inspector Wallaston. Here is

one 28005. It shows Westinghouse Electric Company, electric motors, one rejected. It shows that Shadix was the original inspector and because it was rejected, Mr. Fogman has signed "F-O-G-M-A-N."

Mr. Stewart: "If your Honor please, at this point I think it would be well—I think I understand it—to give an opportunity the first thing in the morning, probably because court starts in order not to lose any time, to come and look at it and then I think our objection may be withdrawn or renewed, depending upon what the circumstance is."

The Court: "I think that is a privilege that should be granted."

The Witness, continuing: Referring to defendant's Exhibit A-10 for identification, this list deals only with those that show rejections and were therefore signed by Mr. Belfield or Mr. Fogman. It does not include any reports that were accepted—reports where nothing was the matter.

The Court: "Mr. Witness, defendant's Exhibit A-10, the one preceding this, was that summary which you made up from the information gained by your perusal of this file and similar files, was it not?"

The Witness: "That is correct."

The Witness, continuing: Defendant's Exhibit A-11 is one of the official files of the Webster-Brinkley Co. of the inspection reports and approvals by the inspectors in charge.

(At his request, Mr. Stewart was permitted further preliminary examination.)

The Witness, continuing: As Assistant Treasurer, I made it my business to find out the operation of the Inspection Department. Each one of the inspectors when they made a report, made it themselves, and they signed that report rejected or approved, and that was turned in each day. That recapitulation is made from that record. The stenographer wrote this from the report turned in by the inspector. Because it had to be copied to go to different departments, that became the official one. That record merely means that Mr. Belfield signed a typewritten report as Chief Inspector. It doesn't mean that he made the inspection or rechecked the inspection. It meant that the Chief Inspector had to countersign all the forms that showed rejections. My understanding was that in numerous cases, it was Mr. Belfield's job to go out to the shop to check and make sure that it was correct. My understanding from all that were there is that that was his job. I did not see him do it. It is not a fact that before he was made Assistant Chief he signed the very same type of documents as I have in Exhibit A-11. I do not have those records here. Mr. Wallaston was acting head of the Inspection Department before Mr. Belfield's tenure of office.

The Court: "So this is the original so far as Mr. Belfield is concerned."

The Witness, continuing: In going over these reports, I did not find during this period of time any of these reports on which Mr. Belfield was listed as the man who made the original inspection.

I did not find during all of that period of time any of those reports where the approval was signed by anybody except Mr. Fogman or Mr. Belfield.

THOMAS R. BELFIELD

recalled by the defendant, testified as follows:

Q. "Mr. Belfield, calling your attention to defendant's Exhibit A-11 and to the place on there where the signature is to be found, or the signature of Mr. Fogman, can you tell the Court when the signatures were placed thereon?"

A. "That was done the first thing in the morning."

Q. "Of each day during the time of your employment?" A. Yes."

The Court: "That answers the Court. Was it a part of your daily work?"

The Witness: "Not necessarily. I was gone out of the plant, oh, lots of times—gone for two, three or four days at a time, on other jobs on the outside."

The Court: "If you were there, was it or was it not a part of your daily work?"

The Witness: "Yes."

The Court: "The objections are overruled. Defendant's Exhibit A-11 is now admitted. For the convenience of the Court and all of those connected with the trial, the Court thinks that it is proper to receive in evidence the summary of inspection reports in order to avoid the necessity of examining each inspection report separately. If it is contended

by plaintiff's counsel that all of the original inspection reports of which defendant's Exhibit A-10 is a summary have not yet been brought into court for inspection by plaintiff's counsel, the Court will hear you further."

Mr. Stewart: "I assume, your Honor, that this tabulation made by Mr. Washington—that he testified personally he made it from the files—on that testimony I am not going to insist that I examine them as to the correctness of it. If the exhibit is proper, I won't raise that ground.

HERBERT R. WASHINGTON

continuing, testified:

The Court: "Mr. Washington, I know you testified at some length about it last night, but what is the fact about whether or not you have brought all of the original inspection reports, of the character like those contained in defendant's Exhibit A-11, into court and are now present in court available for the inspection of all who might wish to inspect them?"

The Witness: "The two cases there contain all of this type of inspection report from a little before November 16, 1944 until a little after May 15, 1945."

The Court: "Does your summary of inspection reports which is now marked defendant's Exhibit A-10 contain in it any information not included in these original reports which are here now in court in two files?"

The Witness: "It does not."

The Court then admitted in evidence defendant's Exhibit A-10 and defendant's Exhibit A-11.

The Witness continued: After Mr. Belfield was hired, he was paid for a portion of the time on an hourly rate. That was during that early period. Mr. Belfield continued to be paid upon an hourly basis because he had been paid upon an hourly basis and because we had had no such position as Assistant Chief Inspector up until that time, and it was the ruling under the Wage Stabilization Regulations that you could not change a rate from an hourly rate to a monthly rate for a position which had not previously existed without application and approval of the Salary Stabilization Unit and we therefore had to continue to pay Mr. Belfield on his old basis until such approval was received. An application for such approval was made to the Wage Stabilization Unit and a ruling was subsequently received thereon. Defendant's Exhibit A-9 for identification is the application and the ruling of the department upon the case of Mr. Belfield. I am sure that this matter was taken up with Mr. Belfield. In November and December, 1944, the plant was on a 6-day basis. That was, I think, because it was mandatory under the manpower regulations and the executive order of the President. I think the plant was on a 48-hour week basis until about August, 1945, approximately the end of the period in question here. As to the clerical employees, most of them were working 44 hours through a permit that had been received from the War Manpower Commission for clerical employees.

On cross-examination, Mr. Washington testified as follows: I did not say that the application made to the Wages & Hours people was brought to the attention of Mr. Belfield. I was Treasurer at one time and later made Assistant Treasurer. My salary was fixed by the Stabilization Unit, but not before I went in as Assistant Treasurer, because I was Assistant Treasurer before there were any wage regulations.

WARREN D. THACKER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows on direct examination: My full name is Warren D. Thacker. I reside at Box 687, Route 1, Port Blakely, Bainbridge Island. I was employed by the Webster-Brinkley Co. from January 1, 1945, until October of that year. I was employed by the Works Manager for the initial purpose of organizing the paper work and the procedure of the Inspection Department. I had done somewhat similar work for a shipping organization in California and for Standard Brands of California. The first thing I had to do in connection with the job in order to write a procedure or go about a thorough and complete reorganization of the department which included all the paper work, was to find out how it was handled, where the reports went, what people were involved in the department and what each of those people did. I not only had to determine what they should do but actually what they did in the line of

their duty. As a result of that investigation, I prepared a manual for the department. It was written up as the investigation proceeded. Changes were made in it as I went along. When I went into the Inspection Department, it was with the idea that Mr. Fogman and I would work together on the manual and build it up as we continued our investigation. Mr. Fogman's very frequent absences made it necessary for me to pursue this work with Mr. Belfield. He helped me in outlining the manual. Most of the provisions of the manual—in fact, I should say all the provisions of the manual—were discussed with Tom as the manual was written. This manual outlined the duties of the people, of the Chief Inspector, his assistant and all of the inspectors in the department.

The Court: “Did you discuss with him the salary or the effect of the Stabilization Unit's action concerning salary in classification of position?”

The Witness: “Not in the manual. I discussed it with him personally.”

I did not discuss it with him at or about the time the matter was being discussed between the company and the Stabilization Unit. I did in the normal course of our work. I should say it was about the first part of February, 1945. I did not mean to say that I discussed with him the effect of the Stabilization Committee's action. I discussed with him his salary. I was very closely in touch with Mr. Belfield and his work. For the first six weeks of my work in the Inspection Department, I was with him almost constantly. Tom went with

me to each of the inspectors, introduced me to them. I accompanied Tom about the plant for the purpose of investigating the duties of these people and for the purpose of investigation his duties as well. I had to know exactly what everyone was doing in the plant in order to come up with a sensible procedure. We had a small inspection office there. We were so close together that we actually used the same desk. My work and Tom's work were both done in the same desk. In the course of the preparation of the manual for the other workers, I prepared a statement of the duties of other workers as well. In fact, that was prepared at my home in the evening. Tom came home with me and we sat in front of the fireplace. I wrote it out on the typewriter and Tom and I discussed each paragraph of it as it was written. We worked several evenings on it together. I am sure that every part of that manual was discussed thoroughly with Tom. He was in agreement with me. Many of the things that were included as a part of his duties were suggested by Tom. They were his ideas of what he should be doing or of what he was doing and what should be included. I did have occasion to go out with Mr. Belfield on his inspection trips outside of the plant. I went with him two or three times. We went over to Cunningham Steel. As to the procedure in the department so far as original inspections and approvals were concerned, inspectors were stationed throughout the plant at strategic spots where inspection work might be required. Each of these inspectors was given a supply of forms which he

filled out as he inspected the various lots of parts. The inspection, itself, would break itself down into perhaps three classes of inspections. There were those parts that were outright rejects, those parts that were complete acceptances and then there were borderline cases. In the case of outright rejection where a part obviously could not be worked to dimension or it was not to dimension, the inspector was entitled to put a rejection tag on it rejecting that material. If it was obviously within the limits, that inspector was entitled to accept it. If it was a borderline case, he had to use his judgment. If it was beyond his judgment, he could and did call either Tom or Mr. Fogman for a final decision on the things so far as they could decide. If it was beyond their discretion, they sometimes called in other higher employees of the company—the Engineering Department. The original inspector made out the reports of the original inspection in his own handwriting and had them at his work place in the plant. When he handed in his conclusions on this inspection report—we called it the pencilled copy—he would turn that in to the inspection office at 4:00 o'clock in the afternoon. The following morning, the pencilled copy of that inspection report was checked by Mr. Belfield. Those that were approved were laid in one pile and those that were rejections were laid in another pile. The rejected reports would be very carefully read and checked by Tom and initialled by him and turned over to the girl for typing. The accepted reports went on to her and were typed by her without further

comment or signature or checking. As to rework orders, we had two kinds of rework orders. There was a rework order that might be handled by a leadman, for instance, in the assembly, or by an inspector, where obviously the part could be reworked and where there was no question in the inspector's mind about it and where the part was very badly needed. We didn't have time to go through the regular procedure. The other type of rework was determined by the mechanical engineer and was handled as a rejection. The decision was by the planning engineer as based on the inspector's recommendation. I can't recall just how the rework orders were signed.

Q. "Did Mr. Belfield have anything to do with the rework orders?"

A. "Yes, because they were a rejection and they had to be approved by the Inspection Department."

Q. "It is a question of what he did, not what had to be done."

A. "He did."

Q. "Did he actually approve of them?"

A. "Yes, that is what I mean to say."

Mr. Belfield's duties as I found them out to be were as follows: I would meet him there in the morning at 8:00 o'clock when I came in. Tom was almost always there. The first thing Tom would do would be to go through the pencilled copies of the reports. He also went through the formal copies—that is, the typewritten copies that were for general distribution—in Mr. Fogman's absence. But ordi-

narily, if Mr. Fogman was there, Tom went over the pencilled copies and then made a tour of the plant. We would drop into the Warehouse Department, go from there over to assembly, around through the machine shop, consult with the various inspectors. They very frequently had borderline inspection problems that they didn't feel competent to decide which were left up to Belfield's judgment or to Fogman's judgment, if he could be reached. Mr. Fogman was absent very much of the time. He was almost always late from 1 to 3 hours. He was away for two or three days at a time when he simply wouldn't show up for work. The work accumulated. It had to be handled and was handled by his assistant. His assistant was required for that purpose to step in. The acting chief of the department during Mr. Fogman's absence was Mr. Belfield. The reports were signed by Mr. Belfield if Mr. Fogman was not in. After the tour of inspection, we would return to the office ordinarily. Tom was subject to call throughout the plant. You couldn't make a regular routine out of your calls throughout the plant. An inspector might call in and ask for Tom and ask for him to come and determine what was to be done—a borderline rejection. The inspectors from outside, Wallaston and Burdge, called in regularly. They were outside, away from the plant, and were required to use a little better judgment and a little more independent judgment than the inside inspectors, but still they would ask where they should go on their next call occasionally and inquire as to what should be done.

Q. "Were those calls directed at all to Mr. Belfield?"

A. "I would say that they were mostly directed to Mr. Belfield. It was almost useless for an outside inspector to call in for Mr. Fogman because of his very frequent absences. I would say most of them were directed to Mr. Belfield. As to the number in the Inspection Department at that time, there were a varying number, I should say 10 or 12 people."

Q. "Who supervised their work?"

A. "Mr. Belfield directly supervised their work. The type of work Mr. Fogman as head of the department did was slightly—it was with final decisions, with consultations with the Engineering Department, and such things. The direct supervision of the people was through Mr. Belfield. He was the supervisor."

Q. "In your trips around with Mr. Belfield, did you ever see Mr. Belfield make an original inspection?"

A. "No, I did not."

Q. "When you went around to make an inspection, what was the purpose and object of the visit and what did he actually do?"

A. "Well, he was almost—we were either making the rounds of the Inspection Department employees or he was called out directly by an inspector because of some indecision on the inspector's part."

Very often he would recheck the work of an inspector or he might tell the inspector to go ahead and write up a reject on this or he might say,

“This is all right,” inspect it, and the inspector would write up his report. I was the representative of the works management, Mr. McCarthy. I was assigned there for the purpose of supervising the work. I was employed by Mr. McCarthy. I was paid by the company. He was the Works Manager of the Webster-Brinkley Co. He was not the working manager employed by a governmental agency. So far as Mr. Belfield’s duties were concerned, my job was to investigate them very thoroughly, first to determine what they were, and then to realign them as much as possible in order to increase the efficiency of the department. As to whether I was in a position to say whether or not Mr. Belfield kept any record of overtime, as I have said, we were very intimate so far as our relationship in the office was concerned. We used the same desk. We were together very constantly, particularly during the first part of my work in the Inspection Department. During that time, I did not see any record of time kept by Mr. Belfield. I recall that Mr. Belfield told me some time—I had been there about a month—when he told me he was making within \$25.00 of as much as the Chief Inspector and that he was doing all of the work because of the Chief Inspector’s absence; there was also, if I may use the expression, the normal beefing of employees during wartime, especially when long overtime hours were in order. I did as much of it, I suppose, as Tom did. That was the nature of our discussion. He did not express any dissatisfaction with the salary that was being paid. As to the connection

between the hours of work which were being worked by a leadman in the assembly department or one of the original inspectors, there would have to be an inspector on duty if there were work being done in the assembly department. Those parts had to be inspected as progress was made. As long as an inspection was being made, there had to be an inspector there. I wouldn't say there was any definite relationship between the time spent by Mr. Belfield in his department and the time spent by one of the original inspectors. We had two shifts operating there. Mr. Belfield ordinarily worked one shift of it. He was not there all of the time that inspectors were on duty by any means, wasn't required to be, couldn't possibly be. As to my recollection of any time during this period when Mr. Belfield was absent, I recall one time when he was late, came in about 10:00. I recall another time when he was off for a day. That happened in March, I believe. I recall Saturday afternoons twice when we left the plant together and spent the afternoon together. Aside from that, Tom was very regular in his reporting to work. As to the two Saturdays, I can recall that one of them was either the middle or the latter part of February. Fogman, Belfield, another chap and myself went down to a restaurant and had dinner and a general discussion which lasted the entire afternoon. As to any time when he was ill, there was one day he was ill. That I can definitely recall.

In cross-examination, Mr. Tracker testified as follows: I have never had the title of efficiency

expert. I was hired as a representative of the Works Manager to reorganize the work of the Inspection Department. My employment was based on the fact that I had had experience in doing similar work and that reorganization was required in the Inspection Department. I wanted to get greater efficiency there, to get a better alignment of responsibilities and duties of the various inspectors and an improvement in the flow of paper work necessary to the operation of the plant. The manual was an inspection manual. When I came there, I was to make up a manual of the inspection work and when I went in there I talked to everyone who would listen to me to find out from the inspectors, Belfield, Fogman and everyone, general information, and from that general information I sat down to make a manual and I worked at that from the time that I came there on or around January 1, 1945, to about April of that year, a period of about four months in the Inspection Department. Mr. Belfield had been Assistant Chief Inspector prior to the time I came there and was after I left. Twice Tom and I, rather than working at the plant, Tom came to my house. We had dinner together at my house. We worked at my house that night. Several times we worked at the plant.

Q. "Mr. Thacker, these pencilled reports that came in in pencil were handed in each day. The following day Mr. Belfield sorted the OK's from the rejections and looked at the blanks to see if they were all filled and turned them over for writing, isn't that right?"

A. "No, that is not right."

Q. "Do you claim that Mr. Belfield took the rejected reports, went out into the shop, miked those same jobs again to see if they were right or wrong, before he did anything?"

A. "That might occasionally happen, but very rarely. The normal course of things was for Tom to check the reports, approve them as to being correct or not correct. On these reports in many cases, the actual dimensions themselves that were at fault, were mentioned. Tom's duty, there, was to determine that the inspector was right in rejecting."

Q. "He had to rely upon that written report and the integrity of the inspector?"

A. "Yes, except in cases where the difference might be very slight, Tom might, if the part were very badly required, go out and reinspect it himself."

I said that Mr. Belfield never made an original inspection at any time while I was with him. It is not a fact that when I made these rounds in the morning he went around to see where they were behind and he was most needed and started in and did the same inspection work that the original inspectors were doing on gears and winches. I was not out with him every hour of the day, but every hour of the day I was with him he did not make an original inspection. I was with him in the office. As to when I went back to my office, I would say that varied very, very widely. I would say there

were occasional days when I spent the whole day with Tom and we even had lunch together. There were other days when I spent one, two, three or sometimes five hours. I want to say that when I was walking around with him, he wasn't doing inspecting. If he went back into the office after it was 5:00 o'clock in the evening or after that time, I don't know what he did, and when he went on an outside job I don't know what he did there, except when I accompanied him. I don't pretend to say to the court how many hours he worked at inspection work other than those when I accompanied him.

On redirect examination, Mr. Thacker testified: In my investigation of the work being done by him, I did discuss with him the amount of original inspection work that he actually did. Those points naturally came up because it had to be determined who was to do what work in the department. Tom had a dislike for paper work. He didn't like to do that kind of work. He liked to be out circulating in the plant. Tom never at any time when I saw him or was with him ever went to any inspection spot in the plant and stationed himself there for the purpose of inspecting parts that had not already been inspected by some other inspector and were not in doubt. He never reported to me that he was spending a large part of his time in original inspections. I do know personally of conferences in which he participated. I know of conferences of Fogman and Shadix and Tom in the inspection office. I sat in on some of them. I know of the fact that he had conferences among the inspectors pri-

marily, that is, he might meet with one or two inspectors regarding some particular part that was a borderline case. Someone had to decide those points and it was Mr. Belfield's duty to determine—either the fact that they were usable or that they must be passed on to someone of greater authority to determine whether they could be used or not.

On recross-examination, Mr. Thacker testified: Those conferences were never called by me. I had no authority to call such a conference. I do not mean to say that in such a conference all of the heads of the departments were called in with Belfield and discussed the situation. I mean by original inspection the first inspection made of the part.

GERALD S. McCARTHY

called as a witness by the defendant, being first duly sworn, testified as follows on direct examination:

My full name is Gerald S. McCarthy. I reside on Mercer Island, Washington. I was the Works Manager of the Webster-Brinkley Co. Mr. Belfield reported to me through the Chief Inspector. I did not hire Mr. Belfield originally, but I approved his appointment as Assistant Chief Inspector upon the recommendation of Mr. Fogman. I did talk to Mr. Belfield about the salary arrangement. At the time that the Inspection Department was reorganized, Mr. Fogman presented to me an outline of the functions of the Inspection Department and of the

personnel to fulfill these functions. I made an analysis of the Chief Inspector's job and the Assistant Chief Inspector's job in relation to other jobs in our plant and determined that the salary for both jobs should be fixed at certain figures, in the case of Mr. Belfield, \$425.00 a month. I then discussed with Mr. Washington, who handled our applications and the filing of the applications with the various governmental agencies, whether such a salary could be paid. I then talked both to Mr. Belfield and Mr. Fogman and informed them of what their salaries would be, informed them that such salaries could not be paid until formal application had been made and approval had been received, if such approval were ever received. No complaint was made on the part of either. The hours of work were explained as the hours that the plant operations normally worked and that the other executive and administrative personnel worked, which, at that time, was 6 days a week.

The Court: "Did you say that you told Mr. Belfield that the salary which you had approved at \$425.00 could not be paid until the Salary Stabilization Committee approved it?"

The Witness: "Yes."

The Court: "Did he make any objection?"

The Witness: "No. He wanted to know how long that would be. I told him that was one thing I could not answer, that we would make application as soon as possible."

Later, I would say at least once every two weeks,

he spoke to me with reference to the application and the progress thereon.

The Court: "What would he say, if you recall—any one of those every-two-weeks statements?"

The Witness: "Well, he would ask me whether we had heard anything yet or when he was going to be on his salary."

The Court: "Every two weeks or so. How many times do you recall?"

The Witness: "Oh, at least a half a dozen."

I told him that I would check with Mr. Washington and see if there was anything new. I never informed him as to any response of the Stabilization Committee until such response came through. The response came through and he was granted the change. I don't know exactly when the response came through, but he was granted the change on the 15th of November. I would say the original arrangement was made with him the early part of September. It took about that long for Fogman to come up with an organization chart and submit the form and the recommendations to me. When the response came through, I informed Mr. Belfield that approval had been granted to pay him the salary which we had requested. As to the kind of work he should do or what was said on that point as to the Stabilization Committee's action, I said only that he had been approved for the Assistant Chief—that the Salary Stabilization Unit had approved his salary for the Assistant Chief Inspector's job.

The Court: "Did the Stabilization Committee

have anything to do with approving or disapproving the kind of work that Mr. Belfield did?"

The Witness: "The application, I believe, outlined the type of work which was covered by the Assistant Chief Inspector's job and hence that is what they ruled on."

As to the function of Mr. Belfield in the Inspection Department, I heard the testimony of Mr. Thacker. I would say that that testimony was correct. I held the Chief Inspector responsible for the entire activities of the department and in the absence of the Chief Inspector, I held the Assistant Chief Inspector entirely responsible for the activities of the men and the work performed. I never attempted to operate that department myself or go over Mr. Belfield's head in dealing with the inspectors in the department. There was only one case that can be called to mind, and that is the case in which the entire management from Mr. Bannon down through the General Manager, the Chief Engineer and myself, together with the Chief Inspector and the Assistant Chief Inspector and one inspector on the winch line gave definite orders to the inspectors on the winch line which were not completely handled through the normal channels of authority. In other words, a man in the winch line was given definite orders with the knowledge of his superiors of what those orders were. I certainly couldn't have handled the routine affairs of any of the inspectors or all of the inspectors. I am 30 years old. I got started pretty early. I was 27 when I was made Works manager. As to previous

experience, I am a mechanical engineer and have a Master's degree in industrial engineering. I worked for the Fisher Body Company in Detroit as an engineer. I have worked for the Webster-Brinkley Co. since February, 1941. I started as project engineer. I was promoted to administrative engineer and then Production Manager and then Works Manager. I came to Tacoma first and worked at Tacoma for a plumbing supply company. I then moved to Boeing because they were in the type of work which I wanted to be in and which I had always studied. The Inspection Department reported to me together with other departments. I was held responsible for quality and performance and the Inspection Department as such was responsible to me for quality and performance.

The Court: "Did you ever go among the inspectors and observe what they were doing?"

The Witness: "Yes, I observed the operations throughout the entire plant."

The Court: "How often did you have occasion to observe what the various inspectors were doing?"

The Witness: "I would say I made a trip through the plant probably both morning and afternoon every day when possible, which was pretty generally."

I was aware of the trips made by Mr. Belfield to the outside plants. As to the purpose of those trips, particularly during the days of the winch contract, we had a great many parts which went from one subcontractor to another until they came into our plant and were completed. Castings would go from

a foundry to a machine shop and then to a machining plant and then for gear cutting. Mr. Belfield would have occasion to inspect parts which were doubtful after coming from a subcontractor's plant. There was no reason to bring them into our plant when a man could go out to another plant and examine. In some instances, he made trips to Western Gear Works to establish standards which were acceptable to our Inspection Department and to our assembly line with Western Gear Works. Those parts were also inspected by government inspectors. Differences of opinion arose between the government inspectors and our inspectors as to the usability of parts. When such differences of opinion arose, the doubtful parts were discussed. Generally in the case of one type of flaw or another—I say flaw, rather than tolerances—everyone has talked tolerances. There were three other things which took a man who had had wide experience in the machinery business for a good many years, such as welding, casting trouble. Those were matters of judgment much more than tolerances are. Tolerances are obvious to a measurement, but another thing was a matter of judgment. It was necessary to discuss between either Belfield or Fogman with the Maritime or Navy inspectors as to what we thought we could do to save such a piece if our Inspection Department thought it was justifiable to save it—that it was a good piece and could finally be repaired. As to whom we looked for the answer to that question, Fogman or Belfield, it depended upon circumstances. We had numerous

conferences at which the top executives and Mr. Belfield and Mr. Fogman—either one or the other or both—were present in connection with the winch contract because of some disagreements or difference of opinion with the Maritime Commission inspectors as to certain standards which made the winches acceptable. These conferences were called at various times to determine the exact standards which our company felt were acceptable winches. I don't remember the exact number of conferences. They were for the purpose of setting the standards through which our Inspection Department was then to carry out as the standard. Inasmuch as this spread throughout the various parts of the plant and into the plants of our subcontractors, it was necessary that the heads of the departments be thoroughly familiar with the standards. The Works Inspections Manager was under me. I know the authority which Mr. Fogman as head of the department and Mr. Belfield as his assistant had. As to their authority with reference to hiring and firing of employees, Mr. Fogman had the right to hire and fire any employee in the Inspection Department. In most cases, most department heads, before they would hire or fire—particularly in the case of firing, would generally check with their superior to see whether there was another place in the organization where that person might be used—something of that nature. But Mr. Fogman's recommendations would certainly be adhered to. As to the authority of Mr. Belfield in that regard, I would say that he was not allowed to hire or fire, but that

his recommendations were to be acted upon. Mr. Fogman was very irregular in attendance. I have no records to substantiate that, but he was very irregular. There were two forms of his absences, one, late arrival, and the other, complete absence from duty due to his health, according to his statements. It was his statement that his health was poor. I definitely know that he was absent. During his absence, Mr. Belfield was held responsible for the activities of the department. Mr. Belfield's testimony that in his absence I was the head of the department is not correct. I could not possibly have supervised the other activities in the plant, supervised the men, made the decisions that were necessary and allocated the men to their duties in the day to day operation of that department. Mr. Belfield did that work. As to the assignment of the work to the inspectors in the Inspection Department, when Mr. Fogman was there, in general he took over the allocation of the work in the machine shop. Mr. Belfield took care of the allocations in the assembly departments and on the outside. In Mr. Fogman's absence, Mr. Belfield took care of all of the assignments. It was quite often necessary for Mr. Belfield or Mr. Fogman to reinspect parts for any one of a number of causes. The purpose of that would be to determine the final satisfactoriness based upon their knowledge and judgment or to refer the case, if it seemed questionable to them, perhaps to the Engineering Department or perhaps to me for final decision. As to whether I know of my own knowledge of any original inspection having

been made by Mr. Belfield during this period of time when he was Assistant Chief Inspector, I distinctly remember in the case of the winch contract—when I suppose you can describe it as original inspection—when following some of these conferences a number of us, including Mr. Fogman and Mr. Forsythe, went out and inspected gears for the first time in measuring them for dimensions particularly but for their physical structure and that would be the first time they were looked at. I can at various times remember Mr. Fogman doing that and others—Mr. Fogman, myself and others. I would say that that was ordinarily referred to as an original inspection. It was not the complete inspection of the part but it was part of the original inspection. As to whether Mr. Fogman or Mr. Belfield did that, on many occasions, that was not a part of the routine of their jobs. As to the number of contacts I had with Mr. Belfield in his work there as Assistant Chief in the Inspection Department, that occurred at least several times a day personally, and anywhere from three to four times a day by telephone or intercommunicating system. The personal contacts during the day would vary in time, depending upon the circumstances and the situation. That close contact continued during the whole time of his employment as Assistant Chief Inspector. When I saw him, sometimes I would see him in the office, sometimes in the plant, and sometimes in my office. Those contacts gave me a chance to see what he was doing in connection with his job and afforded me a basis of judging

how he was occupied. As to an estimate of the amount of time he spent in original inspection work such as the other inspectors were doing, it was very little. In my opinion I would say it was not over 5%.

On cross-examination, Mr. McCarthy testified: I was employed at Boeing before I went to the Webster-Brinkley plant, for three months. Before that time, I worked in Tacoma for a firm there. At Boeing I was in the tooling department. I graduated from the University in 1937. Prior to becoming Works Manager, I had had experience in that type of work at the Webster-Brinkley Co. and in Detroit. I had never supervised that many people before. I reorganized the Inspection Department or requested its reorganization in August. I requested it first of the management, stating that the present organization was not satisfactory, that I had another man lined up for the Chief Inspector's job and that I wished to put him on the job. That was Mr. Fogman. Some considerable time later, I hired Mr. Thacker. The reorganization was begun around August. I hired Mr. Thacker in January. As to his duties, both Mr. Belfield and Mr. Fogman were shop men and I wanted a man on the job who was better on the organizational side. In August when the department was reorganized, I was the Works Manager. As Works Manager, the Production Department reported to me. The shop and Assembly departments reported to a plant superintendent who reported to me and the Warehouse

Department, through the head, a warehouse superintendent, and the Personnel Department, also reported to me. There were six people so reporting. I would say that under the various departmental heads that were under each of those, there were probably a total of from 350 to 500 people. I was responsible for the smooth running of that organization through those heads. That was my job. I spent my day on that type of work. As to the time I could devote to the Inspection Department at that particular time, it was an extremely important department and much more of my time was devoted to it than to other departments. There were several reasons for that. First of all, because of the critical nature of the jobs we were faced with, and also because the Chief Inspector was absent some of the time and I had to watch Tom to make sure he was getting everything lined up all right. I picked Mr. Fogman for Chief Inspector. Mr. Fogman recommended Mr. Belfield to help him. I knew about Mr. Belfield. I knew he was inspector in the department. I knew quite a bit about him. Mr. Fogman recommended him to me. I did testify this morning that I discussed a salary arrangement with Mr. Belfield. That was about the time that Mr. Fogman presented the outline of the organization of the department to me, I would say the latter part of August about. I talked to Mr. Belfield in my office. The exact phrasing would be a little hard to recall but as I remember it, he was told that the recommendation made by Mr. Fogman to appoint him as Assistant Chief Inspector had been

approved by me and by the Operating Committee—which was necessary, and that he would be placed on a salary basis instead of the hourly basis which he had been on. I think I told him we were giving him a promotion. I would say that pretty generally anyone who has been on an hourly basis definitely feels it is a promotion when it is changed to a salary.

Q. “Do you mean that a man who had an income of \$450.00 a month as wages and overtime and he is given \$425.00 in salary, he is promoted—because he has a title? Is that correct?”

A. “Well to my way of thinking it is.”

Q. “Well, Mr. McCarthy, to refresh your recollection, isn’t this a fact that you never discussed with Mr. Belfield any contract until after Mr. Belfield came to your office and told you that he was not making the money that he should be making and wanted to know what you were going to do about overtime on the salary he was then drawing, sometime about January, 1945? Is that correct or not?”

A. “No, I don’t remember that.”

Q. “Do you recall that he came to you a second time and he was angry and he told you that you were going to have to do something about his overtime and you told him to take it up with Fogman, did you do that?”

A. “No. I remember him being in anger several times but that was about other things.”

Q. "You never talked to him about overtime at all?"

A. "I don't believe so."

Q. "You know, Mr. McCarthy, whether he did or didn't, did he or did he not?"

A. "No, I don't think so."

As to whether he wrote out his resignation and sent it through to my office, I think he might have offered a resignation when he was trying to leave the company when Mr. Fogman was not there. As to why he was trying to leave the company, it would take quite a long time to explain. I think part of it was because—I think it has been earlier testified to on the stand, that he felt he was performing all the duties of the Chief Inspector and should have had the Chief Inspector's job and the Chief Inspector's salary, and the Chief Inspector was not there. I think that was one of his primary complaints. He never complained to me that he was putting in hours of overtime and was not paid for it. He complained that he was putting in hours of overtime but I don't remember him complaining about the overtime. He understood when he took the job that it was on a fixed salary.

Q. "You had that understanding with him?"

A. "I know I did."

Q. "You told him what his salary would be?"

A. "That is correct."

Q. "And he was happy to take it, was he?"

A. "Yes, I believe he was."

Q. "Did he say he was?"

A. "He didn't express himself as being unhappy."

As to whether he agreed to anything, he accepted the job and went to work on it. I talked with Mr. Belfield about his salary between August and November 15, 1944. I told the court this morning that he talked to me about it about every two weeks. As to why he talked to me about it, he wanted to know whether it was being approved or not. He wanted to know because he wanted to know if he was going to get a flat salary or not. As to whether he wanted to know if he was going to get less money that he was already getting, I don't remember that it was phrased in that way. I don't remember any discussion with Mr. Fogman about Mr. Belfield's complaining about any salary and overtime. As to whether Mr. Fogman told him that he would not have to work over 40 hours a week if he took this salary of \$425.00 a month, such a statement was never made to me. As to whether an executive had to get a permit to leave the plant, I think there were many people who were interdepartment heads or assistant department heads who had to get a permit to leave the plant. I don't believe that Mr. Fogman did. As to whether Mr. Belfield did when he was Assistant Chief Inspector, I don't know. I know as a regular outside inspector he did. As to who was in charge of the inspection when both Mr. Fogman and Mr. Belfield were not there, Mr. Belfield was there most of the time. I would say generally that he made no trips out of town unless it was so arranged that Mr. Fogman definitely

would be there. I can't remember that they were both gone at the same time. As to the time I was ever in the Inspection Department in one day, I have been in the Inspection Department or inspection areas of the plant with one of the production people, Fogman, Belfield, an engineer, as many as six hours on some days. As to what percentage of time in a month I was actually present in there, the Inspection Department was in several different areas in the plant. The office was in one place but there were areas where there was an inspection area and a warehouse area in addition. As to the percentage of time which I spent in the area of the inspection departments, I would say 25% or a little more. I know Mr. Wallaston. He was an outside inspector at the time. I believe he was at one time an inside inspector. He was an assembly inspector. As to his authority to sign the inspection sheets after they were typewritten, under the procedure, the first inspector did not sign the typewritten reports in general because he worked from a pencilled copy which he signed. Generally, because that was used in the working areas of the plant, it got dirty, naturally, from the work done with it so that was why the other copies were made from it. As to whether Mr. Wallaston ever signed the typewritten copies introduced as defendants' Exhibits A-9, A-10 or A-11, which are typewritten sheets made up from the pencilled copies, I don't know whether he signed them or not. I know he wasn't authorized to sign Belfield's name on it. As to whether Mr. Fogman may have signed it, he would not have

done it. He might have done it but it would have been against orders.

On redirect examination, Mr. McCarthy testified: I told him what the salary was that was being applied for. Mr. Belfield wasn't forced to take the job as Assistant Chief Inspector. He could have still remained as inspector so far as I was concerned.

GEORGE GREGSON

called as a witness for the defendant, being first duly sworn, testified as follows on direct examination: My name is George Gregson. I reside at 1316 N. 77th Street, Seattle. I am the General Manager of the Webster-Brinkley Co. and have been since the spring of 1944. I went with the Webster-Brinkley Co. in 1942 as Chief Expediter in charge of inside and outside expediting material from outside suppliers both in town and out of town. I then later became the Production Manager. From 1941 through 1945, the gross volume of work done by the Webster-Brinkley Co. was in excess of \$36,000,000 and comprised approximately 40 major contracts which varied from approximately \$150,000 to \$4,000,000. The Webster-Brinkley Co. manufactured at that time anchor windlasses, capstans, capstan windlasses, steering gears—both steam and steam hydraulic and electric hydraulic—and cargo winches. There were a number of other smaller items. Many of those items were being built for

the United States Navy and the Maritime Commission. The largest proportion of our business was done with them. We had one or two of the larger contracts with the Army. That work was directly connected with the war. It was all war work. It was equipment for both vessels in the Maritime service and vessels in the United States Navy. In my position as General Manager of the plant, Mr. McCarthy was my Works Manager. I had very definite opportunity to observe Mr. McCarthy's work as Works Manager. Mr. McCarthy is extremely efficient and has that almost unpurchasable asset of drive. He has the prime ability which many of those with whom he came in contact objected to as hot headedness but which actually got the material built. The work at that time was being done under the most extreme pressure. I would say that there was never a week—certainly never a week and often three or four times a day, that we were pressed from either one division of the Navy or the Maritime Commission, and at the time the Liberty ships were being built, the pressure was heavy. Later, when landing craft was the hottest program the United States Navy had, the pressure for steering gears for all of the large landing craft—and we built all of those—the pressure was tremendous. Later, the LST's—that is the landing ship tanks—on which we built all of the wildlasses, this pressure was terrific. Later came the corvettes with a steam steering gear. We designed the steam steering gear and I am told it is the only steam hydraulic steering gear built in the United States

for the U. S. Navy. That program was under fire. At the time our Navy discovered that the Canadian Navy was able to convoy across the North Atlantic with corvettes, our Navy jumped to build 100 of those. We undertook the job, under extreme pressure through the Maritime Commission, to build the steering gears, and supplied them to the Navy. As to whether during that period of time the executive and administrative officers of the company worked more than the ordinary hours, they certainly did. I would like to say that the Webster-Brinkley Co. organization was an organization that grew. The expression that it "grew like Topsy" probably describes it. The vast majority of the executives, the administrative officers, the second in command, did put in an enormous amount of time. I was acquainted with the status on which the executive and administrative officers were hired so far as any given amount of time per week was concerned. I know the basis upon which Mr. Belfield—I personally knew the basis upon which Mr. Belfield was hired. I have this personal knowledge of the situation. The Webster-Brinkley Co. is operated under the direct supervision of the President of the company through an Operating Committee. The Works Manager was one member, the Treasurer of the company was a member, and the Vice President was a member. Only in cases where there might be a deadlock was it necessary for the President to serve. But all matters that pertained to the appointment of people to supervisory positions where it was necessary to clear through the Salary

Stabilization Unit, they came before the Operating Committee with recommendations from their superiors and with a back-up. I was familiar with the hiring of the executive and administrative officials of the company during that period of time. I was also familiar with those cases which were transfers—if they were transfers within the organization from one department to another, which gave a leadman a promotion or gave a stright machinist in the shop a promotion. Those matters all came before the Operating Committee. They were all cleared. As to whether any of the executive or administrative officers were ever hired for a definite number of hours per week. I am quite sure that they were not, certainly not to my knowledge. As to whether they were hired on all occasions to do a definite job irrespective of time, they were. They were hired to do a job. As to whether I know anything personally about the case of Mr. Belfield, I know considerable. I know of my own personal knowledge what the nature of his services was. I am certainly acquainted with the nature of his services. In the management of any organization, whether it be Webster-Brinkley Co. or a smaller or a larger organization or manufacturing business, there are two very vital spots—outside altogether of the actual operating end of the business. In other words, your machine shop must operate efficiently or as efficiently as it can operate. The two departments to which I have reference, Inspection and Cost Accounting, are two of the most important departments in the plant to management. I know what Mr.

Belfield's work was. He was responsible for the operation of the Inspection Department in the absence of his superior, Mr. Fogman. I have seen Mr. Belfield at his work. I spoke with him often. As to contacts with him, they were not often. On one particular occasion, I had a very close contact with him. It was in March, 1945. We were in trouble on this winch that has been mentioned. The Maritime Commission took the position that the standards being set by our Inspection Department were not high enough. It was a very serious matter. It could have been most critical and it almost came to that position, and on at least two occasions, Mr. Belfield was present at conferences in Mr. Bannan's office, conferences called at my suggestion, and Mr. Belfield and Mr. Fogman were both present. One was March 2 and one was March 5 of 1945. Mr. Belfield was there with Mr. Fogman to advise management and the President of the company as to the position Inspection took as against the charges made by the Maritime Commission inspection department. I recall very well when Mr. Belfield first made any claim for overtime. I don't remember the exact date. It was one day I was in Mr. Washington's office and the telephone operator found me there. Mr. Belfield called me by telephone and told me that he had decided he was going to institute suit against the Webster-Brinkley Co. I said, "I am very much surprised." That was considerably after he had left the Webster-Brinkley Co. He said he was employed at the Western Gear Works. That was the first knowledge that I had of

any claim by Mr. Belfield for any overtime against the Webster-Brinkley Co. He called me up himself. That was the first time that I had ever heard of any such thing.

On cross-examination, Mr. Gregson testified: As to whether we lost money on the winch contract, I do not know the exact answer. It was very, very close to a break-even contract. The Cost Accounting Department brought in figures to me, through Mr. Wiley, which showed that we were losing money on the first few ship sets on the winch contract and the loss was quite sharp and it was very upsetting, that is, the possible loss was quite sharp and upsetting. We proceeded to take steps to reduce that loss by going to the Maritime Commission. We did, on the basis of the work presented by our Accounting Department, achieve a negotiating adjustment to the contract. I think it still left the winch contract in a loss position. When, as General Manager, I found out that this was a losing venture, I had to do two things. I had to find out why the costs were in excess of the estimate. I set about to do that. As to whether we could do that by reorganization or reduction of salaries, we couldn't reduce salaries. We could not reduce men. As to whether we could designate a man as manager and say, "You are now an inspector or an officer and we are now going to give you a salary," that had nothing to do with the appointment of Belfield to his position. We couldn't do that. You couldn't do that because the position had to be established in order to bolster the Inspection Department and that was one of my

most severe headaches. That was one of the spots where I was after Mr. McCarthy continually. There is no question about the fact that we put Belfield in to assist Fogman because of the fact that Mr. McCarthy said, "Well, this will take care of this inspection trouble." As to whether, when the things won't pass inspection the trouble is in the manufacturing end, I would say not in this case. When the winch contract was on, our biggest headache was over supplies. It was material supplied by foundries and other outside plants that caused us our biggest headache.

On redirect examination, the witness testified: Mr. Belfield was not under any compulsion to take the job as Assistant Chief Inspector.

On recross-examination, the witness testified: As to whether I know as a matter of fact that Mr. Belfield attempted to transfer out of being Assistant Chief Inspector to an outside inspector and that the company refused to let him do that, I don't know. I certainly don't know that. I would like to say in direct reply that Belfield was considered a good enough workman that I am quite positive if Belfield had expressed a desire to remain an outside inspector, there never would have been pressure put on him. I am not just assuming that. I knew the organization quite well. I lived with it. I don't know whether Mr. Belfield ever protested his appointment to Mr. McCarthy. If he wanted to leave, I had no knowledge of it. I did not know

that he got a transfer through the Personnel Department to another company.

THOMAS R. BELFIELD

recalled as a witness on behalf of the plaintiff in rebuttal, testified on direct examination: I did not have any conversation with Mr. McCarthy in August or September, 1944, relative to going on a salary basis. I did not between the time that I was put in as Assistant Chief Inspector up until after I was on a salary talk to Mr. McCarthy about the salary. After I went on a salary, I think I talked to Mr. McCarthy about my salary, if I remember. The first time he referred me back to Mr. Fogman.

Q. "Did you discuss that you had overtime coming?"

A. "Yes."

The Court: "With whom was that?"

The Witness: "With Mr. Fogman, the Chief Inspector."

The Court: "I know—but whom did you inform that you had an overtime claim?"

The Witness: "I never said I had an overtime claim."

The Court: "Who were you talking to when you said anything about overtime?"

The Witness: "Mr. McCarthy."

I discussed the fact that I was working overtime—long hours. On both occasions, there wasn't very much said. The first time I seen him about

it, he referred me back to Mr. Fogman which in most cases he done. That was shortly after I went on a salary along about the first of the year some time. As to the second time and what was said, we both got a little mad, I think, but he still referred me back to Mr. Fogman.

The Court: "It is too bad you can't answer the question. It would save a great deal of time."

Q. (By Mr. Stewart): "Mr. Belfield, the Court wants to know if you discussed overtime with Mr. McCarthy."

A. "Yes."

Q. "What did you say to him?"

A. "Well, I told him that I was putting in quite a bit of overtime—I didn't like it, I told him. He referred me back to see Mr. Fogman about it."

Q. "About the overtime?"

A. "That is right."

I attempted to get out of the department. I sent him a written resignation from the Webster-Brinkley Co. through the interoffice mail. It was sent back by Mr. Fogman. It was rejected. Mr. Fogman was present in the course of the day's work, as they came and went, I would say 80%. There would be days that he wouldn't come in until 9:00 o'clock or 10:00 o'clock and then there would be other days that——

The Court: "Did you, yourself, know of any reason for that from your observation of him?"

The Witness: "Outside of being lazy or not

able to get up or something like that. He never was actually sick or anything that I could see.”

Plaintiff's Exhibit 6 is the inspection report. It was made up in the inspection office and typed by the girl. I examined that particular exhibit and find various pages in it carrying initials of “TB.” The initials “TB” are my initials on the first page.

Q. “Will you turn to those and state whether or not there are initials on there, ‘TB’ that are not your writing.”

The Court: “Do you mean those where there is a tab marking the place in the file?”

Mr. Stewart: “Yes.”

Q. (By Mr. Stewart): “Where there are tabs and where it is rejected and whether there are figures there and whether they are yours.”

A. “Here is a part rejected by the shop and signed ‘Rejection’ and initialled ‘TB’ and it isn't mine.”

That is not my signature. It is dated 12/27/44. As to another one, here it is another rejected report coming from the shop. It is signed “Argetsinger” and initialled by someone other than myself with a “TB.”

Q. “You may examine all of them and tell us of any in the book that are not yours, if there are more.”

The Court: “There are several places marked with tabs.”

Q. (By Mr. Stewart): “Look at those and count them.”

A. "Most of them are initialled off by the girl here."

Q. "No, just the ones that are 'TB', Mr. Belfield, whether it is your signature or whether it isn't."

A. "Yes, here is a rejection that is mine."

It is dated 1/3/45. Here is one by Mr. Fogman.

The Court: "Does it bear the initials 'TB'?"

The Witness: "No."

The Court: "Then you are not interested in it."

Here is another inspection report, 12/27/44. It is "Prindiville" and is initialled by "TB." That isn't mine. Here is another one, "Argetsinger," rejected 12/27/44 and initialled "TB." That is not mine. Here is one that is made out by Mr. Burdge, 12/30/44. That is initialled by me and is my signature. Here is another one made out by Prindiville, 12/27/44,2 initialled 'TB.' That isn't mine. Here is another one that is made out by Mr. Bayless, 12/28/44. That is initialled "TB" and is not mine. Here is another one that is made out by Mr. Burdge and initialled "TB." That isn't mine, dated 12/27/44.

The Court: "Do you think all of them that you have mentioned there are in 1944 as having the initial 'TB' except one which I think you admitted was yours?"

The Witness: "Yes, this was from 1/4/45 back to 12/28/44."

(Plaintiff's Exhibit 6 was admitted in evidence.)

I examined the other cases in the court room. I found others which were initialled with my initials.

On cross-examination, the witness testified: As to whether I was outside when those were initialled, I could have been in Portland or any place. As to one on 12/28/44 and one 1/3/45, they are my initials. I don't know who signed them. I did not authorize anybody to sign my initials. As to whether anybody was authorized to sign the approvals on those reports except me and Mr. Fogman, I don't know. I don't know what Mr. Fogman had issued in the way of orders to that effect. I looked through that list.

Q. "Did you find any report during that period where the approval was signed by anybody except you and Mr. Fogman?" A. "Yes."

Q. "Come right down and pick that out."

A. "Those were put on there as my initials but I have never signed that."

Q. "All right, then I will correct it. You didn't find any that were not signed by the initials of 'TB' for you or by Mr. Fogman?"

A. "There are some in there that are not even signed by anybody."

Q. "How about rejections?"

A. "On rejections."

Q. "Well, there are not very many of them that are not signed, are there?"

A. "I wouldn't know. I never went through but just a few."

When I talked to Mr. McCarthy about overtime, all I did was to complain of the general overtime. I was working long hours each day. I didn't demand of him any payment for overtime but I wanted back off a monthly salary at one time.

Defendant's Exhibit A-8 and A-9 admitted into evidence. Plaintiff's Exhibit 3 admitted in evidence. After argument, the Court announced the following decision:

“In my opinion it is a question of fact in respect to each of these two plaintiffs, as to whether or not they occupied an executive, administrative, or some other capacity that is exempt from the Act or were wage earners who were covered by the Act and protected by its provisions.

“The Court has listened with a great deal of interest and has carefully considered all of the evidence adduced, in this case, touching the activities of both plaintiffs.

“As to the Plaintiff Belfield, I have considered all that has been testified to and all that has been said by counsel on both sides. It seems to me, and the Court finds, concludes and decides that Mr. Belfield, while occupying a nominal rank in advance of the other inspectors, did nothing, in reality, different from what they did except to sign some inspection reports or to permit his initials to be attached or affixed to certain inspection reports. Insofar as that was done, in this instance, it was a mere clerical performance.

“Mr. Belfield did not impress the Court that he

had the quality of mind or of ability that calls for great discretion in that process connected with the signing or initialling of his name on those reports. Those reports seemed to the Court, as disclosed by the evidence, to have been in themselves something of routine which was done pursuant to established procedure. They were done, in a large percentage of the instances mentioned in the evidence, as a matter of routine by some clerical employee or typist, who had affixed the initials of Mr. Belfield. I believe, of those that were specifically mentioned and introduced in evidence, there was only one where the initials of Mr. Belfield were affixed by Mr. Belfield's own hand.

“There were a number of instances, as disclosed by the evidence, when Mr. Fogman, who was, in fact, the head of the Division of Inspection, was absent from his post for some hours of the day or for the whole of the day or days. The inquiry naturally arises, as to who may have been performing his duties of supervision during those absences. But the Court is not convinced that the situation was anything other than one of suspended supervision until he got back. From all that the Court is able to glean from the testimony, as to what Mr. Belfield actually did is concerned, I carefully observed Mr. Belfield's demeanor on the stand, his manner of testifying, and all of the other measuring sticks by which triers of the fact may properly determine the credibility of a witness, and I would never be impressed that Mr. Belfield is a

man of such a nature or disposition—even if he had sufficient ability, in fact—to be put in a position of discretion and important supervision. I just can't be convinced by the evidence, in this case, that, as a matter of fact—he was in such a position in this case.

“It is, therefore, the opinion, finding, conclusion and decision of this Court that the plaintiff Belfield was not, in respect to his employment, anything other than a wage earner, and that he was no different, in the capacity of his actual service, from the other inspectors, and that—although he carried the nominal position of Assistant Chief—the character of his services was like that of other inspectors, rather than like that of Mr. Fogman, who was, in reality, the Chief.

“I also find that as to him, since the Act does apply, that he was entitled to overtime for all hours worked during any one week in excess of forty hours, and that the rate of pay was one and a half times the regular hourly scale. Of course, the result will be obtained by ascertaining the total number of hours worked in one week and deducting therefrom forty hours, and then, on that difference, multiplying by one and a half times the regular hourly scale. If he was paid anything in excess of forty hours regular scalepay, then he will have to acknowledge credit for payment for any of the hours over forty, to the extent that he was paid in excess of forty.”

[Endorsed]: No. 11680. United States Circuit Court of Appeals for the Ninth Circuit. Webster-Brinkley Company, a corporation, Appellant, vs. Thomas R. Belfield, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed July 7, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the Circuit Court of Appeals of the United States
for the Ninth Circuit.

No. 11680

THOMAS R. BELFIELD,

Appellee,

v.

WEBSER-BRINKLEY, CO.,

a corporation,

Appellant.

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES AND DESIGNA-
TION OF PORTION OF THE RECORD
NECESSARY FOR CONSIDERATION
THEREOF

Appellant, Webster-Brinkley Co., relies on this appeal upon the following points, to-wit:

1. The evidence was insufficient to justify the

court in concluding that Thomas R. Belfield was not employed and worked for the Webster-Brinkley Co. in an executive or administrative capacity and was not exempt from the Federal Fair Labor Standards Act but was subject to said act and entitled to overtime under it.

2. The evidence was also insufficient to justify the court in finding that Thomas R. Belfield was employed at \$425.00 a month upon the basis of forty hours of work per week and it was insufficient to justify any finding by the court that the basis of employment was other than \$425.00 a month for such number of hours per week as the job might take or as he might work; in other words, that the employment was for no definite but for a fluctuating number of hours per week.

3. The evidence was also insufficient to justify the court in finding that Thomas R. Belfield actually worked 591 overtime hours or any number of overtime hours.

4. The evidence was insufficient to justify the court in adopting the formula it adopted to calculate the overtime due Thomas R. Belfield, if any, and the award to Thomas R. Belfield of the sum of \$2174.88.

5. The evidence was also insufficient to justify the court in allowing to Thomas R. Belfield an additional equal amount of \$2174.88 as liquidated damages.

6. The court erred in making and entering its findings of fact No. III and IV, its conclusion of

law No. II and its judgment against the defendant in the sum of \$4349.76, together with attorneys' fees in the sum of \$500.00 and the costs of suit.

7. Since the decision of the lower court, there has been enacted into law the Portal-to-Portal Bill of 1947 approved May 14, 1947, which contains retroactive provisions applicable to this case. The appellant will call the court's attention to that statute and, in particular, Sections 9 and 11 thereof, and urge the court, if it should not reverse the decision of the lower court, to provide that on remand to the District Court, that court shall have authority to consider any matters presented to it under the Portal-to-Portal Act of 1947.

In fact, the entire record pertaining to the Belfield case and all the exhibits with reference to that case, have been forwarded to the Circuit Court of Appeals. The testimony has been reduced to narrative form. The appellant hereby designates the entire record which has been forwarded to this court, together with all the original exhibits forwarded to this court and the narrative statement of the oral testimony, as the record which the appellant thinks necessary for the consideration of the points on which it intends to rely on this appeal.

Dated this 2nd day of July, 1947.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,

/s/ FRED W. CATLETT,

Attorneys for Webster-
Brinkley Co., Appellant.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION AND ORDER
ELIMINATING ORIGINAL EXHIBITS

It Is Hereby Stipulated by and between Thomas R. Belfield, appellee, and Webster-Brinkley Co., a corporation, appellant, by their respective counsel, that all exhibits admitted in evidence at the trial of the above entitled case and designated by stipulation to be transmitted to the above entitled court as part of the records of this cause herein be excluded from printing, and the court be and it is hereby requested to consider the same in their original forms as though set out in the printed record.

Dated at Seattle, Washington, May 19th, 1947.

CATLETT, HARTMAN,
JARVIS & WILLIAMS,
/s/ FRED W. CATLETT,
Attorney for Appellant.

/s/ LEO W. STEWART,
/s/ CHARLES H. HEIGHTON,
Attorneys for Appellee.

So Ordered.

/s/ FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed July 7, 1947.