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Richmond, Va.

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# Record No. 5185

## In the Supreme Court of Appeals of Virginia at Richmond

## MERRIMACK MUTUAL FIRE INS. CO

v.

## MRS. GIUSEPPA LANASA

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

### RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

**Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.**

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 5185

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 20th day of April, 1960.

MERRIMACK MUTUAL FIRE INS. CO., Plaintiff in Error,

*against*

MRS. GIUSEPPA LANASA, Defendant in Error.

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From the Law and Equity Court of the City of Richmond

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Upon the petition of Merrimack Mutual Fire Insurance Company a writ of error and *supersedeas* is awarded it to a judgment rendered by the Law and Equity Court of the City of Richmond on the 30th day of November, 1959, in a certain motion for judgment then therein depending wherein Mrs. Giuseppa Lanasa was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of fifteen thousand dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

# RECORD

* * * * *

Filed in the Clerk's Office the 24 day of June, 1958.

Teste:

E. A. EARLE, JR., D. C.

## MOTION FOR JUDGMENT.

The Plaintiff, Mrs. Giuseppa Lanasa, moves the Court for judgment against the Defendant, Merrimack Mutual Fire Insurance Company, for the amount and on the grounds hereinafter set forth:

1. The Defendant is a fire insurance company authorized and licensed to do business in the State of Virginia.
2. On October 8, 1955, Defendant, in consideration of a valuable premium paid by Anna Lanasa, Baltimore, Maryland, Executrix of the Estate of Antonio Lanasa, issued to Anna Lanasa its policy No. 8916 72 covering loss from fire to the one-story brick building situated at 1817 East Franklin Street, Richmond, Virginia. The policy provided for a coverage of Eleven Thousand Dollars ($11,000).
3. On October 13, 1955, Policy No. 8916 72 was properly endorsed to the Plaintiff, she having acquired 1817 East Franklin Street from the Estate of Antonio Lanasa.
4. Thereafter on June 27, 1957, while the policy of insurance was still in full force and effect, 1817 East Franklin Street was totally destroyed by fire. The true and actual value of 1817 East Franklin Street was at least the sum of Eleven Thousand Dollars ($11,000), and the direct loss and
page 2 } damage to the Plaintiff as a result of the destruction of such property is at least the sum of Eleven Thousand Dollars ($11,000).
5. The Plaintiff duly gave notice of the loss and has since fully complied with each and every term, condition and provision of the policy of insurance except to the extent that said terms, conditions and provisions have been waived by the Defendant.
6. In spite of repeated demands, the Defendant has paid to the Plaintiff no part of the said sum of Eleven Thousand Dollars ($11,000).

WHEREFORE, the Plaintiff moves for judgment against the Defendant in the sum of Eleven Thousand Dollars ($11,000), with interest thereon from November 15, 1957, plus the costs of this action.

MRS. GIUSEPPA LANASA
By Counsel.

WILLIAM A. FORREST, JR.
McGUIRE, EGGLESTON, BOCOCK & WOODS
Counsel for Plaintiff
915 Mutual Building
Richmond 19, Virginia.

* * * * *

page 4 }

* * * * *

ANSWER.

Now comes the defendant, Merrimack Mutual Fire Insurance Company and in answer to the Motion for Judgment filed against it herein, states as follows:

1. Defendant admits the allegations of paragraph No. 1.
2. Defendant admits the allegations of paragraph No. 2.
3. Defendant admits the allegations of paragraph No. 3.
4. In response to paragraph No. 4, defendant denies that the property described was totally destroyed by fire as therein alleged, but avers, on the contrary, that the cause of such loss as was sustained, if any, was explosion and not fire. Defendant further denies that the plaintiff was damaged to the extent alleged in this paragraph.
5. In response to paragraphs No. 5 and 6, the defendant denies that the loss here involved was within contemplation or was covered under the policy sued upon.
6. For the above reasons, the defendant denies that it is indebted in any amount to the plaintiff herein.

MERRIMACK MUTUAL FIRE
INSURANCE COMPANY
By ALEXANDER H. SANDS, JR.
By E. A. MARKS, JR.
315 American Building
Richmond, Virginia.
Counsel.

* * * * *

page 5 }

* * * * *

Received and filed Jul. 14, 1958.

Teste:

LUTHER LIBBY, JR., Clerk.

* * * * *

page 7 } INSTRUCTION NO. 1.

The Court instructs the jury that the words "fire" and "explosion," as used in the policies of insurance herein sued upon and in these instructions are to be interpreted in their ordinary sense.

Fire is that stage in the process of burning or exidation which occurs when flame appears, the thing on fire being consumed or altered in its physical structure by the heat of combustion.

Explosion, on the other hand, is the term applied to a violent bursting or expansion, usually accompanied with noise, following the sudden production of great pressure, with or without instantaneous flash of flame, in connection with which the damage, if any, is caused by mechanical force rather than combustion.

Given.

R. L. Y.

page 8 } INSTRUCTION NO. 2.

The Court instructs the jury that the policies of insurance herein sued upon insure against damage by fire, it being expressly provided that the defendant companies would not be liable for loss occurring "as a result of explosion, unless fire ensue, and in that event for loss by fire only."

Under these policies if a hostile fire, in other words, a fire within or of the insured building or its contents, not started voluntarily, which, if allowed to pursue its natural course, would probably result in the total or partial destruction of said building and its contents by fire, precedes, only later producing, even though the time interval be comparatively

short, the explosion, then all loss will be considered as caused by fire, whether the damage be from the heat or flame of combustion or the mechanical effect of the explosion.

On the other hand, under these policies, if explosion precedes a hostile fire, then coverage exists only for loss causes by any fire following, even though caused by, the explosion. An instantaneous flame, contemporaneous with an explosion, should be regarded by you as a part of the explosion, not a pre-existing hostile fire.

Given.

R. L. Y.

page 9 } INSTRUCTION NO. 3.

The Court instructs the jury that you will find your verdict against both defendants in the amount of $14,575.00, the combined loss from explosion and fire, if you believe that the plaintiff has proven by a preponderance of the evidence that a hostile fire preceded the explosion. If she has not carried this burden of proof, then you will find your verdict in her favor, fixing her damages at $4,090.00, the amount of loss shown by the evidence to have been caused by the fire which followed the explosion.

Given.

R. L. Y.

page 10 } INSTRUCTION NO. 4.

The Court instructs the jury that a fact is considered to have been proven by a preponderance of the evidence when you regard it to have been shown by the greater weight of the evidence, or such measure of proof as you shall find satisfactory and convincing. Proof to a moral certainty, or beyond a reasonable doubt is not essential; however, where in your opinion it is just as probable that a fact is not proven by the evidence as that it is, such fact cannot then be said to have been established by a preponderance of the evidence.

You are further told that a verdict should never be based upon sympathy, speculation or conjecture, but should rest entirely upon the evidence before you and upon these instructions of the court.

Given.

R. L. Y.

page 11 } INSTRUCTION NO. A.

The Court instructs the jury that if you believe that the building in question or one of the rooms in such building was caused to become filled with an explosive gas or vapor and that such explosive gas or vapor came into contact with a spark from an electrical connection, and was thereby caused to explode, and that such explosion wrecked and demolished said building, and that neither said building nor its contents were on fire or burning before such explosion, then you will find your verdict in favor of the defendant, except as to such damage as you may feel resulted from fire ensuing after the explosion.

Refused.

R. L. Y.

page 12 } INSTRUCTION NO. B.

The Court instructs the jury that if you find and believe from the evidence that the building in question was demolished by reason of some explosive substance being ignited by means other than the building or its contents being on fire before the explosion, then the plaintiff is not entitled to recover anything in this action except such damages, if any, which you may believe to have resulted from fire ensuing after the explosion.

Refused.

R. L. Y.

page 13 } INSTRUCTION NO. C.

The Court instructs the jury that if you believe from the evidence that the explosion preceeded any burning of the building or its contents, or if you are unable to tell from the evidence whether the fire or the explosion came first, in either case you can not find for the plaintiff for any damage occasioned by the explosion but only for such damage, if any, which the fire caused after and separate from the damage done by the explosion.

Refused.

R. L. Y.

(b) Based upon plaintiff's own evidence, the fire alleged to have preceded the explosion was a part and parcel of the explosion itself, did not ignite any part of the building or its contents and was not such a fire which in its natural course would have destroyed the insured property in contemplation of the ruling in the *Pearcey* case *supra.*

page 17 } (c) There is not a scintilla of evidence in the entire case as to the value of or of the monetary extent of damage to, the property after the explosion and fire nor is there a scintilla of evidence from which the jury could determine either the entire monetary damage or that it was a total loss. Yet the Court instructed the jury *as a matter of law* that (1) the building was a total loss and (2) that the full amount of the fire damage testified to of $4,079.00 was all fire damage and no part due to explosion. Plaintiff's witness Rives testified that much of the roof could be repaired, there is no testimony that the walls could not be repaired or that there was substantial structural damage to any part of the building except the west wall. The photograph of the outside of the building in evidence, on the contrary, shows all of the front and part of the roof to be intact, which is in accord with plaintiff's witness Rives' testimony.

(d) The instructions offered by defendant were all rejected by the Court though defendant was supposedly entitled to have its theory of the case stated in terms adequately presenting such theory to the jury, which instruction two given by the Court did not do.

MERRIMACK MUTUAL FIRE
INSURANCE COMPANY
By ALEXANDER H. SANDS, JR.
315 American Building
Richmond, Virginia.

* * * * *

page 18 } October 29, 1959.

Robert H. Patterson, Jr., Esq.,
William A. Forrest, Jr., Esq.,
Alexander H. Sands, Jr., Esq.,
Attorneys at Law
Richmond, Virginia

*Re*: Lanasa *v.* Michigan Millers Etc. Co. et al—A-2846.

page 14 } INSTRUCTION NO. D.

The Court instructs the jury that should you find that any damage was caused by a fire ensuing after the explosion, that you can consider only the salvage value, if any, of the property in the condition that it was after the explosion and cannot consider the cost of replacing it in the position it was prior to the explosion.

Refused.

R. L. Y.

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page 16 }

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Received and filed Nov. 11, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

MOTION.

Now comes the defendant and moves the Court to set aside the verdict of the jury upon the grounds that it is contrary to the law and the evidence, that there is no evidence to support it, and upon the grounds of misdirection of the jury by the Court, and to grant a new trial limited to the issue of what, if any, damage resulted from fire ensuing after the explosion and assigns as grounds for this motion, the following:

(a) That even if plaintiff's evidence could be held to establish a hostile fire at the time of the explosion, that such fire, in the light of plaintiff's own evidence, was simultaneous with the explosion and there was no evidence upon which the Court could have permitted the jury to have found the fire to have pre-existed the explosion to the extent necessary to nullify the explosion exclusion in the policy under the doctrine of *Pearcey* v. *Insurance Company*, 163 Va. 928.

Gentlemen:

I have reached the conclusion that judgment should be entered on the verdict in this case and suggest that counsel prepare an order overruling the motion to set aside the verdict and entering final judgment thereon.

While I have examined all of the authorities cited in the unusually well-prepared briefs filed herein, if I recall correctly the only real controversy related to whether or not there was some evidence to the effect that a fire was the proximate cause of the explosion and subsequent fire, thus the entire loss. *Peacey* v. *St. Paul Fire Ins. Co.*, 163 Va. 928, merely lays down the rule where there is absolutely no evidence of a fire producing an explosion. Here there was such evidence. The fact that the interval of time between the red flame seen by Mr. Lanasa, which burned him so severely, and the explosion, due doubtless to peculiar conditions of heat, pressure, and the mixture of gas and air, was comparatively short, does not authorize the court, in my opinion, to withdraw the question of proximate cause from the jury, that being a thing always regarded as peculiarly within its province.

Your very truly,

RLY/e

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* * * * *

This day came again the plaintiff, and the defendant, by counsel to be further heard on the motion of the defendant, Merrimack Mutual Fire Insurance Company, to set aside the verdict of the jury and to award a new trial on behalf of said defendant.

AND the Court having heard argument on said motion and now being advised of its judgment to be rendered herein, doth overrule the said motion of the defendant, to which action of the Court the defendant, Merrimack Mutual Fire Insurance Company, by counsel, excepted.

WHEREUPON, IT IS ORDERED that the plaintiff recover against the defendant, Merrimack Mutual Fire Insurance Company, the sum of TEN THOUSAND TWENTY and 31/100 ($10,020.31) DOLLARS with interest thereon to be computed at the rate of six per cent (6%) per annum from

the 7th day of November, 1958, until paid and its costs by it in this suit in its behalf expended, to which action of the Court the defendant, Merrimack Mutual Fire Insurance Company, by counsel, excepted.

And the defendant, Merrimack Mutual Fire Insurance Company, having indicated an intention to apply to the Supreme Court of Appeals of Virginia for Writ of Error and *Supersedeas* to said judgment, execution thereon is suspended for a period of four (4) months from this date and until page 20 } the Appellate Court has acted on a Petition for Writ of Error presented to said Court, or one of the Justices thereof within four (4) months from this date, and until this Court shall thereafter authorize execution to issue, upon condition, however, that the defendant, Merrimack Mutual Fire Insurance Company, or someone for it, shall within thirty (30) days from the date of the entry of this Order enter into bond in the Clerk's Office of this Court with surety to be approved by its Clerk, in the penalty of Fifteen Thousand and 00/100 ($15,000.00) Dollars with all the conditions prescribed by Title 8-477 of the Code of Virginia of 1959, as amended, relating to such bonds.

Enter Nov. 30, 1959.

R. L. Y., Judge.

I ask for this:

WILLIAM A. FORREST, JR.
Counsel for plaintiff.

Seen and objected to:

ALEXANDER H. SANDS, JR.
Counsel for defendant.

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page 21 }

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Received and filed Dec. 21, 1959.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Law and Equity Court of the City of Richmond:

Counsel for Merrimack Mutual Fire Insurance Company, defendant in the above-styled cause, hereby gives notice of appeal from the final order *endered* in said case on November 30, 1959, and sets forth the following assignments of error:

1. That the Court erred in refusing to grant instruction A, B, C, and D offered by the defendant which instruction correctly embodied the law applicable to the facts in evidence.

2. The Court erred in giving instructions offered by the plaintiff or in giving any instructions which it offered in lieu of those offered by the plaintiff which put to the jury the determination of the question of whether a hostile fire preceded the explosion.

3. The Court erred in giving instruction No. 1, No. 2 and No. 3 as none of these instructions correctly enunciated the law applicable to the case.

4. The Court erred in overruling the defendant's motion to set aside the verdict of the jury upon the grounds that it was contrary to the law and the evidence and without evidence to support it upon the grounds of misdirection of the jury by the Court and in its refusal to grant a new trial limited to the issue of what, if any, damage resulted from fire ensuing after the explosion such motion having been made upon the following grounds:

page 22

(a) That even if plaintiff's evidence could be held to have established the hostile fire at the time of the explosion, that the fire, in the light of plaintiff's own evidence, was simultaneous with the explosion and there was no evidence upon which the Court could have permitted the jury to have found the fire to have pre-existed the explosion to the extent necessary to nullify the explosion exclusion in the policy under the doctrine of *Pearcy* v. *Insurance Company*, 163 Va. 928.

(b) That based upon plaintiff's own evidence, the fire alleged to have preceded the explosion was a part and parcel of the explosion itself, did not ignite any part of the building or its contents and was not such a fire which in its natural course would have destroyed the insured property in contemplation of the ruling in the case of *Pearcy* v. *Insurance Company,* 163 Va. 928.

5. The Court erred in holding as *a matter of law* (1) that the

building was a total loss and (2) that the full amount of the fire damage testified to of $4,079.00 was all fire damage and no part due to explosion.

MERRIMACK MUTUAL FIRE
INSURANCE COMPANY
By ALEXANDER H. SANDS, JR.
315 American Building
Richmond, Virginia.

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page 24 }

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ORDER.

This day came the parties, by counsel, and the defendant, by counsel, representing unto the Court that the above case and the companion case of *Lanasa versus Michigan Millers Mutual Insurance Company* were both tried at the same time and that the Court Reporter's transcript of the testimony, exhibits, and incidents of trial as taken at the trial of the case is thereby equally applicable in both cases and the defendant, by counsel, requesting the Court that the same transcript of evidence and incidents of trial be considered as the separate transcript of evidence and incidents of trial in each of the two above cases, the plaintiff, by counsel, not objecting thereto, it is accordingly

ORDERED that the reporter's transcript of the evidence exhibits and incidents of trial taken during the trial of the above proceeding be likewise considered as the transcript of testimony and incidents of trial in the case of *Lanasa versus Michigan Millers Mutual Insurance Company.*

Enter Jan. 26, 1960.

R. L. Y.

* * * * *

page 2-A } Mr. Sands: May it please the Court, you gentlemen of the jury: My name is Alex Sands. I am representing these two defendant companies today in this case that is before you gentlemen for determination.

Now at the outset I might say that we do not conflict, I agree with my friend Mr. Forrest that at the time this loss took place there were those two policies of insurance in effect; the premiums had been paid and therefore covered, at that time, any fire damage which was sustained, under those policies, on this building.

Now that policy which you gentlemen—both of those policies here again I will refer to them just as one, just as Mr. Forrest, there is no use in referring to both as they are the same, all controlled by the same set of facts—you gentlemen will look at those policies during the course of this trial and you will see that that policy has a provision in here—as a matter of fact, it has to have a provision under the Virginia statute as the Court will instruct you. All this is, is a uniform policy. Here in this State, as you gentlemen know, the policy has to carry various provisions, one of which is that the companies are responsible for any loss sustained by fire or lightning, that they are not responsible for any explosion or any damage caused by an explosion unless a fire follows that explosion, and in that event only responsible for that portion of the loss which is caused by the fire and not by the explosion. That will be the policy provision that you gentlemen will read.

page 2-B

You gentlemen also know, and it will be brought out during this trial, that a great number of policies—and perhaps, I dare say, the ones that you gentlemen have—have what is called on there "an extended coverage endorsement," which means an endorsement put on the policy which adds on to that policy also covering for explosion, among other things wind storm, for which you pay an additional premium. The evidence will show you gentlemen that that was not on this policy. There was no additional endorsement on the policy. At the time of this loss it was a pure, simple, and ordinary fire policy and being paid for as such; which is going to make it vital for your gentlemen to determine, during the course of this case, whether or not this explosion which actually occurred caused this damage and if so what part of it, or whether or not the loss was caused by fire.

Now the Court, again I am not attempting to tell you how the Court is going to instruct you. I think my friend Mr. Forrest is right, the Court is going to instruct you that if there was a preceding fire in the building that was burning the building and in its course would have destroyed either the whole or part of the building, and that as a result of the fire an explosion occurs along that line, that it swept into the

general fire coverage, the fire policy covers it all.
page 2-C } However, gentlemen, we believe the evidence in this case will convince you without any question in the world that this explosion took place; at that time it was an explosion, pure and simple; that there was no fire in connection with that except a flash that occurs when an explosion takes place, such as when you shoot off a shot gun; that no fire occurred for almost an hour thereafter. We expect to show you this damage was totally the damage of the explosion, and we believe the Court will instruct you that these policies do not cover any of this loss, or if any, so much that you gentlemen may determine was done by that fire that occurred later on.

Now we expect to prove those facts in this way, gentlemen. We expect that the evidence is going to show you that about 6:10 that morning that there was a terrific explosion in this building. We expect to show that the blast was so great that it blew part of the roof off, it blew the bricks off and partially demolished the building right behind it next door. We believe the evidence is going to show you that the fire department was immediately called to the scene, and the firemen will be here to testify, the Fire Chief who was in charge. We believe the evidence will show you when the fire department arrived there they found the building in a complete state
page 2-D } of shambles, they went in and made an inspection so far as they could go in safety over the whole building looking for fire. After a careful inspection they were unable to find any fire of any sort; that as a result of that the fire department was sent back to their house; that the Fire Chief in charge stayed on afterwards as was his duty to do so in order to do certain things: cutting off electricity, seeing that all the gas mains were cut off, and what not; and that then perhaps forty minutes later that he was told by a police officer that there was some smoke up in the upper part of this building.

Right there, gentlemen, I want to show you what this building looks like, what we are talking about. This is a picture taken after this loss. The Lanasa building faces out here on Franklin, here is 17th Street running down this day. Here is the front entrance here, the downstairs with the cubicles and office in this wing here, and some cubicles over on this side, which the evidence will show you were used for banana ripening rooms. On back upstairs there is a flooring upstairs and that was used for possibly some sort of storage. That will come out in the evidence, I expect, during the course of the trial.

We expect the evidence will show you gentlemen that when

the fire department arrived the first time and made their inspection, this whole part of the roof that you can just see the top of over in here was blown off, the damage page 2-E } along here that you can see had been done, the inside of this corner just in shambles over here. Photographs will be shown you showing the condition at the time the fire officers arrived; they came up and made an inspection, both up and down. As I say, at this time they found no fire of any sort.

We expect to show you gentlemen, as I say, after the fire department was sent home a police officer then reported to the Fire Chief that he had seen a whisp of smoke over in this area, over in the right-hand as you look at this picture, the right-hand rear corner of the building. The fire Chief then went up and made an inspection in that area. He saw a small flame, perhaps two feet in circumference. He then called his hose. By the time any water was played on it, it had spread and had burned considerable of these timbers, which we will show had been already blown away and damaged by the explosion.

We expect the evidence will further show you gentlemen that the fire department chief who is in charge of determining these fires and the origin was called in and he will tell you what his inspection showed, and he will tell you that there was no evidence of any fire damage on the downstairs, whatsoever, that is the ground floor; that the fire damage was located in the upper right-hand rear, as I have indicated. He will further tell you gentlemen that in his investigation that he went and interviewed Mr. page 2-F } Lanasa, who will talk to you this morning, and far from the evidence which counsel made in his opening statement, we expect to introduce to you that Mr. Lanasa told him that when he came in in the morning and opened that door and turned on the switch that the bomb explosion occurred immediately, at the same time blowing him out of the door. Now Chief Bowman, who is the fire investigator for the City of Richmond, will tell you exactly his views on that, and also what he was told by Mr. Lansas on that morning as to how this fire occurred.

If we do prove those facts, gentlemen, to your satisfaction, and we believe that we shall, it will be our contention as I have stated, that that building was for all intents and purposes destroyed by this explosion long before there had been any fire: but that explosion, we shall prove to you, had been caused by a collection of gas in this chamber due to the extinguishment of that light—which will be admitted, I believe, had been extinguished—and that when the door was opened

by Mr. Lanasa it allowed air to go into the room, the light was fliched on and as it commonly occurs, any spark can set off a collection of gas in a room of that sort and cause an explosion.

If we prove those facts to you, gentlemen, then we believe that you will find your verdict, as we will then ask you to find in favor of the defendants, certainly insofar as all the damage that you find was caused by the explosion page 2-G } was concerned, and if you feel that any damage was caused by the subsequent fire, any material, anything of that sort, then that will be a proper charge against the insurance company under their fire policies.

page 3 }

* * * * *

VINCENT F. LANASA,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Forrest:

Q. Mr. Lanasa, I have several questions I would like to ask you. I would like for you to answer those questions and direct your remarks to the jury sitting over here. Speak up so they can hear you.

First, I would like for you to give us your name, your age, and your address.

A. My name is Vincent Frank Lanasa, age 55, address 1900 block North 22nd Street.

Q. What is your occupation, Mr. Lanasa?

A. I'm a fruit merchant.

Q. Where do you conduct your business?

A. 1817 East Franklin Street.

Q. In a warehouse there at 1817 East Franklin page 4 } Street?

A. Yes, sir.

Q. Is that the warehouse that was owned by your mother, the plaintiff in this suit?

A. Yes, sir.

Q. Mr. Lanasa, will you describe for the jury the principal equipment that you use in this business?

A. I had four rooms—six rooms there. They have refrige-

rator machines which we can cool, then we have gas heaters, gas units in there to heat with. Like a gas burner like you use under a, like a coffee pot. Then we can regulate them any temperature we want.

Q. The rooms are used for what?

A. Ripening and cooling, either. You know, either, to get the temperature we want.

Q. Would you describe the physical dimensions of this room, what it is like on the inside, for the jury?

A. It's four inches of cork. It's ten feet high with an air pocket. The room consists of about seven feet and a ceiling, and one on top of it for air pockets, see. Then we hang our bananas to the ceiling, see, because it's about twenty thousand pounds go on these heavy joists.

Q. What size, approximately, are the rooms?

A. I think they're sixteen by sixteen. About that.

Q. I gather from your remarks that the boxes
page 5 } are lined with cork on the sides, is that right?

A. Yes. All—Top and sides. All four sides, and the ceiling. On top of this ceiling is ten feet high, and then the ceiling runs seven feet, see. It's an in-between ceiling, about as high as that desk, for air pocket. Gas. You know, any kind of, all fruits create gas, see? That's what causes it to decay.

Q. The immediate ceiling is made out of what?

A. Wood.

Q. Hould you generally describe for the jury the general procedure you use when you get fruit in? Let's take bananas.

A. It's according to how, if we need fruit ripened we have to heat it. Its' according to how it comes in. Sometimes it comes in cold, sometimes it comes in warm. If it comes in cold and we need it immediately, we put heat to it, see. Get the cold out of it. On bananas we do; not on other fruits.

Q. How long do you leave it in there?

A. We generally, sometimes we leave it two, three—According to the weather, the weather condition, and temperature condition—leave it burn two or three days sometimes. See, we, you know what I mean, just until we get a certain temperature as we need it.

Q. So when you get the bananas in, for example,
page 6 } you put them in one of the rooms, and either heat or cool—

A. Or cool. Either one. If I need them I heat them, if I don't need them I cool them. I don't want them to get ripe, see. They all come in green, and we have to process them.

*Vincent F. Lanasa.*

Q. Was this the procedure that was followed on the night of June 26th?

A. On the night of June 26th I put a load of fruit in, and I wanted to put some heat on it, and I heated—See, I light the gas arcs, and on the morning of the 27th—I generally go, I, every two to three hours, all during the day, and I check these rooms, you know, for any temperature changes. Sometimes the machines break down, and I go over them all the time.

This morning I—June 26th—I put in a load of fruit. I hit the heater; I came to work at 5:00 o'clock on the 27th. We all got to work and packing the bananas. I examined all my rooms. I found this room with gas. I went back in the room, shut the gas off, and cracked the room.

When I came back, I think it was about 6:00 o'clock, I walked in into this room to see how the condition of the bananas—if they was coloring or not. I looked up to the ceiling, and I, everything caught afire. And I tried to get out and I couldn't.

Q. In other words, when you walked into the room
page 7 } the second time—Just take your time now, you have plenty of time. Try to compose yourself. I have just a couple more questions for you.

Did you walk into the room the second time, is that right?

A. (Nodding head).

Q. Did you turn on the light when you went in?

A. Yes, I did.

Q. You got into the room and saw the flames on the ceiling, is that correct?

A. Yes, sir.

Q. Then would you repeat what happened? Just take your time. Make your remarks to the jury.

A. The fire makes me feel bad.

The Court: Would you like to take a little recess, Mr. Lanasa? The Court will take a ten minute recess at this time.

Note: At this point a short recess is had, following which the court is reconvened and the hearing continues before the jury as follows:

VINCENT F. LANASA,

resumes the stand for further direct examination and states further as follows:

*Vincent F. Lanasa.*

By Mr. Forrest: (Continuing)

Q. Mr. Lanasa, I have just a couple more questions
page 8 } I want to ask you. You said you walked into the room and you saw flames. Just tell us what happened after that?

A. See, I walked in that room and I looked up and I wanted to look at the bananas to see if they were changing colors. As I looked up at the bananas everything started to burn. So then I tried to get out. And the, the only—When I got near the door the explosion blew me and knocked me out. That's all I can recall.

The Court: I wonder if the color of the flame will become important in this case; do either of you know?

Mr. Forrest: That is the next question I was going to ask, Your Honor.

Q. Do you recall the color of the flame around you?

A. Red. Just like a regular fire, any other ordinary fire. Like you burn wood, or anything. That's the way it was. And all at once I tried to get out. I was burning—struck my hands, all over my face, my hair was on fire, my clothes was on fire; and I tried to get out of the room. When I did, everything blew; down I go. I was knocked cold.

Q. You were carried to the hospital, is that correct?

A. Yes. I got up in about—I don't know. I can't recall.
I got up, finally I got up and I walked outside, set
page 9 } down, waited for the ambulance. That's all I can remember. They took me to the hospital, and I stayed in the hospital ten weeks. And I got treatment for nine months.

Mr. Forrest: Mr. Sands, your witness.

CROSS EXAMINATION.

By Mr. Sands:

Q. Mr. Lanasa, this room that we are talking about, where the bananas were hanging, as you come in your front door—

A. Yep.

Q. —you come to several cubicles along the right-hand side—

A. What do you mean "cubicles"?

Q. Rooms, ripening rooms I believe are what you call them.

A. Lined up. Four of them.

*Vincent F. Lanasa.*

Q. How many of them?
A. Four. Down the line. And two on this side.
Q. But this was on the one the—
A. Yep. Number two, we call it.
Q. Second from the front, is that right?
A. Yes, sir.

Q. Tell us: In that room, whereabouts is this page 10 } gas jet located?

A. In other words, I can describe it to you. In other words, my building is running—All right, I can show you. This way facing Frankling Street, the walls are over here.

Q. Let's do a little better than that. Come on over here, if you will, now?

Note: The witness steps down from the witness chair and stands before the jury. Counsel draws on a yellow sheet of paper and states as follows:

Q. Let me do the first part of this. Let's say that this is the floor of your building; here is the door which comes in here from Franklin Street, like—
A. Put it on this side. Right here.
Q. This is the Franklin Street door there.
A. Right.
Q. There are cubicles along this wall, four, is that right?
A. Right here. Four rooms. Right up here. Then there were two rooms here.
Q. All right. Now, this was the number two room?
A. That is the number two.
Q. Where in that room was the gas jet located? Put an "X" where the gas jet was located?
A. Back on the wall, right in the center. Right here, and here, one here, and one here. Four.

page 11 } Q. Is that on the floor, or how high off the floor? Does it come out of the wall, or does it come out of the floor?

A. Comes down the wall.
Q. Comes down the wall and sticks out like this?
A. Comes down the wall and sticks out about that far. Eight inches.
Q. How far off the floor is that?
A. About, I would say about five to six inches.
Q. Will you draw a little arrow there and put "gas jet"?
A. "What do you mean "put gas jet"?

*Vincent F. Lanasa.*

Q. Write "gas jet" out there. Do you want help? Let the record show the witness put an "X"—Number the rooms first, one, two, three and four, if you will, sir?

A. One, two, three, four, five, six.

Q. Put an "X" in room two where the gas jet was located.

A. Right here.

Q. And that was how high off the floor?

A. About six inches.

Q. From the floor?

A. Yep.

Q. How far from the wall?

A. The wall, another eight inches, maybe a foot.

page 12 } About a foot.

Mr. Sands: I would like to file this as Defendants' Exhibit No. 1.

Note: The above paper-writing is now marked and filed as Defendants' Exhibit No. 1.

Note: The witness resumes the witness chair.

Q. Mr. Lanasa, when you went home the night before, I believe you said that you lit that gas jet, is that correct?

A. Yes, sir.

Q. All right, sir. How tall a flame now does that gas jet give you; just show us?

A. I tell you that gas will run unordinary. It's according to how many people are using gas, and how they ain't. Now the flame will throw at least about an inch around it. It's a circle. Like they put under a coffee pot.

Q. Was the flame throwing about that size the night you left it?

A. That flame when I left it, it was about half lit. It wasn't full supplied. Just half. I have left that gas on for weeks burning slow.

Q. What ventilation do you have in this room after the door is shut, except for the door, what other ventilation do you have?

A. I have two doors on each side of the room.

page 13 } Three doors in each room.

Q. Were those doors all shut?

A. I can't recall.

*Vincent F. Lanasa.*

Q. Do you have any vents, any air vents anywhere in that room?

A. Air vents? Three of them.

Q. What do you mean by "doors"? Do you mean doors you walk through?

A. Three doors in each room. It's a vent on the side of the wall, you see. Two doors.

Q. I am asking you about that vent on the side of the—

A. Looks like the doors an ice box will have. Those doors are about that big. I would say two feet square.

Q. How about this vent you were talking about, where was the vent?

A. What do you mean "vent"?

Q. Didn't you say it also has a vent in addition to those doors? Does it have any vent in there where air can get in?

A. Only these doors. The three doors.

Q. Only the three doors?

By the Court:

Q. Don't you think maybe he misunderstands the question? Do the doors themselves have a vent built right

page 14 } in them, or are they solid, absolutely air-tight?

A. Air-tight door. Any time you want to open them you can open them.

The Court: I see.

By Mr. Sands: (Continuing)

Q. When you went out the night before, did you close all of the doors?

A. Well, I closed them all except one. I left a crack in it.

Q. Which was that?

A. One of the little two-foot doors.

Q. Where was it located?

A. On the side of the wall.

Q. Which wall?

A. The wall where the room is. You can only have them doors on the side where the aisleway is. Wasn't out on the side of the partition wall.

Q. All the doors—

A. On the aisle.

Q. So that if they were shut, in addition to those doors,

you would not have any cracks, or any vents, or any little openings anywhere in that room?

A. You see, this room—I will show you. Let me show you: The only air pockets we have in these rooms is on top of the ceiling, is like this desk and this floor, see?

page 15 } Q. Yes, sir.

A. And it's an air pocket on top of it. That's all the pocket we have. You know what I mean? Just like this table, then another floor on top of it.

Q. Let me ask you this way and see if you understand it: If those three doors were shut tight, there is no way any air could get in that room?

A. I wouldn't say that it can't, but it's just a little bit of air in there. They ain't that tight.

Q. Would the air have to come in those doors?

A. In other words, they have a crack underneath the door. That much underneath the door. About two inches. Two to three inches.

Q. Underneath the front door?

A. Yes. Underneath the big door.

Q. You cannot block that off?

A. I could block it off, but—

Q. You do not block it off.

A. If you blocked it off you couldn't open the door.

Q. In other words then, you have a space that big under your door where—

A. Yes.

Q. —where air comes and goes, is that right?

A. Right.

page 16 } Q. You do not have any other vents in the room anywhere?

A. No. Only those three doors. When I need vent, air, I can get it out of these three doors.

Q. The floor is made out of what?

A. Cement.

Q. The ceiling is made out of what?

A. Wood.

Q. The sides are made out of what?

A. Cork.

Q. What sort of wood do you have in the ceiling? I mean by that, is it a solid wooden ceiling? Are the beams exposed beams? Or what?

A. In other words, I think that every nine inches—It's a beam. Big heavy beams, with a ceiling.

Q. Yes, sir.

*Vincent F. Lanasa.*

A. See, when—In other words, these rooms carry twenty thousand pounds. You can't take a nail and hook it in the ceiling.

Q. So you put your hooks in those beams.

A. Beams. Big joists. Not beams, joists.

Q. Beyond the joists, what sits on top of those?

A. Oh, it's a big air pocket. About as big as that desk.

page 17 } Q. I mean do you have any floor, or boards, or anything over the top of the beams, or are the beams just open?

A. No, it's not—The beams are closed. I tell you it's a, it's a false ceiling about as high as that desk. See that desk there?

Q. What I am asking you is: What sits on the top of these beams?

A. What sits way up on the top? Another—On the top of the beams? Another ceiling's on top of the beams.

By the Court:

Q. The room has a false ceiling and it has heavy joists—that is the way he described it—is that correct, Mr. Lanasa?

A. Let me explain it to you. The joists—In other words, they are sitting—You know what a joist is. It's maybe, it's a four inch by 12 inch joist, and this ceiling is sitting on top of that—flush. Then on top of it is another ceiling about that high, see. Then the cork is up on top of that, and it's, you know what I mean.

Q. Are there joists on top of that again?

By Mr. Sands:

Q. In other words, when I walk into the room I do not see the joists; I see the ceiling?

A. Yes.

Q. What is that ceiling? What kind of wood is that ceiling? What kind of boards are they?

page 18 } A. Regular wood, pine wood. And the side of the wall, you see, we have a crack two inches all around the side. The wall don't go up against the ceiling. We have a crack two inches, so the air goes up there.

Q. That is what I have been asking you for ten minutes, Mr. Lanasa. Then you do have a crack—

A. It's still a ceiling, ain't it? I say, I'm asking you. It's still a false ceiling, ain't it? I'm asking you.

Q. I am asking you. I have never seen it. I say, you do have a crack, then, around the ceiling, is that right?

*Vincent F. Lanasa.*

A. In other words, the place is sealed.
Q. Yes.
A. All the room is sealed. It's still a false ceiling. Ain't nothing can get in it. In this false wall. It's a crack—
Q. I see. So that the air can come from the false ceiling down into the room and back, is that right?
A. Ain't no air. Only gas stays up there, like dead air.
Q. Well, in other words, though, there is an air opening between the top ceiling—
A. No air opening. It's just a dark place up there.
Q. There is a crack between your downstairs room and that false ceiling, isn't that right?
page 19 } A. Right. That's right.
Q. Was that crack open on this night, or was that—
A. It stays—It's built that way.
Q. You did not have it stuffed with papers, then?
A. No.
Q. When you left that night to go home you left that lit, that gas on at half—
A. Half speed.
Q. What time did you leave, Mr. Lanasa?
A. I left about 10:00 o'clock.
Q. Then what time the next morning did you come back?
A. We open at 5:00. I open at 5:00.
Q. When you went in your store, when you opened at 5:00 o'clock; you say you did get there at 5:00?
A. Huh?
Q. You got there at 5:00, about 5:00 o'clock?
A. Yes.
Q. When you went in you detected a gas odor?
A. I didn't detect a gas odor. I examined all my rooms, then I detected that gas odor in that number two room.
Q. Let's go back. You opened the number one door, is that right?
A. Number two.
page 20 } Q. You opened Number One first?
A. Yes.
Q. You opened Number One first?
A. Yep.
Q. Did you look in there and inspect it?
A. No. I don't have to inspect to have to smell that gas.
Q. I am talking about room Number One now.
A. Yes. Inspected that. From there I went to two.
Q. Did you turn the light on when you inspected it?

*Vincent F. Lanasa.*

A. Turned the light on, walked back, shut the gas—Smelled the gas, went back there and shut the gas off.

Q. Let's talk about room Number One first.

A. Right.

Q. Did you turn your light on in room Number one?

A. I have to turn the light on to go in.

Q. All right, sir.

A. To read the thermometers. I read the thermometers.

Q. You went in and inspected room Number One; you turned your light on—

A. Yes.

Q. —and turned it off and shut your door?

A. Yes.

Q. Then you went down to room Number Two—

page 21 } A. Number Two.

Q. —opened the door to room Number Two, smelled gas—

A. Yes, I did.

Q. What kind of gas did you smell?

A. House gas.

Q. All right, sir. And was it strong?

A. Pretty strong. I wouldn't know if it was strong. I just smelled gas.

Q. Did you turn the light on and look in that room, then?

A. Yes. I looked at the light and went back and shut the gas off. Let the crack in the room.

Q. At that time you had your electric light on in the room?

A. I don't know if I had—When I went in I put it on.

Q. That is what I say.

A. Yep.

Q. You saw the gas jet back there was out?

A. Yep.

Q. You went back there and turned it off?

A. Yep.

Q. There was no fire in the room at that time,

page 22 } was there?

A. Right.

Q. You are positive, you are telling this Court and jury you went back and turned that gas off, turned the spicket off?

A. Yep.

Q. So then you did what, came on back out?

A. I went around—Then I cracked the room. Then I went back to Number Three. I inspected that and read—had bananas in there. I read my thermometers in there. I went

into Number Four. Then I went in Number Five and Number Six. And I inspected them all. Then I left the crack. And I went on and helped my men cut bananas for an hour.

About 6:00 o'clock I came back to look in that room, if everything was all right. I was inspected the thermometer and all, and no more than I walked in there and everything went up in a flame.

Q. All right, sir. Let me ask you: When you came out, let's go back to when you came out of Number Two.

A. Yep.

Q. You went in and cut the gas off—

A. Yep.

Q. —after you had smelled the gas. When you came back out, did you cut the light off then?

A. Where?

Q. In Number Two.

page 23 } A. What do you mean cut the light off?

Q. You said you had it on when you went in to cut the gas off—

A. Yep.

Q. —did you cut the light off when you came out?

A. Yep.

Q. Did you shut the door?

A. No. I left it a crack, so the gas could come out.

Q. How much of a crack did you leave?

A. Left about two or three inches. About two or three inches.

Q. You left about a two or three inch crack so the gas could come out?

A. Yep.

Q. Then you went on—

A. Left the other two doors, I think I left them open. The two little side doors.

Q. To room Number Two?

A. Yep.

Q. So when you left room Number Two, then, you left the two side doors open, and you left the big door about three inches open, two to three inches open?

A. Yep

Q. Then you went on down and made your

page 24 } rounds, and inspected your other cubicles, or store rooms—whatever you call them—then you cut bananas for about an hour—

A. Yep.

Q. —then you went back again—

*Vincent F. Lanasa.*

A. Yep.
Q. —then you opened your door—
A. Yep.
Q. When you opened your door, before you did anything, what did you see?
A. I just put the light on. I just flipped my light on, walked into the room, and I looked around and I seen all flames. It was burning.
Q. All right. In other words, when you opened the door it was dark in there then, was it not?
A. No. I put the light on.
Q. Did you not say you walked in and flicked the light on?
A. No. Before I get in. The box is right there. I flicked the light on.
Q. So you opened the door and you started into the room. As you opened the door and before you started in, did you see any flame?
A. No, I didn't.
Q. You did not see any flame at all?
A. No. After I got in that room, everything
page 25 } started to burn.
Q. How tall is that ceiling?
A. About seven feet.
Q. How tall are you?
A. Six feet.
Q. The ceiling is about a foot over your head, is it not?
A. Yep.
Q. When you opened the door, turned the light on, and started into the room you did not see any flame at all?
A. No, I didn't.
Q. You did not smell any smoke?
A. No, I didn't.
Q. No smoke at all?
A. The only thing I smelled was gas.
Q. So then you walked on into the room?
A. Yep.
Q. What were you going to do, Mr. Lanasa, when you walked in there?
A. See—Let me explain. something to you. You can't see so much when you got bananas—
Q. Just a minute—
A. Wait a minute. I want to answer your question for you.

*Vincent F. Lanasa.*

Mr. Sands: If Your Honor please, I ask that
page 26 } the witness be instructed to answer my question.

The Court: I believe there has been a misunderstanding. I think he was trying to answer, at any rate. Maybe this would help: I think he wanted to explain the amount of vision he had in the room.

A. I got all these bananas all packed up in the ceiling, all hanging.

Q. Yes.

A. How much can you see? If you really want to look in there you got bananas all over the top of you hanging, how much can you see?

Q. I am asking you.

A. No. I'm only telling you. I'm answering your question. What I'm trying to tell you: I don't walk into an empty room. I don't walk into an empty room. This room is full of fruit, bananas.

Q. Mr. Lanasa, how high is that ceiling?

A. That ceiling is about seven feet.

Q. The bananas hang from that ceiling, do they not?

A. They hang on the ceiling.

Q. That is what I say.

A. You see, every bunch of bananas is around two-and-a-half feet when you hang them over top of your
page 27 } head.

Q. Yes.

A. And they're all down the line. You just can walk through them, see. You walk through an aisle.

Q. That is what I was going to—

A. All right, then, I was just telling you.

Q. No bananas are hanging over your head in that aisle, are they?

A. Just an aisle long enough for me to go by.

Q. Wide enough so that you can get down along side the bunches of bananas hanging down?

A. Yes. That's right. Up and down.

Q. When you opened the door and you walked in, you did not see any flames?

A. No, I didn't.

Q. You smelled no smoke?

A. I didn't smell nothing. I smelled gas.

Q. How far did you walk into the room?

A. About halfway.

Q. About halfway back?

*Vincent F. Lanasa.*

A. Yes.
Q. How deep is that room?
A. I say I walked about eight feet. It's about sixteen feet.
Q. All right, sir.
A. That's where my thermometer is, about eight
page 28 } feet. The thermometer is about in the center of the room.
Q. You walked to about the center of the room?
A. Yep.
Q. You had not seen any fire up to that time?
A. I hadn't. If I did I never would have went in there and got burned like this, I'll bet on that. I'd have run out.
Q. Where did you see the fire then?
A. I didn't. When I looked up there I seen the fire.
Q. Where was it?
A. All over the ceiling, on top, behind the bananas, and all over. All around behind the bananas.
Q. The fire was over your head?
A. Yes. Some over top of my head. I tell you it started to burn, everything started to burn.
Q. What did you do?
A. I tried to get out. I'm burned. What do you think I tried to do; think I wanted to stay in? I come out, tried to come out. When I got near the door she went bang.
Q. You opened the door, you smelled gas—the gas was still in the room—you walked into the room, you walked back, and you saw this flame over your head. No gas was burning around you at that time, was it?
A. No.
page 29 } Q. All of a sudden the flame came down and set you afire; still no gas explosion.
A. That's right.
Q. Then you started to go out; then you had an explosion, right?
A. No. I was burning when I was there.
Q. That is what I am asking you.
A. Yes.
Q. Then you had the explosion.
A. Yes.
Q. What did it do, blow you out the door?
A. No. I don't know what it done to me. All I know I went down. Didn't throw me out the door. I was in the room. Bananas was all over top of me. That's all I remember. I never seen so many bananas.

*Vincent F. Lanasa.*

Q. All right, sir. Do you remember the next day, or the day after, do you remember one of the members of the Fire Department and—

A. There was so many people, reporters—The doctor told nobody to come in and see me, bother me, because I was dying. They thought I was going to die. I was under dope. I kept on getting shots. I got twelve needles a day. I don't know. I met everybody. I don't know who I didn't meet. They come in there, talked to me and asked me what I knew.

I met everybody. Like I told you.

page 30 } Q. You do not remember talking to any particular people?

A. I met the Fire Department, news reporters, all kinds of reporters. But I don't—

Q. Do you recall meeting the Fire Department?

A. I think I met—Somebody came in there. I can't recall. I tell you Fire Department, news reporters, and everybody come to see me.

Q. Do you remember talking to any member—

A. Even the priest come to see me. The sisters and everybody, preachers and all come to see me.

Q. Do you remember talking to any member of the Fire Department?

A. I remember—I don't remember particular. I tell you I met so many people there.

Q. Do you remember anybody in the Fire Department uniform?

A. No, I don't. I don't think I seen anybody in uniform.

Q. You do not remember, then, seeing anybody who told you that he was from the Fire Department?

A. I tell you it's been a long time. I was mighty sick when I was there. I was dying.

Q. You remember these other things, Mr. Lanasa.

A. Let me tell you something . You'll remember,

page 31 } too, if you get burned like I did.

Q. I am asking you—

A. Look, I don't even only remember, I feel it.

Q. You remember the reporters coming in, you remember other people; do you remember talking to any member of the Fire Department and Police Department?

A. Listen. I tell you I had so many people come to talk to me, it could have been anybody talked to me. I tell you I recall people talking to me—Understand me, I'm going to answer you the best I can, what I remember. That's all I can do.

*Vincent F. Lanasa.*

Q. You do not remember, though, talking—You do not remember anybody who said he was from the Fire Department?

A. Listen my friend, I can't tell you who I didn't talk to. So many people come to see me, I don't know. I can't tell you everybody, because I was under dope all the time.

Q. Do you deny that you made the statement to Chief Bowman—

A. I might have made a statement to anybody.

The Court: State the occasion and then the statement.

Q. Do you deny making a statement to Chief Bowman two or three days after the fire, when he interpage 32 } viewed you in the presence of Police Officer Sgt. Bahen, do you remember—

A. I recall one thing. I can recall that case. They come to me and the detective come to me and said to me, "Did somebody set your place on fire for revenge?" I said, "No. Nothing like that never happened."

Q. Do you remember the Fire Chief being with him at that time?

A. I don't know who it was.

Q. Do you deny you made the statement to that police officer—

A. I don't know I said I met them now.

Q. Let me finish my question.

Mr. Forrest: Let him finish the question.

Q. Do you deny making the statement to this police officer and to the—

A. No, I didn't.

Q. Let me finish the question.

Mr. Forrest: Let him finish the question.

Q. —fire chief that you told them the whole story: The night before you put your bananas in the store room, you lit your gas light, and you went home. The next morning when you came back, you went into your store and you smelled gas. You went back and opened the door to the Number page 33 } Two room, and when you flicked your light on, everything exploded and it blew you out the door.

A. No. I didn't never.

Q. You deny you told him that?

A. I don't—I deny it, yes. I deny that. I told him I was burned. I seen the fire because I got burned.

Mr. Sands: I have no further questions.

Witness stood aside.

JERRY BURKE, JR.,
introduced as a witness in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Patterson:

Q. State your name and age, please, sir?

A. Jerry Burke, Jr.

Q. Your address?

A. 42 years old. Address: 2608 Stratford Road, Richmond, Virginia.

Q. Your occupation?

page 34 } A. I am a mechanical engineer employed by Experiment, Incorporated, Richmond, Virginia.

Q. What is your position with Experiment, Incorporated?

A. Present position executive vice-president, research firm.

Q. Research in what?

A. In combustion.

Q. What does your particular work consist of?

A. Well, at Experiment, Incorporated our particular work, mine is, my particular work is uniformity throughout the company, involving experiments and studying fuel, how they burn, why they burn, the length of time it took to burn, the results of combustion and also designing and building special devices for slower combustion or burning.

Q. You have been called as an expert witness to testify on the phenomena of fire and explosion; would you tell the Court and the Jury your qualifications to so testify?

A. Well, I graduated from the Mechanical and Aeuronotical Engineer School, VPI, in 1938. During the course of Mechanical Engineering, of course, you study combustion and chemistry of combustion of physical phenomena of combustion. After I graduated I got a job with the Royal Liverpool Group of Insurance Companys in New York as a pre-

ventive, Fire Prevention Engineer. I studied fire
page 35 } prevention engineering in New York for two years;
was sent to Richmond in 1940 and in charge of, as a Regional Engineer, Virginia, North and South Carolina in carrying out the fire insurance company fire prevention. In 1942 joined the Navy, assigned to the Engine Research Laboratory in Philadelphia studying combustion insofar as power plants is concerned for Naval aircraft, studying fuel, sometimes designing and developing new and more powerful engines, including jet engines, gas turbine engines. After the Navy I came back to the Royal Liverpool Group for a few months and went to work at the Richmond Oil Equipment Company as Chief of the Research, and designing oil handling equipment. After that in 1948 I went to Experiment, Incorporated as the senior engineer, designing, studying combustion, and working in combustion equipment, studying fuels. I think I mentioned that before, I believe, and designing fuel equipment and high pressure systems. I think that about covers it.

Q. That's fine.

By the Court:

Q. You work on solid fuels only, or gas, too?

A. Gaseous fuels, liquid fuels, and solid fuels. Right now I am just in the process of designing, finishing designing a gas burner, designed for commercial gas burners as well as gas burners to be used in propulsion systems, or rockets and things like that.

page 36 } By Mr. Patterson: (Continuing)

Q. I will ask, Mr. Burke, that you assume these facts that I will give you. I have to phrase to you the question in this manner, I think I had better read it to you because it is rather lengthy. Assume these facts: Mr. Lanasa, the son of the plaintiff in this case, was the operator of a fruit wholesale business with operations being conducted in a brick structure at 1817 East Franklin Street. Within the brick structure there are ripening rooms which have cement floors, cork walls which are, I believe, over concrete, and a cork or wood roof. There is nothing else in the room but gas burners, or a gas burner, and electric light in a receiptical in the middle of the roof of the room and a refrigeration unit and bananas. Assume further that on the morning of June 27, 1957, Mr. Lanasa entered 1817 East Franklin Street at about 5:00 A. M. Shortly thereafter he opened the door of a

particular ripening room and detected the odor of gas, the door to the ripening room was then left open and the gas cut off. Assume that an hour later Mr. Lanasa cut the light on in the ripening room and entered it. As he reached the middle of the room and while inspecting the bananas or looking at the thermometer, flames were seen on the roof of the room. Assume that such flames began to expand until the room was a mass of flames and that as Lanasa reached the door of the room or made his way out of the room there was a

page 37 } blast. Now on the basis of you assuming these facts to be true, I ask you if you have an opinion as to whether or not a fire in its non-technical sense preceded the blast?

A. Yes, sir. I have an opinion on that.

Q. What is your opinion?

A. Well, having the opinion that you had a fuel and air mixture in the correct proportion and some ignition source ignited the fuel and air mixture and started it to burn and proceeded to burn until the pressure in the room, well, the air in the room, the remaining air became very heated and as the fire progressed the pressure undulating the air increased the pressure in the room.

Q. All right, sir. Now could such a fire as I have described in itself partially or totally destroy that building?

Mr. Sands: If Your Honor please, I object to that.

Mr. Patterson: I will rephrase it then.

Q. Do you have an opinion as to whether or not such a fire as I have described could partially or totally destroy the building?

Mr. Sands: I still object to that, Your Honor. It is without any statement as to the size of the fire or the size of the flame.

The Court: I do not think that is a question for

page 38 } an expert. Couldn't it burn down the Empire State Building if all conditions were ideal? I mean it is just a question of spreading, is it not? Is that a question for an expert?

Mr. Patterson: I think it is, sir. This is a gaseous fire and I want to establish that such a fire, while it may not be a solid substance, can burn and can result in the destruction of the building itself. As a matter of fact I think when we present the instructions to Your Honor you will see the

significance of the point that we are trying to make. The testimony is that the flame—The hypothetical situation is that the flames have enveloped the room; on the basis of that I asked this witness, a combustion expert, whether or not those flames could have resulted in the partial or total destruction of the building.

The Court: I am afraid it is something the jury might pass on. I believe it would help, perhaps, if you were to describe the nature of the walls, I mean the fact that they consist of cork and wood, floor cement, ceiling pine and some heavy timbers; whether that type of thing would be likely or not likely to be ignited by gas fire. Is that what you are really working at?

page 39 } Mr. Patterson: That, of course, is a part of the question. I did not intend to be any more specific other than this: establish that a gaseous fire could result in itself in destruction, that is all. That is all I want to establish.

The Court: I do not believe that question is proper. You might ask if the type of building with which we are dealing could be caught on fire so as to become a progressive fire by gas fire such as you have described to him. Could you answer that question for us? Or do you want the building more carefully described?

The Witness: Well, what is the question right now, sir?

By the Court:

Q. The question right now, is: You have had the building described to you to some extent and these cubicles according to the evidence were about 16 feet square with a false ceiling in them about 7 feet off the ground, concrete floor, cork sides, perhaps with an air space between the cork, and the masonry of the building being a brick building. The false ceiling, as I say, about seven feet high, the ceiling on the bottom of it being pine boards with very heavy joists above it and then a space of two or three feet of dead air space, other heavy joists that lead up into the roof structure; could

page 40 } such a cubicle as that be likely to be caught on fire so as to become a progressive fire by gas fire such as has been described to you by Mr. Patterson?

A. Yes, sir. It is very likely that a structure of that type could be caught on fire and could continue to burn by a gas fire as originated.

Mr. Patterson: All right, sir. Thank you.

*Jerry Burke, Jr.*

By Mr. Patterson: (Continuing)

Q. Again assuming the facts, do you have an opinion as to whether or not such a fire, which has been I think now adequately decribed, may have been extinguished by the blast?

A. Yes, sir, I have an opinion on that.

Q. What is your opinion?

A. A fire in a room of that type can be extinguished by what you so term "a blast," much the same as you strike a match and you blow on it, you blow the flame off the match. The particular phenomena of explosion, particular blaze or blast as we call it, the room over-pressurized with hot air to such a point the walls no longer contained it. That phenomena happens right regularly.

Q. Do you have an opinion as to whether or not it is possible for such a fire to exist and then to be extinguished by a blast with invisible evidence of that fire then remaining?

page 41

A. Yes, sir. I have an opinion on that.

Q. What is your opinion?

A. Well, a gaseous fire burning within a contained space generally the gas-air mixture is quite often uniformly mixed. Other times in strates. A fire of that type starts by ignition, propagates across the room, and by virtue of the fact that the flame front is a narrow band the room doesn't all go up at one time. It is a slow, methodical propagation from the flame, from the ignition, until all the fuel is consumed. So once the flame is moved away from the ignition point, the other fuel in the remaining portion of the room continues to burn a narrow band of flame. That flame passes along a wall; is not in contact with the wall for a very long time. It is much like a, you might say a blow torch playing on a piece of cardboard doesn't necessarily synge a cardboard. Something of the same phenomena. If you have a piece of paper or something, or clothing, something of that kind, or a piece of light, combustible material, the flame will be in contact long enough that it might completely envelop that. So a flame can be very violent in a room so far as violent generating temperature without a totally destructive flame existing in that room.

Q. Do you have an opinion as to whether or not a fire of gases, a gaseous fire is in the non-technical sense as much a fire as say a fire of wood or some solid substance?

page 42

A. Yes, sir, I have an opinion on that.

Q. What is your opinion?

A. My opinion is that a gaseous fire is substantially the

same as fire of wood, or coal, or any other combustible material. Some slight difference chemically, but primarily adding oxygen, combining oxygen with a material which will burn and gas, though it may be you cannot see it in a room, is a matter, combustible matter; just the same as a handful or pocket full of—it compresses into liquid—so it is a matter just the same as wood is matter. So a gaseous fire is substantially the same as any other combustible material.

Q. Do you have an opinion as to whether or not a fire of gases or a gaseous fire is an explosion?

A. Yes, sir, I have an opinion on that.

Q. What is your opinion?

A. A gaseous fire is not an explosion.

Q. All right, sir. Do you have an opinion as to whether or not a gaseous fire will always result in an explosion?

A. Yes, sir, I have an opinion on that.

Q. What is your opinion?

A. Well, the gaseous fire doesn't always end in explosion. Most of the time it doesn't.

Q. Would you elaborate on that to some extent?

page 43 } A. Well, in the particular instance you have recited to me in the beginning here, had less gas or less fuel, combustible material been in the room then if that had been ignited it could have burned in exactly the same manner as you have described to me but the pressure in the room would not have increased to a point which would over pressure the room and therefore push down the walls. So we could have a fire that would heat up the room to some extent, raise the pressure a little bit but not too much. So therefore you could have a fire within the room without having any explosion.

Q. Then it is your opinion that a fire of gases may or may not result in explosion?

A. That is right. It may not.

Q. Do you have an opinion on the basis of the facts that I have given you as to whether or not the gaseous fire that has been described resulted in the blast that followed?

A. Would you do that again, please, sir? I didn't get the question.

Q. Do you have an opinion on the basis of the facts that I have given you as to whether or not the gaseous fire resulted in the blast that followed the gaseous fire?

A. Yes, sir, I think so.

Q. What is your opinion?

A. Well, I think from the facts that you have
page 44 } given me this room had a fairly large quantity of
gas in it, there apparently was sufficient oxygen in the room to burn the gas, some ignition, so this gas and fuel mixture started to burn, and as it continued to burn that heated the air and the hot air, as fire is contained within a space it has a higher pressure, and the more heat you get into it the higher the pressure goes, and apparently there was enough fuel to, and a sufficient quantity of oxygen in the room to burn enough fuel to give you real high pressure in this room, a pressure higher than the walls could contain, so therefore when the pressure got to a certain point the walls let go.

Q. All right, sir. I have a couple more questions, I want to give you some additional facts: Let's assume that after the blast occurs and the building is destroyed, that a fire department comes and there is no evidence of any fire but that while they are standing around there a policeman sees some smoke and then there is discovered a little rubbish burning and then suddenly, immediately there is a blaze that practically covers the entire destroyed structure, and prior to the blaze there was detested the odor of gas; do you have an opinion as to the cause of the flames or the blaze suddenly sweeping over the entire destroyed structure or a part of it? I say entire, any part of it, a sizeable part of it?

A. May I ask a question?

Q. Yes, sir.

page 45 } A. You mentioned gas was smelled, did you
mean—

Q. There was gas in the area.

A. Oh, yes. And flame swept across the ceiling of—

Q. Swept over the, came up and swept over the entire destroyed structure very rapidly.

A. Yes, sir. I have an opinion on that.

Q. What is your opinion?

A. Apparently all the gas had escaped from this gas burner inside was not contained in the room. I suspect the room was an air tight room. I believe you mentioned the door was open for some time, quite a bit of the gas could come out of the room and go in other portions of the building. Also mentioned, you also mentioned that it takes some time for this flame to propagate; the fire which started in the room does not necessarily at all connect or continue to burn after this explosion of the walls; there is large amount of gas lurking around in the remaining portions of the building which did

not enter into the original combustion. That's one way the gas could have been there. And had some portion of this room—I think you mentioned cork walls, did you not?

Q. Yes, sir.

A. Well, cork is a light material quite often that will burn up. Part of that could have been smoldering, could have flown among the debris somewhere, could have been covered and in some way segregated from this gas. Normal

page 46 } stratas, if warmed, stratify near the top. If sometime later a fire had built up, if covered by debris, and the flames then communicated with this remaining gas, it could easily and most probably would ignite that gas and give you a flash fire such as you have described.

Q. Do you have an opinion as to whether or not there is any difference between the fire that we have previously alluded to and the second fire that I have just described? Is there any difference between those two fires?

A. No, sir. There isn't any difference between the two fires.

Q. Then would you say that the only reason for a blast in one instance and the failure of a blast or the absence of a blast in the other instance depends on whether or not the gases are contained in the oxidation process and the pressure that is built up?

A. Yes, sir. I have an opinion on that, in that that is right. The only difference in those two types of fires is, in the first case, in the room the fuel-air mixture was substantial so as to be contained in the walls of the room, and once the building had been destroyed, after this fire had occurred, then the second fire apparently was not contained and so it had no way to build up a pressure. They are substantially the same type of fires both chemically, physically, and from the heat put from them, for that matter.

page 47 } M. Patterson: I think that is all. Thank you.

## CROSS EXAMINATION.

By Mr. Sands:

Q. Mr. Burke, let me ask you this question: Assuming that natural gas has been accumulated in a closed room without any, or certainly with very little ventilation, and that then an opening to the room is opened to allow oxygen to get into the room, and subsequent to that an electric light is switched on in the room; in your experience is it not a fact that the

switching on of that electrical apparatus can activate an explosion, assuming that the right proportion of oxygen has mixed with the gas?

A. If it's—Is the electrical contact in the room, out of the room, or—

Q. In the room itself.

A. If the light switch is in the room, and the gas is in the room, and sufficient air and oxygen, yes, sir, that is certainly an ignition source.

Q. Then let me ask you now: If the light switch is located directly at the door of the room so that the gas coming out of the room comes into contact with the oxygen right at that point, would not that be possible to have the same

page 48 } effect?

A. I would like to get a clearer picture of what you are speaking, sir.

Q. A room that has been shut up without any ventilation, then is opened, which allows oxygen to go in, and I assume by the same token, gas to come out so that they meet right in the area of the door, and if the electrical switch is right in that area, in the immediate area of the door of the room where the gas is coming out and the oxygen is meeting the gas, would not that cause the same effect, or could it not?

A. You mean would it be an ignition source?

Q. Yes.

A. I would have to say an electrical switch is certainly an ignition source of gas and air mixture. It may ignite or not, depending entirely upon the electrical box and the gas and air mixture. If the light switch were on the inside of the room and the gas had time to infiltrate into the electrical box generally that is a pretty good source; if the switch were on the outside of the room it generally takes time for gas and air mixture to infiltrate into the box; such as the one we are looking at on the wall over here.

Q. Would an hour, perhaps, be enough time under normal conditions?

A. It depends. Well, yes, sir, on certain types of boxes perhaps it would take less time; then on other types it might never happen.

page 49 } Q. Certainly it is an igniting factor, the switching on of the light.

A. Yes, sir.

Q. And gas in the immediate area of the light unignited, and the light being switched on can and does frequently

furnish enough spark to cause the ignition, isn't that correct, sir?

A. Yes, sir, that is correct.

Q. Let me ask you this: Assuming that a person enters a room in which he finds a collection of gas, that at that time there is no visible or igniting agent in vision at all, no evidence of any fire or anything in the room at that time—

A. Uh huh.

Q. —that he then returns sometime later, perhaps an hour later, to that room, having then allowed the door to stay ajar so that oxygen could reach the room, and switched on an electric switch, and at that time sees a flame that is followed immediately, or shortly, or almost immediately by an explosion; would you say that under those circumstances, considering the fact that just prior to that time, an hour or more prior to the time he had entered the room and had seen no indication of any fire at all, would it not be just as probable under those circumstances that the flicking of the switch had caused that flash and explosion as that some other fire had caused it?

page 50

A. It certainly is an ignition source, sir. From what has been given me in the room, that is the only ignition source you have given me, so that is the obvious one. I don't know what else is in the room. There are many ignition sources. Gas is very easy to ignite, gas and air mixture. I am not trying to bandy around with you.

Q. I think that answered my question all right, sir. Would a fire such as the kind that you have described in your direct examination, assuming that the ceiling of the room were pine wood, would a fire such as that, that you have described in your direct examination be accompanied in your opinion by smoke?

A. Would a fire of gas and air mixture in a room of this type be accompanied by smoke?

Q. Yes, sir, either before or after it went out? Either while burning or right after it went out?

A. Not necessarily at all, sir. If you got the right mixture you get very clean combustion with gas. I can give you an example: with the gas burner on a stove in a kitchen you don't see smoke coming up off of it.

Q. What color of flame would a gas fire of that sort burn with, Mr. Burke?

A. All types of colors depending on the air-fuel mixture

ration: One portion of it deep orange, another
page 51 } portion blue, other portions of it maroon, you may
get a brighter red. If gas flames—Most any flames from any materials go through a wide range of hues, and that is generally indicating the temperature of those flames.

Q. Does the gas flame have the same appearance or the same hue as burning wood, say?

A. Generally a portion of it does, yes, sir.

Q. Now this pressure that you have referred to, as I understand from what you say, that is just what caused this explosion, the pressure building up, is that correct, sir? So when the gas comes in contact with the flame, and the proper amount of oxygen is finally built up and gets with the gas there is an explosion, is that the way it is actually caused?

A. After you had combustion? After you have a burning?

Q. Yes, sir.

A. Uniting oxygen with the fuel that heats the surrounding area. If the surrounding area is air it heats the air. That increases the pressure in the room. Yes, sir, it can build up a terrific pressure.

Q. But that follows the combustion?

A. Yes, sir. Now just a minute. The top pressure follows it, but pressure has to be, as you continue to burn you build up pressure. The pressure, slight pressure increases, goes
up with combustion. In other words if I strike a
page 52 } match here I'm heating the air around that match
to a degree.

Q. If you magnify that many fold, such as would be the case in a room of this size, would that pressure be felt by an individual coming into the door prior to explosion?

A. You mean if a fire was in progress?

Q. Yes, sir.

A. If a fire was in progress I doubt whether he would be able to get in the door. The pressure would be venting out through the door to such an extent that he would be pushed back out of the door before he got in the room.

Q. Exactly so, sir, and by the same token if there was a greatly burning fire up in the ceiling of the room and the bottom part of the room was filled with gas and he enters the door, and the fire burning up there in the ceiling burns very fiercely, would that pressure that you just mentioned would that not be created at that time?

A. Yes, sir. You do have pressure whenever heat is in the room.

Q. Assuming that a person attempts to enter a room and

the room has a ceiling seven feet tall, and I believe the dimensions of the room were 16 x 16, if there was enough fire on the ceiling to be a great burning fire, as that individual started entering the room and the room was at that time filled with gas, in your opinion would he be able to walk into the room, walk around and make an observation, and have page 53 } the fire come down and burn him before enough pressure was exerted to get him out of the door?

A. You question is: If a fire is burning in the room can a person go in the room while the fire is burning and get out of the room before the room built up enough pressure?

Q. Assuming the fire is over the ceiling and is a very prominent fire and burning rapidly and that the room is full of gas, yes, sir, and assuming that the door is open, or partly open, or ajar certainly, at the time he opens it to go in, isn't it a fact?

A. I don't know, sir. I guess it depends on whether the man is a track runner or not.

Mr. Sands: Yes, sir. I think that answers my question. I have no further questions.

## RE-DIRECT EXAMINATION.

By Mr. Patterson:

Q. On the assumption that Mr. Sands just presented to you, it is, of course, entirely possible that one could go into a room and be in the room, from the ceiling of which there are hung bananas which is the fact—

Mr. Sands: If Your Honor please, just one moment, I want to object to the leading nature of the question. This is direct examination.

Mr. Patterson: All right.

page 54 } Q. Do you have an opinion as to whether or not one could enter a room in which there are hanging from the ceiling bananas, and with the knowledge that there is gas in the room, and to get into the room and then to look up and suddenly discover a fire is burning there, is that impossible?

A. Your question is can a man walk into a gas filled room and discover fire after he gets into the room?

Q. That's right.

A. Yes, sir. I'm sure that is possible.

Mr. Patterson: That is all.
Mr. Sands: I have no further questions.

By the Court:

Q. I wonder if you could help us with this: What is the technical distinction between fire and explosion? Is it not the rate of combusion only, or what is it?

A. Well, I think an explosion occurred at the moment the walls let go.

Q. I am not talking about the building now, I am talking about the terms as I understand them, or do the words "burn" and "explode" convey different meanings—

A. Yes, sir.

Q. —to combustion engineers?

A. Yes, sir.

Q. What is the difference?

page 55 } A. Burning is a stable process, is a chemical uniting of oxygen with a fuel. The fuel may be a hydrocarbon such as gasoline, or gas, that is, in which heat is evolved. That is primarily what fire and combustion is. In burning a match you are uniting oxygen from the air with the wood fibers which are a fuel and heat is being evolved. That's for a fire. Now for an explosion there are several different types of explosion, some of which are not at all related to fire, such as an explosion of a rapid release of pressure, such as an automobile—

Q. I wasn't thinking about, you know, an airplane blowing up, we call that an explosion. I am talking about explosion in the sense of destruction by blast caused by some sort of combustion. When do you call a burning in the sense of the combination of oxygen with a fuel an explosion, scientifically, if there is such a field?

A. I mean when you pour gasoline in a pan and you light a match to it you call that burning. Actually burning is high pressure. Controlled high pressure is burning, sir.

Q. What is an explosion?

A. Generally explosion is when you have a sufficient and uncontrolled release of high pressure gases, that is one type. I think that is the type you are trying to get it. Anything that is controlled, that is not an explosion, sir. If it is machined phenomena, an automobile piston for instance probably is called an explosion. Actually, it's a burn-

page 56 } ing because it is controlled. If the engine head blew off, as a matter of degree, tht might be termed an explosion; but I doubt it.

*James A. Rives.*

Q. I am not interested in the technical difference because I am going to have to tell the jury what the popular difference is. How about powder in an ordinary gun cartridge when you set that off, is that burning or explosion?

A. Well, actually, sir, there are two types of explosions: One type such as any gasoline actually detonates. It is not necessarily associated with fire at all. It is a chemical release energy to be sure, but can be caused by shock or a blow. Black powder is actually a burning process. That is, a large cannon is charged with black powder and is touched off with a flame, it starts to burn, we have oxygen and fuel within the powder, they both combine as a solid fuel. That is, the finite time it takes to burn that powder in the room and build a high pressure, that can be measured. The burning time in firing a gun, for instance, often at Experiment, Incorporated we fire a 15″ gun to measure it pressure wise. We measure the propellant inside the gun and the time it takes to burn all of the propellant that we put into it. But that is all controlled. We wouldn't term that an explosion unless it was an uncontrolled type of thing.

Q. Isn't the distinction in the rate of burning? Or is it in the disastrous effect produced?

page 57 } A. Well, they kind of go, the higher the rate of burning generally the higher the energy and the more difficult it is to dissipate it within a short time, and if energy has to be dissipated in a short length of time it generally moves things around a little bit. Actually you don't have an explosion, as we term it, until such time as a container gives way; prior to that time it's burning.

The Court: Any further questions, gentlemen?
Mr. Sands: No, sir, I have none.
Mr. Patterson: I have none.

Witness stood aside.

The Court: We will take a five minute recess.

Note: At this point recess is had, following which the taking of evidence is resumed, as follows:

page 58 } JAMES A. RIVES,
introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

*James A. Rives.*

DIRECT EXAMINATION.

By Mr. Forrest:

Q. Mr. Rives, would you state your name, your age, and your address?

A. James A. Rives; 43 years of age; 5401 Argall Avenue, Norfolk, Virginia.

Q. What is your occupation, Mr. Rives?

A. Consultant Civil Engineer.

Q. Mr. Rives, you have been called to testify as an expert in connection with the certain destruction of a building at 1817 East Franklin Street, with which you are familiar; will you please give us your background and qualifications for so testifying?

A. I am senior associate of Lublin McGaughy and Associate, which is the largest architectural and consulting engineering firm in Virginia. I handle practically all of their investigations of accidents to building and that sort of thing.

Q. What is your educational background?

A. I have a B. S. in Civil Engineering, and a Masters degree in Sanitary Engineering. I am a registered professional engineer in Virginia and Maryland.

Q. Did you at our request have occasion to
page 59 } examine the premises at 1817 East Franklin Street?

A. Yes.

Q. What did we ask you when we made the request; what did we ask you to examine the premises for?

A. I was asked to make a physical examination of the premises with particular emphasis on determining damage due to fire only.

Q. When did you make such an examination?

A. July, 1957.

Q. Would you tell the jury the extent of the damage that you observed, which in your opinion was caused by fire? And the amount of that damage?

A. I probably could show it a little more clearly by photographs.

Q. All right. I think maybe it might be better if you would step down here.

Note: At this point the witness steps down from the witness stand and stands before the jury.

A. Here is a picture of the top taken toward the front, or

*James A. Rives.*

from the north. This picture shows, is a picture showing the front and side of the building from the north and shows smoke damage to the front of the building from the port in the front wall.

The next two pictures are pictures taken from the building across the street, from the roof of the building across the street; and shows damage to the roof. Now you will note that the metal is discolored and is bent from the heat of the fire underneath. The damage underneath the roof, or from the fire underneath the roof does not show completely on top, because the wood sheating was burned in places where it doesn't show through.

page 60

There were two trusses severely damaged by the fire of a total of, I believe, four roof trusses, starting from the back wall of the building the most solid. Most trusses had fallen. But you can see that the fire damaged it to a point where it could not be reused. Otherwise the truss was not damaged. It could have been lifted back in place and securely placed and reused again.

This is another view of the same truss, a little closer up, where you can see how badly the wood to be scorched in places. In fact, not only scorched, but it has been severely burned.

Here is another shot of the middle of the same truss. It is a close up which gives it a little clearer view of actual fire damage.

Now the next truss northward from the most southerly truss is shown in this picture, and you will note that the peak of this truss was broken by other forces, but the damage was such that it could have been repaired very easily had it not also been badly damaged by fire; so the member was not worth reusing.

page 61

This picture is just a sort of a general picture, but it shows how the metal has bent all out of shape so it could not be reused again on the part in the background. Quite a bit of the roof was damaged in this manner. While bent out of shape due to other causes, it could have been bent back in shape, hammered back in shape—in some cases—but where the fire has damaged it, you can see where you could not have repaired it and reused it.

Note: At this point the witness resumes the stand.

Q. On the basis of those pictures, your estimate was based solely on the damage caused by fire?

*James A. Rives.*

A. By fire only, yes. In other words, I took into account the materials that could be *resued* that weren't damaged to the point where they could not be reused. See?

Q. Do you know when the fire occurred which caused this damage?

A. I couldn't say to the minute, no. It apparently occurred as a last, later part of the damaging of the building; as you can see the truss had dropped before it burned.

Q. What is your estimate of the damage in monetary figures?

A. $4,095.00.

page 62 } Mr. Forrest: No further questions, Your Honor.

Mr. Sands: Might I have those exhibits, Your Honor?

The Court: They have not been offered as yet, but whenever you want to have them marked I will mark them. Do you want them to go in? They have been passed to the jury.

Mr. Forrest: Yes, sir, Your Honor. Go ahead and mark them, if you will.

The Court: The subject photographs have been identified as Plaintiff's Exhibits 3 through 10.

Note: The above referred to photographs are now marked and filed Plaintiff's Exhibits 3 thru 10.

CROSS EXAMINATION.

By Mr. Sands:

Q. Mr. Rives, the damage which you have indicated in Plaintiff's Exhibits 4, 5, and 10 show actually burned timbers, or joists, or supports where the fire obviously has burned and damaged those?

A. Yes, sir.

Q. So there would be no question in your mind but that that damage—of course it is perfectly obvious—was

page 63 } caused by fire.

A. Yes, sir.

Q. Now on the roof: I will ask you to take a look now at Exhibit No. 7. Suppose, Mr. Rives, you were told that the physical condition of that roof, as it shows in your picture, was discovered by the Fire Department to be in that condition at the time they first reached the scene, and suppose you were further told that at that time on their examination they

*James A. Rives.*

did not find the charring condition which existed later after the fire, but that the roof condition—the town condition—was the same as it shows in your picture as being after the fire, and assume that no indication of any fire was found by the Fire Department in that area at that time at all; from your experience, would you have an opinion as to whether this damage to the roof, the holes in the roof, were caused by explosion or by fire?

A. Well, sir, I think we can look at this end of the building, the north end of the building and see that the roof has been bowed upward. That was evidently done by some force from below.

Q. Yes, sir.

A. Now that material there you could take a wood block and go back and flatten that out.

Q. Yes, sir.

A. That material would probably be in satis-
page 64 } factory shape, outside of patching up a hole or two here and there.

Now this material here, you can see a very definite discoloration; and if you compare that with this one—if I may (referring to Exhibit No. 3)—it shows clearly the results of the fire, resulting in the metal being wharped and twisted, as well as the paint, itself, being peeled off; in other places there is some discoloration where the paint has been balled up due to the fire—curled up.

As I evaluated the damage when I was there—you can see some of the light color here a little bit—there was somewhat of a damage sort of in this manner, and back diagonally across in the other. In other words, this was a skylight and apparently this was blown out, because lying beside of it was a hole through which the fire came up there.

Q. Yes, sir.

A. That is burned around the fringes and damaged the material there.

Now when you go to patch a roof like that you either generally have to come all the way, or do to some extent; you cannot match in your metal work. So I would say the damage due to fire came up to this point. This down at this end, the metal down here was not damaged by fire, and the opposite corner the same way.

Q. I believe you misunderstood my question. My question
was: The damage to the tin portion of the roof
page 65 } here—You did not, of course, see the fire?

A. No.

*James A. Rives.*

Q. You did not get there at the time of the explosion, and you did not see the condition of the premises between the explosion and the subsequent fire—assuming there was an explosion and a subsequent fire—you did not see the picture at that time; you saw it later, after both fire and explosion had taken place?

A. That is correct.

Q. My question to you is: Assuming the ruptured roof and the holes that you see there—the breaking and tearing of the roof—existed at the time the firemen got there the first time, at which time they found no evidence of any fire; then, in your opinion, would that, would you have an opinion as to whether that eruption was caused by the explosion?

A. The eruption in the roof?

Q. Yes, sir.

A. The rupture was probably caused—assuming your circumstances are correct—was caused by the explosion, and that the fire, that the opening left by the explosion permitted the fire to do further damage by giving it an opening whereby it could burn.

Q. Could I ask you, Mr. Rives, what portion of your estimate covers, or how much of it in dollars, covers the replacement of the tin?

page 66 } A. I have $960.00.

Q. For the replacement of the tin on the roof?

A. Yes, sir.

Q. Do you have an additional amount on there for the replacement of the under surface that comes right under the roof?

A. The sheathing, yes, sir.

Q. Yes.

A. $240.00 for that, sir.

Q. Your other figure was how much?

A. $960.00.

Q. And the sheathing $240.00?

A. That's right.

Q. In your opinion and from your experience, Mr. Rives, assuming that there had been a prior explosion and that the explosion had blown the tin off the roof and torn it away to the extent indicated in that picture prior to the fire, assuming that to be a situation—

A. Pardon me, you lost me there.

Q. Assuming that there had been an explosion prior to the fire—

A. Yes, sir.

*James A. Rives.*

Q. —as a result of that explosion the tin had been torn off of the roof and the holes made such as shown in your pictures—

page 67 } A. Uh huh.

Q. —and then the fire came along at a subsequent time and burned the timbers underneath; would it not have been necessary to have taken that roof off after the explosion in order to replace those joists?

A. That were burned, you mean?

Q. Yes, sir; even if a fire had not come.

The Court: The question is: Even if they had not been burned.

A. In other words, if the material had not been burned, would it have been necessary to take the roof off?

Q. Yes, sir.

A. Not necessarily, no, sir. That's what I am trying to point out. That in the end of the building toward the north that there was no fire damage, even though the metal was bowed up, you could flatten it out and it would be satisfactory. The underneath had not been charred or affected by the fire, other than maybe a little smoke damage.

The Court: I think perhaps you had better describe the conditions as you claim they were at the time the firemen got there again to him. I do not think he understands the question.

Q. Assuming for a moment, Mr. Rives, at the time the firemen first got there that all of the physical damage which you see to the tin on that roof in your photographs—

page 68 } A. Yes, sir.

Q. —without any fire damage, however, but assuming that all of the other physical damage you see in your pictures were there at the time the firemen got there—

A. Yes, sir.

Q. —and suppose there had been no fire; is it not a fact that this damaged portion of the roof would have to have been removed before the blown-down timber could have been replaced and the timbers under the roof replaced?

A. Only on the south end.

Q. That is at the south end.

A. That is right.

Q. The north end could have been—

*James A. Rives.*

A. In other words, the damage was severe there, the material had fallen, much of the material had fallen down inside the building.

Q. Yes, sir.

A. However, that material did not appear to be too severely splintered up, so—the sheathing possibly—but most of the joists and your trusses did not appear to be splintered up to the point they could not be reused; the damage to them seemed to me—so far as I could determine from investigation—was principally fire damage. Like the two trusses, they could have been repaired and reused very simply; but the reason they could no longer be used was that the

page 69 } fire had weakened them to a point where they wouldn't be safe.

Q. I understand. Yes, sir. Does this estimate of $960.00 that you gave me, does that include labor for the roof, or just the material?

A. No. That's in place, with this exception: That to come to my total, I mean, I have other items, too.

Q. Yes, sir.

A. I have added the customary 20 per cent, which is the customary contingency for a repair job of this nature. In other words, doing a repair job of this type you don't know to what extent you must go; you have to pull everything out and see what you can reuse, for instance. So it is customary on a repair job of this nature to add a 20 per cent contingency. On top of that I also have 15 per cent for contractor's overhead and profit item.

Q. Yes, sir.

A. To get the true value of that roof you take, you add to the $960.00, 20 per cent for contingency, and 15 per cent for contractor's overhead and profit. So it would amount, probably, to $1,200.00 or something in that neighborhood.

Q. May I ask you one other question, sir: Is your estimate broken down so you could determine how much you have in there for labor in the over-all picture for everything?

A. No, sir, I didn't do it that way. I could have,

page 70 } I mean.

Q. Could you give us a rough estimate for the total labor to do the job?

A. Yes, sir. I'd say in the neighborhood of $2,000.00; $1,800.00-$2,000.00.

Mr. Sands: Right. Thank you, sir. That is all.

*James A. Rives.*

A. Now, of course, to that you have to add your percentages, again. I just picked off the basic items.

Mr. Sands: Yes, sir.

## RE-DIRECT EXAMINATION.

By Mr. Forrest:

Q. I have several questions I would like to ask: A number of assumptions have been made by Mr. Sands. He made the statement, I think—he can correct me if I am wrong—in asking you what your estimate of replacing the tin on the roof was, and you gave him a figure of $960.00, is that correct?

A. That is correct; to which I explained, later, there should be added, to get to the total, the grand total, a 20 per cent contingency factor and a 15 per cent factor for contractor's overhead and profit.

Q. But that estimate is based on the tin replaced, only that portion—

A. That's right.

Q. —which from your observation, was damaged
page 71 } by fire and not the whole roof, is that correct?

A. That's right. I estimated two-thirds of the roof.

Q. In your opinion, could fire have twisted and burned that tin in the picture that you have there?

A. That's the only way it could have damaged it, the way it's shown; particularly as shown in this close up.

Q. In other words, in your opinion the tin as damaged there could only have been damaged by fire in that manner?

A. That is: The final result you have here, yes.

Q. When you took into your consideration that tin, you opserved it with the idea it could have been used again, is that right, if it had not been burned?

A. That's right, a certain amount of it. Yes, sir.

Q. Upon what was the basis for your figure of $4,095.00?

A. You mean by items?

Q. Not by items, just generally: How did you figure it?

A. By the normal method of estimating, like we do for every construction job we do. When we prepare plans and specifications for an owner, or even in the preliminary stages when we are just setting a project up, we have to make an estimate to let the owner have some idea what it's going to
page 72 } cost. In other words, there is no need for us to draw up a set of plans if we can't tell approxi-

mately what it is going to cost—it may not be within the reach of the owner's pocketbook; that would be an unwarranted expense. So, when the project starts out, such as this, in other words, you wanted to know how much it would cost to repair the damage by fire.

Q. You have used the normal method used by engineers in estimating the cost to repair the damage done by fire?

A. That's sight. The normal method of estimating construction work.

Mr. Forrest: I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Sands:

Q. I have one question which I failed to ask you during your examination: Did you determine any fire damage to the bottom floor?

A. None at all.

Q. You did look at the bottom floor, I take it?

A. As far as I could get, yes, sir. In the back part of the building it was pretty badly torn up, and I think the Fire Department had barred it off; plus the fact, it was obvious, that only one 3/4 inch pipe line was holding up a big share of what had fallen from the roof. It wasn't safe to go any further.

page 73 } Q. As far back as you could go you found no fire damage to the first floor at all?

A. No, sir.

Mr. Sands: That is all.

Witness stood aside.

W. C. CHEWNING,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Forrest:

Q. Would you state your name, age, and address to the jury, please?

A. W. C. Chewning; my address is 114 North 7th Street, Richmond, Virginia; I am 38 years old.

*W. C. Chewning.*

Q. What is your occupation, Mr. Chewning?

A. I am a realtor.

Q. You have been called to testify as an expert in connection with the destruction of the building at 1817 East Franklin Street; would you please state your qualifications, your background to the jury to permit you to so

page 74 } testify?

A. I am a realtor, as I said before. I am a lifelong resident of the City of Richmond; I attended Richmond elemenary and high schools; Hampden-Sydney College; T. C. Williams School of Law; Richmond Professional Institute, Law School, taking courses in Real Estate Principles and Real Estate Appraising.

I subscribe to publications of the American Institute of Real Estate Appraisers and The Society of Residential Appraisers; and use their principles in my appraisal work.

I am vice-president of the Richmond Real Estate Board, and past-president of the Local Residential Appraisal Society. I have been in real estate business here, generally, for two years before the war and thirteen years since the war—engaged in sales, rentals, loans, insurance, and appraisal work, also.

My recent assignments in appraisal work have included qualifications as an expert before Chancery Court of the City of Richmond in *petition* cases; State of Virginia appraisal warehouse property right here just below Capitol Square; Medical College of Virginia multiple family property and H commercial classification; land for Glenwood Apartments, Incorporated for FHA; light industrial parcel on Arlington Road, industrial parcel for J Zoning on 9th Street Road; Southern Fuel Oils Plant on Ellen Road; 2100

page 75 } Hamilton Street, southeast corner of Grace and 19th Street—All those are types of zoning and property as this subject property.

Q. How long have you been appraising real estate?

A. Formally: Six years.

Q. You appraise what type of real estate?

A. All types of real estate, including the kind of subject property.

Q. Did you, at our request, examine the premises at 1817 East Franklin Street?

A. I was employed by Lublin McGaughy and Associates, Engineers in Norfolk, to make a real estate appraisal of the property, yes, sir.

Q. When did you make an appraisal?

*W. C. Chewning.*

A. Approximately the first of September last year, 1957.

Q. Did you determine in your appraisal what, in your opinion, constituted the actual cash value of this property on June 26, 1957?

A. I did.

Q. Would you give us that figure?

A. The value at that time was, of the improvements on the property was $14,575.00.

Q. Would you break that down basically for us; how did you arrive at that figure?

page 76 } A. That included two particular items: One is the replacement cost of the building itself, less physical depreciation of all types; and the cost of clearing the land after the damage was done to the building so that the land could be made available for reuse.

The replacement cost of the building I estimated at: 2706.85 square feet, or 2700 square feet at $7.00 a square foot $18,-947.95, or approximately $18,950.00. From that, physical depreciation of all types $6,875.00, leaving a value of $12,075.00. To that has been added $2,500.00 which is the cost of clearing the debris from the lot. That figure was, of course, an estimate before the work was done; but since the work was done, I verified it with the contractor who did the work, and he confirmed that figure.

Mr. Forrest: I have no further questions:

Mr. Sands: We have no questions.

Witness stood aside.

Mr. Forrest: If Your Honor please, we have one additional witness, the surgeon. I will check to see if he is here; if not, we will pass on and let Mr. Sands put on his case.

page 77 } Note: The witness is called by the Deputy Sheriff with no response.

Mr. Forrest: He is not here.

The Court: We do not have too long, Mr. Sands, would you rather go ahead now, or the first thing after lunch?

Mr. Sands: I have sub-poenaed my witnesses, assuming the plaintiff would take the morning for her testimony, after lunch. I expect, if it is agreeable with the Court, that probably it would be better if we were to adjourn now.

*Edward S. Futrell.*

The Court: All right, sir. Gentlemen of the jury, we will recess for lunch now. I will give you the usual admonition applicable to all recesses: Do not discuss this case with anyone, or allow it to be discussed in your presence while we are in recess. The Court will be in recess until 2:15; if you will come back at 2:15, please.

Note: Recess for lunch is now had until 2:15, at which time the hearing is resumed before the jury as follows:

The Court: We will call the Doctor at this time, if he is here.

Mr. Patterson: If Your Honor please, he is now operating. We hope he will be here at 3:30.

page 78 } Mr. Sands: Your Honor, we are perfectly willing to go forward as I indicated. I do think this, however, in fairness I would prefer not putting our case on until the plaintiff has concluded. We will go forward with the understanding that they have concluded except for the doctor. I believe that would be fair.

Mr. Patterson: We so agree.

EDWARD S. FUTRELL,

introduced in behalf of the defendants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Sands:

Q. Mr. Futrell, state your name and occupation, please, sir?

A. My name is Edward S. Futrell. I'm Chief of the Gas and Water Division of the City of Richmond.

Q. How long have you been in that department for the City of Richmond?

A. I have been Chief of the Bureau since 1952.

Q. Will you state pursuant to your duties as Chief of that Department whether you had occasion to be called

page 79 } in connection with a loss which occurred on 17th and Franklin Streets, I believe 18th and Franklin Streets, the Lanasa Building back in June, 1957?

A. May I use my notes?

Q. Yes, sir, you may refresh your memory from your notes.

A. It was on June 27th at 7:16 I received a notice of a

second alarm fire at 18th and Franklin and when I arrived I found that there had been an explosion as well as a second alarm fire at 1817 East Franklin. The fire department had already turned the supply of gas off to the building, and I verified that fact.

Q. May I interrupt you a second? What are your duties as Chief of the Gas & Water Division, what duties are you required to do?

A. I have two main duties in response, in answering multiple alarm fires: one, of course, is to see that adequate water pressure is available for the fire department and to help extinguish the fire; and the second is to see that if the building has any gas service or supply to it that that service or supply is turned off so that any fires resulting from the gas will be extinguished.

Q. Do you or do you not in addition to checking the source of gas supply, do you also when you investigate a building under those circumstances check the outlets in the

page 80 } building itself?

A. As soon as it's, as I'm able to get into the building.

Q. Did you do that in this case, sir?

A. Yes, sir, I did.

Q. Will you describe to the jury what inspection you made of the interior unit on that occasion and what you found?

A. Well, the first thing I did, of course, was located the meter which was on the east building wall, I believe. It was hung from the ceiling about 25 feet south of the north building wall, and on the east wall. The gas meter and the piping on both sides of the meter had suffered no damage.

I then traced out the house piping in the entire building, or the portion of it that I could get into. I found that the building had a series of half inch lines going to each of the refrigerator type rooms and that each one of these half inch lines in the refrigerator type rooms ended in an illuminating type jet similar to the ones that were used back in the days when gas was used for illumination.

I found all the house lines were intact, all the piping in the house was intact with the exception of one half inch line at approximately the mid point of the building that was about the ceiling level, and that line had been sheared

page 81 } off. I believe that it was sheared off by a beam which had fallen, either caused by the explosion or the fire, one.

It was very obvious as to which room, in which room the

explosion had occurred, and I managed to get down into that room because I was anxious to find out whether this cock was off or on. And I moved enough bananas and debris to see that the gas jet was in the on position, indicating that gas had been coming out of it prior to the fire department shutting the line off. And that just about concluded my inspection.

Q. That gas jet in the room where you determined the explosion had taken place was not cut off but was in an on position?

A. Yes, sir. That was in an on position.

Mr. Sands: No further questions.

## CROSS EXAMINATION.

By Mr. Patterson:

Q. How do you cut it on and cut it off?

A. How do you cut it on and how do you cut it off? With a little handle about a half, maybe five-eighth inch in diameter, and you turn it with your fingers.

Q. And turn it like that? Sort of with this sort of movement?

page 82 } A. Right.

Q. You went in, dug under the debris, found the cock, and discovered that it was on.

A. Yes, sir.

M. Patterson: All right, sir, thank you.

Witness stood aside.

## JOHN F. FINNEGAN, JR.,

introduced in behalf of the defendants, first being duly sworn, testified as follows:

## DIRECT EXAMINATION.

By Mr. Sands:

Q. Chief Finnegan, what is your full name, sir?

A. John F. Finnegan, Jr.

Q. What is your position with the Fire Department?

A. Group Battalion Chief, First Battalion, Richmond Bureau of Fire.

*John F. Finnegan, Jr.*

Q. What are your duties in connection with that
page 83 } assignment?
A. I respond to all alarms in my particular district.

Q. Did you have occasion, pursuant to the discharge of your duties, to answer a call to the so-called Lanasa Building on 18th and Franklin Streets on June 27, 1957?

A. I responded to an alarm at 6:30 A. M.

Q. Did you determine how many units are taken out?

A. No, a box alarm came in. It has an automatic assignment of three engine companies and one truck company.

Q. Was that assignment the assignment made in this case?

A. Yes.

Q. When you arrived at the scene, Chief Finnegan, will you please state to the jury what you found?

A. Well, on arriving on the scene I got out of the car and tried to determine what was going on. I found the building in shambles. It was obvious that there had been an explosion.

I came to the side and found Mr. Lanasa, who I later learned was the owner, with a cover on him, and two of my men had him. I immediately asked him were there any other people in the building? He told me there wasn't.

Then I ordered the gas to be cut off, and started a search in the building insofar as we could. The reason being the building was in such a condition we could only enter into the
front portion of it. The other had to be done
page 84 } by means of observation, had to be done by means
of ladders.

Q. Do you have any photographs which will demonstrate the condition of the building when you arrived?

A. These particular photographs were taken at the scene, at the end of the fire. Basically the conditions I found were such as shown in these photographs.

Note: At this point the above mentioned photographs are shown to counsel.

Mr. Sands: We would like to save time, Your Honor, by introducing these as a group. I will ask the Court to mark them as defendants' exhibits?

The Court: That would be starting with No. 2, would it not?

Mr. Sands: Yes, sir.

*John F. Finnegan, Jr.*

Note: At this point the above mentioned photographs are now introduced and marked and filed as Defendants' Exhibits 2 through 7.

Q. Now, step down here for a moment, if you will, Chief: I will ask you, if you will, take these photographs one at a time in any order that you want and describe to the jury what part of the building those photographs show?

Note: The witness steps down from the witness stand and stands before the jury.

page 85 } A. This shows the front of the building. There had been something like, maybe banana and so forth, some of the crates had been drug across the street. The door was out; this door was up and it was still intact—as it was open. The roof was in the condition as you see here.

In addition to that, the west wall had pushed in toward the west, and it was more or less being held by potato sacks which had been stacked all the way up to the ceiling.

The wall here, the east wall had bulged. In the rear of the building, which was another part of the roof in the rear of the building—

Q. May I ask you: Is that the condition you found it upon the time of your first arrival?

A. The wall here is the dividing wall between this building and what is known as Robelen Produce, which was south. The wall here, which extended up, had kicked over and gone through the roof of this wall and had gone all the way down to the floor.

Q. This is the same view of that wall from the top?

A. These views here are the back wall, and this is the dividing wall here, again.

Mr. Sands: All right, sir, you may have your seat back, if you will, sir.

Note: The witness resumes the witness stand.

page 86 } Q. At the time that you arrived, did you personally make this inspection that you have just indicated to have been made?

A. When I arrived I did. Not only did I, but I gave instructions to the various units there to search the building

insofar as they could; ordered ladders put up to the front of the building, which goes to the second floor as indicated in one of those pictures, and a ladder was put to the rear on the east wall.

We could go roughly about fifteen to twenty feet in from the front of the building, which was more or less known as the office in the same space, up on the second floor you could get in, and the rest of the building was too dangerous to send men in. We could look down through aisles off ladders and such as that. It was just too dangerous to enter in. I am in charge and am responsible for the lives of the men; I just wouldn't send them in there.

Q. From the observation that you made, would you say that, with the limitation that you have just described, you made a thorough and complete examination of the building?

A. Oh, yes. Not only that; we kept a company on the scene, and we continuously—I stayed on the scene myself. We continuously inspected the building from various vantage points that we could see from.

Q. During that first inspection that you made
page 87 } when you got there, did you endeavor to ascertain
any evidence, visible evidence of fire?

A. Oh, yes, definitely.

Q. Did you find any?

A. We did not find any at that particular time.

Q. Did you find any smoke?

A. None whatsoever.

Q. Or any physical evidence of any burning of any sort?

A. None, whatsoever.

Q. I will ask you, I am not sure whether you stated, but I hand you herewith Exhibit No. 2, obviously that exhibit was taken before or after the fire?

A. That was taken after the fire.

Q. So that you do see smoke in that exhibit?

A. Yes, sir.

Q. Look at photograph No. 2 and tell the jury whether or not the damage to the roof that you found there was present at your first inspection before any fire?

A. The damage was, except for the charring of the timbers.

Q. Chief Finnegan, can you, from your experience, and I don't know that I asked you: How long have you been in fire work?

A. Well, actually, as a paid employee since Jan-
page 88 } uary, 1946.

Q. From your experience in fire work and in

examining and investigating buildings during and after fires and explosions; do you have an opinion satisfactory to yourself as to whether this damage you have just described, which you found when you arrived on the scene, resulted from an explosion or whether it resulted from a fire?

A. It resulted from what is known as an explosion.

Q. All right, sir. Now then, the next question I will ask you: After having made an examination of the premises that you have described and having been unable to determine any evidence of any fire, what did you then do?

A. I began to send various units back. I had called for the Building Inspector, the Electrical Inspector, and the Utility Department, and I kept one unit on Stand-by with lines layed, hose lines in the street, in the event anything should develop.

Q. What if anything did develop after you had sent your units back to their departments?

A. Roughly, about fifty minutes later—I just left the second floor from the front, came down the ladder, went to the east wall, down the east wall and started to climb the ladder up on the east wall, and the police officer came running to me and he said, "Chief, there's a small amount of smoke coming out of the top of the building." I looked, then I saw page 89 } it. I ordered the ladders to the front, and one of the ladders just left; I went to the front of the building to the second floor with the line. At that time, approximately, on the second floor in the back toward the back of the building in a group of containers such as orange crates, banana crates and so forth, there was a flame visible about the size of this chair (indicating witness chair).

Q. That was in what portion of the building?

A. That was on the second floor, more or less to the rear, in a group of crates.

Q. And on the second floor?

A. That's right.

Q. That would have been what corner of the building?

A. The building facts north, I believe, doesn't it? The building faces north and south. I can show you more probably in the photograph than I—It was almost directly under where the roof is in this picture here.

Q. All right, sir, if you would hold it so the jury can see it?

A. Back in this area here.

Q. On the second floor?

A. On the second floor.

Q. What did you then do?

*John F. Finnegan, Jr.*

A. Well, I entered and the two men came in behind me with the line, and we were attempting to extinguish
page 90 } it. We only had twenty foot of space to travel with—it was deeper in the building. And as we opened the line into it, it really did happen then. Something ignited. A flash, screen of fire, came over the top of our heads and out of the front door. For awhile there it was nip and tuck.

I managed to get out of there and put in the second alarm, and in a matter of four or five minutes the whole second floor was on fire; and the fire was coming out of the roof.

Q. Did you bring that under control?

A. Yes, sir.

Q. Where was the majority of the fire damage located with reference to the second floor of the building; in what end of the building?

A. Physically what burned were the packaging materials, such as the orange crates, banana crates and so forth, in the center of this area here. And, of course, as the flames went up it also charred—

Q. Hold the picture around so the jury can see it.

A. —the various structural timbers up through here.

Q. I hand you herewith a photograph: Does that depict the appearance of the building after the fire?

A. This?

Q. Yes, sir.

page 91 } A. Yes.

Q. Could you point out in this picture, which gives us an over-all picture of the building, can you point at the approximate location of the fire, where it occurred and the fire damage?

A. It centralized itself back over in this area here.

Q. The area you cannot see to the rear, is that correct?

A. Back in here. We could get—Probably right in this area here is as far as we could get.

Mr. Sands: I will ask that this be filed and marked as Defendants' Exhibit.

The Court: This will be Defendants' Exhibit 10.

Note: The above described photograph is now marked and filed Defendants' Exhibit 10.

Q. I wonder if you would take a pen or pencil and make a mark in the white area up over here; put an arrow down

as close as you can come to the location that you have just indicated where that fire was?

A. It actually started back in this area here, about where those crates were piled up, back in here; and it extended something like this. (Drawing circle on photograph).

Q. In the area that you have indicated.

page 92 } A. Uh huh, right through there.

Q. Chief, did you inspect the lower floor for fire damage after the fire?

A. Yes, we did.

Q. Did you find any visible signs of fire damage to the lower floor?

A. The only thing we found, we found portions of the cement flooring had been broken where pieces of debris had been knocked down from the upper floor. So far as fire being in the lower area, no.

By the Court:

Q. Is it cement flooring throughout the entire floor?

A. Lower floor, yes, sir. Throughout the building. Yes, sir.

By Mr. Sands: (Continuing)

Q. I believe you stated, Chief, but let me ask you: Did you state the period of time that elapsed between your having reached the scene and having made your first examination—when you determined the explosion damage—and the time the fire broke out later?

A. It was, according to the alarm pulled, the first one was pulled at 6:13 and the second time it was pulled at 7:06. I think it was fifty-three minutes.

Mr. Sands: Witness with you.

page 93 } CROSS EXAMINATION.

By Mr. Patterson:

Q. Chief, I am interested in the second little fire that you personally saw, the little fire that started off and grew to be a big fire.

A. Uh huh.

Q. I am interested in that; first of all: I know that you, of course, were not there when the initial fire or the explosion occurred?

A. No, sir. I arrived a few minutes later.

*John F. Finnegan, Jr.*

Q. Was the rubble on the second floor, which I presume you walked by, on your first inspection tour?

A. We could only go about twenty feet, sir. Back in this, on the second floor back in the area of these crates and so forth, it wasn't safe. The floors were in such condition—

Q. So you have no idea what caused the fire back in that area?

A. The only thing I can say, sir, is this: It is quite common in an explosion that when something is, you know, blown up, that when it flashes it sets cobwebs, dust, and something of that nature on fire. It could have been in there smoldering and we just couldn't see it.

Q. You did not see any smoke or anything like that?

A. No, sir.

page 94 } Q. As you put it: You could not make a thorough inspection of the building?

A. We couldn't get in and lift the crates up; no, sir.

Q. You did not ascertain, in view of that difficulty, that a fire was not going when you first arrived; you did to the best of your ability as far as you could go; ascertaining that you saw no evidence of that, apparently there was no fire?

A. Evidently there must have been something in those crates smoldering.

Q. When you went up on the second floor with the men there was suddenly a tremendous fire, because you had difficulty getting out; I remember you just testified that way?

A. Yes, sir.

Q. Will you tell me what caused that sudden envelopment of the building with fire?

A. We believe, sir, that a three-quarter inch gas line which comes up on the second floor, service line, we found where it had ruptured; and apparently the gas had pocketed back in those areas.

Q. That, incidentally, Chief, was no explosion, there was no noise there, just a fire?

A. No noise. Just a fire.

page 95 } Q. The fire went over the whole building?

A. That's right.

Q. There was a fire, however?

A. That's right.

Mr. Patterson: Chief, I think that is going to be all.

Witness stood aside.

Mr. Sands: If Your Honor please, if I might, at this time, I would like to read into evidence the deposition of Mr. Lynn E. Hufner.

The Court: There is no question about it on either side? I have not examined it.

Mr. Sands: No, sir.

The Court: Would you like to read it yourself, or you may get one of the gentlemen to use a copy and give the answers, perhaps.

Mr. Patterson: I will be glad to do it.

The Court: Explain to the jury whose deposition it is, and that under the law there are certain provisions for taking the depositions of certain people, and so forth.

page 96 } Mr. Sands: I believe counsel will agree that this is a deposition of Mr. Lynn E. Hufner, who is confined to his bed and was unable to attend trial, and who probably would not be able to attend for some time in the future. His deposition was taken rather than having Mr. Hufner present as a witness. It is to be considered the same as if he were here in person testifying.

Note: At this point the deposition of Mr. Lynn E. Hufner is read into the evidence. Since this deposition is filed herein, the same is not repeated in this transcript.

Following this reading the photograph referred to in the deposition is offered into evidence by Mr. Sands, as follows:

Mr. Sands: We would like to introduce the photograph in evidence.

The Court: I will mark it Defendants' Exhibit No. 11.

Note: The above referred to photograph is now marked and filed Defendants' Exhibit No. 11.

page 97 } L. M. BOWMAN,

introduced in behalf of the defendants, first being duly sworn, testified as follows:

## DIRECT EXAMINATION.

By Mr. Sands:

Q. Chief Bowman, state your name, age, and your specialty with the Fire Department, if any?

*L. M. Bowman.*

A. Lawrence M. Bowman; age 56; and I am Chief of the Fire Prevention Division for the Bureau of Fire.

Q. How long have you been in the Fire Department?

A. Twenty-eight years this past August.

Q. How long have you been in the Division of Fire Prevention?

A. Twenty-one years this past October.

Q. Can you describe to the jury, please, sir, your duties in connection with your job as Chief of the Fire Prevention Bureau?

A. Primarily my duties and responsibilities are the enforcement of the Richmond City Fire Prevention Code; the investigation of fires of unknown origin; investigation where there has been death or injury because of fire; and investigation of fires of suspicious origin—is primarily my responsibilities.

Q. Will you state whether you had occasion pursuant to your duties to conduct an investigation concerning an explosion or fire or both occurring at the premises of
page 98 } the Lanasa Building on June 27, 1957?

A. I did, yes, sir.

Q. What was the purpose of your investigation?

A. To determine, if possible, the cause of the explosion and fire.

Q. What steps did you take? I will ask you first: When did you arrive at the scene?

A. I am unable to give you the time. It was some little time after the explosion and fire occurred, because I was off duty; it was early in the morning. I was off duty at home. And I was called back, of course, and it may have been, oh, maybe forty-five minutes later. I don't know the exact time when I arrived, sir.

Q. But it was shortly after the explosion and the fire?

A. Yes, sir.

Q. Sometime during the morning?

A. That's right, sir.

Q. What steps did you take when you reached the scene, Chief Bowman?

A. First I tried to make a general observation of the physical conditions, with the thought in mind, of course, to, if I could, to determine what had caused the explosion.

Q. Will you tell us what your examination disclosed, or what portions of the building you did examine?

page 99 } A. Well, actually I was unable to get very far, penetrate very far back into the building. I went

*L. M. Bowman.*

in from the front, of course after going around the exterior or outside, and also in the adjacent building on the west side. Then I went in to the inside of the building, and, of course, a few feet back from the front there was quite a lot of debris down, and still some material hanging suspended from above; and, of course, I tried to observe from what view point the best I could as to where probably the explosion might have originated—if I could tell from observation.

Q. Were you able to tell?

A. It appeared to me that it originated in one of the banana ripening rooms—I presume is the proper description for the room.

Q. Pursuant to your duties and in furtherance of your investigation, did you, or did you not have occasion to interview any persons who were eyewitnesses to the explosion?

A. Yes. I talked with Mr. Lanasa.

Q. Do you remember which Mr. Lanasa? Was it Mr. V. F.?

A. Well, I can't give you his initials, sir, but he was the man that was injured and in the hospital.

Q. Can you state, approximately if you cannot give the exact date, do you know whether it was that day, or the next day, or several days later that you interviewed him?

page 100

A. It was a few days later. I would say it was probably three or four days afterwards when I went to the hospital to interview him.

Q. Where did you interview him?

A. In the Medical College of Virginia.

Q. Were you in company with anyone else at the time?

A. Yes, sir. Detective Sgt. Bahen and I were together at the time.

Q. Your purpose in making that trip and conducting that interview was in furtherance of your investigation and attempt to determine the origin of the fire, or the explosion?

A. Yes, sir.

Q. Did you have your uniform on at the time?

A. Yes, sir.

Q. What was his condition at the time you interviewed him as to: Was he coherent, and did he appear to be perfectly normal in his mental attitude?

A. Yes, he did.

Q. State, if you will, wht he told you in connection with the explosion or the fire?

A. He told us that on the—Well, perhaps I should say

he told me on the evening prior to the explosion and fire that occurred, that they had received, I believe, two truckloads of bananas, and they had unloaded them and put them in these banana ripening rooms; and before he left
page 101 } that evening to go home he went into this room here, I believe it was room No. 3, and turned on the gas.

Now they use gas for ripening these bananas; have a little gas burner; and he left it on and closed it up and left it that way for the night.

Then he went home. And he said he came back the next morning, I believe he said about 5:30, and the other men were already there at work when he came in; and that he smelled gas. He told the other men not to smoke. He went to this room where he had left the gas burning the previous evening and opened the door, turned the light switch on, and he said when he did, that's when it happened.

Q. Did he tell you anything about having made two trips into that room?

A. No, sir.

Q. Did he tell you anything about having seen any fire on the ceiling when he opened the door?

A. No, sir.

Q. Before he entered the room?

A. No, sir.

Q. His statement to you was just as you have related it to the jury?

A. Yes, sir. I asked him, if I remember correctly, one other question: I asked him if it was unusual for that burner to go out during the night, and he said, "No, that
page 102 } it was not, that it frequently did go out during the night."

Q. Chief Bowman, what if any familiarity are you required to have as to the types and preceptive of gases and their various behaviors under various conditions pursuant to your job; what experience are you required to have?

A. Well, sir, I hardly know how to answer that, because the specifications for my job doesn't spell out exactly my experience that is required.

Q. Maybe I should have asked you: What experience do you have in order to carry out your duties with the behavior of various kinds of gases and their reaction?

A. My experience has been experience that I have gained over the years as I have worked here in the City in making investigations.

*L. M. Bowman.*

Q. Do you feel that you are qualified from your experience to express, to describe the actions of certain gases used by the City, such as natural gas, under various conditions?

A. Probably to some extent; I am not a gas expert; but to some extent I think I have a general knowledge of the reaction of gas under certain conditions.

Mr. Patterson: If Your Honor please, I do not mind this at all, but the Chief acknowledges the fact that he is not an expert. I do not think he would be qualified to
page 103 } testify.

The Court: We will have to see what the question is before we can really tell.

You might ask him if he has ever taken any courses, or whether he has performed any experiments with gas; that sort of thing.

Q. Have you taken any courses with the Fire Department, Chief, relative to the reaction of gas?

A. Not as such. I have spent six seminars at Purdue University studying investigation of arson and the setting of fires. There was some of that included in the courses, but it was not a course designed specifically for that purpose.

Q. During the course of the performance of your duties and investigating the causes of fires and explosions, do you have to determine the reaction of various gases used by the City under the various conditions?

A. We try to, to the best of our ability, yes, sir.

Q. Does that also include the reaction of gases connected with explosion?

A. Yes, sir.

Q. Chief Bowman, I will ask you: Assuming that a natural gas jet in a room, such as you have described one of these banana compartments to be, were left lit overnight, and the door was shut and the ventilation cut off, and the oxygen supply thus limited; what would be the anticipated
page 104 } behavior of the flame?

A. We would expect the flame to go out; cease burning.

By the Court:

Q. What do you mean, due to lack of oxygen, or what?

A. Lack of oxygen, yes, sir. May I elaborate?

Q. Yes, sir.

A. In order to have a fire under any circumstances, we must have oxygen to support combustion.

By Mr. Sands: (Continuing)

Q. Assuming that the fire had become extinguished from lack of oxygen, or from any cause, and the natural gas had flowed into the room, and assuming that the door was later opened and the electric light switch turned on; what reaction would you expect to occur?

A. Well, we would expect, probably, an explosion. If there is a presence of gas, that might come in contact with a spark that we might anticipate from the throwing of an electric switch.

Q. Will you state whether or not that is an unusual or fairly usual occurrence?

A. That is a fairly usual occurrence.

Q. How many explosions would you say that you have had occasion to come in contact with, roughly, during your service in the Fire Department, Chief Bowman?

page 105 } A. From gas, or other causes?

Q. From gas.

A. I would say probably twelve to fifteen.

Q. Would or would not such an explosion of the kind that you have just described ordinarily be accompanied by a flame?

A. Oh, yes. If it's a true explosion you would get flame.

Q. What would be the nature of that flame; would it be a sustained flame, or otherwise?

A. It would be a flash; that is perhaps as good a way as I can explain it. You would have a quick flash. An explosion of gases and air, burning gases expand as they heat; then you get a very quick hot flash.

Q. Would it, or would it not be a normal occurrence for such a flash flame to burn the clothes and flesh of a person standing in its path of exit, such as the doorway, without igniting other objects in the immediate area?

A. Oh, yes, you could expect that.

Q. Chief Bowman, I will ask you: From your experience with investigating gas explosions in connection with your duties, assuming that a hypothetical man opened the door to a room in which gas had been collected, and walked into the room, turned a light on, went to the rear of the room to turn off a gas switch, smelling the presence of gas

page 106 } at that time, that he then went out of the room leaving the door slightly ajar for the purpose of

allowing the escape of some of the gas, came back an hour later and opened the door, entered the room and saw flames in quite some velocity on the ceiling, walked back in the room until he reached the middle of the room and then the flames came down sufficiently to burn him, and that then thereafter an explosion occurred; do you have an opinion satisfactory to yourself as to whether or not, under the conditions I described, a situation of that sort could exist where the flames could be in the roof or in the ceiling of the room filled with gas long enough for a man to enter and to see them, as I have described, without causing an explosion?

A. Not in my opinion, no, sir.

Q. I mean without causing an explosion before he had time to enter the room and walk all the way back?

Mr. Patterson: Before you answer that question: I do not mind your giving your opinion to it, but I would like to have it clear: I objected once, and not wholeheartedly—I am perfectly willing for you to testify—but I would like to know whether you consider yourself to be an expert on gases and the reaction of gas, how it reacts when ignited?

page 107 } The Court: I have not ruled on the question as to whether or not he is qualified yet; we were waiting for the hypothetical question. That is the first objection that we have had.

Mr. Sands: That is correct, sir. I should like to be heard on that, if Your Honor please, before Your Honor rules on it.

The Court: All right, sir.

Mr. Sands: I submit that whether or not a man is a specialist in the special term of the word, whether or not he is Phi Beta Kappa, is not the governing and controlling criterion to be used in a case of that sort. I submit that where a man, in the performance of his duties, has the job of investigating that type of explosion, among other incidents, for the City and where he has investigated during the course of his work some fifteen gas explosions, having been in that work for as long as he has indicated, that certainly he would be qualified to express his opinion as to how gas reacts.

The Court: It is not a question of whether he is qualified for his particular work; he is being qualified as an expert, not just generally in his field, but in some particular field of expert knowledge.

*L. M. Bowman.*

Mr. Sands: I believe, Your Honor, that we
page 108 } would all be almost qualified to pass on that question; although I may be wrong.

The Court: That would make him a non-expert, then, would it not?

Mr. Sands: The plaintiff has offered expert testimony on that, Your Honor, and I submit that this witness is qualified to express his opinion.

The Court: Maybe we had better inquire into it a little further. I do not think all the facts in the hypothetical question were—of course I do not express any opinion as to what the facts in the case are—but I do not believe all of the facts were in accordance with all of Mr. Lanasa's testimony.

Mr. Patterson: Yes, sir, they were not.

The Court: I know you meant to state them as they were testified, but I believe you did make one or two mistakes in them, Mr. Sands.

Mr. Sands: I certainly would like to have it corrected.

The Court: As I understood his statement he said that he switched the light switch off when he went out; when he came back approximately an hour later he turned it back on.

Mr. Sands: That is correct; yes, sir.

The Court: He entered the room—and the way
page 109 } I understood his testimony—he went not to the back of the room, but approximately to the center of the room.

Mr. Sands: That is correct, sir.

The Court: At which time he looked up and saw a thin sheet of flame near the ceiling, above his head—it being only seven feet in height there—and that he ducked and started to the door; whereupon it kept coming on down, caught him on fire, and exploded about as he went out of the little room.

What I want to know, Chief Bowman, is this: I know there are a lot of things that you would have to take into consideration, I suppose, to answer the question. I want to know first of all whether you have been in the ripening rooms, and do you know of their general construction?

The Witness: Yes, sir.

The Court: The testimony in this case was that the doors were closed, except one of the little side doors was left slightly ajar, originally. Then, according to Mr. Lanasa's testimony, he went there approximately an hour before the explosion, went in, came out, and left the main door slightly ajar, and

the two little side doors open so as to get ventilation in there and get the gas out. There are no outside windows, no forced ventilation or anything, so it would be just a
page 110 } question of it getting out of there if at all, by natural ventilation and so on.

We have had some expert testimony about gas being stratified in a room; sometimes in one area it would be a combustible mixture, and in another area it will not be a combustible mixture; that agrees with your experience, does it?

The Witness: That is correct. Yes, sir.

The Court: Is there anything that we haven't brought to his attention, gentlemen?

Mr. Sands: I think that covers it.

Mr. Patterson: I would like to make this statement in connection with the hypothetical question, if Your Honor please. The Chief is directed, in all of counsel's questions, to a light switch which is inside the room. The evidence of Mr. Lanasa is, and it is a fact, the light switch is on the outside of the room.

Mr. Sands: We are perfectly willing to concede that. I do not think it has anything to do with this question, Your Honor.

The Court: I think it is best that it be brought to the Chief's attention.

Mr. Sands: We are going to cover that very point before he leaves the stand. Yes, sir.

page 111 } The Court: The question put to him now is: Are the properties of gas such that upon going back there an hour later and flicking on the light switch, flame could have existed in the form of flame overhead a few seconds before the explosion itself took place, isn't that your question?

The Witness: With the room full of gas and the time it takes a man to walk to the middle of the room?

The Court: We do not know that it was full of gas.

The Witness: It would have to be gas in the room, or it wouldn't have been an explosion, I take it, if it hadn't been.

The Court: I assume so, too. I guess the Chief will agree with us that the mixture is very important, is it not?

The Witness: That's right. Although the mixture for that type of gas is rather a wide range, about 5 to 15 per cent by volume. I think that it gives a rather wide range that you might anticipate burning or explosion.

The Court: The question is: Could that have taken place?

Mr. Sands: In his opinion, yes. Would Your
page 112 } Honor care to let the reporter read back the hypothetical question, and we will add to that the fact that he had cut the electricity off when he went out?

The Court: All right, sir.

Note: At this point subject question is read to the witness by the reporter.

A. Now, if I understand the question, I do not believe that a sustained fire would be suspended near the ceiling for any period of time, if there was gas in the other parts of the room. I think that after an hour had elapsed, that a sufficient amount of oxygen would have entered that room, that we would have it immediately consumed by whatever gas was in there once the flame was started.

By Mr. Sands: (Continuing)

Q. Would or would not that immediate consumption be simultaneously accompanied by an explosion?

A. I would say yes.

Q. Is a gas flame, as a rule from your experience, accompanied by any smoke?

A. There again we run into a degree. If you have the proper air mixture we don't generally get smoke; if we do not have the proper air mixture, why there is a possibility we might get some smoke. The same as you might adjust your gas burner on your stove at home, you might get
page 113 } smoke from it if you don't have the proper air mixture.

Q. Chief Bowman, I am going to ask you to look at this photograph, sir, first and then I am going to get you to hold it around so the jury can see it: Do you recognize the scene that is depicted in that photograph?

A. Yes, sir, I believe so.

Q. Now, hold it around so the jury can see it: What does that show?

A. That shows the west side, I would say, the street side or front end of the building. There was a locker room here, and one here, right here, and then another one out here.

Q. Which was the one that exploded?

A. This one back here. Just beyond this one shown here.

Q. You have testified that, in your opinion, and from your experience, Chief Bowman, that the switching of an electric switch can furnish and frequently will furnish the activating

agency to set off gas, that is, a spark to set off a gas explosion. I will ask you to look at this picture, and assuming that the electrical switch is where it is indicated in this picture to be in reference to the door, and that door was left ajar for an hour's time, and then after having been ajar for an hour's time the switch was cut on; would the fact that that

page 114 } was outside the room, would that still be a possible activating agency?

A. A possible one, yes, sir.

Q. Do not answer this question until counsel has an opportunity to make a statement, if he cares to do so: From your experience in explosion analysis and from your investigation of this case, together with statements that you stated you received from Mr. Lanasa, have you an opinion satisfactory to yourself to the cause of the explosion here involved?

Mr. Patterson: Your Honor, I would like to renew the objection; unless you are satisfied that he can testify on that point.

The Court: I do not think this question is so much a question of an expert as it usurps the function of the jury. I will sustain the objection to that question.

Mr. Sands: We except to the ruling as stated.

I would like, if Your Honor please, to have the witness answer that in the absence of the jury. I am through with the witness, and I will reserve that to save time; we can take it up after the cross examination.

page 115 } The Court: Suppose we go ahead and continue the cross examination, and then we will take it up at the conclusion of the cross examination.

## CROSS EXAMINATION.

By Mr. Patterson:

Q. Chief, I have very few questions for you. No. 1: When you conferred with Mr. Lanasa, did he look something like this? (Showing witness a photograph)

A. Something like that, yes, sir.

Mr. Patterson: I would like to have that introduced, if I may, Your Honor.

Note: The above photograph is now marked and filed as Plaintiff's Exhibit 11.

Q. The newspaper clipping—

Mr. Sands: One minute, Your Honor, I do not like the way the question started off.

Q. Chief, would you say from your observation of Mr. Lanasa that his face was burned and because of his facial muscles being injured he had some difficulty in talking?

A. He had, he was burned some, yes; and as I remember I believe his face may have been swollen some.

Q. Hand the picture to the jury, please.

A. But he was able to talk to us all right.

Q. In your investigation of the building, as I understand it, were you able or not to make as full an investiga-
page 116 } tion as you may have liked to because of the destruction and the places to which you were unable to go?

A. I believe that is the way I stated it. Yes, sir.

Q. Actually you got to the building some forty-five minutes after the fire had occurred?

A. That is correct.

Q. So in addition to the status of the building when Chief Finnegan, for example, for there it was in one state; and when you got there it was in another, I believe?

A. That is correct.

Mr. Patterson: Chief, I think that is going to be all the questions I have.

The Court: Gentlemen of the jury, would you like to take a little recess? We will join you in recess in just a few minutes.

Note: At this point the jury is recessed for a few minutes and leave the courtroom, thereupon the hearing continues in the absence of the jury as follows:

Jury out.

Mr. Sands: Mr. Reporter will you read my question to the witness, please?

page 117 } Note: At this point the subject question is read to the witness by the reporter.

A. Can I answer that now, sir?

The Court: Yes, sir.

A. After Sgt. Bahen and I interviewed Mr. Lanasa we dropped our investigation there, because from the statements he made to us we were satisfied in our own mind as to what had happened and what caused the explosion.

By Mr. Sands:

Q. Will you state that opinion, sir?

A. Our opinion is, sir, that gas had escaped into the room and when he opened the door and turned the switch on, as he told us, that that created the spark that ignited the gas and caused the explosion.

Q. That would be true, as I understand your testimony, regardless of whether the fact the switch was situated right outside the door but still in the path of the escaping gas?

A. I don't see—To me it wouldn't make any particular difference. By opening the door it would create a current which would pull the gas right outside.

Witness stood aside.

page 118 } Mr. Sands: Your Honor, I have one one more witness and he will take a very short while. However, I did not know whether Your Honor wanted me to complete the case before taking any lengthy recess, or whether Your Honor would rather take a recess at this time.

The Court: Since the jury is out and I told them that we would join them in recess in a few minutes, I think we will recess at this time.

Note: At this point recess is had, following which the taking of evidence is resumed before the jury, as follows:

Jury in.

J. J. BAHEN,

introduced in behalf of the defendants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Sands:

Q. Sgt. Bahen, please state your name, your age, and your occupation, sir?

*J. J. Bahen.*

A. J. J. Bahen, B-A-H-E-N, Detective Ser-
page 119 } geant, 54 years old.

Q. You may if you like, sir, refer to your notes in answering questions. I am going to ask you: Will you state, sir, whether pursuant to your duties as detective sergeant you accompanied a member of the Fire Department of the City to the room of Mr. Lanasa during June, 1957, pursuant to an investigation that was being made concerning the origin of the loss of a building by fire or explosion?

A. I was, except that date I think it was around the first of July.

Q. I may have been off; do you have the date there, sir?

A. Yes, sir. My record says the 1st of July.

Q. Will you state who accompanied you?

A. Chief Bowman.

Q. Can you state to the jury whether or not at the time that you interviewed Mr. Lanasa he was or was not in complete command of his faculties?

A. To the best of my knowledge he was.

Q. Did he or did he not discuss questions coherently with you?

A. He did.

Q. Will you relate to the jury what Mr. Lanasa told you in the presence of Chief Bowman as to the origin of this explosion or fire?

A. Yes, sir. He stated that on the afternoon
page 120 } before the explosion took place that two loads of
bananas came in. After the last load came in he went home and he returned the next morning about 5:30, and some of his men were working then. As he arrived in the building he smelt the odor of gas. And he told his men not to smoke any cigarettes nor do any smoking there. He stated then he went back to room 3 where he had lit a gas jet the afternoon before, and opened the door, turned the switch on and the explosion occurred.

Mr. Sands: You may take the witness.

CROSS EXAMINATION.

By Mr. Patterson:

Q. Sergeant, the purpose, you are a policeman, I take it?

A. Yes, sir.

*J. J. Bahen.*

Q. The purpose of your talking to Mr. Lanasa was simply to determine whether or not there was any criminal activity?
A. That is true, sir.
Q. That was your job?
A. That is true.
Q. According to your testimony he only went into room 3 on one occasion?

A. Now I didn't—He said he only went into
page 121 } room—

Q. Mr. Lanasa only went into room 3 on one occasion?
A. That morning?
Q. Yes, sir.
A. He said when he arrived there—
Q. He went into room 3—
A. After smelling the gas, the odor of gas he went into room 3.

Mr. Patterson: Thank you, sir.

RE-DIRECT EXAMINATION.

By Mr. Sands:
Q. As he went into the room what happened?
A. He turned the switch on and the explosion occurred at that time.

Mr. Sands: Thank you, sir.

Witness stood aside.

Mr. Sands: That is the defendants' case, Your Honor.
The Court: Do you have any rebuttal?

Mr. Patterson: If Your Honor please, we are
page 122 } terribly embarrassed. We are still waiting for our medical witness. There is a possibility that counsel for the defendants may stipulate with me the import of his testimony.

Mr. Sands: I was going to say that I possibly can stipulate his injuries, Your Honor, as they are not involved in this case. Probably almost anything he would say I will agree to, whatever counsel says he will testify to here.

The Court: Why don't you confer a minute while we wait for you and see if you cannot agree on that.

Mr. Sands: I will stipulate to what these gentlemen say the doctor would testify to if he were present.

Mr. Patterson: If Your Honor please, the doctor who has been summonsed to testify and would be here but for the fact he is in the middle of an operation, is B. W. Haynes. He treated Mr. Lanasa. I think he still treats him. The testimony would be that the injuries sustained by Mr. Lanasa are burns of such a nature that would not have been produced by an explosion; it would require a fire in order for him to be burned to the extent that he was. The testimony page 123 } would be that an explosion gives a flash burn; that this man's burns are third degree burns requiring a skin graft; and that these burns can only be acquired by fire.

That is our case.

The Court: That is all the evidence, then, is it, gentlemen?

Mr. Sands: Yes, sir.

The Court: Gentlemen of the jury, I do not really believe we can finish this case tonight, without staying real late after supper. I think if you will come back Monday morning at 10:00 o'clock we will try to be ready for you. We should be through with the case fairly early in the day. I will adjourn now until 10:00 o'clock Monday morning. We will try to be ready for you at that time.

page 124 } In Chambers.

Note: Court reconvened at ten o'clock A. M. Thereupon Court and counsel retire to Chambers, where the following motion, etc., is had:

The Court: All right, gentlemen.

Note: (After a discussion between Mr. Sands and Mr. Patterson as to the sufficiency of the evidence upon the issue of total loss, Mr. Patterson, counsel for plaintiff, made the following motion):

Mr. Patterson: At this point we move the Court for permission to offer further testimony explaining Mr. Chewning's item of $14,575.00, it being our understanding that the evidence in this case shows that the building and its contents were totally lost, and that the items for which the companies would be liable under their policies would therefore be the

replacement value of the building less proper items of depreciation, plus the cost of removing the debris from the lot, but the question having come up as to whether or not we have shown that the building was a total loss, we therefore request permission to offer further evidence along that line at the present time.

page 125 } Mr. Sands: The plaintiff having rested her case, I object to the evidence being reopened to permit her to offer further testimony at this time.

It is my understanding that at such a stage of the case that the plaintiff always has the procedure available to him of a non suit, over which the defendant has no control, and can in that manner cure any defects which he might feel that he might believe exist in his case, and that this would be the proper and the only proper procedure at this late stage of the case of reopening and introducing additional evidence, and making out a different case upon the point of damages from that which the evidence discloses. Otherwise we feel that it would always be open to plaintiff in any case after argument of instructions and of various motions and after evidence to reopen his case indefinitely until he had gotten in such evidence to cover all points of objection raised by defense counsel.

As stated, he has the election, if he feels that additional evidence is necessary to his case, to pursue the remedy of non suit.

page 126 } The Court: I am inclined to think that total destruction of the building has been proven in this case, or at least that we have mistakenly proceeded on the theory it had been proven.

Therefore, I will deny the plaintiff's motion to reopen the evidence, but should it turn out that the Court is wrong in this regard I will consider a motion for a new trial based upon this ground.

Mr. Patterson: I except to the ruling of the Court.

Note: At this point Court and counsel retire to the courtroom, and are now before the jury, as follows:

The Court: Gentlemen of the jury, I will now read the Court's instructions.

Note: At this point the written instructions are read to the jury by the Court, following which the case is argued to the jury by counsel. Following the argument of counsel, which is completed at four minutes after 11:00 A. M., the Court states to the jury as follows:

The Court: All right, gentlemen, if you would like to go with the Sheriff.

Gentlemen, we will now recess until the jury
page 127 } is ready.

Note: The jury retires, and the objections and exceptions to the instructions are now placed in the transcript.

Jury out.

OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS.

Mr. Sands: In order to dictate our objections to the instructions, I did not number the ones that I offered. I wonder if your Honor—

The Court: You may number them as you go along.

Mr. Sands: Then I will call mine A, B, C and D.

The Court: You may mark them "Refused" with pencil, and I will go ahead and take care of it. If you do not mind doing it out of order like that you can hurry through this a little bit. So it would be better if you did it in the courtroom. If you have any "Refused" that you want to put in the record, see that that is done (Speaking to Mr. Patterson).

page 128 } Mr. Patterson: No, sir.

Mr. Sands: Counsel for the defendant objects and excepts to the action of the Court in granting any of the instructions offered by the plaintiff which puts to the jury the determination of the question of whether a hostile fire preceeded the explosion.

The evidence in this case, and this includes the plaintiff's evidence in *toto,* established the fact that as a matter of law that the fire alledged to have been seen by the plaintiff immediately prior to the explosion was so close in point of time with the explosion itself that under the doctrine of the case of *Pearcy* v. *Insurance Companies* that there could be no finding that a hostile fire, such as that which is necessary to take the case out of the explosion exception pre-existed the explosion.

Without waiving the above objection to the plaintiff's *ob*structions, the defendant offers instructions A, B, C and D, and objects and excepts to the action of the Court in refusing said instructions, as follows:

Counsel for the defendant excepts to the action
page 129 } of the Court in refusing defendant's Instruction A as offered, and assigns as grounds for said ex-

ception that the instruction as offered correctly stated the law applicable to the case, and that Instruction 2 as offered by the Court does not comprise the elements contained in defendant's Instruction A as offered; that the defendant was entitled to an affirmative instruction by the Court in view of the evidence in this case that a spark from an electrical switch would not be considered as a pre-existing fire, which would justify the consideration of the explosion under the coverage of the fire policy.

Defendant by counsel objects and excepts to the action of the Court in refusing to give the defendant Instruction B as offered on the grounds that it correctly states the law and provides that before a fire can be considered a pre-existing fire, such as to bring an explosion under the coverage of the policies in question, that it must be a fire either to some portion of the building itself or to its contents.

page 130 } The defendant excepts to the action of the Court in refusing defendant's Instruction C as offered in that it correctly states the law applicable, and the principle therein enunciated is not clearly covered in Instruction 2 given by the Court.

The defendant objects and excepts to the action of the action of the Court in refusing defendant's Instruction D as offered, and assigns as grounds therefor the following:

(a) Defendant is responsible only for that portion of the loss by fire following the explosion as was to materials not destroyed or damaged by the explosion.

(b) All of the testimony is to the effect that certain of the beams and joists, though perhaps usable, were down after the explosion. Even plaintiff's own witness Rives so testifies. Yet the action of the Court in refusing this instruction allows plaintiff to recover for cost of putting all material damaged by fire back in place whether blown down by explosion or otherwise.

page 131 } Defendant objects and excepts to the action of the Court in granting Instruction #2 in lieu of all instructions offered by defendant in that it does not cover the elements covered in defendant's refused instructions, and further permits recovery for a fire though not consuming any part of premises or contents prior to explosion.

Defendant objects and excepts to the Court's action in giving Instruction 3 on the following grounds:

(a) It finds as a matter of law that the fire damage sustained after explosion was $4,090.00 and does not take into consideration that this figure includes cost of replacing in position much of material damaged by explosion.

(b) This instruction permits recovery upon the basis of a total loss. There is no scintilla of evidence in the case as to the condition or value of the building after loss. A $4,079.00 fire damage has been proven, and also the value beforehand, but there is no evidence that the building was a
page 132 } total loss, a 50 per cent total loss, whether it was repairable or if not what value if any was left standing. There is no yardstick upon which the jury could find a total loss and yet the Court has, by this instruction found as a matter of law that the loss was total leaving only the question to the jury of whether it was covered.

Defendant objects and excepts to Instructions Nos. 2 and 3 further on the ground that they both leave to the jury the question of whether a hostile fire preceded the explosion as even by the plaintiff's testimony the discovery of the fire and explosion were so closely related in time that under the doctrine of the case of *Pearcy* v. *Insurance Companies* it would be impossible to determine which was antecedent.

HERE ENDS OBJECTIONS AND EXCEPTIONS TO THE INSTRUCTIONS.

Note: At 12:25 P. M. the jury asks to come in for further information, as follows:

The Court: (Speaking to the jury). I believe you had a question you wanted to ask?

A Juror: Yes, Your Honor. There are many
page 133 } facets and *remefications* to this matter, and we want to be entirely fair.

Therefore we respectfully request the Court to rule on the point of how short a time must elapse between the presence of flame existing, being not preceeding, to be considered a fire, and the resulting explosion.

Do I make myself clear?

The Court: Yes, I think so. Could I see the instructions?

While these words are used in their natural and ordinary sequence, naturally they must have been the subject of a great deal of litigation over the years on fire policies, and we have

tried to define them as much as we can in the use of ordinary words.

Now, really I do not believe that I can answer your question in the sense of being more specific than I have in the instructions.

In other words, it is more the character of the condition rather than the matter in fixed units of time like seconds and the like.

I think if you consider what I have told you in the instructions that that would be about the best that I could do.

page 134 }

In Instruction #2 I have told you that an instantaneous flame contemporaneous with the explosion would be regarded by you as a part of the explosion for the pre-existing fire. On the other hand I have told you that a fire existing in accordance with the definition of a fire, which I have given you in the first instruction, would be a fire even though its period of existence, as I have told you in the middle paragraph of Instruction #2, is comparatively short.

I wish I could be more specific with you gentlemen than that, but that seems to me the wording and those definitions seem to run throughout the decisions on the subject. I believe that is about the best we can do with it.

A Juror: Would Your Honor be so good as to read from the excerpt to Instruction 1 again, relative to the word "Instantaneous"?

The Court: Usually an explosion, other than a term as applied to a violent bursting or expansion usually accompanied with noise, following the sudden producing of great pressure with or without instantaneous flash of flame, in connection with which the damage, if any, is caused by mechanical force rather than combustion.

page 135 }

Of course, you gentlemen have these with you, and you could keep referring back to them, and it is for you to interpret the language in them according to the ordinary use of words.

A Juror: We will try again, Your Honor.

Note: The jury again retire at 12:30 P. M.

At 12:50 P. M. the jury return to the courtroom, as follows:

The Clerk: Gentlemen of the jury, have you agreed upon a verdict?

A Juror: We have, sir.

The Clerk: (Reading) We, the jury, on the issue joined,

find for the plaintiff and assess its damages at $14,575.00. Frank L. Betts, Foreman.

Gentlemen of the jury, is this your verdict?

Note: The jury answered in the affirmative.

The Court: And you will be excused for the Term. You will report to Room 107, City Hall, on or after the 17th of the month and they will compensate you for your services. Room 107.

The Bailiff: Gentlemen of the jury, you are excused.

Jury out.

page 136 } The Court: Would you like to file your motion in writing?

Mr. Sands: I was going to request the Court to permit me to file it in writing within a week, if that will be adequate.

I might say this, Your Honor, so far as the argument on the motion is concerned we will abide by the Court's wishes in that.

I think this is another case, however similar to one a little while back I think that we have gone into the law on about as thoroughly as we can, and most of the transcript has been written up, which will be available to the Court, and while we will be happy to have a date set for argument, maybe the Court feels—

The Court: Suppose one of you gentlemen leave a copy of the transcript with me. After I get your motion I will read that and if I desire to hear oral argument, or in the meantime if either of you desire to be heard orally, I will hear it orally.

Note: At this point Court is adjourned.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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