

THE STATE OF TEXAS ::
COUNTY OF HARRIS ::

T H I S I N S T R U M E N T

this day executed by and between the Board of Penitentiary Commissioners of the State of Texas, hereinafter called party of the first part, and W. T. Eldridge of Bexar County, Texas, party of the second part,

W I T N E S S E T H

That for and in consideration of Five Dollars cash in hand paid by the party of the second part to the party of the first part, and the mutual promises and undertakings hereinafter set out, the party of the first part does hereby undertake to sell to the party of the second part, and the second party undertakes to buy at the prices herein named, all the sugar cane which may be raised on what is known as Ramsey Farm in Brazoria County, Texas, during this year and the year 1910, except such quantities of cane as the first party may choose to retain for seed, for replanting and extension of cane acreage; it being intended hereby to sell and deliver to the second party upon the terms and conditions herein stipulated, subject to the above exception as to seed cane, the entire crop now growing on said Ramsey Farm and the entire crop to be grown thereon during the year 1910.

The first party further agrees upon like consideration to sell and deliver to the second party all the sugar cane to be raised on said Ramsey Farm by the Penitentiary Department of the State of Texas, or under its direction during the years 1911, 1912 and 1913, except seed cane as above provided, unless said department should elect to grind its cane for its own account at a mill or mills owned or operated by the said department. This option to be exercised by the department for any year it may choose of the last named three years, without abrogating the contract as to any of the years which may remain;

but may exercise such option for each of the three last named years, if the first party or its successors in office may so elect. Provided, however, that in case the first party or their successors, should decide to grind the cane on its own account in any given year or years, it shall notify the second party or his assigns at least 60 days prior to October 15th, of the given year, of its purpose to refuse to deliver the cane to the second party for the given year.

The second party shall have the right for any one or more of the five years^{named} in this contract to refuse to take the cane for the given year by notifying the first party or its authorized agent in writing at least sixty (60) days before the 15th of October of the given year of his purpose not to take the cane for the given year, in which event this contract shall be thereby suspended for the given year, but not longer except upon like notice.

In consideration of the obligations of the first party as herein set out, and as the agreed purchase price of said cane, the second party agrees to pay to said first party, or its authorized agent three dollars per ton free on board the cars at Ramsey Farm, such tonnage to be ascertained by proper weighing at the mills of the Cunningham Sugar Company at Sugar Land, Texas, or the mill of the Imperial Sugar Company near Sugar Land, according to where the second party may choose to grind it. For the purpose of checking and verifying the weights, the first party may weigh same in advance at Ramsey Farm and may also have an agent, present at any other point where the weighing is to be done.

The cane thus sold may be loaded on the cars at any point on the line of railroad now running on or to be extended through Ramsey Farm at which the first party may choose to load same.

The flat price of \$3.00 per ton for said cane free on board the cars at Ramsey Farm shall be without reference to the

test of the cane or its product and said cane so to be delivered shall be paid for at Houston, Texas, on the first and 15th days of each month after delivery begins for each cane season.

Upon timely request, the first party shall begin cane shipments on October 25th of each year and shall have the right to deliver under this contract as much as four hundred tons per day, which the second party agrees to take and promptly furnish transportation for. And the first party shall have the right to begin cane shipments as early as November 1st of each year. The cane so to be delivered is to be cut not higher than the last red joint, to be reasonably free from trash, and in such condition in this respect as cane is usually received at the sugar mills in this State. The second party shall have the right to reject any cane which may have been materially damaged by frost or other causes to such an extent as to render it unmarketable; but this provision shall not be construed to mean that a low test disclosed by unimpaired cane shall authorize the second party to refuse to accept it, or that the test alone shall in any respect affect his obligation to accept same.

The second party is to furnish to the first party in due time according to the letter and spirit of this contract, such cars as are usually used in the transportation of cane, and in such number from time to time, as well enable the first party to load and ship the maximum tonnage per day as is allowed by the terms hereof, and shall transport the loaded cars to the mill and weigh out the cane with reasonable dispatch.

The first party shall have the cars racked at as low a cost as possible, the second party to bear one half the cost of racking same for this season. Such half of the cost to be payable as the cost is incurred and bills presented for same. After this cane season, the first party shall bear the entire

cost of racking cars.

In case, however, the first party or its successors elects to refuse to ratify this contract in so far as it relates to the seasons of 1911, 1912 and 1913, but chooses to exercise its option to grind the cane on its own account, then and in that event the sums paid by the second party as its share of the cost of racking cars, shall be refunded to him without interest.

Executed in duplicate.

Witness the hands of the parties this August 20th, 1909.

(Sgd)	<u>W H Gill</u>) Board of Penitentiary Commissioners
(Sgd)	<u>R H Hicks</u>	

(Sgd) W T Eldridge

LAW OFFICES OF
LANE, WOLTERS & STOREY
HOUSTON, TEXAS

JONATHAN LANE
J. F. WOLTERS
JAS. L. STOREY
LEE CAYARS
W. AVINSON
L. A. ADAMSON

Oct. 21, 1917.

Messrs. I. H. Kempner & W. T. Eldridge,
Sugar Land, Texas.

Gentlemen:

Answering your letter of October 11th, wherein you state, "The contract for the moving and handling of the Harlem cane is also submitted, with the understanding that you and Mr. Brahan will write Mr. Kempner and myself a letter stating that you will vote and recommend to the Prison Board that they donate the right-of-way, 100 feet in width, to the Sugar Land Railway when this extension is put under the jurisdiction of the Railway Commission, and also the necessary land for side tracks", we beg to say that we will, when the road on the Harlem farm is conveyed to an incorporated railroad company and put under the jurisdiction of the Railway Commission of Texas, vote to convey to said railway the right-of-way on said Harlem farm 100 feet in width, and also the necessary land for side tracks on said farm.

Yours very truly,

R. W. Curbell

R. W. Brahan

(204)

Houston Texas, Oct. 21, 1911.

Messrs. H. Kempner & W. T. Eldridge,
Sugar Land, Texas.

Gentlemen-;

Answering your letter of October 11th, wherein you state, "The contract for moving and handling of the Harlem case is also submitted, with the understanding that you and Mr. Brahan will write Mr. Kempner and myself a letter stating that you will vote and recommend to the prison Board that they donate the right-of-way, 100 feet in width, to the Sugar Land Railway when this extension is put under the jurisdiction of the Railway Commission, and also the necessary land for side tracks", we beg to say that we will, when the road on the Harlem farm is conveyed to an incorporated railroad company and put under the jurisdiction of the Railway Commission of Texas, vote to convey to said railway the right-of-way on said Harlem farm 100 feet in width, and also the necessary land for side tracks on said farm.

Yours Very Truly,

(Signed)

Ben. E. Cabell.

R. W. Brahan.

County of Harris } THIS CONTRACT made and entered into by
and between W. S. Eldridge, of Fort Bend County, Texas, and I. H.
Leupner, of Galveston County, Texas, parties of the first part,
and the Board of Prison Commissioners of the State of Texas, com-
posed of Ben E. Cabell, L. S. Fittie and R. W. Brahan, party of the
second part, WITNESSETH:

1.

That the parties of the first party hereby contract,
promise and agree to keep up and maintain the railroad now situated
on the Harlow Farm, in Fort Bend County, Texas, and owned by them,
for a period of five years from this date, and during said period
of five years to haul for the party of the second part, and their
successors in office, all of the cane grown on said Harlow farm
during said period, and to deliver the same at the sugar mill on
said farm, loaded on the cars. The parties of the first part shall
receive for hauling said cane the sum of Twenty-five (\$25) Cents
per ton, which the party of the second part hereby agrees to pay to
the said parties of the first part at Sugar Land, Texas. Said cane
shall be delivered by the party of the second part at convenient
points along said line of railroad, loaded on the cars. The said par-
ties of the first part shall furnish all cars necessary for the haul-
ing of said cane, and the party of the second part shall rack all of
said cars used in the hauling of said cane. Said cars shall be load-
ed by the party of the second part with fifteen tons of cane, which
shall be the minimum weight per car, and in the event any of said
cars are not loaded with fifteen tons, the party of the second part
shall, nevertheless, be liable to pay the parties of the first part
for hauling said car at the rate of fifteen tons.

2.

The party of the second part is to do all the work of grad-
ing, building and putting in any and all side tracks that are neces-
sary in the hauling of said cane at their expense,

provided that the parties of the first part are to furnish all steel, ties and other material necessary for the putting in of said side tracks. Provided, however, that the party of the second part is to pay the parties of the first part for all steel and ties so furnished at the reasonable market value thereof. Provided that in the event the parties of the first part should sell said railroad to an incorporated railroad company, or same should become a part of said incorporated railroad company, or common carrier, then the obligation on the part of the parties of the first party to maintain said railroad and to haul said cane shall be abrogated.

EXECUTED in triplicate, on this 21st day of October, 1911.

Attch
J. H. Applefield
Asst. Secretary



W. L. Fairidge

J. H. Applefield
parties of first part

Bur Cabene

Louis Dr. Sutte

R. W. Brohan
BOARD OF PRISON COMMISSIONERS
party of the second part

SUGAR LAND TEXAS.
OCTOBER 20, 1911.

Mr. Ben E. Cabell, Chairman,
Board of Prison Commissioners,
Huntsville, Texas.

My dear Sir:-

I am enclosing you herein, triplicate copies of the contracts that we propose to enter into with your Board, and you will note the changes, as follows:

Contract for hauling Harlem Cane:

Page 1, Article 1-

"and to deliver the same at the sugar mill on said farm loaded on the cars"

"party of the second part hereby agrees to pay to the said parties of the first part at Sugar Land, Texas"

"by the party of the second part at convenient points along said line of railroad loaded on the cars"

Contract for purchase of Ramsey Cane:

Page 2, 1st paragraph-

"and said cane so to be delivered shall be paid for at Sugar Land, Texas"

Lease Contract:

Page 2, Article 1-

"said sum to be paid as the crop on said premises is gathered and marketed, and not later than the 31st day of December each year"

"provided that the aggregate acreage to be cultivated shall not exceed 2500 acres"

Page 2, Article 2-

"now being worked on the premises herein to be leased at a price to be agreed on by the parties hereto, this option, however, to be exercised before the 1st day of December, 1911, and the said lessors shall also have the right to use the said lands until the crops now growing on the premises are all harvested"

Mr. Ben M. Cabell, Chairman, -2- 10-20-11.

Lease contract; Cont'd.
Page 3, Article 4-

"in the event of a disastrous storm
or flood over which the lessees have no control"

The above changes having been suggested by Mr.
L. H. Kempner.

And, so far as the leasing of the place is concerned,
that, of course, is submitted to you with the understanding
that we agree on the quantity and price of implements that
you will take off our hands.

The contract for the movement and handling of the
Harlem Cane is also submitted with the understanding that you
and Mr. Brahan will write Mr. Kempner and myself a letter,
stating that you will vote and recommend to the Prison Board
that they donate the right of way, 100 feet in width, to the
Sugar Land Railway when this extension is put under the juris-
diction of the Railway Commission, and also the necessary
land for side tracks.

We hope that the small changes we have made will
meet with your approval, and would be very glad to hear from
you on receipt of this.

Yours very truly,

Vice Pres & Gen Mgr.

E-3

Enclosures-

HILL & ELKINS,
ATTORNEYS AT LAW
HUNTSVILLE, TEXAS.

December, 1, '11.

Mr. W. T. Eldridge,
Sugarland, Texas.

At the request of Mr. B. E. Cabell, we send you herewith,
copies of the contract for the lease of the land in Fort Bend
County, as originally drawn by you.

You will notice certain interlineations and additions that
were made at the suggestion of the Attorney General, and
insisted on by the Govenor.

Yours very truly,

Hill Elkins

H-N

THE STATE OF TEXAS)

County of Harris)

KNOW ALL MEN BY THESE PRESENTS: That

we, W. T. Eldridge, of Fort Bend County, Texas, and I. H. Kempner, of Galveston County, Texas, and who are hereinafter called lessors, for and in consideration of the promises and undertakings on the part of the lessees hereinafter named, have entered into the following lease and contract with the Board of Prison Commissioners of the State of Texas, composed of Ben E. Cabell, L. W. Tittle and R. W. Brahan:

1.

The lessors do hereby lease unto the said lessees, for a term of two years, beginning on the first day of January, 1912, and ending on the 31st day of December, 1913, the following described lands and premises, to-wit:

All and singular all the cultivatable land contained in those certain several tracts and parcels of land in the Brown and Belknap and Alcorn leagues and lying south of the Southern Pacific Railroad Company's track, in Fort Bend County, Texas, containing approximately 3,042 acres, and known as a part of the Cunningham Sugar Plantation, and now owned by the Imperial Sugar Company; together with the prison building on said premises, the guards house, Manager's house, barns, cribs and out houses used in connection with the operation of said farm, and also the blacksmith shop situated thereon, provided that the blacksmith tools are not included therein. If the blacksmith shop above referred to is not situated within the lines of the premises above described, then the lessees shall have the right to remove the same within the boundaries of said plantation, or to occupy the same as now situated.

The term of this lease shall begin on the first day of January, 1912, and the lessees shall have the right to take possession of all lands included within said premises, provided that if on said date the lessors have not removed or harvested all of the cane or other crops growing on said plantation they shall have the right to retain possession of any lands upon which cane

or other crops are then growing until they have removed and harvested the same. This lease shall terminate on the 31st day of December, 1913, provided that if the lessees have not removed or harvested all of the cane or other crops growing on said premises on said date they shall have the right to retain possession of such of said lands upon which cane or other crops are growing and unharvested until the same are harvested.

In consideration of the lease of said premises as above stipulated, the lessees promise, bind and obligate themselves to pay to the lessors the sum of Six (\$6.00) Dollars per acre per annum for each acre of land on said premises suitable for cultivation for the lease of said premises; said sum to be paid as the crop on said premises is gathered and marketed, and not later than the 31st day of December each year.

It is expressly agreed that the lessees shall have the right to appoint some competent surveyor to survey out said land and ascertain the amount of land on said premises suitable for cultivation, and the lessees shall only be liable for Six Dollars per acre for the land ascertained to be suitable for cultivation. It being provided, however, that the lessors shall have the right to substitute and put in other lands of equal quality, adjoining the premises above described, provided that the aggregate acreage to be cultivated shall not exceed 2500 acres. In ascertaining the amount of land on said premises suitable for cultivation, all rivers, creeks, lakes, lagoons, railroad right-of-way not cultivated and marshes shall be excluded, but roads, turn rows and drainage ditches shall be included in said acreage. *The expense of making said survey shall be paid by the lessors*

2.

As a part of the consideration for this lease, the lessees shall have the right to purchase any mules owned by the lessors and now being worked on the premises herein to be leased at a price to be agreed on by the parties hereto, this option, however, to be exercised before the 1st day of December 1911, and the said lessors shall also have the right to use the said mules until the crops now growing on the premises are all harvested. And in the event that the

lessees decide to purchase said mules, they shall have the right to pay for same with two notes of the Board of Prison Commissioners, in equal amounts, one half thereof due in one year and the balance due in two years from the date of said sale, and bearing interest at the rate of 6 per cent. per annum from said date.

3.

It is understood that there are about 750 acres of land on said premises adjoining the cultivated land thereon which is now timbered and uncleared. With reference thereto, it is agreed that the State shall have the right to clear all of said land that it may desire, and that the lessors are to pay for the labor used in clearing said land and cutting the wood thereon the sum of \$1.00 per day per man used in clearing said land and cutting said wood. The wood so cut on said land is to be the property of the lessors. When said land is properly prepared for cultivation, the lessees shall cultivate the same, and shall pay to the lessors one-fourth of whatever crops are raised on said land. The lessees shall have the right to use any of the timber on said timbered land for fire wood for the camps on said premises, free of charge.

4.

In the event of a disastrous storm or flood over which the lessees have no control, and the crops ^{on any portion thereof} on said premises are destroyed thereby, then the lessees shall not be liable for the money rent for said premises as hereinbefore stipulated, but shall only be liable for one-fourth of all crops that may be grown on said premises during the year of said storm or other disaster.

5.

It is further agreed and stipulated that the lessees shall have the right, during any year, to pay one-fourth of the crops grown upon said premises in lieu of the money rent hereinbefore provided, provided that if they elect to exercise that right they shall notify the lessors of their election ^{to do} on or before the first day of August of the year in which they desire to make said election, and in the event they fail to so notify the lessors on or before the first day of August of such, year, then said right shall be forfeited.

6.

The lessees bind and obligate themselves to cultivate all of the lands now on said premises and suitable for cultivation in a first-class farmer like manner, and to keep open and in repair all of the drainage ditches thereon, ^{and to keep up} and all other improvements thereon, natural wear and tear excepted, and to keep down and prevent the spread of Johnson grass on said premises, so that at the end of this lease said Johnson grass has not spread over greater area than that now occupied by it, provided that this stipulation shall not apply to Johnson grass on the railroad right-of-way.

7.

The East and North sides of said premises are now fenced, and shall be maintained by the lessees, with the understanding that if any new material is needed to maintain and keep up said fences the same shall be furnished by the lessors. The South and West sides of said premises are unfenced, and if it ^{in the judgment of the lessees} becomes necessary to fence same in order to protect the crop on said premises from depredations by stock, said fences on said South and West sides are to be constructed at the expense of the

lessors, and thereafter to be maintained by the lessees. ^{If the lessors shall fail to construct said fences when demanded by the lessees, then the lessees shall have the right to construct said fences and charge the cost thereof against the lessors.}
The lessees shall keep up, at their expense, the bridges and culverts on said premises, and shall use for so doing the timber on said place, provided that if the lessors shall desire any of said bridges or culverts constructed of lumber or material not grown on the place, it shall be furnished by said lessors, at their expense.

8.

As a part of the consideration for the promises and undertakings on the part of the lessees herein, it is agreed that said lessees shall have the right and option to purchase said lands above described, and more particularly described and referred to in "Exhibit A" hereto attached and made a part

hereof, for the sum of \$150.00 per acre, upon terms to be agreed upon by the parties hereto hereafter. This option and right to purchase shall continue and be in force for eighteen months from the first day of January, 1912.

9.

Provided that all the provisions of this contract shall be performed at Sugar Land, in Fort Bend County, Texas.

EXECUTED in triplicate, on this _____ day of October, 1911.

Lessors

BOARD OF PRISON COMMISSIONERS
Lessees

THE STATE OF TEXAS }
County of Harris }

THIS CONTRACT made and entered into by and between W. T. Eldridge, of Fort Bend County, Texas, and I. H. Kompner of Galveston County, Texas, parties of the first part, and the Board of Prison Commissioners of the State of Texas, composed of Ben B. Cabell, L. W. Fittle and R. W. Brahan, party of the second part,
WITNESSETH:

1

That the parties of the first part hereby contract, promise and agree to keep up and maintain the railroad now situated on the Harlen Farm, in Fort Bend County, Texas, and owned by them, for a period of five years from this date, and during said period of five years to haul for the party of the second part, and their successors in office, all of the cane grown on said Harlen farm during said period, and to deliver the same at the sugar mill on said farm, loaded on the cars. The parties of the first part shall receive for hauling said cane the sum of Twenty-five (25) Cents per ton, which the party of the second part hereby agrees to pay to the said parties of the first part at Sugar Land, Texas. Said cane shall be delivered by the party of the second part at convenient points along said line of railroad, loaded on the cars. The said parties of the first part shall furnish all cars necessary for the hauling of said cane, and the party of the second part shall rack all of said cars used in the hauling of said cane. Said cars shall be loaded by the party of the second part with fifteen tons of cane, which shall be the minimum weight per car, and in the event any of said cars are not loaded with fifteen tons, the party of the second part shall, nevertheless, be liable to pay the parties of the first part for hauling said car at the rate of fifteen tons.

2

The party of the second part is to do all the work of grading, building and putting in any and all side tracks that are necessary in the hauling of said cane at their expense, provided that the parties of the first part are to furnish all steel,

ties and other material necessary for the putting in of said side tracks. Provided, however, that the party of the second part is to pay the parties of the first part for all steel and ties so furnished at the reasonable market value thereof. Provided that in the event the parties of the first part should sell said railroad to an incorporated railroad company, or same should become a part of said incorporated railroad company, or common carrier, then the obligation on the part of the parties of the first part y to maintain said railroad and to haul said cans shall be abrogated.

EXECUTED in triplicate, on this 21st day of October, 1911.

ATTEST:

J. W. Stubblefield,
Asst. Secretary.

(SEAJ)

W. T. Eldridge, (signed)

I. H. Kemmer, (signed)
Parties of the first part

Ben H. Cabell, (signed)

Louis W. Tittle (signed)

R. W. Brahan, (signed)
BOARD OF PRISON COMMISSIONERS
Party of the second part

Copy

Harlem Contract

Oct. 21. 1911

(copy)

Huntsville Texas, May 7, 1912.

Mr. Jonathan Lane,
Houston, Texas.

Dear Sir:-

Your letter of April 16th came duly to hand, but a reply has been delayed on account of the absence of the several members of the Commission from their offices.

While your letter is addressed to the Prison Commission, its subject matter refers to an agreement that was made by Messrs. Cabell and Brahan individually, and which was not the act of the Commission; hence we reply individually and not as the Commission.

Replying to your request that the Commission execute a deed to a right-of-way across the Harlem State Farm, we beg to say that we have not presented the matter to the Commission and, as the expenses incident to building a certain railroad extension and side track across the Harlem State Farm is now in litigation, we prefer not to present this matter to the Commission, or have the Commission take any action with reference thereto until the litigation is terminated.

In addition to this we are not satisfied that the Sugarland Railroad Company has met the condition of our promise with respect to this extension across the Harlem State Farm. Our promise to recommend to the Prison Commission and the Governor to make a deed to the right-of-way, to the Sugarland Railroad Company across the Harlem State Farm, was based upon the condition that said railroad extension should be a part of a common carrier and should be under the jurisdiction of the Railroad Commission. We are not satisfied that this has been done. On the contrary, the reports that come to us are to the effect that the railroad extension mentioned in your letter is not performing the functions of a common carrier, but that its services is entirely unsatisfactory in every respect.

Yours truly,

Ben E. Cabell
(signed)
R. W. Brahan

(copy)

May 10, 1912.

Board of Prison Commissioners,
Huntsville, Texas.

Gentlemen:

Yours of the 7th inst., signed by Messrs. Cabell and Brahan of your Board, received this morning.

I was in hopes that you would, in a cheerful and proper manner, carry out the express promise of two of your Board, including your Chairman, and convey the right-of-way requested.

The reasons assigned for not performing your agreement, it seems to me, are trivial and without weight, -mere subterfuges- indicating a lack of purpose to comply with your promise.

We, of course, know that Messrs. Cabell and Brahan do not constitute the entire Board, as suggested by you, but we know they do constitute two-thirds of it, and could have, if they wanted to, put through a resolution to do as they promised to do.

The Sugar Land Railway is a railroad corporation; is under control of the Railroad Commission, and by every law of Texas and by the common law is a common carrier, and bound to perform the duties as such, -your statement to the contrary notwithstanding. The mere fact that Mr. Eldridge desires you to pay for a track which you agreed to pay for, and insists upon your doing so, is no reason why you should not carry out your promise in this matter. Since, however, you decline to do so, we will have to endeavor to take some other course to secure the rights of the Railway Company.

Yours truly,

JL-EGB.

No. 4126

The Prison Commission

vs

The Imperial Sugar Company.

Tried in the District Court of Walker County, Texas, at the
September Term, A. D. 1912.

Asst. Attorney General Crawford

Asst. Attorney General Weade,

Hill & Elkins,

E. A. Berry,
Attorneys for Plaintiff.

Jonathan Lane

M. E. Kleberg

Dean, Humphrey & Powell,
Attorneys for Defendant.

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THE PRISON COMMISSION
VS. NO. 4126
THE IMPERIAL SUGAR COMPANY #

IN DISTRICT COURT, WALKER COUNTY, TEXAS

SEPTEMBER TERM, A. D. 1912.
#

BE IT REMEMBERED that the following are the facts and all the facts adduced in evidence upon the trial of the above entitled and numbered cause

My name is J. A. Herring. In the year 1910, I held the position of Superintendent of the State Penitentiaries: I held that position from January 1907 to January 26, 1911. Q. The defendant in its answer in this case sets up a claim of \$961.57 for building a track described on this map here and referred to as a curve? A. That is the connection between the railroad and the spur that runs from the Southern Pacific Railroad to Harlem. That connection was made when I went in office, and it belonged to the Imperial Sugar Company, and was built by the company. I did not have it constructed: I agreed to its construction. I did not agree to pay for it.

THE DEFENDANT OBJECTED TO THIS TESTIMONY AS UTTERLY IRRELEVANT AND IMMATERIAL, BECAUSE THE PROPERTY DID NOT AT THAT TIME BELONG TO THE STATE, AND BECAME THE PROPERTY OF THE STATE AFTER THE WITNESS WENT OUT OF OFFICE, AND THEREFORE HIS TESTIMONY HAS NO RELEVANCY TO THE ISSUE IN THIS CASE.

Q. Was there ever any agreement on the part of the Superintendent or the prison system while you were in office to buy this track or pay for it?

THE DEFENDANT OBJECTED TO THIS QUESTION BECAUSE THE TESTIMONY CALLED FOR IS IRRELEVANT AND IMMATERIAL, - WHICH OBJECTION WAS BY THE COURT SUSTAINED.

CROSSED BY DEFENDANT:

During the time I was Superintendent, I had no trouble with the labor at my command in complying with the contracts that the State engaged in to cultivate farms. At times there was a scarcity of labor and we didn't have labor to do everything that we would have liked to do. We complied with the contracts. We succeeded in harvesting the crops fairly well: at times we didn't have in

work the crop as rapidly as we would have liked to do. We did work them finally in a farmer-like manner and get good results. This piece of track is located on the State's land. I suppose a majority of the business that the railroad did was the State's business. Some of it was not the State's business: some of it was the rice farmers at Harlem. The State had a sugar mill a short distance from this track. I was Superintendent at the time the State leased the Cunninghamham Share Farm. As Superintendent of the Penitentiaries, I was the official to whom it was turned over by the Imperial Sugar Company. On the main turnrows that I traveled, they were in fairly good condition, but it is a large place and I couldn't say what the conditions were all over the place. As far as I know, it was in good condition. When I turned the place over to Commissioners Tittle, Cabell and Brahan, I think they were still in good condition, as I received them.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY AS TO THE TURNROWS AND BRIDGES BECAUSE THERE IS NO PROVISION IN THE CONTRACT THAT THE STATE SHALL BE REQUIRED TO KEEP THEM UP.

During the first year of the occupancy of the State of that farm, new quarters were built there: they were finished sometime in the summer of that year. They were good quarters,- probably the best in the State at that time and they were brand new. I do not know what they cost.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE IT IS IMMATERIAL.

So far as I know, those quarters were in good condition when I turned them over to Messrs. Cabell, Tittle and Brahan. I was there with Mr. Tittle and Mr. Brahan a few days before I went out of office. I did not see anything the matter with them then: they were in good condition. We had some cane frozen the last year that I was Superintendent?- 1910. I suppose we probably had some cane frozen each year: I don't remember to what extent, but we lost some cane the last year. The cane was lost: we didn't get off in time. I believe we ground it all up. It was ruined by reason of the freeze. That depends largely on the conditions: if you get it off before it melts too badly, you can make sugar out of it. The freeze injures it

some but if it is gotten off before hot weather returns, it don't injure it so much, but if you wait until hot weather comes and it sours, it destroys it largely. It could not be used after it sours. I mean we worked it up at a loss. If you take cane that has been frozen and you permit it to stay there until it is warm and the juice in it sours and the saccharine substance in it is destroyed, - under those conditions, I think it would be worth nothing. It might be made into a low grade syrup. I don't think it would have any value in that shape. It would already be vinegar practically. I didn't have any cane that was frozen and on the ground and not taken off.

Q. Take this ribbon cane, frozen cane, and stack it up as it is out, could you burn it?

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE IT IS IM-MATERIAL.

THE COURT: I WILL HEAR THE TESTIMONY AND PASS ON THE OBJECTION LATER.

A. You couldn't burn it at that time: you would have to dry it out before you could burn it. It would take probably six months for it to dry out. You couldn't plow it under if you had any to amount to anything. The usual way to get rid of it, the usual custom is to pile it in one out of seven or eight rows and leave it there that season and burn it out the next fall. I don't think you could burn it or plow it up. As to the number of rows that you could pile in one row would depend entirely on the amount of cane to the acre. For an eighteen ten crop, it would be about one sixth. If you did that, you would lose one sixth of your land for the next year.

RE-DIRECT BY THE PLAINTIFF:

The freight that was hauled over this track for the State was hauled by the Sugarland Railway Company and paid for by the State. There were some rice farms near Harlem that loaded their rice at that place too. I don't think that road was chartered as a common carrier, but I am not sure. It did the business of a common carrier and accepted freight from anybody that tendered it. This cane that is piled in the rows wouldn't interfere with the cane in all of the oth-

er six rows, but it would interfere with the cane near by. I don't think you could pile it up if you had as large a crop as 18 tons to the acre. A large crop would necessarily take up more rows. You might grow some cane on each side of where that cane is piled in, but you couldn't cultivate it on these sides. You could cultivate it on the off side, but it wouldn't make much cane.

RE-CROSSED BY THE DEPENDANT.

The cane would probably grow on both sides, but you wouldn't make much cane. I do not know how many cent acts with Dew Bros. were to be furnished when I went out of office except by the prison records.

The Plaintiff offered in evidence a Contract between J. A. Herring, Superintendent, A. M. Barton, Financial Agent, and The Imperial Sugar Company, as follows:

The State of Texas,
County of Walker.

This agreement made and entered into by and between J. A. Herring, Superintendent, and A. M. Barton, Financial Agent of the Texas State Penitentiaries, parties of the first part, and hereinafter designated as the State, and the Imperial Sugar Company, of Fort Bend County, Texas, parties of the second part, WITNESSETH:

1. That this is an agreement between the said parties to work on the share system, with convict labor, a farm in Fort Bend County, Texas, known as the Sugar Land Plantation, for a term of Two (2) years, commencing February 1st, 1910, and ending December 31st, 1911, and subject to the conditions hereinafter named in this contract.

2. For the purpose of operating said farm on said share system, the State agrees to perform and furnish as follows:

(1) The labor and services of two hundred and fifty (250) or more, (as can be furnished by the State) convicts belonging to the Texas State Penitentiaries, who are to be White, Mexicans and Negroes and who can under the Penitentiary rules, be so contracted to work outside of the Penitentiary wall.

(2) To appoint and pay a Sergeant and a sufficient number of guards to keep securely said convicts and to maintain amongst them proper industry and good discipline: also to feed and board said Sergeant and Guards.

(3) To clothe and feed said convicts in accordance with the rules and regulations of the Penitentiaries: to furnish them with bedding, tobacco, with medicines and medical attention.

(4) To furnish cooking stoves, lamps, oil, and table furniture for Sergeants, guards, and convicts, and in short, to furnish everything necessary and incidental to the management and keeping of said convicts not especially contracted to be performed by said parties of the second part.

3. The parties of the second part agree to perform and furnish as follows:

(1) To furnish about 7,000 acres of land on the said Sugarland farm in Fort Bend County, comprising such land only as lies South of the G. H. & S. A. R. R. already cleared, fenced and in good state of cultivation, and sufficiently near the Prison buildings to be conveniently worked therefrom. The land so furnished to be cultivated and planted as follows, to-wit:

About 3,000 or 3,500 acres in cane, planted and to be planted, about 2000 acres in cotton, and the balance to be planted in such other crops as may be agreed upon.

(2) To furnish sufficient teams of good strong mules with which to cultivate the land, not less than one mule to every twenty acres of land, and to provide and keep on hand a sufficiency of forage with which to keep said mules in good condition while engaged in the cultivation of said land.

(3) To furnish and have kept in good repair a sufficient number of wagons, plows, hoes and other farming implements, all of the best kind, necessary in the preparation of said land and in the cultivation, harvesting and marketing of the crops grown thereon.

(4) To furnish the necessary Gin house, Gin, Cotton Press, Grist Mill and steam power to run same: also such skilled labor as may be necessary in operating said machinery: but it is understood that one-half the wages on one Engineer is to be paid by the State.

(5) In case it becomes necessary to work the convicts by far away from the building that it is inconvenient to return to their meals, or to secure shelter, during rain or bad weather, it shall be the duty of the parties of the second part to provide necessary shelter for their protection.

(6) To grind into meal for the guards and convicts such corn as may be furnished by the State for that purpose.

(7) To furnish such horses and saddles, and feed such horses free of expense to the State, as may be required by the Sergeant and guards in the discharge of their duty.

(8) To furnish transportation for convicts and supplies to and from the railroad depot.

(9) To provide good comfortable quarters for the Sergeants and guards convenient to the prison houses, also good prison houses, Hospitals, Dining Rooms, and Kitchens for the convicts, as is prescribed by the rules: the plan and location for all such buildings to be approved by the Superintendent of the Penitentiaries. All windows and doors in said buildings and in quarters furnished for the Sergeants and guards to be covered with wire screens to protect the occupants against flies and mosquitoes.

(10) To furnish necessary wood for fuel for the camps.

(11) To furnish necessary heating stoves for Prison Building, Dining Room and guards quarters, and to keep same in good repair.

(12) To furnish lime for sanitary and buildings purposes, and to have buildings whitewashed outside at least twice a year and the inside once a month.

(13) To furnish sufficient land necessary for garden and truck patches on which to raise vegetables for convicts and guards, the seed to plant same to be furnished by the State, but it is hereby understood that the seed for planting the crops on the said farm is to be furnished by the said parties of the second part.

(14) To furnish the wagons and teams for hauling the State's share of the crop to the nearest railroad shipping station.

(15) To furnish storage for the State's supplies at the convict camp, and for the State's share of the crop until disposed of.

(16) It is hereby understood that the bagging and ties, twines, etc. for the baling of the cotton shall be furnished proportionately by both parties.

4. The Crop of cotton, cotton seed, corn, cane, Irish Potatoes, hay, and all other products of whatever description, raised on said land by said convict force (except in the garden and truck patches where the seed is furnished by the State) when gathered and ready for the market shall be divided between the State and the parties of the second part, viz: The State to receive 50% of the cane and Irish Potatoes and the parties of the second part to receive 50%: the State to receive 60% of the cotton, corn and hay, and the parties of the second part to receive 40%: such division to be made either of the products themselves or of the net proceeds after sale, as may

7.

be agreed upon by the Financial Agent of the Texas State Penitentiaries and the said parties of the second part.

5. It is further agreed that on the 10th of each month the said parties of the second part shall pay to the Financial Agent of the Penitentiaries all Running expenses that have been advanced during the preceding month by the said Financial Agent for the purpose of maintaining work and guarding said convict force: such amount not to exceed sixteen dollars per month per man for the convicts employed on said force, said amounts to be repaid to the parties of the second part with interest at the rate of six (6%) per cent per annum out of the proceeds of the State's share of the crop as soon as said crop is marketed.

6. It is agreed that the convict labor herein contracted shall be used in the preparation of said land, and the planting and cultivating and harvesting of the crop worked on shares, for keeping fences, ditches, Prison Quarters, and the farm buildings in proper repairs, for feeding and taking care of farm teams and guards horses, for driving farm teams and for ginning crops and hauling same to the depot: in short, for doing all such work as is incidental to the making, gathering and marketing of said crops. And it is further agreed that if the parties of the second part desire to use said force, or any part thereof, for making permanent improvements, or for doing any other work on this farm, or elsewhere not above mentioned, the consent of the Superintendent of the Penitentiaries must be first had and the said parties of the second part shall pay One (\$1.00) Dollar per day per man for such labor to the Financial Agent of Penitentiaries, provided the crop shall not be neglected for the extra work.

7. It is agreed that if a larger crop of cotton is made on this place than can be gathered by the average force of convicts who cultivate it, and it shall become necessary to employ free labor to gather said crop, then the expense of such free labor shall be borne by the parties hereto in proportion to their interest in the crop, but no such expense shall be incurred unless approved by the Financial Agent of the Penitentiaries.

8. It ~~xxxxx~~ the termination of this contract by limitation or otherwise, the said convicts and camp property belonging to the State are to be returned to the nearest penitentiary, or to such other place as may be designated by the Superintendent of penitentiaries, not further than the nearest penitentiary by rail, at the expense of said parties of the second part.

9. The Penitentiary officials shall have entire control of the discipline and treatment of the convicts, and it is their duty and especially the duty of the Sergeant and the guards in charge to require that each and every convict herein contracted, when physically able, in proper hours and suitable weather, shall do and perform good and sufficient work.

10. The Superintendent of the Penitentiaries shall have the right to remove any convict of said force, but shall, if necessary, supply his place with another convict, if the force is under the number contracted.

11. The said parties of the second part hereby agrees to give to the party of the first part, within ten days after the execution of this contract, his bond in the sum of Twenty-five Thousand (\$25,000.00) Dollars with two or more good and sufficient sureties, conditioned upon the faithful performance of same.

12. It is further agreed that the parties of the second part shall put in at once, and keep in good repair, a Long Distance Telephone connection with the Prison Buildings.

13. The parties of the second part shall purchase such number of cultivators, and other modern labor saving implements and machines as, in the judgment of the Superintendent of the Penitentiaries, are necessary to the proper and economical cultivation of said farm.

14. The parties of the first part agrees to sell to the parties of the second part all of its share of the cane raised on the said Sugar Land Plantation, and the parties of the second part agree to pay for said cane at the rate of Three Dollars and Twenty-Five Cents (\$3.25) per ton, regardless of test, loaded on the cars either on the Sugarland Railroad or spurs running out from said Sugarland Railway, or on the Tram Road which is now in operation on said Sugar Land Plantation. The cane so to be delivered is to be cut not higher

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than the last red joint, to be reasonably free from trash, and in such condition in the respect as cane is usually received at the sugar mills in this State. The second party shall have the right to reject any cane which may have been materially damaged by frost or other causes to such an extent as to render it unmarketable; but this provision shall not be construed to mean that a low test disclosed by unimpaired cane, shall authorize the second party to refuse to accept it, or that the test alone shall in any respect affect his obligation to accept the same. If the cane is delivered by the parties of the first part on the tram road, the parties of the second part agrees to furnish a Locomotive and fuel for same and to keep said Locomotive in good running condition for the use of the parties of the first part in delivering said cane to the Sugar Mill of the said Imperial Sugar Company. Where delivery of cane is made on the standard cars of the Sugarland Railway, the said parties of the second part agrees to furnish said cars in good condition and keep in good condition free of expense to the State.

15. The parties of the second part agrees and obligates themselves to receive from the parties of the first part an average of 650 tons of cane per day, providing the parties of the first part desire to deliver this amount of tonnage; and it is agreed and understood by the parties hereto that sufficient cars to be furnished by the parties of the second part for the delivery of 650 tons per day, but delivery of cane shall not begin before October 25th, except with the consent of the parties of the second part.

16. The parties of the first part are to have the right to employ some person of its own selection to be present during the time the cane is being delivered for the purpose of weighing said cane and otherwise looking after the State's interest in such respects as the parties of the first part may determine.

17. The amount due the parties of the first part for their share of the cane crop by the parties of the second part shall be payable to the Financial Agent of the Penitentiaries, at Huntsville, Texas, and shall be paid in the following manner, to-wit:
The parties of the second part shall remit the Financial Agent of the

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PENITENTIARIAL COMMISSION RECORDS 1 of 2
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Penitentiaries on the 10th of each month following the date of the delivery in the preceding month for all cane delivered during the month preceding the date of payment: and they shall pay interest at the rate of 6% per annum on all deferred payments.

18. It is distinctly agreed and understood that this contract is made subject to all provisions of the laws, rules and regulations now in force, and hereafter to be passed, regulating and organizing the management of the Penitentiaries and the convicts therein or belonging thereto, and especially subject to the provisions of Art. xv, Art. xx and Art. XVIII of the rules and regulations of the Penitentiaries.

Witness our hands, this the 2nd day of February, A. D. 1910.

IMPERIAL SUGAR COMPANY
By D. W. Kempner, President.
(Signed) Parties of 2d part.

J. A. Herring, (signed)
Supt.

A. M. Barton, (signed)
Financial Agent.

Approved 2/16/1910

W. H. Gill)
R. H. Hicks) PENITENTIARY COMMISSIONERS.
Walter Tips)

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The Plaintiff offered in evidence contract between the Board of
Prison Commissioners and the Imperial Sugar Company, as follows:

THE STATE OF TEXAS :
COUNTY OF HARRIS :

THIS INDENTURE, this day executed by and be-
tween the Board of Prison Commissioners of the State of Texas, com-
posed of Ben R. Cabell, L. W. Tittle, and R. W. Brahan, and herein-
after called party of the first part, and the Imperial Sugar Company,
a body corporate, of For& Bend County, Texas, hereinafter called the
party of the second part, WITNESSETH:

That for and in consideration of Five (\$5.00) Dollars cash in
hand paid by the party of the second part to the party of the first
part, and the mutual promises and agreements hereinafter set out,
the party of the first part does hereby undertake to sell to the
party of the second part, and the party of the second part agrees
and promises to buy, at the price herein named, all of the sugar cane
which may be raised on what is known as the Ramsey Farm, in Brazoria
County, Texas, during the year 1911, except such quantity of cane as
the first party may choose to retain for seed for replanting and ex-
tension of cane acreage: it being intended hereby to sell and deliver
to the second party upon the terms and conditions herein stipulated,
subject to the above exception as to seed cane, the entire cane crop
now growing on said Ramsey Farm during the year 1911.

In consideration of the obligations of the party of the first
part, as hereinabove set out, and as the agreed purchase price of
said cane, the party of the second part agrees and promises to pay
to the party of the first part, or its authorized agents, Three
(\$3.00) Dollars per ton free on board the cars at the Ramsey Farm,
such tonnage to be ascertained by proper weighing of said cane at
convenient points. For the purpose of checking and certifying the
weights, the party of the first part may weigh said cane in advance
at the Ramsey Farm and may also have an agent present at any other
point where the weighing is to be done. The cane thus sold may be
loaded on the cars at any point on the line of railroad now running
on or through the Ramsey Farm at which the party of the first part
may choose to load same.

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The flat price of \$3.00 per ton for said cane free on board the cars at Ramsey Farm shall be without reference to the test of the cane or its product, and said cane so to be delivered shall be paid for at Sugarland, Texas, on the first and 15th days of each month after deligery begins for the cane season.

The party of the first part shall begin cane shipments by the 25th day of October, 1911, and shall have the right to deliver, under this contract, as much as 250 tons per day, which the second party agrees to take and promptly furnish transportation for. The cane so to be delivered is to be cut no higher than the last red joint, to be reasonably free from trash and in such condition in this respect as cane is usually received at sugar mills in this State. The party of the second part shall have the right to reject all cane which may have been unusually damaged by frost or other cause to such an extent as to render it unmarketable: but this provision shall not be construed to mean that a low test disclosed by them in testing cane shall authorize the party of the second part to refuse to accept it, or that the test alone shall in any respect affect its obligation to accept the same.

The party of the second part is to furnish to the party of the first part, in due time, according to the letter and spirit of this contract, such cars as are usually used in the transportation of cane, and in such numbers from time to time as will enable the party of the first part to load and ship the maximum tonnage per day, as is allowed by the terms hereof, and shall transport the loaded cars to the mill and unload and weigh up the cane with reasonable dispatch.

AND WHEREAS, by separate contracts, the parties hereto have agreed upon the purchase and sale of the cane grown on the Imperial State Farm and the Imperial Sugar Company's share farm, known as the Cunningham place, and the party of the second part has agreed in said contracts to grind more than 500 tons of cane from said farms per day:

NOW, it is hereby agreed that said contracts are modified in so far as the grinding of the cane therein stipulated so that the
13. aggregate tonnage of cane that said party of the second part shall

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be required to grind per day shall not exceed 750 tons per day from the said two farms and said Ramsey Farm: it being understood that in the event the party of the second part should be unable to grind cane from any one or more of said farms, then the party of the first part shall have the right to deliver the aggregate of 750 tons per day from the other farms.

It is further agreed and stipulated that if the party of the second part shall be unable to grind 750 tons of cane per day from said three farms, then the party of the first part shall have the right to mill and grind said cane at any mill it may choose, and in that event the party of the second part agrees that it will have said cane hauled by I. H. Kempner and W. T. Eldridge and the Sugarland Railway, over the roads owned by said I. H. Kempner and W. T. Eldridge and the Sugarland Railway, and tendered to their connecting carriers in standard guage cars, except that they shall not be required to deliver any cane at Anchor, at a rate equal to the rates fixed by the Railroad Commission for a haul of a like distance: it being expressly agreed that the party of the second part shall furnish its cars to carry said cane to the point of delivery thereof chosen by the party of the first part: it being understood that the cars shall be racked by the party of the first part.

EXECUTED in triplicate, on this 21st day of October, 1911.

Ben E. Cabell

Louis W. Tittle

R. W. Brahan

BOARD OF PRISON COMMISSIONERS,
Party of the first part.

SEAL OF

PRISON COMMISSION

ATTEST:

J. E. Stubblefield,

Asst. Secretary.

IMPERIAL SUGAR COMPANY

By W. T. Eldridge

Vice-Pres. & Gen'l Mgr.

Party of the Second Part.

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The Plaintiff offered in evidence Deed and Contract between the Imperial Sugar Company and the State of Texas, dated the 17th day of February, 1908, and a contract dated the 11th day of March, 1908, signed by the Board of Penitentiary Commissioners.

THE DEFENDANT OBJECTED TO THE INTRODUCTION OF THE DOCUMENT RAILED A CONTRACT, BECAUSE IT IS IRRELEVANT TO ANY ISSUE IN THE CASE, - IT BEING MERELY A RECOGNITION OF THE OBLIGATION TO THE STATE OF THE IMPERIAL SUGAR COMPANY AND HAS NOTHING TO DO WITH THIS CASE, - WHICH OBJECTION WAS BY THE COURT OVERRULED, AND TO THE RULING OF THE COURT THE DEFENDANT IN OPEN COURT EXCEPTED.

Said deed is as follows:

THE STATE OF TEXAS,
COUNTY OF HARRIS.

KNOW ALL MEN BY THESE PRESENTS: That the Imperial Sugar Company, a private corporation, incorporated under and by virtue of the laws of the State of Texas, and with its place of business and general office at Sartartia, Fort Bend County, Texas, and acting herein by authority of a resolution, legally passed at a meeting of its board of directors, held on the 17th day of February, A. D. 1908, and by and through its President, and hereinafter called the "Company" for convenience, and for the consideration hereinafter fully expressed to it, the Company, to be paid by the State of Texas, acting herein by the Board of Penitentiary Commissioners of the State of Texas, and for the use and benefit of the State of Texas, in fee simple, and hereinafter for convenience, referred to and called the "Board".

Have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto W. H. Gill, R. H. Hicks, and J. T. Mewshaw, composing the said Board, for the use and benefit of the State of Texas, in fee simple, all the following described tracts or parcels of land, personal property, chattels, etc., to-wit:

All the lands constituting, forming and being a part or parcel of what is known as the Sartartia Plantation, situated in Fort Bend County, Texas, being the plantation formerly belonging to the estate of L. A. Ellis, deceased, and situated near the station of Sartartia,

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and containing Five Thousand Four Hundred and Thirty-five (5435) acres of land, more or less, and being the same land conveyed to said Imperial Sugar Company by Mrs. Amanda M. Ellis, Mrs. Olive Graves Ellis and Leigh Ellis, by deed dated November 23rd, 1907, which deed is hereby referred to for description: said land is part of the Alexander Hodge and Mills M. Battle Leagues and all the Alexander Hodge Labor in said Fort Bend County, Texas, on the north side of and fronting on the Brazos River: and for more definite description of said land reference is here made to the Deed Records of Fort Bend County, Texas, and to various deeds of conveyance to said L. A. Ellis, deceased, recorded therein, as follows, to-wit:

1st. Deed from J. F. Dyer to L. A. Ellis, dated September 1st, 1881, recorded in Book N on pages 581 to 584, conveying 1553 acres of land, more or less.

2nd. Deed from F. C. Dunlavy to L. A. Ellis, dated January 5th, 1882, recorded in Book O, in pages 14 and 15, conveying 366 ~~xx~~ 2/3 acres of land, more or less.

3rd. Deed from J. E. Williams and Rosa Williams to L. A. Ellis, dated June 9th, 1884, recorded in Book Q, pages 213 and 214, conveying 465 acres of land, more or less.

4th. Deed from J. D. Freeman and wife, Rosa L. Freeman to L. A. Ellis, dated October 16th, 1882, recorded in Book O, pages 511 to 513, conveying several small tracts of land, aggregating 225.67 acres more or less.

5th. Deed from J. D. Freeman and Mrs. N. E. Nichols to L. A. Ellis, not dated but acknowledged March 21st, 1882, recorded in Book O, pages 149 and 150, conveying 33.28 acres of land, more or less.

6. Deed from E. B. Lomax and wife, Jodie Lomax to L. A. Ellis, dated December 13th, 1883, recorded in Book P, pages 498 and 499 conveying eight acres of land, more or less.

7th. Deed from Mrs. M. A. Secrest to L. A. Ellis, dated December 15th, 1882, recorded in Book O, pages 560 and 561, conveying 56 acres of land, more or less.

8th. Deed from A. G. Secrest to L. A. Ellis, dated October 14, 1882, recorded in Book O, pages 454 et seq. conveying 88 1/2 acres of land, more or less.

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9th. Deed from J. D. Freeman and wife, Rosa L. Freeman to L. A. Ellis, dated July 17th, 1880, recorded in Book N, pages 34 et seq. conveying 2578.2 acres of land, more or less.

10th. Deed from Albert Ganaway and wife, Pauline Ganaway to L. A. Ellis, dated February 1893, recorded in Book Z, pages 12 to 14, conveying six acres of land, more or less.

11th. Deed from F. C. McHesse and wife, P. W. McHesse to L. A. Ellis, dated September 23rd, 1885, recorded in Book R, pages 86 to 89, conveying _____ acres of land, more or less.

12th. Deed from Julia Murray to L. A. Ellis, dated September 8th 1880, recorded in Book S, page 41, conveying 5 1/2 acres of land, more or less.

13th. Deed from E. A. Stansbury and husband, G. A. Stansbury, et al to L. A. Ellis, dated March 20th, 1882, recorded in Book O, pages 71 and 72, conveying 354 acres of land, more or less.

14th. Deed from Mrs. E. A. Stansbury and husband and others to L. A. Ellis, dated December 18th, 1882, recorded in Book Z, pages 499 et seq, conveying 200 acres of land, more or less.

15th. Deed from W. B. Freeman to L. A. Ellis, dated November 25th, 1882, recorded in Book P, pages 264-266, conveying 430 acres of land, more or less.

16th. Deed from John M. Moore and wife, Lottie Moore and N. M. Dunlavy and wife, Clara A. Dunlavy, to L. A. Ellis, dated October 5th 1885, recorded in Book R, pages 89 to 92, conveying 25 acres of land, more or less.

There is excepted from the above described tracts, however, and not conveyed hereby, the following several described tracts of land, to-wit:

(a) A tract of land 1000 acres, part of the Mills M. Battle League, conveyed to L. A. Ellis and his wife, Amanda M. Ellis to his daughter Pink Owen Turner, by deed dated and acknowledged October 23rd, 1896, and recorded in Book 6, pages 228 to 231, Deed Records of Fort Bend County, Texas:

(b) The right of way and depot grounds conveyed by L. A. Ellis to the Galveston, Harrisburg and San Antonio Railway Company, by deed dated April 24th, 1889, recorded in Book V, page 226, Deed records of said County.

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(a) A tract of land containing 213.55 acres described as following, to-wit: Beginning at an iron pipe for corner in the line between the Ellis and Cunningham Plantations, it being the line between the Williams and Hodge Leagues or surveys in Fort Bend County, Texas, said beginning corner is 65 ft. north of the intersection of the center line of the main track of the G. H. & S. A. Ry. with the above mentioned line between the Hodge and Williams leagues or surveys: thence south 62 deg. 39' west 3038 feet to an iron pipe for corner, said corner being parallel with and fifty feet distant from the center line of the main track of the G. H. & S. A. Ry. Thence north 21 deg. 56' west, 2095.9 feet to an iron pipe for corner in the center line of the main track of the Imperial Valley Ry. thence north 8 deg. 44' east 654 feet to an iron pipe for corner: thence north 62 deg. 39' east 3807 feet to an iron pipe for corner set in the line between the above mentioned Hodge and Williams surveys: thence following said line south 2945 feet to the beginning, containing within the above described boundary lines 213.55 acres, of which 13.55 acres is contained in the right of way of the main line and transfer tracks of the Imperial Valley Railroad, within the boundaries of this tract or survey.

This deed is intended to include and convey all the land forming and constituting the Imperial Sugar Company plantation described above, whether described or referred to herein specifically by tract or not, and the aggregate acreage of the land conveyed by this instrument, exclusive of the above tracts (a), (b), and (c) excepted, is guaranteed and warranted to contain not less than Five Thousand Two Hundred and Thirty-five (5235) acres of land: also all of the following described personal property, to-wit:

(a) Live stock, including hogs, 139 work mules, 17 saddle horses
134 hogs.

(b) Tram Equipments- 80 tram cars, about 75 sections of portable track.

(c) Farm Implements- 49 cultivators, 16 disc cultivators, 115 turning plows, 6 disc plows, 35 sweep stocks, 7 stubble shavers, 5
18. stubble diggers, 8 middle bursters, 13 sub-soilers, 6 cane scrapers

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12 cotton planters, 2 mowing machines, 30 hoes, 5 post hole diggers, 3 rice seeders, 12 shovels, 10 spades, 20 stubble hoes, 12 briar hooks, 30 axes, 6 scrapers, 5 pitch forks, a large number of double and single trees, 150 cane knives, 60 sets plow gear, 17 cane wagons (second hand), 10 cane wagons (new), 9 road wagons, 2 good graders, 1 corn crusher, about 20 dozen trace chains for unloading cane, 6 saddles for guards, 18 wagon saddles, 3 complete derricks.

(d) Feed Stuff- ear corn about 1000 bu., 2 large barns of crushed corn, about 50 tons of rice bran, about 200 bales of alfalfa and hay, 75 bu. of field peas, about 1500 bu. of cotton seed for planting purposes: also one blacksmith and wheelwright shop and tools also a large amount of repair material, such as clef lap links, etc. and such other similar personalty and chattles as is on hand and used in connection with said plantation, and all machinery, improvements and buildings of every description now on the land.

TO HAVE AND TO HOLD, the above described lands and personal property, together with all and singular the rights, members, hereditaments, appurtenances and improvements to the same belonging, or in anywise incident or appertaining, unto the said Board, for the use of aforesaid and assigns forever. And said Imperial Sugar Company hereby binds itself, its successors and legal representatives to warrant and forever defend, all and singular the title to the above described lands, premises, improvements and personal property unto the said Board and assigns for the use aforesaid, against every person or persons whomsoever lawfully claiming or to claim the same, or any part thereof. But it is express stipulated agreed and understood by and between the parties hereto, that a vendor's lien and the superior title to all of the lands and personalty hereby conveyed, is hereby retained and reserved by the Company and granted by the Board to secure full, complete and prompt payment of the consideration herein agreed to be paid therefor, as is hereinafter fully set forth, and to fully insure the obligations herein assumed by the Board (the Vendee) and upon the full payment of the said consideration and performance of said obligations, this deed shall

19. become absolute. The consideration agreed to be paid for said land

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and personal property is the amount and upon the terms and conditions following, as is evidenced by the one certain obligation in writing, for the sum of One Hundred and Sixty Thousand (\$160,000) Dollars to bear interest from the _____ day of January, 1908, at 6% per annum, interest payable annually, executed by said Board in behalf of said Penitentiary system, and duly approved by His Excellency, T. M. Campbell, Governor of the State of Texas, of even date herewith, and made payable to the Imperial Sugar Company or its order at Houston, Harris County, Texas. The full purchase price for said land and personalty is One Hundred and Sixty Thousand (\$160,000) Dollars, to be paid by said Board causing to be delivered to the Company, its assigns or legal representatives, as is hereinafter provided, 4% gross of the annual crops of cane and cotton raised and grown upon the lands hereby conveyed: the value of said per cent of said products so delivered to the Company is to be applied annually as a credit upon the obligations given for said purchase money, first discharging and paying all accrued interest and the balance to be applied to the reduction of such principal sums, and this method to continue until the full amount thereof has been paid, when full release thereof shall be given.

In connection with and as a part of this sale and purchase, the following covenants and agreements, by the Company and the Board, respectively, are made and entered into and is a part of the consideration therefor, viz:

(a) A right of way for the tracks of the Imperial Valley Railroad Company from the sugar mill of Imperial Sugar Company to the Brazos River in a southward direction and from said sugar mill in a northwestward direction towards Harlem Sugar Mill through and over the lands hereby conveyed, is hereby reserved by the Company and granted by the Board, free of cost to the Railroad Company, same to be used as a right of way for railroad purposes, and to revert to the Board if abandoned for such purposes: said right of way to be where selected by said Railroad Company and to be 100 ft. wide, 50 ft. on each side of the center line of the main track of said railroad company as constructed, such easement to be evidenced by a proper deed of conveyance of such right of way, when located and designated.

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(b) For the term of ten years, including the year A. D. 1908, the purchaser (the Board) agrees and binds itself to sell and the said annual cane crop grown on the land hereby conveyed to Imperial Sugar Company or its successor or assigns, P. O. B. cars at its sugar mill at Sartartia, and when the same is so delivered, the Company agrees to purchase the same and to pay therefor a minimum price of \$3.00 per ton on a 79% purity test, and as much more as the test shall indicate, at the rate of 10 cents per ton for each degree or point over and above 79% test, and plus also such additional price per ton, as the advance price of sugar at New Orleans, Louisiana, shall indicate or justify from time to time. This agreement, sale and purchase having been made on a basis of the price of sugar at New Orleans, Louisiana, on January 24th, 1903. Such cane shall be delivered by the purchaser at proper times and in proper quantities, so as to facilitate the operation of the Company's mill, when the company is grinding the cane of the purchaser, and the Company agrees to take and receive daily, during the grinding season, from the purchaser a reasonable quantity of cane, so as to facilitate the harvesting of the crop, each party looking, not only to its own interest, in this respect, but to their mutual interest. The Vendee may, however, require the Company to accept a daily average of 500 tons of cane from the beginning of delivery until the close of the season, but shall not compel the Company to receive a greater daily average. The cane to be delivered under the provisions hereon shall be in good marketable condition, and reasonably clean of fodder and trash, that is to say: in such condition as cane is usually and customarily accepted by mills generally in this section, and shall be topped or cut no higher than the last full red joint. In loading same for the mill on cars, the chains shall be properly placed in cars and if any cars are delivered without such chains properly placed, the Company will have the right to charge against such cane the reasonably additional cost of handling the same, and if any cane not meeting the above requirements, as to marketable condition, is accepted, a reasonable reduction shall be made and allowed thereon so

21. as to bring it to the proper standard.

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(c) It is understood and agreed that settlement for cane delivered will be made by the Company on the 10th day of the month following the date of each delivery in the preceding month, but interest on these deferred settlements shall be off-set against the interest due the Company at a like rate.

(d) The Company obligates itself, each year for ten years, if desired by the Board, or until the property hereby conveyed has been paid for, to furnish to the Board for the purpose of financing the crop to be grown upon said premises the sum of Twenty-Five Thousand (\$25,000) Dollars per annum, or if the Board shall require it, such an amount in excess of Twenty-five Thousand (\$25,000) Dollars per annum as may be needed to the extent and not exceeding the sum of Fifty Thousand (\$50,000) Dollars per annum, such money to be furnished as needed, and from the time furnished to bear interest at the rate of 6% per annum until paid. Such advances for the purpose of financing such crops are to be repaid to the Company, principal and interest, from the proceeds of the annual crop raised on said premises, and to secure the payment thereof, priority of payment over all other indebtedness is hereby fixed against the portion of the crop which will belong to the State.

(e) Before any payment of any part of the purchase money herein agreed to be paid has been paid, the Company agrees and binds itself to furnish to the Board a complete Abstract of Title to all of the lands hereby conveyed, brought down to the date of this conveyance, showing good title to all of said lands, and showing that there exists no incumbrance whatever upon the same or any part thereof.

(f) From and after the delivery of the conveyance and including the year 1908, the Company shall be relieved from the payment of any taxes, state or county, that may be assessed against all or any of said property hereby conveyed, real and personal.

(g) It shall be the duty of the State, acting through its Board Aforesaid, to maintain on said plantation at all times at least 2250 acres in good cane stubble, and to keep and maintain the personal property hereby conveyed, and the improvements on the real estate in approximately as good condition as they are when delivered to the

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Board. Under the provisions of this conveyance and this provision with reference to the maintenance of said property, shall apply to the quantity as well as to the quality of all such personal property, and shall continue in force until at least 50% of the purchase money has been paid, including all interest.

(h) At any time during the said ten years in which the State is to deliver the cane crop to the Company, the State shall have the exclusive right to purchase the sugar mill and appurtenances, buildings and improvements, and the lands upon which they are situated, and other improvements used in connection therewith and appertaining thereto, and the price to be paid therefor, if such option is exercised, shall be as is determined by the board of arbitration to be raised in the following manner:

At the time that the state gives notice of its purpose to purchase the same, the Penitentiary Board shall name one arbitrator and the Imperial Sugar Company shall name another, and these two shall select a third, and the three arbitrators thus selected shall carefully examine, inspect and value the said property and determine what it would then cost to construct and rebuild the same out of new material, so as to reach its then present capacity and efficiency, and shall then determine the proper and equitable amount which should be deducted for depreciation in value between the then present condition of the plant and such new plant, and deducting the depreciation from the cost of reconstruction, the amount thus shown shall be the amount which the State shall pay for the property, if it should exercise the option to buy the same hereby given.

(i) The Company reserves the right to use the waters of Oyster Creek for the purpose of operating its mill, and reserves the right to construct a dam or dams across said creek for the purpose of storing water, and reserves the right to ~~xxx~~ use such proper rights of way and easements as may be necessary, reasonable to appropriate such water, but the water shall not be raised so as to affect any tillable land of the Vendee. The Company reserves the roadway or easement from its mill to Sugarland and to Sartartia Station on the G. H. & S. A. Ry.

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(j) The Company will join with the Penitentiary Board in securing the Railroad Commission of Texas as low a transportation or switch rate for transporting and switching cars used in delivering cane to the mill, as the Commission can be induced to allow: and the Company will, if possible, induce the Imperial Valley Railroad Company, to deliver the cars to the mill from where they are loaded with cane for its mill anywhere upon the farm hereby agreed to be sold, at the rate of \$1.50 per car.

(k) By the term "delivery to the mill" as used in connection with the provision for carrying and handling cane, is meant delivery to the Company at the point where it is customary for the Company to receive cane cars with mule power when hauling on tram cars, or where it is customary to receive railroad cars when hauled by that method, and the Company agrees to accept the cane thus transported at such points and to take it into the mill with its own power over its yards, switches and terminals.

(l) The Board reserves, however, the right to retain for replanting and extension of acreage from the cane crop grown upon said premises, such reasonable amount of cane as may be necessary for that purpose, and is relieved from the obligation to sell said seed cane, under the provisions of this instrument.

(m) This sale, although the same is not enumerated above, carries with it, without cost to the Board, all seed cane now on hand for the purposes of planting or replanting the cane crop for 1908.

(n) The Board will pay, independent of the consideration herein agreed to be paid to the Company, for all such new farm implements as have been placed upon the plantation since the making of the inventory of personal property hereinabove enumerated, at the cost thereof.

(o) The Company undertakes and binds itself to procure from the Imperial Valley Railroad Company a perpetual permit to make and use portable tram crossings over and across its tracks and to maintain and use the loading cranes not established and in use on the premises, and to perpetually maintain the same, but such crossings are to

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19 D 664 IMPERIAL SUGAR COMPANY RECORDS
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be so used as not to interfere with or endanger the use of the Railroad track by the said Railroad Company or to endanger its engines and cars operated thereon.

(p) If the State's agents and representative so desire, they may appoint and have present at the weighing and testing of cane and its products, a person of the State's own selection to inspect and verify such weighing and testing; and the vendor obligates itself to maintain and furnish at all times suitable scales and testing apparatus in first class condition.

IN WITNESS WHEREOF the Imperial Sugar Company has caused its corporate name to be hereto signed by its President, and has caused its corporate seal to be hereto affixed, and has caused these presents to be attested by its Secretary, for the purpose of making this the act and deed of the said Imperial Sugar Company. This the 17th day of February, A. D. 1908.

IMPERIAL SUGAR COMPANY

By D. W. Kempner, President.

ATTEST:

Gus Elrich
Acting Secretary.

THE STATE OF TEXAS
COUNTY OF GALVESTON.

Before me, J. Seinscheimer, a Notary Public in and for Galveston County, Texas, on this day personally appeared D. W. Kempner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he had executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and for the purpose of making it the act and deed of the Imperial Sugar Company.

Given under my hand and seal of office this the 18th day of February, A. D. 1908.

NOTARY SEAL.

J. Seinscheimer, Notary Public in and for Texas.

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Said Contract is as follows:

THE STATE OF TEXAS :
: COUNTY OF HARRIS :

WHEREAS the Imperial Sugar Company, a corporation, has this day executed and delivered to the Board of Penitentiary Commissioners of the State of Texas, a warranty deed, conveying to said Board and its successors in office, for the use of said State in fee simple 5435 acres of land situated in Fort Bend County, and known as the Sartartia Plantation (less 230 acres with improvements on same: less also the railroad of the Imperial Valley Railroad Company, and an easement for its right of way 100 feet in width through said plantation) and whereas there was also sold and transferred to the vendee by said deed all the personal property, farming utensils, and improvements on said lands conveyed, which personalty has already been delivered to vendee: and

WHEREAS it is desirable that the contract and undertaking of the vendee shall be evidenced by a separate writing officially signed by the members of the Board of Penitentiary Commissioners,

NOW, THEREFORE, this instrument is to declare: that said Board in consideration of said deed and the covenants therein contained, undertakes, agrees and promises and so far as may be lawfully binds its successors in office and the State of Texas to pay the purchase money, to-wit: \$160,000.00, with six per cent interest from January 24th, 1908, as stipulated in said deed, as follows, to-wit:

1st. To maintain the present acreage of sugar cane and to pay to said vendor forty per cent (40%) of the annual crop of cane and cotton grown on said premises to be credited first to the accrued interest on the \$160,000.00 purchase money, the remainder to be credited upon the principal and to so continue from year to year until the entire purchase money, principal and interest, is fully paid off and discharged.

2nd. In consideration of said deed and transfer and the undertakings therein set out, on the part of the vendor, said Board agrees and as far as may be lawfully done, binds its successors in office and the State of Texas, to sell and deliver f. o. b. cars at the cane

26. mill of said vendor situated on the 200 acres reserved as expressed

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in the deed, the annual output of cane (less such amounts as may be reserved for replanting and extension of acreage) and to sell same to the vendor at the minimum price of \$3.00 (three dollars) per ton on a 79% (seventy-nine per cent) test, and as much more per ton as the test above that or the price of crude sugar at New Orleans may indicate at the date of delivery, the vendor having bound itself to purchase said cane upon the terms above stated. The price of \$3.00 per ton above named is predicated upon the price of crude sugar at New Orleans, on the 24th day of January, 1908, and shall be the basis of comparison in arriving at the increased price of cane per ton from time to time. This obligation for the sale and purchase of cane upon these terms, shall be mutually binding for the term of ten years: that is to say: it shall run from the year 1908 to 1917, inclusive, and shall include the crop of 1917 whether harvested and delivered before or after the expiration of that year: and this whether the property transferred by said deed is sooner paid for or not.

3rd. The vendee in said deed shall maintain the condition of the personalty on the sold premises in practically as good condition as when delivered both as to quality and quantity until at least half the purchase money is paid.

4th. It is agreed that the vendees shall not undertake to raise on said premises a greater amount of corn, oats, or other forage crops than are necessary for the maintenance of the live stock now on the premises sold, or which may hereafter be placed thereon for the proper cultivation and handling of said premises. But if the Vendee should conclude to raise such crops for sale or for the maintenance of the live stock on other State farms, then the vendor shall have forty per cent (40%) of such excess so sold or used elsewhere to go as a credit on the principal and interest of the purchase price. But this restriction as to the use of the premises shall not be in force after the property is paid for.

Executed in duplicate and delivered this 11th day of March, 1908.

BOARD OF PENITENTIARY COMMISSIONERS

APPROVED
T. M. CAMPBELL
Governor of the State of Texas
S E A L.

By W. H. Gill, Chairman
J. T. Mewshaw, Associate
R. H. Hicks, Associate.

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J. B. ROBINETT, a witness for Plaintiff, testified as follows:

I occupied the position of book keeper for the Prison Commission during the years 1910, 1911 and 1912. I made up a statement of the tonnage of cane from the daily reports sent in by Mr. Barnhill. I made up these exhibits attached to Plaintiff's Petition together with some other assistants in the office. They are correct to the best of my knowledge and belief. They were made up from these reports sent in by Mr. Barnhill. I don't remember who made the reports, but that was supposed to be the total tonnage delivered.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE THE TESTIMONY NOW SHOWS THAT THEY BEGAN SHIPPING THE CANE ON THE 25TH OF OCTOBER, AND THERE IS NOTHING TO SHOW ANY WEIGHTS FROM THE 25TH OF OCTOBER TO THE 12TH OF NOVEMBER. THEY NOW HAVE THIS WITNESS TO SHOW THAT THEIR PLEADINGS WERE MADE UP FROM THESE REPORTS AND A GREAT PORTION OF THE REPORTS HAVE NOT BEEN PROVEN UP BY ANYBODY.

THE COURT: I THINK MYSELF THIS TESTIMONY IS PREMATURE, BUT WE WILL CONSIDER THE OBJECTION LATER.

In arriving at the price of the cane from the Imperial State Farm, I took a basis price of cane testing 79 at 80% of sugar testing 96 at New Orleans. If cane tested 79%, the price of the cane would be 80% of the price of 96 test sugar in New Orleans. That is the way it has been done usually. There is nothing in the contract that I know of specifying how you arrive at the price, but the settlement has always been made with Mr. Eldridge on that basis.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE IT IS INADMISSIBLE AND BECAUSE AND BECAUSE IF THE WITNESS HAS DISCOVERED HOW THE TEST WAS MADE IT IS EVIDENCED BY SOME WRITING OR BOOK OR SETTLEMENT AND THAT WRITING? BOOK OR SETTLEMENT WOULD BE THE BEST EVIDENCE.

I have been employed by the State since the 6th of September, 1907. Those figures that I have made there on the Imperial State Farm Cane are made on that basis I think: that is the way I understood it. To the best of my knowledge they are made on that basis and are correct on that basis. Mr. Eldridge has always made settlements with us that way. He would render the account himself. I have never heard of any disagreement about that being a correct basis at arriving at the price of this cane.

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CROSHED BY DEFENDANT:

Just the cane from the Imperial State Farm comes under this contract we are talking about. I figured all the cane from that farm on that basis. I do not figure all of the cane from all of the farms that way. I figure the cane from the Ramsey Farm at a flat price of \$3.00 per ton. I didn't make any allowance for frozen cane. I knew that a freeze came on the 29th of November and froze the cane, but I didn't know how much was frozen. I knew how much was delivered after it was frozen. I supposed that cane out in the open would freeze when it froze. I heard the cane was frozen. I charged three dollars a ton for the frozen cane right along with the best cane. I do not know how much of the cane was frozen. Eldridge has never settled for any frozen cane that I know of, while I was there. I don't know that this cane was frozen. I have heard that the reason the State was in debt so bad was because the cane was frozen. The statement shows that I charged \$3.00 per ton for all cane testing over 71, no matter whether it was frozen or not.

Q. You charged \$3.00 for the Ramsey cane without any test at all
THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE THE TESTIMONY SOUGHT TO BE BROUGHT OUT HAS NOTHING TO DO WITH THE CASE, - WHICH OBJECTION WAS BY THE COURT OVERRULED.

THE PLAINTIFF ADMITS THAT IT HAS CHARGED THE DEFENDANT WITH FROZEN CANE.

I charged \$3.00 per ton for all cane that was reported to have been delivered from the Ramsey Farm, whether it was frozen or not. I charged \$3.25 per ton for the cane from the Sugar Company's share farm, for half of it. I don't think I charged for all of the frozen cane. I think some of it was not charged, the whole amount. I don't remember whether I charged him with 4000 tons of cane at \$3.25 per ton. I know that there was a freeze that reached the Cunningham Sugar Company's share farm about the 29th of November. I was advised of it by the Plaintiff, The Commission. I did not make any deduction for frozen cane. I charged right straight along for all of it that was reported, 50%. In fixing the price of the cane from the Imperial Farm, I took \$3.00 per ton minimum price and the price of New

29.

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Orleans Sugar. I took three dollars anyhow. That was the minimum. This season, it doesn't run under three dollars. I had a minimum of three dollars regardless of the price of sugar. The price of New Orleans Sugar depended on whether it was lower or higher than it was at the time of the execution of that contract. I can't tell you what the price of New Orleans sugar was in February 1908. Q. If it was based on a minimum of three dollars per ton for 96 test sugar in New Orleans in 1908, how would you know whether to add to or take from the price? A. If the price of 96 test sugar was so much on that date, the price of 96 test sugar would be 8% of that. Sugar was higher last year: I know that because one or two years it ran a great deal lower than it did last year.

Q. In fixing the addition to the minimum of three dollars for 96 test sugar, you would have to know what it was prior to the execution of the contract?

THE PLAINTIFF OBJECT TO THAT BECAUSE THE CONTRACT DOES NOT SO STATE IT.

THE COURT: I HOLD THAT THE CONTRACT MEANS THAT THAT PRICE NAMED THERE IS ON THE BASIS OF THOSE PRICES IN NEW ORLEANS AND NOT ON THE PRICE IN NEW ORLEANS AT THE TIME THE SALE WAS MADE.

RE-DIRECT BY DEFENDANT:

The way these figures were made, we took the price of 96 test sugar in New Orleans: for instance, if 96 test sugar was worth 4 cents a pound in New Orleans, I figured that 79 test cane would be worth \$3.00 a ton.

RE-CROSSED BY PLAINTIFF:

Q. If 96 test sugar in New Orleans had been worth four cents a pound at the time of the execution of this contract, and on that very day you delivered cane, what would you have charged for it- only \$3.00 wouldn't you? A. I don't know about that. If it had been worth four cents, I couldn't have charged \$3.00: that is the way I figured it. If it had been worth \$4.50, I would have charged eight per cent for 79 test cane. If it had been worth 4½ cents, the price of the cane would have been eight per cent of that. If it had been worth two cents a pound, the cane would have been worth \$1.50

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but it never went that low. I figured the price in New Orleans and the test too. The way I figured it, for every degree that cane testing over 79 tested, I added ten cents per point. I figured it that way. If sugar was worth 4 cents per pound in New Orleans, and only tested 79, it would only be worth \$3.20. If sugar was worth 4 cents in 1908 and was still worth four cents, I would add to it if it tested over 79. I added that to the price because it tested higher. On October 28th, I charged for cane delivered \$4.10 per ton, 79 test. The test showed 75 and we deducted forty cents from \$4.10 and that would make it \$3.70 a ton. The minimum was three dollars for 79 test cane and I charged forty per cent off because it didn't come to the test, which would leave \$2.60 and I charged \$3.70. I did that because the settlement with the Imperial Sugar Company the season before that had been made that way. I did it that way because I followed out the way I interpreted the contract and that is why I added the \$1.10. Basing the price of the cane on the sugar in New Orleans, 79 test cane on 96 test sugar in New Orleans, is the way I figured it. . The Contract does not say the price of cane in New Orleans: it says the price of sugar. I don't remember what there was in the price of sugar that justified me in adding \$1.10, but that was the price of sugar at the time, - \$4.10 for 79 test cane. I didn't make it three dollars, the minimum price, because I didn't understand the contract to read that way. I did not understand the contract to mean that the price was three dollars plus \$1.10. I made this settlement like it has always been made with the State. I made the statement like I told the court, taking the price of New Orleans sugar as a basis. I did not just add \$1.10. The \$3.70 represented eight per cent of the price of sugar in New Orleans. I knew then what sugar was worth, but I don't recall now what it was worth then. Q. You don't know whether it was worth more when you made this statement or less than when this contract was made? A. Yes sir. I didn't pay any attention to 1908 in making this calculation. I made it without reference to what sugar was worth in 1908. All the way through, I made it according to the same method. I got the authority for charging for cane under 79

31.

Q. leaving 75. A figure that is eight per cent of the price of

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RECALCULATION VERSUS IMPERIAL SUGAR COMPANY'S 1911
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purity test from the Commissioners. I didn't get it from the contract. I don't remember whether there is anything in the contract fixing the price of cane testing under 79 or not. I just simply got it from the Commissioners. We had cane testing 75, 78, 76.3, 76.6, and clear on down until November 29th, we never found a car that test 79, and then there was cane testing 76 and 74 and against on ~~XXXXXXXX~~ October 29th you found one testing 83, and all along with all this low grade cane I made the charge as I did, deducting forty cents, and charging by the same method, as I did in the one that we have gone over, and that is the way I made this statement. I do not know how much difference that would make in the interest of the State of Texas in those amounts of cane that I have charged here for, if I had charged according to contract. I haven't made that calculation. Mr. Eldridge and the Imperial Sugar Company had made settlements on that basis before. I notice some of the accounts show that they made deductions for under test cane and added to it for high tests. I will show you the statement where they did that (witness gets statement)

RE-DIRECT BY PLAINTIFF:

This (indicating statement) is an account made out by the Imperial Sugar Company, and rendered to me by the Imperial Sugar Company.

RE-CROSSED BY DEFENDANT:

There is one place right there where they added something for the price of sugar in New Orleans per ton. The price was 78 in New Orleans, making the cane worth \$3.02. I suppose they gave the price in New Orleans, I guess that is what it means. Q. It would seem here Mr. Robinett that they added there for sugar being worth \$3.78 in New Orleans at that time 2/100 of a cent to the minimum price, the minimum price being \$3.00, they added 2/100 or 2-4/100 to it on account of sugar being \$3.79 from which would you not infer that the \$3.78 was a few cents higher than it was at the time the contract was made: now, does that justify adding \$1.10 when it was worth four cents? A. All the calculations were made on that basis.

Q. Figure out the price of cane for 5-1/8? A. \$4.10 for cane
32. testing 79. I figure that is eight per cent of the price of 96 test

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sugar in New Orleans. I do that because in other settlements, the settlements have been made that way. That is the way this account is made up, - whether right or wrong, that is the way it is made up. If it tests over 79, in addition to adding the price at New Orleans, I add ten cents per point per ton, and if it were under 79, I then deducted the ten cents per point and took the price of 8% of the price of 96 test sugar in New Orleans. For all cane testing over 71 from the Imperial Farm, we made the same charge as the reports ~~we~~ came in. There is a separate report showing the tonnage testing under 71. I don't think there is any charge for cane testing under 71, but I am not sure. I never have charged anything for cane testing under 71. I never made any charge for cane testing under 71. I did not do so this year. I don't show any statement in my statement there showing any reason for them charging for cane testing under 71. I don't recall right now what sugar was worth in New Orleans on these several dates. At the time the entries were made, we took the price of sugar in New Orleans from reports of New Orleans Brokers. That is the way we made it. I did not make any allowance for or deduction from the price I figured for frozen cane that we received from the Imperial State Farm. I charged you for frozen cane like I did for good cane. I never saw any statements from the Imperial Sugar Company showing how much cane they received and what the test was. I didn't see any report from them showing the tonnage of cane received by them, not from the Imperial Sugar Company. The State weighers sent those reports to us. These are account sales that I have in my hand, - account sales of cane, the cane delivered to the Imperial Sugar Company. They did not give us a statement showing the amount of cane received for the entire season: they only made two this year: one for the Imperial and one from the Ramsay State Farm, but they didn't show the entire farms. They made one from the Imperial Farm and one from the Ramsay Farm. There weren't any from the Cunningham share farm. I checked up the one made from the Imperial Farm to see how it tallied with the reports made by the weigher. It tallied all right: there were a few pounds difference, they practically corresponded. Their tests corresponded with the

33. test and tonnage that I had practically. I had no report from the

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Cunningham share farm. I haven't any charge on my books for 2724 tons of cane from the Imperial State Farm testing under 71. We have the record of the tonnage up yonder in the office but have no record there of any charge for it on the books. I have no record on my books of a charge against the Imperial Sugar Company Share Farm for 4061.35 tons of cane testing under 71. I haven't any charge on my books against you for 1598.45 tons of cane from the Ramsey Farm testing under 71.

RE-DIRECT BY THE PLAINTIFF:

These various items of cane testing under 71 were purposely left off the books, pending this litigation, under instructions from the Prison Commission. I knew they were in litigation and I didn't put it on the books. The way I figured those items on the Imperial State Farm Contract is the way I figured the items of that record attached to the petition in this case, and is the way I always figured those settlements. There has never been any question raised by the Imperial Sugar Company that that wasn't the right way to figure to figure it. They never have made any objection to it as being wrong. They always paid us prior to this year on that basis. They made settlements from year to year on that basis and paid the money. They have not rendered a statement for all of the crop for the year 1911. They have rendered a statement for part of it. I got all these statements and account sales through the mail.

RE-CROSSED BY DEFENDANT:

I have had a statement this year from the State Farm, but not for the full delivery. I have one statement from the Ramsey Farm. I said that I had had no statement at all from the share farm. I have never had any trouble with the Imperial Sugar Company up to this year, except differences in freight and charges for cars. They have been adjusted. We have had no trouble about cane up to this year. By "this year", I mean the 1911 season.

RE-DIRECT BY PLAINTIFF:

These (examining papers) are daily cane weights for cane delivered to the Imperial Sugar Company, as reported by Mr. Kirvin. Those weights were carried into the Plaintiff's Petition in this case

84 D 004 IMPERIAL SUGAR COMPANY RECORDS
PRISON COMMISSION
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PRISON COMMISSION
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These statements as carried into the petition are correct.

RE-CROSSED BY DEFENDANT:

These are weights that I furnished to Mr. Hill and which he carried into the petition. I made it up and Mr. Hill attached it to the petition. That is a correct record as sent in by these reports.

RE-DIRECT BY PLAINTIFF:

Q. I have here a letter dated New Orleans, March 26, 1912, signed by The Louisiana Sugar and Rice Exchange, and attested by W. Martin, Assistant Secretary, and it purports to give the price of Sugar on the New Orleans Sugar Exchange for November 1, February 1, 1912,- state whether or not those prices of sugar as given by that Secretary of the New Orleans Exchange there are the prices upon which you figured these prices of sugar.

THE DEFENDANT OBJECTED TO THIS TESTIMONY ON THE GROUND THAT IT IS NOT THE PROPER WAY TO SHOW THE MARKET VALUE BY SHOWING WHAT SOME MAN OR FIRM IN NEW ORLEANS WROTE. SUCH A STATEMENT SHOULD BE UNDER OATH OR FROM THE MARKET REPORTS AS PUBLISHED IN NEW ORLEANS IN SOME STANDARD PUBLICATION OF IT.

We received daily reports from the New Orleans sugar Exchange during the season of 1911 from the Sugar Brokers, Harry L. Laws & Company. We used these reports in making up our statement to the Imperial Sugar Company.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE IT IS NOT PROPER TO SHOW WHAT SOME PARTICULAR BROKER OR FIRM WROTE BECAUSE DIFFERENT REPORTS CAN BE GOTTEN FROM DIFFERENT BROKERS AND IT IS NOT PROPER OR COMPETENT TO PROVE MARKET VALUE THAT WAY.

THE COURT: I WILL STATE TO COUNSEL THAT I DON'T THINK IT IS A PROPER WAY OF PROVING IT, BUT I WILL HEAR THE TESTIMONY.

THE DEFENDANT EXCEPTED TO SAID TESTIMONY BEING RECEIVED AS EVIDENCE AND MADE THE ADDITIONAL OBJECTION TO THE WITNESS TESTIFYING ORALLY TO DAILY MARKET REPORTS WITHOUT EXHIBITING THE MARKET REPORTS THEMSELVES.

THE COURT: I HOLD THAT THESE MARKET REPORTS DO NOT ESTABLISH THE MARKET PRICE OF CANE UNLESS IT IS ACQUIESCED IN BY THE DEFENDANT,-

35. TO WHICH RULING OF THE COURT THE DEFENDANT EXCEPTED.

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TEXAS PERSON COMMISSION
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I received daily reports from the Sugar Market at New Orleans during the cane season of 1911, from Harry L. Laws & Company. They are sugar and molasses brokers. They live at New Orleans. These statements attached to Plaintiff's petition in this case were made on the basis of those reports that we received. We didn't render any statement to the Imperial Sugar Company on these various cane accounts. We never did render them. We received a rendition of some of the cane account from them during the year 1911. I don't remember exactly whether the prices rendered by them agreed with the prices quoted to us by Harry L. Laws & Company.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE IF THERE ARE ANY REPORTS FROM ANYBODY ELSE THEY ARE IN WRITING AND THE WRITING WOULD BE THE BEST EVIDENCE.

THE COURT: I THINK THAT OBJECTION WOULD APPLY IN CASE THEY ATTEMPT TO SHOW WHAT THOSE REPORTS ARE.

There was no material, no appreciable difference in the prices rendered by the Imperial sugar company and the prices quoted by Harry L. Laws & Company.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE THE WITNESS MIGHT NOT CONSIDER IT MATERIAL OR APPRECIABLE AND THE DEFENDANT MIGHT SO CONSIDER IT,- WHICH OBJECTION WAS BY THE COURT SUSTAINED.

I don't recall any difference at all. I am not positive whether I have those daily reports or not: I can look for them.

The Plaintiff offered in evidence market quotations above referred to. (which will be found in full on pages following testimony of this witness.)

THE DEFENDANT OBJECTED TO THEIR ADMISE ON IN EVIDENCE BECAUSE IT IS IRRELEVANT AND INCOMPETENT TO PROVE WHAT THEY PURPORT TO SHOW.

THE COURT: I CAN'T MAKE THE STATEMENT AS TO HOW IT WILL BE CONSIDERED, BUT I WILL ADMIT IT,- TO WHICH RULING OF THE COURT THE DEFENDANT IN OPEN COURT EXCEPTED.

RE-CROSSED BY DEFENDANT:

In making up the statement against the defendant, I charged all cane that came from the Ramsey Farm, testing over 71, at \$3.00 per ton. In making up the statement from the Cunningham share farm, I charged all cane,- that is our part of it,- testing over 71 at

9 D 2004 IMPERIAL SUGAR COMPANY RECORDS
TERRY WILSON EXHIBITION
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\$3.25. Q. In making up the statement for the Imperial Farm, you pursued the course to which you testified yesterday afternoon, and in doing that, in deducting or adding for the purity test, you added to that whatever these market reports you just spoke of would show what the price of New Orleans sugar was, taking what these reports stated; how did you do that now; for instance, you found sugar sold by these people say at five cents, how much would add to the price? A. The price of 79 test cane would be equal to eight per cent of the price of 96 test sugar. That is the way I arrived at the basis of it. I do it that way because that is the custom. You get that by taking 80 per cent of 96 test sugar. . I don't know what relevancy 96 test sugar selling at four cents per pound has to a ton of cane. I don't know the rule, but that is the custom by which we calculated it. I was basing the settlement on settlements made by the Imperial Sugar Company with the State heretofore. Anyway, that is the way I did it. I made some of these calculations before which I furnished Mr. Hill ~~xxxx~~ I got these letters that I just referred to. I didn't have that letter as a basis of calculation which I made and which I furnished to Mr. Hill. I did not make these calculations as to each car as I got a report on it every day and enter it in my books. I made these prices from the daily quotations furnished by Harry L. Laws & Company. If I received a carload of cane on the 2nd day of December, I would make the calculation afterwards; I couldn't do it all the same time. I furnished Mr. Hill copies of all charges on the books for cane testing over 11 I don't know the rule as to how to get at the percentage of sugar.

RE-DIRECT BY PLAINTIFF:

I suppose that is the arbitrary rule of the Sugar Exchange. In taking a ton of cane testing 79 I would take 8 per cent of the price at New Orleans and the result would give us the price of this cane.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE THAT IS NOT THE

37. CONTRACT, AND DEFENDANT IS NOT BOUND BY THE RULES OF THE SUGAR EX-
#&. CHANGE, - WHICH OBJECTION WAS BY THE COURT SUSTAINED.

RE: D. COOY
IMPERIAL SUGAR COMPANY RECORDS
RE: HARRISON (ADMINISTRATOR) VERSUS IMPERIAL SUGAR COMPANY, 1911
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Take a ton of cane testing 79 and if the market in New Orleans was four cents per pound, the price for that ton of cane, - that is the basis price would be \$3.20. For every degree above 79, I add ten cents per ton, and for every degree under 79 test, I deduct ten cents per ton from the basis price. These accounts were made up and posted from the reports I received from the weighers from day to day and time to time. It was all made up before the receipt of this letter dated March 26th.

RE-CROSSED BY DEFENDANT.

I didn't open the mail at all and had nothing to do with the reports of purchases made or anything of that kind. These reports of purchases made at various dates came to my desk. All purchases were made from this office here. Occasionally there might be a few in an emergency case where they wouldn't have time to make requisition. Ordinarily they would make requisition and the invoice would be sent to me. After the bill had been approved by the sargeant it would be paid.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY ON THE GROUND THAT IT IS IRRELEVANT AND IMMATERIAL, - WHICH OBJECTION WAS BY THE COURT OVERRULED.

R4 D 009 MINERAL SUGAR COMPANY RECORDS
TENTH PERSON COMMISSION VESSELS MINERAL SUGAR COMPANY, 1911
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W. GUS KIRVIN, a witness for Plaintiff, testified as follows:

I was employed to look after the interest of the State during the cane season of 1911. I probably weighed a few cans of cane. I couldn't answer direct as to whether I weighed any cane or not because they had several weighers down there. I made up this report (examining document) so far as I know, those are correct statements of the weights of the cane there. I had a man down there who was looking after this, and I made the reports. I made the report from the scale sheet. I first had a man named Edwards down there. These are the reports that Edwards weighed.

THE DEFENDANT OBJECTED TO THIS WITNESS TESTIFYING TO THOSE REPORTS WHICH HE MADE UP FROM DATA THAT HE DIDN'T KNOW AS CORRECT OR NOT.

Some of this was weighed by Mr. Edwards and some of it was weighed by Mr. Wisby. Those men weighed it and I made the reports from the weights they made. The endorsement on the first page of this report reads, "Check with Imperial Sugar Company". That is in my handwriting. I compared this report with the Imperial Sugar Company's books up to the time I left there. I compared these things here (indicating papers) they agreed with the Imperial Sugar Company's books, - that is, I say they agreed-- We had to make up the Imperial Sugar Company's and the State's both: both had weighers there and they got it all balled up and a whole lot of the reports were sent in and afterward we had to go back and get up a revised report covering several weeks time and then we went down to the Imperial Sugar Company's books and there were some differences, and we had to reconcile them. I think this report shows the result of our reconciliation. It does show the result of that reconciliation.

CROSSED BY DEFENDANT:

I checked all of those reports personally with the Imperial Sugar Company's books. I went down there and checked it over. We had to check everything: everything was out of balance, and so we went down and checked it over. I don't know whether it was the Imperial Sugar Company's books that we checked with, but it was their scale sheets. I went down there, and where there were any dif-

86 D 209 IMPERIAL SUGAR COMPANY RECORDS

EXHIBIT 1 542

7105 PERSON COMMISSION VERSUS IMPERIAL SUGAR COMPANY (1911)

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ferences, any question about any of the entries- probably there would be a few thousand pounds difference, may be there would be several thousand pounds less than ours, and it got to where in order to make the books balance so a settlement could be made, we had to go and give and take a few of those. I went there for the purpose of reconciling differences, and those differences I reconciled and checked.

Q. The question was whether you checked all the cans that this paper relates to or only those where there were differences? A. Where there were no differences, there was no necessity of checking. What I actually did was, I checked those cans where differences existed, and the balance of it was supposed to be right. There was no question about them and no checking was done. It was Edwards' weights that were balled up. It was his work where most of the trouble was. I couldn't say that we found any discrepancies in Mr. Wisbey's work, or not. I couldn't say whether we did or did not. Edwards weighed at the standard scales. That was before Wisbey came there. I don't think Mr. Barnhill weighed any up to the time I left there. I left sometime in November; I am not sure, but I think it was about the middle of November. I don't think Wisbey had weighed any up to that time either: I think most of it was done by Edwards. When I got through with these papers I mailed the report into the Huntsville office. Those are the identical papers I made up and mailed into the Huntsville office. That was their record. They wanted them to base a settlement on, I judge. It was for the purpose of knowing how much cane had been delivered. I went there to reconcile the differences, and I think that is what I sent in. That is the daily report that was sent in. This report doesn't cover just one day. It can't be a daily report if it covers a whole lot of days. Several reports were sent in. I wrote that (examining paper) That is my handwriting. I don't know that anybody representing the Imperial Sugar Company endorsed that as being correct: however they acknowledged it was correct. I suppose that "O. K." there is a check from this office here. I didn't put that there. I don't know who C. A. Crook or Cook is. I didn't get anybody from the Imperial Sugar Company to endorse these reports as correct with me. I forget the young man's name now that acquiesced in it. I would know him if I were to see

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REAS PERSONAL GAINSTOCK VESSES MEDICAL SUGAR COMPANY'S 1911
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him. I have not seen him this morning.

THE DEFENDANT OBJECTED TO THE ADMISSION IN EVIDENCE OF THE PAPER ABOUT WHICH THE WITNESS HAS BEEN TESTIFYING FOR ANY PURPOSE.

RE-DIRECT BY PLAINTIFF:

I checked this over against the records, the slips of the Imperial Sugar Company. I didn't go over the cars and compare their records with mine where there were no discrepancies. I couldn't say positively that I checked every car. I checked some of the cars. I don't know what cars I checked. One report was checked against the other where there were discrepancies. That is the total. We would find out, pick it out and reconcile the differences and that is correct. My entire revised report that I got up to the time of my leaving there was agreed to by the Imperial Sugar Company. That is a part of the report, it may be all of it.

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VESSES IMPERIAL SUGAR COMPANY'S 1911

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C. A. RICHARDSON, a witness for Plaintiff, testified as follows:

I came to Sugarland about the 5th of November, 1911. During October, and November and December of 1911, I was employed as Chemist by the State and also by a Sugar Company down near Mexico. I am a practical chemist. I was employed by the State to test the cane for purity. I didn't make all the tests, but Mr. Eldridge said we would have to watch their men, and sometimes I would do the testing and would watch his men. Mr. Eldridge had a chemist in the same laboratory with me. We tested the cane as it came in. The sample was collected in the mill and Mr. Eldridge had a nigger boy to take the sample and I went over after it from time to time to see about taking the sample. The Imperial Sugar Company had a man to take the juice out as it run from the rollers, and that was brought to us and we tested it. I made a record of these tests, and have that record with me. These books (indicating books) represent the actual work that I did. I put my records down in these books as they were made.

I made a daily report of these tests to the Huntsville Office of the Prison Commission. These are the reports (indicating papers) When I first went there, I tested the cane from the Imperial Farm. Capt. Addison was Sergeant. As well as I remember, I began testing other cane for the State about the 7th of December. I then tested the cane from the Ramsey Farm and the cane weighed by Capt. Mills. The records of those tests are in those books and in those reports. After I had completed my work, I went over it with the representative of the Imperial Sugar Company. Before I left, Mr. Eldridge requested me to go over it with his man, Mr. Vickerman, who was employed by him to look after the weights of the cars. I checked it over with Mr. Eldridge's chemist, and had an understanding with him. He and I agreed. We agreed on the test before it was put out. After I had made my tests, Mr. Eldridge requested me to go over the various items with his weigher: he had the tests opposite the weights in his reports, and I had Mr. Barhill's book at that time, and I entered the tests opposite the car number and Mr. Eldridge requested me to check the tests and also the weights before I sent the books in and I did so. Mr. Vickerman agreed with me that the tests and reports

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by me were correct.

CROSSED BY THE DEFENDANT:

Q. You didn't begin to test cane to ascertain the purity until after you received that letter from Mr. Ben E. Cabell, Chairman of the Prison Commission, asking you to do so? A. That was some of the cane that was from the share farm. I had no tests for purity on the cane from the Share Farm and the Ramsey Farm up until that time. I made no tests off of the Cunningham Share Farm and the Ramsey Farm until I received that letter from Mr. Cabell, telling me to do so. I couldn't say positively that all the delivery of cane had ceased when I left there. I don't know. I signed that paper (indicating paper).

Q. This paper states, "This is to certify that we have checked the cane weight books from the Imperial State Farm, the Ramsey State Farm, and the Cunningham Share Farm (E. B. Mills), with the books of the Imperial Sugar Company, and find that they agree as to weights and tests": this bears date January 31, 1912, and on January 31, 1912 as a matter of fact, upon the checking you made with Mr. Vickerman, the books of the Imperial Sugar Company show the correct weights and the correct tests? A. Yes sir: there might have been a few tests entered wrong on account of the slips. We corrected them. I am a chemist: I am not such an old man yet, but I have been a chemist four or five years. I have had four years practice in that science, relating just to sugar chemistry. I knew that the juices I was testing in making these tests came from cane sent there from these farms. The times I didn't personally manipulate the instrument by which I ascertained these tests, I was standing right there and read the instrument: I read all the instruments and polarized the sugar too after Mr. Eldridge's chemist. Mr. Eldridge's chemist did not do all of the work. I wouldn't say that he did most of it. He did maybe a half of it and maybe most of it, I couldn't say. I personally examined all reports and read the tests and put down the tests. We put down our own results and checked the results. I put down mine, and Mr. Eldridge's chemist put down his- what I meant by half awhile ago, the solutions have to be made up ready to be polarized, and some

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VELOSOS IMPERIAL SUGAR COMPANY'S 1911
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times I would do it and sometimes he would do it, and I would always read from the instruments themselves. I polarized it every time: at that time we ran every six hours and when the work got so large I couldn't handle it, the State allowed me to have an assistant. I didn't do what my Assistant did. Mr. Vickerman and I agreed that the tests were right. Everybody was satisfied that they were the proper tests. I can't say that all the cane was frozen that was sent in from the Share Farm and the Ramsey Farm after December 7th. Some of it was windrowed.

Q. Can you tell how it kept from being frozen, when the mercury went down as low as it did?

THE PLAINTIFF OBJECTED TO THAT QUESTION BECAUSE THIS CHEMIST'S REPORTS SHOW THE RESULTS OF THE TEST UP TO THE CONTRACT PRICE, - WHICH OBJECTION WAS BY THE COURT OVERRULED. PLAINTIFF EXCEPTS.

I didn't keep any record of how low the mercury went on the 2nd of December. I know it went as low as 16 degrees, as well as I remember. It is hard to say whether there was any cane that was not frozen after I began to test it, because some of it was windrowed and there could have been some of it that was not frozen. I didn't examine the cane all the time: sometimes I did. I saw some cane that was not frozen as late as we were grinding because I tested the cane. There was some that never had been frozen, as well as I could tell. In a way, the science of chemistry teaches a man the effects of a freeze on the juices of cane. When I say cane tests eighty per cent or 89 per cent purity, I mean that there is the presence of that much purity in the juice. That is not the percentage of sugar in all the solids that are contained in the entire juice. It means that much sugar in the apparent solids. It is that percentage of sugar in the apparent solids of the entire juices. The value of cane depends upon the percentage of the sugar that you can recover in the process of manufacturing. The value of the cane as determined by the test of purity depends upon the percentage of the sugar that can be recovered in the process of manufacturing. When you freeze cane, you can't recover as much of that juice as you can before it is frozen.

9 D. 1009
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TRIAL PLEASANT GRINDING MILL VERSUS MERCANTILE SUGAR COMPANY'S (1911)
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And what you do recover, it takes a longer time to recover it than it does cane that has not been frozen; you have to boil it longer. Sometimes, cane that has been frozen is green, and it tests about the same. . Q. The test don't determine the value: it is the purity you recover and how long it takes you to do it? A. Yes sir.

RE-DIRECT BY THE DEFENDANT:

The amount of sugar recoverable from cane juice on a given test depends largely upon the appliances used to recover that sugar. It depends in a large degree on the mill or method used in extracting sugar from the juice. . This cane, after the freeze, tested as reported here in my reports to the Prison Commission, At one time, after the freeze, the cane tested up as high as eighty per cent, just jumped up all at once and went pretty high for about a week. It is the fermentation that results from a freeze that injures the cane. Cane being frozen don't lose any of its sucrose properties. Cane being frozen does not render the juice harder to extract. It is only after fermentation that the chemical combinations between the juices and the solids takes place which renders it difficult to extract the juice. Take cane and freeze it to any degree, if you take the juices out before fermentation takes place there would be no difference between that and cane that has not been frozen. If a big freeze comes on several big plantations of sugar cane- that would create an emergency in saving that cane that would demand extraordinary efforts on the part of the maker to take care of it and crush it before it fermented. How long it would take for fermentation to set up in cane after it had been frozen, would depend on the change in the temperature. As long as the cane was frozen, there would be no fermentation. The time within which fermentation would set in and the development of fermentation would depend on the weather. If it got pretty hot it would ferment very fast. Fermentation is caused by the development of bacteria in the cane juices. They don't develop in cold weather- not in freezing weather. The freezing and resulting fermentation has some effect upon the purity test indicated by my chemical analysis. Q. Here on the 9th day of December, your report shows 34,100 pounds of cane testing 82.6: now assuming that

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MEDICAL SUGAR COMPANY RECORDS
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that cane had been frozen, would you or not, from that test disclosed there, say that the freezing had injured the cane? A. No sir, I couldn't say. You can't tell by the purity test whether the freeze has injured it or not. You can tell after it begins to ferment. Before fermentation it does not show it. Taking this car of cane of 30,000 pounds on December 22nd, testing 84.2: you couldn't tell whether or not there had been any injurious effects to that car of cane from freezing. There had been no fermentation in that car. In checking up our books with the books of the Imperial Sugar Company I had the cane weight book of Mr. Barnhill. He tabulated the weights into the book. I checked up Mr. Barnhill's book. I had his book at the time and the Commissioners requested me to send them in. I didn't check any books except Mr. Barnhill's. If there were any cane weights not included in Mr. Barnhill's book, they were not included in that statement.

RE-CROSSED BY THE DEFENDANT:

Down to December 5th, there was no test made by me of the cane from the Ramsey State Farm. There were none made in the laboratory. I commenced testing on the 6th or 7th or somewhere along there. I said awhile ago that it was the 7th as well as I remember. Q. You began here, the first test made on the 8th after the 7th: on the 8th cane tested 76.8; 78.6; 77.2; 80.3; 81.9; 78.9; 84: you run on down and get 75 and 73 and sometimes 80 and 81 and keep along that way to 81- 72- 72- clear on down to the last one on January 19, 1912: on that date you had some cane that tested 71: now come over here- here is upon the Ramsey State Farm cane beginning December 8th it seems you did test some on December 7th, but it is not in here: now on the 8th if you notice again you didn't test any above 71 on the 7th, but you did do so on the 8th: that was above 71: now on the 7th of December, you have 70% purity on the 7th you have six cars on the 7th no one of which went as high as 71: they went as low as 69- 68-70-: none of it went as high as 71: now then you ~~started~~ run on down 69-66-59- and you run on down under 71 as low as 45-50-52-63 Now Mr. Richards, if cane that tests 61-70-68-63 down as low as 45 according to this statement which they say they took from what you

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reported as a correct test, if that is true, would that make sugar at all at a profit? A. Well, it is hard to say: it is hard to say because it is not many times that a person has any experience in this kind of cane: I don't know. I said that the freeze had nothing to do with the purity test of the cane but the fermentation that came after the freeze was what influenced the test. I don't remember whether any fermentation had set in between the 2nd of December and the 7th, five days after this 16 degree freeze. I don't remember about the weather conditions after the freeze, and I couldn't tell you whether it is possible or not. It didn't drop off that way: some cars were included that were some higher. It had been separated out. I don't recall whether they had a cane killing freeze on the 29th of November.

RE-DIRECT BY THE PLAINTIFF:

It is a fact that some cars of cane tested as high as 80 and on the same day other cars would come in testing as low as I reported. I account for this difference on account of the weather and it is caused by the lay of the land. Some of the land was water and the cane had a greater growth. Some of it might have been frozen in the first freeze and fermented. All I know about making sugar out of cane is what I saw at Sugarland. Sometimes the juices ran as low as 68 and 70, and they would make a pretty good grade of sugar and then it would be 70 and 71 and perhaps it wouldn't grain.

RE-CROSSED BY THE DEFENDANT:

As far as I know it was frozen cane. After it was frozen it took much longer to boil it and recover the sugar, after the test began to go down,

Rg B 009
MERRILL SUGAR COMPANY RECORDS
REYES RAYSON QUINQUENAL VEZCOS MERRILL SUGAR COMPANY'S (1911)
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B5, F24

J. B. ROBINETT, recalled by the Plaintiff, testified as follows:

I made that statement attached to that statement concerning the Ramsey Cane, together with some of the office assistants. To the best of my knowledge and belief, it is correct. I made it from the reports sent in by the cane weighers. It is correct to the best of my knowledge and belief. The cane on the Cunningham Share farm was handled the same way. I made up that statement from the weigher's reports. To the best of my knowledge and belief, it is a correct statement from the weigher's reports.

CROSSED BY THE DEFENDANT:

Q. I see on the Ramsey Farm here you have charged \$3750.85 tons of cane at \$3.00 per ton, and that you say accounts sales rendered by Imperial Sugar Company \$6963.90: you don't give any tonnage and don't give any price? A. I think that statement includes that. Cane testing over 71 is not included in that statement.

Q. That is not what I asked you: you got here a charge of \$6963.90 without giving any tonnage or any price, based upon account sales of Imperial Sugar Company: above there you give 6177 tons of cane that you charge at \$3.00 per ton: what I want to know is, do you mean to say Cunningham Sugar Company received from you not only the 6177 tons above 71 test, but above that? A. That is in addition to the accounts sales rendered by them. I think if you look on the next sheet you will find it. That is the amount on accounts sales rendered by Imperial Sugar Company to us: that is simply a copy of that. That is where I get this: I bring this back and the tonnage I show on this sheet is the tonnage that ought to be applied and is applied to this price, \$6963.90. This is not a double charge. The correctness of these accounts is as determined by me from the reports I received from various and sundry persons and passed into my books. Personally, I know nothing except that I have correctly carried forward the various reports and data I have received.

RE-DIRECT BY THE PLAINTIFF:

The accounts sale that Mr. Lane just asked me about is not the one that you offered in evidence yesterday. That account sale of the Imperial Sugar Company, the account of Ramsey State farm was rendered about it. I have no personal knowledge about their correctness.

D 0004
IMPERIAL SUGAR COMPANY RECORDS
TERES NELSON (ADMISSION)
FOLDER 1-4-2
VERSUS IMPERIAL SUGAR COMPANY, 1911

B5, F-29

to me by the Imperial Sugar Company. The Statement that is attached to the Plaintiff's Petition is a correct transcript of this account. The Report on this Share Farm is made up independently. I have examined the accounts attached to Plaintiff's Petition, and I made those accounts from the books of the Prison System.

Q. The first account I have here is set out and totals \$4618.49: the first item amounting to \$351.00; 50% of 216 tons at \$3.25 per ton, amounting to \$351.00; the next item is 24 days black smith work \$24.00; 27 days black smith work, \$27.00; Shelling peas, 14 men, and shelling peas, 16 men and hauling and various other items- From what records or from what were these various items of account made? A. From reports made by Managers on the Farms. I think I have those reports. This account as stated here, amounting to \$4618.49 correctly states the reports made to me by the Managers in charge.

Q. The next item of account here totals \$3330.80: the first charge is overcharge on freight on sugar shipped to New Orleans, \$346.65: you know anything about that item? A. It is a charge that Mr. Barton instructed me to make on the books. I don't know the reason of the charge myself, except that he explained to me that it was an overcharge on freight on two cars of raw sugar shipped to New Orleans. These other items were made up from reports made by Sergeants and Managers. This is a correct statement from those reports of Sergeants and Managers. Four of these accounts were rendered to me by the Imperial Mercantile Company I received those various accounts that you have there from the Imperial Mercantile Company made out to Mr. Louis W. Tittle, Commissioner. They are credited into this account correctly. There are not any statements from the Imperial Mercantile Company on these other accounts: they are all ~~in~~ there.

CROSSED BY DEFENDANT:

Q. The first item here is on March 20, 1911, a charge for one half of 216 tons of plant cane at \$3.25 per ton: personally you don't know whether the Company got that cane or not? A. Only from the reports made to me from Mr. Eldridge. I know Mr. Eldridge told me about it. I have no personal knowledge about their correctness.

0009 IMPERIAL SUGAR COMPANY RECORDS

7115 PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911
EXHIBIT 1 of 2

85, F 29

I only made the entries from reports, and have no knowledge whether they are true or not. The Imperial Sugar Company has never acknowledged in writing that it was proper for me to charge them with \$351.00. I don't know of any acknowledgment of its correctness. That charge on March 25th for 24 days blacksmith work, \$24.00, is made from a report made by the Manager in charge of the Farm. I don't know who he was, without looking at the report. I have no knowledge of the correctness except from the report made to me. That is all. The Imperial Sugar Company has never affirmed in writing this charge for blacksmith work that I know of. They never admitted that charge for blacksmith work in April, that I know of. The Imperial Sugar Company has never affirmed the correctness of that charge for shelling peas that I know of. The Imperial Sugar Company has never admitted the correctness of that charge of \$115.00 for hauling in May, that I know of. I charged it on reports of employees of the Penitentiary. They have never admitted that charge of 25 days blacksmith work in July. They never admitted that charge for 26 days blacksmith work in November. That charge on October 31 for ginning 46700 pounds of cotton at 46 cents per hundred, bagging and ties was for ginning cotton from the Share Farm I suppose. That is taken from the credit memoranda rendered us by the Imperial Mercantile Company. So far as I know as bookkeeper, there is nothing ever come in admitting any of these items. It was simply charged by these other people.

RE-DIRECT BY THE PLAINTIFF:

Except as shown by these credit memoranda.

RE-CROSSED BY DEFENDANT:

There has been no recognition of this account of March first by the Imperial Sugar Company, that I know of. I know nothing as to the validity of the charges except from the reports made to the office. I don't know whether they are correct or not.

RE-DIRECT BY THE PLAINTIFF:

I do know that I correctly stated these accounts from reports made to me.

50.

52. I couldn't say positively. They were raised on that farm. I shelled

84 D 009 IMPERIAL SUGAR COMPANY'S RECORDS
7543 JAMES W. GARDNER VEASO'S IMPERIAL SUGAR COMPANY'S 1911
FOUNDER I 572
85, F24

E. B. MILLS, a witness for Plaintiff, testified as follows:

I was employed by the Prison Commission during the year 1911. I was stationed at Sugarland. I was employed in the capacity of Sergeant and Manager. I had charge of the Sugarland Share Farm, the forces on that farm. My duties as Sergeant included the management of the men and the direction of their work and everything pertaining to the management and control of the men on the farm. The work was performed by these convicts as stated in that letter or statement dated February 28, 1911, - 24 days labor in plantation shop from February 1st to February 28th at \$1.00 per day. I really don't know what the price was at which that work was to be paid for. I think Mr. Eldridge was to pay the same for the men that he had been paying for contract labor, whatever price that might have been: I don't remember. I reported the number of days and the work and left blank the price: I said a dollar - I don't know what that was: I left that for the Commission to charge or rather settle between themselves and Mr. Eldridge. I do know that I worked the number of days stated in the memorandum. I wrote that letter addressed to Louis W. Tittle, enclosing statement of times of convicts in plantation shop for February, leaving the amount blank.

Q. The next paper I find here is Imperial Sugar Company to State of Texas, Dr.: March 31st to 27th days labor No. 2871, Frank Smith, at black smith shop from March 1 to March 31st, at _____ dollars per day, did you write that? A. Yes sir That is a correct statement of the time put in by that man. The work was done for Mr. Eldridge at the Blacksmith shop.

Q. The next item I find is a letter enclosing the following statement: April 24, shelling peas all day, 14 men. 25th, 16 men. 27th, 24 men. May 1st, 11 men, 3rd, 14 men. 12th, 12 men. 22nd, Hauling corn, 3/4 of a day, 11 men, and 22nd, hauling brick, 1/4 of a day, 4 men, and 27th, Hauling brick all day, 2 men. Is that a correct statement? A. Yes sir. That labor was performed by those men for the Imperial Sugar Company. Now this corn and brick, when

51. I made that statement out and signed it, just exactly the time has

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TEXAS PRISON COMMISSION RECORDS
FOLDER 1 of 2
RECORDS IMPERIAL SUGAR COMPANY'S 1911
B5, F29

slipped my memory. The statement is correct as I made it out. That item of June 30, 1911, to 25 days labor No. 2871, Frank Smith, Blacksmith shop, June 1st to June 30th, 1911 at _____ dollars per day, I made that statement, and the work was performed as therein stated for the Imperial Sugar Company. I made out that statement containing the item, "To 26 days service of No. 2871, Frank Smith, at black smith, ship, at _____ dollars per day, and the service was performed as therein stated. I can't say that the blacksmith work was performed at the request of the Imperial Sugar Company. I went to Mr. Eldridge and--Yes he was the man that wanted the man to work: yes he requested me to do the work it was done for their benefit at his request.

CROSSED BY THE DEFENDANT:

This plantation shop that Frank Smith worked in was the shop that did work for the convict camp. The shop was owned by Col. Eldridge. This man Frank Smith was a helper. Mr. Eldridge had a white blacksmith, and requested a man put in the shop as a helper. He wasn't a blacksmith; he was a helper. Mr. Eldridge said he thought it was their place to furnish a man, and I took the matter up with the Commissioners and they said to report every day to the Commission that the man put in there. Eldridge suggested that it was the duty of the Prison Commission to furnish a man to help that blacksmith. He contended for that. I really found the man in the shop when I went there, and I took this matter up after I took charge of the place. Mr. Eldridge never did admit to me or claim that he owed for that man. Mr. Eldridge told me I could report it and they could make the charge but he would not pay for it. He meant that the Imperial Sugar Company wouldn't pay for it. The peas that they were shelling were peas that were gathered the year before I took the place. They were gathered in 1910 and stored away in some houses. They were gathered the year before the penitentiary cultivated that farm. These were not peas that were raised by the penitentiary. The peas belonged to Col. Eldridge--I say Col. Eldridge--I suppose they did, I couldn't say positively. They were raised on that farm. I shelled

D-2001 IMPERIAL SUGAR COMPANY RECORDS

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VERSUS IMPERIAL SUGAR COMPANY'S 1911

95, F24

these peas for the purpose of planting. I had them planted on the share farm. ~~But~~ I didn't charge him anything for shelling them. I just kept account of the number of men and the number of days I had those men at work shelling those peas and they charged it. I planted the peas and raised a crop. We gathered the peas and used them. Col. Eldridge got his pro rata share. We planted corn that year. We didn't shuck the corn. . We didn't shuck but very little corn. We shucked it to plant it. We didn't charge him for that. We didn't charge him for shelling it. Eldridge never did admit that he owed us for shelling the peas. I don't know that Col. Eldridge and I ever talked about the peas at all: if we did, it has escaped my memory. I don't remember just exactly what that hauling was-- that hauling corn, 3/4 of a day, 12 men. It was corn that was on the place there. The corn was used on the place. It was used by the penitentiary people. I don't know where I hauled it from or where I hauled it to or whose corn it was. The brick that we hauled were brick that we hauled around the sugar house. They were the Imperial Sugar Company's brick. I don't remember where we hauled those brick from or where we hauled them to. I don't know what it was for or for whose account it was. I don't know what they did with the brick. That item for hauling more brick on the 22nd is the same thing. There were several things hauled around there that have escaped my memory. That charge for 25 days labor in blacksmith shop is the same thing I testified about awhile ago.

RE-DIRECT BY THE PLAINTIFF:

This convict, Frank Smith, was helper in the blacksmith shop. He was what they call a stricker. They were fixing plows in the shops and wagons and machinery, disc plows, cotton planters and sweeps. They fixed the farming implements. I reported that to the Commission. I was familiar with the contract between the Imperial Sugar Company and the Prison Commission. If you will let me explain, I will just state that I took the matter up with Mr. Brahan and he said they didn't have any right under the contract to furnish a man at the shop. This man was supposed to be working for the Imperial

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION
EXHIBIT 1 of 2
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B5, F29

Sugar Company. He wasn't working for me. He was an assistant there fixing farming implements. I don't know whether that corn was hauled for the State or not: I don't remember about that. I remember about hauling the corn to feed Mr. Eldridge's teams from one of the lower plantations. Yes, that was the corn that we hauled from the Adams Brothers, some that Mr. Eldridge bought and we hauled that corn. They were his mules. I sent the men over there and hauled the corn from that place and made the charge. I couldn't remember: it has been a good long time ago: I couldn't remember at first. I think the Imperial Sugar Company Farm was worked on a share force the year before I went there. I don't know how it was worked. I should think it is customary for peas to be thrashed and delivered in a state ready for planting rather than having to be shelled. I don't thrash corn. It is a good deal cheaper to thrash peas by machinery than it is to thrash them by hand. I couldn't give you any idea of the difference in the cost. I know there is a great difference: I know we had a thrasher at Mr. House's and you could take two or three men and thrash out more in a day than you could with 25 or 30 men will thrash out with sticks. I couldn't shell corn with sticks. The ordinary way to prepare corn for planting is to do it by hand. I can't recall now where the brick were hauled from. They were not hauled for the State: as well as I remember, Col. Eldridge asked me to haul some brick for something, but it has escaped my memory, and I don't know exactly what those brick were used for. The State didn't build any house. We didn't construct any building of brick. They are bound to have been hauled for the Imperial Sugar Company.

Q. I find in this account here an item of \$351.00 for 50% of 210 tons of plant and at \$3.25 per ton, do you know anything about that?

The Defendant admitted that the item of \$351.00 is a correct charge.

RE-CROSSED BY THE DEFENDANT:

I said that I thrashed those peas out by beating them with sticks. On House's place, we used a regular pea sheller and of course

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you could do more by machinery than you could by hand. On this share farm, we beat them out with sticks. It could have been done faster with a machine. I have seen cornshellers many a time: however, I will say that we didn't shell no corn in a sheller: we shelled that by hand. I couldn't say that that helper, Frank Smith, was used only in work on implements and plows for the State. They did a good deal of outside work. They did it for Mr. Eldridge, and he helped do it.

Q. The corn that you hauled, Mr. Hill suggested to you that you used the Imperial Sugar Company's mules that this corn was for, and the State kept on working the mules and worked all that corn out of them didn't it? A. We worked them all the time.

RE-DIRECT BY THE PLAINTIFF:

I suppose we had to haul that corn about two miles and a half, may be three miles. I don't know about whether it was the Imperial Sugar Company's duty to furnish the corn.

D. 0009 IMPERIAL SUGAR COMPANY RECORDS

TEXAS SUGAR COMMISSION
EXHIBIT 1 of 2

VERSUS IMPERIAL SUGAR COMPANY, 1911

85, F29

A. K. ADDISON, a witness for Plaintiff, testified as follows:

I was employed by the Penitentiary System during the year 1911. I was employed on the Imperial State Farm, and my position there was Manager of the State Farm. They called me Sergeant and Manager.

Q. I have here a letter dated October 28, 1911, addressed to L. W. Tittle at Huntville, containing the following language: "I beg to hand you herewith statement of cotton ginned for the Imperial Mercantile Company, Sugarland, Texas": This is cotton from the Imperial Sugar Company's share farm? A. It was ginned at Imperial State Farm. I ginned that cotton at Mr. Eldridge's request.

The Defendant admits that the item of \$111.52 is correct.

19 D. 6009 IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY, 1911
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RS, F-29

read in that statement. Mr. Ferguson had charge of the men. I made that statement (indicating paper. It is for board bills. I know it is correct, and that we boarded the train crew for Mr. Eldridge. I know this to be correct.

Q. It starts out here September 1st, and totals 24 months and runs on through giving an itemized statement of the various numbers of men and the days on which you boarded them aggregating \$88.60: do you know that to be correct? A. Yes sir.

Q. Here is a statement dated November 1, 1911, signed J. M. South, giving the number of meals furnished various men, examine that and see if that is correct? A. Well this was made there: while I never signed this, I authorized it to be signed by my Bookkeeper Mr. Smither. I believe that is correct. I made it up or had it made up. When I sent it in, I sent it as a true report of the number of men I had fed as it was handed to me.

CROSSED BY THE DEFENDANT:

Those men mentioned in that letter to Mr. Tittle as working for W. T. Eldridge were working for Mr. Eldridge. I said that I didn't know whether it is correct or not, that I made it up from data furnished by my assistant. I know they did the work on the road I don't know the number of days, exactly. They were working on the railroad, south of the Santa Fe. Those names that I give in the Statement dated July 31st are all convicts. Those are the names and numbers of the convicts. This work was done for W. T. Eldridge, for the Sugarland Railroad. He controls the railroad. The work was done for the Sugarland Railroad. I got this report from Ferguson and suppose it is correct, but I don't know. I have nothing to do with the charging at all. I sent them the time. This second statement of time was done for the Sugarland Railroad too. That board bill for 252 men at \$15100 per month is for the Sugarland Railroad too. I believe those board bills are correct: they were handed to me just as all the others were. I don't know any more about them than I do all the others. I was authorized to do this work by the Penitentiary Commission. We did some work on the sidings. This particular work was not done on the siding. that was done on the

main track. It was done from Otey Post Office, to about middle ways of the Ramsey State Farm. They did raising track and leveling the track: it was all track work. This was not work on the sidings done for the special benefit of the Prison Commission.

THE DEFENDANT MOVED THE COURT TO EXCLUDE ALL OF THIS TESTIMONY BECAUSE THE WITNESS TESTIFIES THAT HE DOES NOT KNOW THE CORRECTNESS OF ANY OF IT AND FOR THE FURTHER REASON THAT IT DOES NOT PROVE THAT EITHER ELDRIDGE OR THE SUGARLAND RAILROAD COMPANY IS CONNECTED WITH THIS SUIT ARE CHARGED AGAINST THE DEFENDANT.

RE-DIRECT BY THE PLAINTIFF:

I was instructed to have this work done by the Prison Commission. The work was done for the Sugarland Railroad. I don't know anything about the contract between the Prison Commission and the parties having the work done. I just stated that this work was done. I know this work was done. I know this work was done on the Sugarland Railroad by the State Convicts. It was done on that railroad. It was not done upon any spur of the railroad belonging to the State of Texas. These reports do not include any work done on any property belonging to the State of Texas, and done for the State.

RE-CROSSED BY THE DEFENDANT:

While I was working in the field I was out with that force. I was not out on the railroad, not for any length of time: when they were working through the plantation, I visited them once or twice a day, but after they went north of the plantation, I did not.

RE-DIRECT BY THE PLAINTIFF:

I don't think the State owned any track north of the plantation. I never heard of any.

Rg D 609 APPELLAL SUGAR COMPANY RECORDS
THE PRISON COMMISSION VERSUS APPELLAL SUGAR COMPANY'S 1911
RUBEE 1 of 2
85, F29

G. W. EDWARDS, a witness for Plaintiff, testified as follows:

I was employed by the Prison Commission during the fall of 1911 for about 15 days. I was employed in the capacity of cane weigher. I weighed cane right near Sugarland at the Sugarland Scales. I did not weigh the tram cars out in the field: I weighed the railroad cars. I made a record of these weights. That is my signature signed to those papers which are scale weights. I made the weights as set down there. To the best of my knowledge and belief, they are correct weights. I weighed them and they are correct. They begin on October 26th and run through about the 10th of November. That is about right. I was there all that time. I sent the reports to the Prison Commission, and those are the reports that I sent in.

CROSSED BY THE DEFENDANT:

I have not counted those reports and I don't know whether there are thirty of them. I commenced there on the 26th of October, and left there about the 10th of November. I weighed the first cane that was sent in by the State, all except the first car. I remember I met Capt. Eldridge on the track and he says to me, "I can't wait: they have weighed one car", and I suspect the first car was weighted by Mr. Eldridge's weigher. During the time I was there, I ~~had~~ had some ~~xxxxxxx~~ difficulty there with my scale sheets. I think my weights and the weights of the man that was weighing for the Imperial Sugar Company tallied. I returned these weights to the Prison Commission I made out duplicates of them, but I don't remember exactly what went with those duplicates. I don't remember that me and Mr. Finley had any trouble about our weights. If we had any, it is more than I know of. There was some little confusion about weights there because those weights according to my understanding at the time taken from the scales they went over to the sugarhouse and over there there were other weighers ~~xxxxxxx~~ over there that seemed to have something to do with those weights. There was a little confusion. I am satisfied these weights are correct.

D 009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION, WEIGHING IMPERIAL SUGAR COMPANY'S (1911)
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85, F-29

D. R. SECREST, a witness for Plaintiff, testified as follows:

I started weighing cane for the Prison Commission on the 25th of October, 1911 and quit on the 28th of January, 1912. I weighed on the tram track, on the old Cunningham Place. That is known as the old Cunningham Plantation, where I was raised at. I was weighing tram cars. I made a records of my weights. I have not examined my weights since I sent them in to Mr. Tittle. All that I see here (examining papers) I signed. That is my signature. I set down those weights there: I copied them from my book. They are correct weights made of those tram cars at the time. They were sent here to the Prison Commission.

CROSSED BY THE DEFENDANT:

Mr. Eldridge had a man there weighing from the time we started until the first of January, and then he took them away. The first four or five days we didn't talley, and after that Mr. ^{Kirvin} ~~Kirvin~~ told us we might save trouble if they did talley, and after that we did. No one weighed with me after the first of January. I sent Mr. Tittle one every day and every day or so, Mr. Eldridge would get his report. I sent the same reports showing the same weights to both offices. I never footed up Mr. Eldridge's. They were the same though, copies of them, the number of cars and same number of weights. I couldn't tell you whether the footing was the same.

It is agreed by both sides that it is not necessary to introduce the original book made by D. R. Secrest.

PLAINTIFF RESTS

89 D 004 MARSHALL SUGAR COMPANY RECORDS
TENA J. NELSON (MAY 1930) VESSES MARSHALL SUGAR COMPANY (1911)
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85-1-29

It is agreed in this cause that the statement of the chemical tests of the cane, as shown by the exhibits attached to plaintiff's first amended original petition, is correct. That the number of tons of cane shown to have been delivered by the Prison Commission to the Imperial Sugar Company, as shown by exhibit to plaintiff's first amended original petition, is correct, less 23 1/2 tons.

RG D 6004 IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION RECORDS
FOLDER 1 of 2
VERSUS IMPERIAL SUGAR COMPANY, 1911

85,624

J. H. RENVYSON, A WITNESS FOR DEFENDANT, TESTIFIED AS FOLLOWS:

I live in Houston. My business is that of an engineer and Machinist. I have worked in the sugar business in Louisiana and for the Cunningham Sugar Company, and then I worked for the State of Texas. I have been working in the sugar business pretty nearly 30 years. I have had occasion to work where the cane was frozen by a freeze. I am familiar with the effect that a freeze has on cane, and what effect it has on its sugar making properties. In November and December of last year, 1911, I was working for the Penitentiary System. I was on different farms, different plantations during those months. I was on the Clemens Plantation on the 29th of November, 1911. We had a hard freeze in that valley in which is located the Ramsey Plantation and the Imperial Plantation on the 29th of November, - Thanksgiving day, I believe. The Mercury went down to about 16 degrees below freezing point I think.

Q. Did you have occasion to look at cane in that valley to see whether or not that freeze froze the cane?

THE PLAINTIFF OBJECTED TO ANY EVIDENCE AS TO THE FROZEN CANE OR AS TO THE EFFECT THE FREEZE HAD ON IT, - THE OBJECTION BEING BASED ON THE CLAUSE OF THE CONTRACT THAT GIVES THE DEFENDANT THE RIGHT TO REJECT FROZEN CANE IF HE DESIRES TO DO SO. IT BEING IN EVIDENCE THAT DEFENDANT DID NOT REJECT IT, AND HAVING RECEIVED IT, IT BECOMES IM-MATERIAL FOR THE PURPOSES OF THIS CASE WHETHER THE CANE HAD BEEN FROZEN OR DAMAGED BY FREEZING OR OTHERWISE, - WHICH OBJECTION WAS BY THE COURT OVERRULED FOR REASONS HERETOFORE STATED.

I had occasion to examine cane in and near Sugarland to see what effect the freeze had on it on the 29th of November. The freeze ruined the cane. When I say it ruined the cane, I have reference to the cane's sugar making properties. It destroyed the cane for the purpose of making sugar.

THE PLAINTIFF OBJECTED TO ANY TESTIMONY EXCEPT THAT WITH REFERENCE TO THE FARM THAT THE WITNESS WAS ON.

I saw the cane frozen on the Ramsey Farm and I saw the cane on the Clemens Farm and I saw the cane on the Harlem Farm. It is a fact that Sugarland and the Imperial Farm is between Harlem and Ram-

64, 63.

D-2009 IMPERIAL SUGAR COMPANY RECORDS
72145 PENNSYLVANIA DIVISION
RECORDS
VICTORUS IMPERIAL SUGAR COMPANY'S 1911

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sey and Clemens Farms. The effect of the freeze would be worse on the Sugarland Farm, due to the fact that the Ramsey place is further South ~~maxing~~ and due to the fact that there is one or two degrees, may be three degrees difference. The cane was ruined on the Ramsey place and on the Harlem place,- both above and below the Sugarland Farm. How long after the 29th of November that cane could be used for the purposes of making sugar depends on the conditions. Cane standing, after that freeze, in fifteen or twenty days, I suppose that cane would be worthless, but cane that was windrowed would last longer than that. Cane standing would last 15 or 20 days after the freeze and cane windrowed would last some longer. Cane that was windrowed might last possibly thirty days, but that would also depend on the weather conditions.

CROSSED BY THE PLAINTIFF:

I used some of that cane. I worked some of it up. I was principally at the Harlem place.

RE-DIRECT BY THE DEFENDANT:

It was somewhere along the latter part of December before the Cane on the Harlem Place got in such condition that it was unfit to use. It was somewhere along in December before standing cane became worthless,- about Christmas or New Year's time. We had some windrowed cane that we used clear up to the middle of January, up to about February. We made sugar up to the middle of February,- a certain grade of sugar. It was not such sugar as paid us to make it. It hardly paid us to make it up in sugar. Due to the fact of wanting to get the cane off the ground, we did what we could with it, but as to its commercial value, there was nothing to it. I don't think it paid us at all after the first day of January. After the first of January, it could not be made up at a profit. . The weather conditions caused those conditions. The freeze and the amount of rain and the warm weather set in and the fermentation set in and that simply ruined the cane. I am not a practical sugar maker I think we had a freeze after the 29th of November, but I don't remember when that was: I think it was along in December. We had a freeze in the latter part of October or the first of November.

IMPERIAL SUGAR COMPANY RECORDS
REAS RAMSEY EXHIBITION, VERSUS IMPERIAL SUGAR COMPANY, 1911
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B5, F29

That freeze killed the bud of some cane. It injured the cane to a certain extent. We stopped on some of the places and windrowed it. Windrowing the cane preserves it. The cane deteriorates as soon as you cut it, but the windrowed cane holds it for some little time afterwards. Immediately after you cut the cane, it deteriorates in value. We windrow it to keep the sap from going down and destroying the cane. I know whether it takes more or less time to make sugar out of cane juice that is frozen than it does to make it out of juice that is not frozen. It takes longer to granulate frozen juice from frozen cane than it does to granulate juice from cane that is not frozen. It takes several hours longer in the boiling process.

Q. If a sugar mill is so constructed that the vats and boiler will take care of the juice from the crusher and granulate the sugar where you boil three or four hours, if you have to go on seven hours or eight hours, or twenty hours, wouldn't you have to stop the crusher to wait for the boiler? A. Yes sir.

THE PLAINTIFF OBJECTED TO THE ABOVE QUESTION AND ANSWER THERETO ON THE GROUND THAT IT IS MATERIAL.

THE COURT: IT MIGHT BE MATERIAL ON THE FROZEN CANE PROPOSITION. There are times in sugars houses that it happens that you have to stop the crusher to wait for the boiler to catch up when handling frozen juice. It is much more expensive to make sugar out of frozen juice than it is out of juice that is not frozen.

PLAINTIFF OBJECTS TO ALL TESTIMONY OF THIS CHARACTER.

It is not possible to recover as much ~~juice~~ sugar from juice that has been frozen as it is from juice that has not been frozen. There is no possible way to recover it at all. It may be possible that cane juice that has been frozen and then melts may be made up into what we call spring sugar or it could made into syrup, It ~~xxx~~ would not be profitable to make cane in that condition up into sugar. You might make it up into spring sugar. By spring sugar, I mean where it has been put in a hot room. Cane that has been frozen and then melts has no market value in that country or any country where I have ever been, after the weather gets warm and it ferments.

84 D 1009
MERRILL SUGAR COMPANY RECORDS
7443 FROZEN CANE PROPOSITION
FEBRUARY 1 1912
MERRILL SUGAR COMPANY'S 1911

65

85: F 29

CROSSED BY DEFENDANT:

The mere fact of freezing has some effects on the sugar properties of cane. I don't think the mere fact of freezing, without the resulting fermentation has any effect on it. I am not a chemist. I know what you mean by chemical reaction. I don't know whether I could answer the question as to whether any chemical reaction takes place in cane just merely by cooling it thirty or forty degrees. I cannot answer it. I was always under the impression that freezing did affect the sugar properties of cane juice. I don't know whether there is any change that takes place in the chemical elements of cane juice, with relation to one another by the act of freezing or not. I know this much, that if cane is frozen, and the weather becomes warm again and fermentation takes place, I know the deterioration takes place then. That is from fermentation. Well, I would suppose it was from the cane being frozen too. You might take cane that is frozen hard and work it up and grind it before fermentation takes place. If you did do that, there would not be any difference between the results in sugar between unfrozen cane juice and frozen cane juice. What I meant to say to Mr. Bane was that if cane were frozen and then fermented, there would be a difference. . I did not say that in the places where I was that cane did not begin to ferment until the latter part of January: I said that there was some cane standing after the freeze that fermentation took place in 15 or 20 days after the freeze. The first fermentation that took place that I noticed was about ten days after the freeze. I worked the cane up. We got results, but not as good as we would have had if the freeze had not come. We made granulated sugar out of the cane. It took a little longer probably at the boiler to work that cane up. We didn't have to boil it twenty hours longer at that time, but we did later on in the season. I was at Harlem. I was working for the State. We began taking the crop off. I was not attending to the sugar boiling. I was Superintendent of the outside sugar building: I was at different places. I was looking after the machinery on several places. I was not engaged in making sugar at Harlem. I did not take part in making sugar. What I have said about making sugar

0004 IMPERIAL SUGAR COMPANY RECORDS
7005 REASON FOR RECALLS
FOLDER 1-1-2
VELOSUS IMPERIAL SUGAR COMPANY'S 1911

66

B5, F24

is not largely conjecture. I was not at Harlem all the time. I don't know what happened while I wasn't there. What I have said about that crop up there is conjecture entirely as to the time that I was not there. I don't remember what day it was that I saw fermented cane come into Harlem. I did not keep a record of how long it took to boil that first cane that came into Harlem and make it into sugar. I did not make a test of the result. The only thing is this, I know we were a longer time in boiling the cane. We were probably an hour or two longer in boiling it. After the first freeze, it took from two to three hours longer to boil the cane. That was shortly after the last freeze in November. It is hard for me to recollect how long after. I have no accurate knowledge on that particular subject. It was about ten days after this first freeze before this damaged cane was brought in and we attempted to make it into sugar. I kept a record of the time while I was there. I kept no record with respect to this cane. I know something definite about this cane: I know it was frozen. I told you that the fermentation set in about ten days after the freeze. As near as I can judge, it was about ten days. It could have been twelve days, and it could have been 15 days. I know it was ten or fifteen days afterward, as near as I can speak now, as near as I can recollect. By spring sugar, I mean sugar that is not granulated and is put in hot rooms and allowed to remain over several months to granulate later on in the season. I did not take any part in the delivery of any cane to the Imperial Sugar Company. I didn't make any observation of that cane. I do know that sometime after the freeze there was fermented cane brought into Harlem. I said in reply to Mr. Lane that the cane was ruined by that freeze. I meant by that that the cane was worthless that is, some cane, not all of it. There was some cane that was ruined and worthless on all sugar plantations. I did not swear that freezing did not render the cane worthless: I said that after the freeze and fermentation took place it ruined the cane. Certainly it was the freeze that did that: if it had not froze, the cane would not have been ruined. If it had stayed cold, it would not have been ruined. I mean to say that the cane was ruined, due to the freeze in there: if there had been no freeze, the cane would not have been

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IMPERIAL SUGAR COMPANY RECORDS

TESTS WATSON (ADMINISTRATOR) VERSUS IMPERIAL SUGAR COMPANY 1911
PAGES 1 OF 2

B5, F29

ruined. I don't remember exactly the amount of cane that was crushed before fermentation took place on Harlem, but there was some cane there that was never ground at all. I did not say that all of the cane was ruined. There was a severe freeze down there, and the fermentation setting in as a result of that freeze, ruined what cane they couldn't grind before it became fermented. That is what I intended to say. We had rain following that freeze on the 29th of November, Thanksgiving Day. They were heavy rains, that rendered the farms very boggy and the roads very bad. Cane is exceedingly heavy, and a load of cane on an ordinary farm wagon in muddy weather is a heavy proposition to handle. I don't remember the date of this severe freeze when the thermometer went down to sixteen below freezing. Following that freeze it rained: I think we had rain along in December. I think it rained a great deal of the time during the month of December. I think it rained very hard in December. We had some pretty cold days and then the weather got warm again. . I think there was some really warm weather during December: the best of my recollection we had some warm days in December. I don't remember what part of December they occurred.

RE-DIRECT BY DEFENDANT:

I believe I stated that within about ten days from the 29th of November it was warm enough for the cane to begin to ferment: I don't remember exactly. It has been over a year ago now, or about a year. I never saw a sugar mill in the State take cane and thaw it out. They have often tried to introduce them, but it never made a success. We have tried using steam, but it was an expensive proposition to use steam to thaw out the cane. As a matter of fact, a fellow has to wait awhile after a hard freeze before he cane crush that cane. After cane has frozen and begins to ferment, it would have a market value to a certain extent: it might be made into syrup or spring sugar or something like that. I would not consider that profitable if you would take a whole crop and run it into sugar, it would not be profitable. I am not a chemist.

RE-CROSSED BY PLAINTIFF:

68. Fermentation takes place after a freeze and then a rain or very warm weather causes fermentation.. I do not understand what is meant

D 1001 IMPERIAL SUGAR COMPANY'S RECORDS

7045 PERSONAL SUBMISSION

EXHIBIT 1 OF 2

VERSES IMPERIAL SUGAR COMPANY'S 1911

B5, F-29

by the chemical process that brings about fermentation. I don't know how the bacteria is formed by the warm weather and that they cannot live in cold weather.

D 1009 IMPERIAL SUGAR COMPANY RECORDS

REDAI TAYSON (ADMINISTRATOR) RIDGE 1 of 2

VERBOS IMPERIAL SUGAR COMPANY'S 1911

7

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85-124

PAUL C. RUDAT, a witness for Defendant, testified as follows:

My name is Paul C. Rudat. I am a Chemist. I am employed by the Imperial Sugar Company. I was employed there during the cane season of last year, 1911. I stayed there on the 7th of November. I know what properties must exist in the syrups of cane in order that a part of it can be converted into sugar. The part that the sugar is made out of is the ^{sucrose} ~~glucose~~. A 70% purity test means ~~that~~ that 70% of the total solids is sucrose--not of the cane now, but 70% of the total solids found in that cane. It means that 70% of the total solids found in the cane is sucrose. When you boil those juices, the effect of it is to recover as much of this sucrose or sugar as possible. You cannot recover it all by any known process. About 75% would be a good extraction from cane in perfect condition. Take cane that is frozen and has been subjected to a temperature of 16 degrees above zero,-- that makes the working of the juices very difficult. After fermentation has set in, produced by the freeze, it changes the sugars into gums-- all of the sugars and non-sugars, but mostly the sugars are converted into gums-- mucilaginous, and it makes it difficult, by the ordinary processes of clarification, to recover those juices. The actual freeze itself does not change the quality of the cane. The result of the freeze-- when fermentation sets in, changes the properties existent in the juices. Warm weather or rain will produce fermentation. After fermentation is produced, either to a small or great extent, it takes a great deal more time to crystallize. Cane is not suitable for making sugar profitably after fermentation has proceeded beyond a certain extent. . It is hard to determine the exact stage at which it could be worked profitably. It could be determined only from the actual work on the juice. I was at Sugarland on the 2nd day of December last year, 1911. I watched the efforts of the sugar makers to make sugar out cane brought in there.

Q. Could they or not make sugar out of any of that cane profitably.

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT CALLS FOR AN OPINION OF THE WITNESS,--THE ONLY COMPETENT EVIDENCE BEING THE COST

Imperial Sugar Company Records
1911
RECORD 1 of 2
VERSES IMPERIAL SUGAR COMPANY'S 1911
B5, F29

70.

OF FUEL AND LABOR AND NO WITNESS IS CALLED TO OR CAN COME IN HERE AND STATE WHETHER OR NOT THEY COULD MAKE SUGAR PROFITABLY OUT OF THE CANE JUICE.

THE COURT: UNLESS HE KNOWS THE COST OF THE MANUFACTURE, I WILL SUSTAIN THE OBJECTION.

I know what is required to be done in order to extract the juices, boil it and reduce it to sugar.

Q. Well then, knowing that, and the condition of the cane as it was there, could those things necessary to be done such as crushing it, boiling it, and doing everything else that might be necessary, could that be done out of that frozen cane at a profit?

PLAINTIFF OBJECTS TO THIS QUESTION BECAUSE IT CALLS FOR AN OPINION OF THE WITNESS.

THE COURT: I HOLD THAT IN ORDER TO SHOW THAT THE CANE COULD NOT BE PROFITABLY MANUFACTURED INTO SUGAR, YOU HAVE TO PROVE THE EXPENSE OF MANUFACTURING IT.

Q. Do you know the expense of running a boiler and the fuel that goes into the boiler, the number of men that fire the engine and the engineer and the oilers to run the engine, and the wear and tear and cost of running an engine and in running the hoister to throw the cane on to the drag or carrier, the cost of running the carrier by machinery and of running the crusher and forcing the cane ne through the crusher and furnishing the fuel to boil it and carry it into crystal,- have you actual knowledge of the cost incident to that kind of process?

THE PLAINTIFF OBJECTED TO THAT QUESTION BECAUSE IT IS NOT THE PROPER INFORMATION. OBJECTION OVERRULED.

CROSSED BY PLAINTIFF.

I am not a practical sugar maker. I never made any sugar.

THE COURT: I WILL LET HIM ANSWER THE QUESTION AND WILL HEAR YOU FURTHER.²

In dollars and cents I do not know the cost of all those things, or what the cost would be. I would not know the cost for a grain of sugar or for a pound of sugar or for a ton of sugar.

Q. Do you know the general cost of doing those things?

PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT IS TOO INDEFIN-

0089 IMPERIAL SUGAR COMPANY RECORDS
TEXAS HOUSON COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
RUBEN 1 of 2

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B5, F29

ITE, - WHICH OBJECTION WAS BY THE COURT SUSTAINED, AND TO THE RULING OF THE COURT THE DEFENDANT IN OPEN COURT EXCEPTED.

The effect of a freeze is to convert the sucrose in the cane juice into gums, - principally mucilaginous gums.

CROSSED BY PLAINTIFF:

The process of fermentation was directly due to the cane having been frozen and the process of fermentation converted the juices in the cane into gums. Cane would have to lay on the ground for a long time in order for it to ferment without being frozen. It can do it. There is no reaction that takes place from the mere freezing. The reaction that takes place is that the juices in the cane is converted into gums. It is hard to explain just what a chemical reaction is. I can't exactly explain from a technical standpoint just what a chemical reaction is. The process of fermentation is brought about by bacteriae or germs that get into the cane. I mean to tell the Court that the germ forms a chemical compound with the juices in the cane. There is one gum known as dextran and various other gums due to the bacteriae. I am not a bacteriologist. The influence of bacteriae on some subjects bring about a chemical reaction. I know what H₂O is. There is something like that that happens when you come to bacteriae in cane juice. That is one thing that I am not familiar with enough to thoroughly explain. I don't believe any of the most learned men in the land have been able to explain the change that takes place. All the authorities agree, and give nothing more on the subject in the books other than to simply say that that conversion takes place. The working of the cane causes it. I would like to know a man that could explain that. The fact is the bacteriae cause that reaction. If the fermentation had not taken place, there would be no loss in the sucrose properties of the cane and no additional difficulty in extracting the sucrose from the cane juice. Fermentation does not strike a stalk of cane all at once. It is the exposed part where the bacteriae first begin to work, Certainly it is true that you can take a stalk of cane where the small end is fermented and cut off a full joint and the balance would be good. If you take a whole field of cane where the bacteriae have
how many gallons

IMPERIAL SUGAR COMPANY RECORDS

RECORD 1 of 2

TEXAS SUGAR COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911

72

85, F-29

not affected all of it, some of it will be good and some of it will not be good, and some affected and some not affected. If you would bring in a carload of cane to a sugar mill, if there was no fermentation, it would not be deteriorated or impaired in its sugar making qualities. The don't take a car of fermented cane and dump it in with a car of cane that is not fermented. There would be ^{no} ~~some~~ way to determine exactly what was fermented and what was not fermented: a small sample from a cane car would not determine what was in the whole car. If you would take a car of cane testing 80% and put a car of cane in with it that tested 70 per cent, it would make an average of the two. It would deteriorate the eighty per cent cane and would not help the seventy per cent cane. . In this mill of Mr. Eldridges, they make it all up and grind it together. There was no way to separate the good cane from the bad cane. There was nothing done to separate it. They just took good cane and bad cane and dumped it all in together and made the juices up together and run that through the process. They have the milling process, and the juice after it is milled is run through a clarification process. There is diffusion,- that is extracting the juices by boiling instead of extracting the juices out with the crusher. They brought all of the cane there and crushed it and mixed the juices all up together.

RE-DIRECT BY DEFENDANT:

I don't know of any mill where the diffusion process is in existence in Texas. I know of some that have been abandoned long ago. They used to have one there at the Cunningham Sugar Plantation but it was torn out this year. I don't know of any better mill than the Cunningham Sugar Plantation mill. I don't know of any bigger mill than that. I never knew of anybody, any miller, sugarmaker or chemist who would go out to the car and get out a few stalks of cane and squeeze the juice out of it and separate that juice from the other. It would not be practical to do that.

RE-CROSSED BY PLAINTIFF:

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In order to get a test out of each car, it would necessitate a great many helpers. I don't know how many gallons of cane juice there are in a car of cane. A car of cane will average about 20 tons. 73% of the juice would be a fair extraction. I can very easily calculate how many gallons that would be.

2004 IMPERIAL SUGAR COMPANY'S RECORDS
FRANK J. JASON'S EXHIBITION
EXHIBIT 1 of 2
IMPERIAL SUGAR COMPANY'S 1911
85, F-29

H. VARNER, a witness for Defendant, testified as follows:

I live at Sugarland. I am Sugarhouse Superintendent. I am a practical sugarmaker by the crushing process. I have been engaged in that business for over thirty years. I have been living in Louisiana, and have engaged in that business there. I have not been in Texas quite two years. . . During the two years I have been in Texas, I have worked right there at Sugarland. I know how to take cane in the stalk and make it into sugar with a mill equipped for that purpose. I have had experience in trying to make sugar out of frozen cane. I have only experienced one freeze like that one last year. I think the first freeze of that kind that I experienced was in 1901 or 1902.

THE PLAINTIFF OBJECTED TO ANY TESTIMONY IN REGARD TO CONDITIONS IN 1901 AND 1902.

Such a freeze sours the cane and makes it unfit for working up into sugar. It sours the cane and makes it unfit for use. .

Q. How long after a freeze like that would it be until the cane was unfit for use?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE THE WITNESS HAS NOT QUALIFIED AS TO ANY KNOWLEDGE ON THAT POINT AT ALL,- WHICH OBJECTION WAS BY THE COURT OVERRULED,- TO WHICH RULING OF THE COURT THE PLAINTIFF EXCEPTED.

I think the length of time after a freeze before cane would become worthless would depend a great deal on the weather. I was at Sugarland making sugar on the 29th of November, last. I superintended the handling and saw the handling of all the cane that was crushed at the Cunningham Sugar Company's mill from the 29th of November on.

Q. How long after the 29th of November was it until that cane got so you could not make sugar out of it at a profit?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE THE QUESTION AS TO WHETHER OR NOT SUGAR IS MADE AT A PROFIT HAS NOT BEEN PROVEN, AND THE ONLY WAY THEY CAN PROVE THAT IS BY COMING IN HERE AND SHOWING THE COST OF FUEL, LABOR, MATERIAL, AND EVERYTHING THAT ENTERS INTO IT

THE COURT: I UNDERSTOOD THIS WITNESS TO SAY THAT HE KNEW WHAT
TH. I WAS.

19 D 009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMPANY (CUMMINGS) VERSUS IMPERIAL SUGAR COMPANY, 1911
INDEX 1 of 2

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85 F 29

I do not know what it costs to make sugar per ton with good cane
I know about what it costs.

PLAINTIFF OBJECTS TO THE TESTIMONY FOR THE REASONS STATED.

THE COURT: I WILL HEAR THE TESTIMONY. PLAINTIFF EXCEPTS.
PLAINTIFF FURTHER OBJECTS TO THIS TESTIMONY BECAUSE THE DEFENDANT
CANNOT, UNDER THE ALLEGATIONS IN ITS ANSWER IN THIS CASE, WHEREBY
IT CLAIMS A DAMAGE OF FIFTY THOUSAND DOLLARS AGAINST THE STATE OF
TEXAS FOR FAILURE TO DELIVER THIS CANE, PROVE UP ANY DAMAGES BY
GENERALIZING AS TO THE COST OF MAKING SUGAR AT ANY OTHER MILL OR
ANY OTHER SUGAR THAN THAT WHICH THEY ENTERED INTO A CONTRACT HERE
IN THIS CASE.

THE COURT: I SUSTAIN THE OBJECTION; MAKE THE TESTIMONY APPLY TO
THAT MILL.

I could not say what it costs per ton to make sugar out of cane
because I have not figured it out there at all, but I think the
records will show it. You can make about 165 pounds of sugar out of
a ton of good cane at that mill.

CROSSED BY PLAINTIFF:

I did not keep a record of these things.

PLAINTIFF OBJECTS TO THE TESTIMONY BECAUSE IT IS MERELY GUESSWORK.
OBJECTION OVERRULED.

RE-DIRECT BY DEFENDANT:

Q. How much did you get out of the frozen cane after that freeze
how much sugar out of a ton of frozen cane?

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE THE WITNESS
CAN'T GENERALIZE AND SAY HOW MUCH SUGAR THEY GOT OUT OF FROZEN CANE.
IF THEY HAVE THE PROOF TO SHOW HOW MUCH WAS FROZEN LET THEM PRODUCE
IT CAR BY CAR.

THE COURT: I WILL STATE TO COUNSEL THAT IT STRIKES ME WE ARE
TAKING UP TIME UNNECESSARILY; I RULED THAT ON ACCOUNT OF THE FACT
THAT THEY HAVE FILED A SUPPLEMENTAL ANSWER THEY COULD SHOW IT.

CROSSED BY PLAINTIFF:

I don't know where the cane came from that Mr. Eldridge re-
ceived.. I don't know where any of this cane came from.

0009 IMPERIAL SUGAR COMPANY'S RECORDS
REAR ROOM (ADMISSION)
RUBEN I 212
VERSUS IMPERIAL SUGAR COMPANY, 1911

75

85, F29

RE-DIRECT BY DEFENDANT:

I think may be we started to try to make some sugar out of cane that had been frozen, at that mill after the 29th of November, but very little of it. We did not try to make sugar out of the frozen cane. We could not make enough sugar out of the cane to pay for the manufacturing of it. None of that frozen cane would make sugar enough to pay for the making of it, none of it. As to how much longer you would have to boil the cane to get the sugar out of it would depend on how badly it was fermented. Some of it took twice, three, four and five times as long as ordinary cane would take. If it took, twice, three times four times or five times as long, we had the same men at work, the same machinery and same everything. It took that much time longer to boil the sugar. I think the greatest amount of sugar that we got out of that frozen cane was seventy odd pounds of low grade sugar. I don't know how much that sugar cost per pound to make it. It would cost 25 cents per pound to make it. You could not sell sugar at 25 cents per pound. I am just a sugar maker. There was nothing that we could have made out of that frozen cane that would have paid for making it. It was no account for manufacturing purposes. It had no market value.

CROSSED BY PLAINTIFF:

I said that it cost 25 cents per pound to make that sugar, more or less. It might have cost a whole lot less. I didn't mean to say that it did cost that much. I can't say what date it was that the first fermented cane came into that mill, but it was somewhere the early part of December. I did not keep any record of the good cane. I don't know how much good cane there was come in there and how much bad cane came in during that cane season. The bad cane began coming in in the early part of December, I don't know the date. I believe the freeze was on the 2nd of December. I really don't remember when the freeze was. We were not running our mill during that time: we had stopped. I don't know when we stopped. We stopped during that freeze. I don't know how long we stopped. I didn't take any record and I don't remember. I guess there is records about that but I didn't keep them. I didn't keep any items of cost or expense.

76.

D. 1004
MINERAL SUGAR COMPANY RECORDS
T. H. HARRISON COMPANY
FOLDER 1 of 2
VERSUS MINERAL SUGAR COMPANY 1911

B5, F29

When I got to handling the cane, I can mighty quick see what I can do with it. I ground the cane and worked up the juice. I don't know what time we stopped grinding. I don't know whether it was in January or not. I can't give you my best recollection, I don't know. It might have been away along in the middle of January. I tell the Court that I was grinding that cane and working it up and that I knew it was costing three or four or five times as much to work it up as it was worth. Practically speaking, all of it cost that much, even the molasses. It was our orders to work it up. I reported it to the mill people: in fact, I was on the point of resigning my position on account of that very cane. I didn't resign. I stayed there and worked it all up, up to the middle of January. We made molasses out of this stuff that we worked up. The molasses is standing there yet. The molasses aint no good. I made it up because I was ordered to make it up.

R4 0 004
MORNING SUGAR COMPANY RECORDS
7210 1 1900
PAPER 1 1900

77.

85, A 29

H. L. TRASKILL, a witness for Defendant, testified as follows:

I live at Houston. I have a sugar plantation. It is located in Brazoria County, about forty miles from the Cunningham Sugar Plantation in Fort Bend County, south of the Cunningham place. I grow ribbon cane on my place. I raised some last year, 1911. The State was half interested in the cane grown on my place. Most all of my cane was in the field at the time of the freeze on November 29th. The freeze hurt it to the extent of about 85%. After that freeze, I worked the cane up until sometime in January, the 15th of January I think. I worked it up as economically as I knew how. I lost money on it. I manufactured it at as little cost as I could, and I lost money. I lost somewhere about \$2500.00, more or less. I made a statement of it, but I have forgotten just exactly now. I made a statement of it to the Commissioners to show that they hadn't made anything.

Q. Under what agreement, if any, did you go ahead and manufacture that stuff?

PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT HAS NOTHING TO DO WITH THIS CASE.

THE COURT: I UNDERSTAND THAT THE DEFENDANT HAS AN ALLEGATION IN ITS ANSWER THAT A CERTAIN CONTRACT WAS MADE WITH THE BOARD OF PRISON COMMISSIONERS IN REGARD TO THE MANUFACTURE OF THIS FROZEN CANE. I WILL HOLD THAT THERE IS NO ISSUE AS TO THAT SO FAR.

THE PLAINTIFF OBJECTED TO ANY TESTIMONY BY MR. TRASKILL AS TO ANY CONTRACT THAT THE PRISON COMMISSIONERS MAY HAVE HAD WITH HIM, BECAUSE IT IS NOT ADMISSIBLE FOR THE PURPOSE OF ESTABLISHING ANY TRADE OR WHETHER OR NOT THERE WAS A TRADE MADE WITH MR. HERRIDGE ON ANY PROPOSITION BECAUSE WE MIGHT BE WILLING TO MAKE A TRADE WITH MR. TRASKILL THAT THEY WOULD NOT BE WILLING TO MAKE WITH MR. HERRIDGE: THERE IS NO EVIDENCE THAT THE CONDITIONS ARE THE SAME OR THE CIRCUMSTANCES THE SAME OR ANYTHING CONNECTED WITH THE ONE THAT WOULD BE PRESUMPTIVE OF SUCH A TRADE WITH THE OTHER.

THE COURT: I WILL HEAR THE TESTIMONY.

trade with the Board of Prison Commissioners, under
make syrup out of the cane. Our agreement was

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Mr. D. C. ...
Missouri Sugar Company ...
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that if I made anything out of it, I was to give them what was right out of the proceeds. They owned half of the cane and I owned half. The State was to be paid by me, and if I made anything I was to pay them, and if I didn't wasn't to pay them anything, and I lost instead of made.

CROSSED BY PLAINTIFF:

I was friendly with the Prison Commission then. I had no trouble with them. I had not sued them for a big state farm, and I had not threatened to sue them for anything. I had not been buying a lot of junk at high prices. I didn't write them any letters saying that I wouldn't pay them for the cane after that freeze. I offered to turn the mill over to the Commission and let them operate the mill. My cane was tested over at the Clemens Farm. The cane went down as low as ~~xxx~~ thirty-eight. The acid in the cane ate the sugar up. There was nothing there but sour water. The first cane was better than the last. When we had the second freeze, it went all at once. We stopped about ten o'clock and couldn't operate at all. As to whether the first cane after the freeze was worked up at a profit or not, would bring on an explanation as to how long after the freeze, I contracted some of my cane in syrup. Sometime in January I think it was, about the middle of January, I sold Gordon Sewell one car, and I delivered about two, and by mixing glucose with it, it had a nice color and it tasted pretty well, and Gordon Sewell took two cars, and I had 140 or 160 barrels at Dew Brothers Mill to mix with glucose and the mill was burned, and after that time it went to pieces and I didn't sell any more, - that is at a profit: I shipped some out and had to take it back, and all the syrup I had left I sold for seven or eight cents a gallon net. In figuring this loss, I took into consideration the 160 barrels burned up at Dew Brothers' Mill. If I could have sold it all and got it sold in time, I think I could have made a profit. It was the fire that brought about the loss.

RE-DIRECT BY DEFENDANT:

79. I do not mean that the freeze didn't have anything to do with: the freeze had all to do with it. If I could have handled it quickly I could have made something out of it. As soon as it started to

D 1009 IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION
Rider 1 of 2

VERSUS IMPERIAL SUGAR COMPANY, 1911

S.F. 29

ferment it all went at once. I think the first freeze was about the 26th of November, and the next one sometime in January, between the 10th and 15th of January. I know I was gringing and we stopped the mill about ten o'clock and fermentation set in.

RE-CROSSED BY PLAINTIFF:

I had a pretty hard time with my mill breaking down. That delayed me a great deal: the mill didn't break until after the freeze: it didn't run well before the freeze, but the rainy, wet weather kept me down. I have had experience in cutting down frozen cane that has been ruined and piling it in the rows. Everybody does it: I guess it is practical: I did it. I put mine six rows together, and in fact I have one row for every six. Some of it you can't tell where the rows are, but some of it will be affected by it- that is the cane on each side of the row where it is piled. Some of it is right smartly affected. A great deal of it you can't tell there is any cane there unless you see it on the ends.

RE-DIRECT BY THE DEFENDANT:

It costs something to move it from the five rows into the sixth. It is pretty expensive.

R4 D 004 MATERIAL SUPPLY COMPANY RECORDS

REAS PERSON (AKA) SAKU VEASUS INFERIOR SUGAR COMPANY'S 1911
Folder 1 of 2

85-1-2

8 80.

T. C. BLANEY, a witness for Plaintiff, testified as follows:

I was employed by the State during last year. I will have been employed by the State six years next February. I have held the position of Manager of the Harlem State Farm. I took off the Cane crop on the Harlem State Farm last year. I had some cars furnished by Mr. Eldridge or by the Sugarland Railroad Company or by the Sugar Company. I had six racked cars on my farm to start with and used them a few days and Mr. Eldridge phoned me and asked me would I exchange them for coal cars, and he sent down and got them. Mr. Eldridge did not rack thirty, sixty or eighty cars on that farm for me. I used six coars for about a week. The balance of the cars I used were coal cars. I had some cars racked: I think there were thirty. The majority of those cars were coal cars. The difference between coal cars and racked cars is that you rack the flat cars from the floor up and you rack a coal car from the top of the box. I don't remember whether all of the cars that I racked were coal cars or not. I think it was about half and half- coal cars and flat cars. By racking a car car is meant boxing it up and making a box car out of it without a roof. You put some 4 X 6 like standards on a wagon and box it up. You use 1 X 12 for that boxing and tie the tops of the poles together with a 2 X 6. I think that curved track, running from one railroad to the other was built there during the second year of the Campbell administration. The Sugarland Railroad Company has used it since its construction in connection with the Harlem track to get up to the Sugar mill. The State does not use that track. The State has no cars or engine either to haul on it. The Sugarland Railway Company used it in running their engines and cars over it, hauling freight to the Harlem State Farm. They hauled for other farms. They were common carriers, taking any freight that was tendered to them.

CROSSED BY THE DEFENDANT:

81
A coal car is not a flat car: a coal car has about four feet of boxing on it. A coal car is a flat car with sides a short distance up. I think the sides are built up that much because in the other cars we used six planks and in the coal cars we used two. There is

IMPERIAL SUGAR COMPANY RECORDS

TEXAS RAILROAD COMMISSION
EXHIBIT 1 of 2

VERSES IMPERIAL SUGAR COMPANY'S 1911

85-F-29

a difference in them: some are a good deal higher than others. They run all the way from 2½ feet to four feet. So if you use a coal car, you start at the top which is already above the floor, and in the other it is the same method only you start at the floor. It wasn't necessary to use those high cars. Whatever height you raise it, you begin from the floor on a flat car and from the sides on a coal car. The only difference in racking them is the place you start to rack and the amount of lumber you would have to put in it. In any event, if Eldridge got coal cars for me, that rendered it unnecessary to rack from the floor of the car up to the top of the sides. This was the effect of securing coal cars instead of flat cars. I suppose that ordinarily the railroad company furnishes flat cars to the shipper and requires him to rack them. Since Mr. Eldridge secured coal cars instead of flat cars, he saved the entire racking of these cars because we didn't rack them. These coal cars were used just like they were. He called me up over the phone and asked me would I use these coal cars: he knew I was going to use chains and of course we could pile the cane on top, chained together and it would not fall off, and I told him yes we would use the coal cars. He furnished me cars, some of them coal cars and some of them racked cars. He first sent me a few racked cars- I think it was five or six. He sent me up one day and told me he was short of cars and wanted those cars, and I told him all right, I would use coal cars. I don't remember whether he furnished me thirty cars, half coal cars and half racked cars: he told me those cars were there. They were foreign cars and he told me he would have to turn them back to the railroad and that I would have to unrack them, and I told him I would not unrack them. I kept the lumber that I took off the cars for the State. He called me up one day and said they were behind with unranking and that Addison was behind with unranking and if we didn't take the racking off he would have to turn them in with the racking on, and he was anxious to have it taken off, and I saw a chance to get some lumber and unracked them. Addison was behind with the unranking. He was another employee of the State. Mr. Eldridge called me up and told me he would be forced to turn the cars in with the racking on them.

42.

4 MINERAL SUGAR COMPANY RECORDS
TEXAS MINERAL SUGAR COMPANY RECORDS
RULDER 1 of 2
MINERAL SUGAR COMPANY'S 1911
85,424

I unracked I think, thirty cars. I think that curved track was built during the second year of the Campbell administration. That curved track is one wing of a "Y". It Ys into the Harlem track. It makes it possible to turn at that point. There is no Station there at Harlem, but we have received freight there for other people and have shipped some of it out. The Majority of the freight that goes there or leaves there is for the State, - practically all of it. The Y is used to connect with the State Railroad. They have a road in there on up to the mill and it is a wing of the X Y that connects with the State's track. It is used by the Sugarland Railroad Company I will tell you why that Y was put in there. We were operating an engine and a crew hauling stuff from the Southern Pacific, and this track runs down three miles to the Southern Pacific Railroad, and Mr Eldridge made an agreement with Mr. Brahan that if we discontinued the use of this road with the Southern Pacific we could bill our freight to Sugarland and he would haul it up to the Sugar mill free of charge and that Y was built to connect with the State Track. I don't think that track has been used for anything except the State's business since last fall. I don't think any freight has come up there, only state freight, since last fall. I know nothing of the contract between Bob Brahan and Mr. Eldridge by which the State bought that track. It never has been used for anything except the state's business, except those rice farmers out there shipp a good on the X road one season. It has not been used by anybody except the State since last fall.

RE-DIRECT BY THE PLAINTIFF:

There wasn't any rice shipped over that road last year. There were five or ten carloads of potatoes that went over it this year: that is right. The road is used principally for hauling freight up there for the State and the State pays for the service. The State pays the freight bills. There was a lot of rice stored there in 1911. It was stored in the fall of 1910 and we shipped it out last spring. I didn't have any cars that I used during that cane season that were racked cars, except these six that I used for about a week. I didn't have any through the season. I used them a week

209 APPELLAL SUGAR COMPANY RECORDS

TEXAS RAILROAD COMMISSION VERDICT APPELLAL SUGAR COMPANY'S 1911

83, F-29

or ten days and Mr. Eldridge replaced them with coal cars. I don't know where these cars that I unracked came in. Eldridge said that other farms had failed to unrack them and I saw a chance to get some lumber and I unracked them.

RE-CROSSED BY DEFENDANT:

I know that the State paid for that freight over that road, because I know they wouldn't deliver it until it was paid. I know that I paid for all the freight that had not been prepaid that came to Harlem. Just paid the day I left there \$310.00 because the Railroad Company wouldn't deliver until it was paid.

104 HARLEM SUGAR COMPANY RECORDS
TERRY NELSON COMMISSION VERSUS HARLEM SUGAR COMPANY'S (1911)
FOLDER 1 OF 2

DR. H. S. DEW, a witness for Defendant, testified as follows:

I live in Fort Bend County. I am in the sugar cane raising and sugar making business to some extent. I have a plantation in Fort Bend County. My plantation is six miles from the Cunningham Mill. My plantation does not join the Cunningham Plantation: the Adams Brothers place is in between, - about a mile in width, I judge. I am about a mile south of the Cunningham east line. I had about 1200 acres in cane in 1911.

PLAINTIFF OBJECTS TO ALL OF THIS TESTIMONY.

There was a freeze out there on my place last November: I think it was the last of November, about the 28th. It hurt my cane- practically ruined all of it. I judge that the conditions on my place were practically the same as on the Cunningham Plantation with reference to that freeze. We always consider it a little warmer on the Ramsey place: it is forty or fifty miles south of us. We had a complete sugar house for handling our cane after that freeze. We had men and were in position to handle it as expeditiously as I thought it could be handled. We practically lost all of the cane after the freeze. I have been in the sugar business about ten years or a little over. There was not anything that we could have done that we did not do to try to save the cane. We did everything that we could do, but it rained so much afterwards that we couldn't get in the field. The State of Texas had a half interest in my crop of cane. We were to buy their half interest.

Q. Did they undertake to make you pay anything for the frozen cane?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT HAS NO BEARING ON THIS CASE.

We had an agreement with the State to work the cane up after the freeze. The agreement was that we would work it up and if there was any profit above the operating expenses they would get their half of it. There was not any profit. There was a loss. They acquiesced in that. When cane is frozen and the stalks are left upon the ground, we have to take them off some way in order to cultivate our ground the next year. You could not plow them under or burn them.

1 D 004
MORNING SUNSHINE COMPANY RECORDS
TEXAS RAILROAD COMMISSION
RULING 1 of 2
VERSUS SPECIAL SUGAR COMPANY'S 1911

85

85, 129

up at that time. The way we did was to put four rows into one middle, and then didn't cultivate those two rows that the cane was piled in. We would take it off of four rows and pile it in one row and didn't cultivate that row on each side. That makes you lose 2/7 of your land. We thought that was the cheapest method. It costs something to pick it up off of four rows and pile it in the fifth. we haven't got the exact figures on what it cost per acre.

THE PLAINTIFF OBJECTED TO THIS WITNESS TESTIFYING AS TO WHAT THE COST WAS APPROXIMATELY.

Now, that is moving half the cane on the ground. We put two windrows into one and that is including, of course, two rows. There is a wagon row--three rows between the windrow- that necessitates carrying it from that row across those three rows. That would cost a little bit more than it would to load the cane into the wagons. It would have to be packed by hand that distance, and I suppose it would cost as much again to carry it that way as it would to pile it into wagons. We figure on cutting and pulling it into the mill on the cost being 75 cents a ton, and it cost us half of that to cut it. To do this work, it would cost practically as much as it would to haul it to the mill, because you would have to haul it. That would not be 75 cents per ton: it would cost 75 cents a ton to cut it, strip it and deliver it to the mill, and we figure half of that amount is for cutting it and half of that is the cost of putting it to the mill. I figure about 37-1/2 cents per ton as the cost of doing that work.

Q. Did you ever ride over the Cunningham Plantation after the Board of Prison Commissioners got through with it to see the condition of the bridges, culverts and turn rows?

PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE THE WITNESS DOES NOT KNOW WHAT CONDITION THEY WERE IN BEFORE THE PRISON COMMISSION GOT IT, - WHICH OBJECTION WAS BY THE COURT OVERRULED.

The bridges, culverts and turnrows on the Cunningham plantation were not in good condition after the Prison Commission got through with it. It looked like they needed repairing.

Q. What condition were the roads in?

86.

1009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMPANY RECORDS
IMPERIAL SUGAR COMPANY'S 1911

THE PLAINTIFF OBJECTED TO ANY TESTIMONY ABOUT ROADS.

THE COURT: I WILL HEAR THE TESTIMONY.

The roads were cut up from hauling. The turnrows is what I have reference to. We consider all roads turn rows. The drain ditches didn't seem to have been cleaned out during the season and had weeds in them and trash. They looked in a general way to me like they had not been cleaned out. Some of the bridges and culverts were torn up and some of them were intact. I saw a good deal of sorghum cane planted on that place. I saw a good deal of it stacked in the field: I don't know what became of it. There was some standing uncut, but it looked like the bulk of it was shocked. It looked like a good crop. I examined some of the seed with a view of making Mr. Bridgman an offer on them, but they had been damaged by being shocked. An average crop of sorghum would thrash out about forty or fifty bushels of seed per acre. I paid as much as \$2.00 and \$2.50 per bushel for it. I think \$1.75 and \$2.00 is an average price per bushel for it. We cut sorghum twice a year: our first cutting is in May or June and the last one before frost in November. The freeze in November could not have had anything to do with the harvesting of that sorghum

1 D 2004 IMPERIAL SUGAR COMPANY RECORDS
1910-1911
VEREUS IMPERIAL SUGAR COMPANY'S 1911

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85-F-24

A. W. OLYN, a witness for Defendant, testified as follows:

I reside on the old Cunningham Plantation. I am a farmer. I am farming on that place. I am farming on some of the land this year where the cane stalks were left by the State last year.

Q. What effect does it have on your ability to cultivate the land?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT IS NOT AN ELEMENT OF DAMAGES PLEADED IN THIS CASE, BECAUSE THE ONLY DEMAND FOR DAMAGES WOULD BE THE COST OF REMOVING THE CANE FROM THE LAND.

THE COURT: THE ELEMENT OF DAMAGES WOULD BE AS MR. HILL STATES, - THE COST OF REMOVING THE CANE. YOU MAY PUT THE TESTIMONY IN AND I WILL HEAR YOU FURTHER ON IT.

The cane was windrowed in two rows out of six, - making it windrowed on a third of the ground. These two rows on each side of the windrow you can't cultivate on account of the cane lying there, and it would only make half what it would have made had I been able to cultivate it.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY ON THE GROUND THAT IT IS IRRELEVANT AND IMMATERIAL TO ANY PLEADING IN THE CASE.

THE COURT: I WILL RULE ON THE OBJECTION LATER.

I don't know what it would cost to take that cane up and move.

Q. What was the condition of the roads on that plantation after January 1st?

PLAINTIFF OBJECTS TO THIS TESTIMONY BECAUSE THE WITNESS HAS NOT PROPERLY QUALIFIED.

CROSSED BY PLAINTIFF:

I went there the 20th day of February, 1912.

RE-DIRECT BY THE DEFENDANT:

Q. What condition did you find that place in on the 20th day of February, 1912, as to drain ditches, bridges and turn rows?

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE IT IS NOT THE PROPER WAY TO PROVE AN ITEM OF DAMAGES.

THE COURT: I WILL HEAR YOU ON THAT FURTHER.

During those hard rains in the spring, there is one ditch that goes right by my place, and the water got up until it was an inch

RE-CROSSED BY THE PLAINTIFF:

1912
MERCANTILE SUGAR COMPANY RECORDS
TENNESSEE SUGAR COMPANY
GLIDER 1912
VERBOS MERRILL SUGAR COMPANY'S 1911
85-129

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P. 11

over lower door step, and it stood there 24 hours. I took the pitchfork and rake and took off my shoes and rolled up my pants and tried to clean up the ditch, and I found it was too much of an undertaking, and the water stood there on my place about 24 hours before it could get away. That was incident to the stopping up of the drain ditches. Wherever those culverts were down, it left a hole and they would pile poles in it and instead of having a culvert, it would be a mass of poles and stop the ditches. I could see no work on the bridges except to pile poles in on them. I broke one out and I brought out half a cord of old poles out of it just to get to my work.

CROSSED BY THE PLAINTIFF:

I was brought here by Mr. Eldridge. ~~He~~ I pay my own expenses. I presume he is to pay me back. Q. He is to pay you for your expenses and time: you are not working for nothing? A. No sir, I concede the fact: I don't work for nothing. I am just saying what those ditches were when I went there. I don't know whether it was ever deep enough to carry off all the water or not. I don't think I saw anybody pile poles in the ditches where the culverts were. By "They," I mean whoever put them there. I don't mean by "They" that the prison Commission put them in there. I just testified to the conditions I saw: I don't know who did it. That rain that I was talking about flooding everything down there was a good, heavy ~~one~~ dew. It would be hard to say where I came from. I am used to rain. That is a flat country there anyhow, but there is considerable drainage to it. It is flat. These unusual rains would cover the ground with water and then it would run off by natural drainage. The ditches are big enough now to drain off flood water, but they were filled up with weeds and grass. That was on a part of the place that is 1/4 of a mile west of Mr. Adams' west line. I don't know that those ditches are enumerated. There are supposed to be ditches every forty acres. The ditch that I speak of was a ditch running along by my house.

RE-DIRECT BY THE DEFENDANT:

All that I was asked to do was to tell what I saw, and that is all I did.

RE-CROSSED BY THE PLAINTIFF:

IMPERIAL SUGAR COMPANY RECORDS
TERMS PRISON COMMISSION RECORDS
RECORDS IMPERIAL SUGAR COMPANY, 1911
85-F-29

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I couldn't say that that is the same land that Sibley cultivated
one year. I wasn't there. I do not know who cultivated it before.

D 0009 MERRILL SUGAR COMPANY RECORDS

TEXAS SUGAR CORPORATION VERSUS MERRILL SUGAR COMPANY'S 1911
EXHIBIT 1 of 2

R. T. KOLLEY, a witness for Defendant, testified as follows:

I live on the Cunningham Farm. I am a farmer. I suppose they want me for a witness here in this case. I came here at Mr. Eldridge's request. I suppose Mr. Eldridge is going to pay me for my expenses and trouble: I didn't ask him. Mr. Eldridge didn't ask me to come: Mr. Eldridge's Manager asked me to come. Because I get my expenses paid to come here and testify, I don't understand that I am to tell anything but the truth. Q. An intimation of that kind would be absolutely false? A. That is the way my father raised me. I went on the place that I am on now the 19th of this last March. I had been on the Cunningham place the year before. The first time I went on the farm at all was in January. I seen the drain ditches, culvert bridges and roads and turnrows the first time I went on the farm, but I didn't notice them. After I moved down there I noticed them. I couldn't say about any of the drain ditches except those right near my place- the land I farmed. There, the culverts were fallen down and made a dam instead of a bridge in some places. That stopped the water. The roads and turnrows wasn't cut up where I was at. The bridges on that part were just of poles- some of them were all right and some of them were not.

CROSSED BY THE PLAINTIFF:

I live on the east side of the Cunningham Farm. I live about a quarter north of Mr. Glyn. I am not on what they call the Sibley Place. My house is in a location that has been very disagreeable in the spring during those big rains: I have from 12 to 18 inches of water around there. It is a low, flat country. I am about a quarter of a mile from Oyster Creek. That is a sluggish slow stream. The water would stand there after any rain, but it would have gotten away earlier if the ditches had been in proper shape. There is very little fall from my place to Oyster Creek. I am west of Oyster Creek I am near the south-east corner of the place. I suppose it is a mile to the southeast corner. I came from Birmingham, Alabama. I went there last fall, but have been in the State since the first of March a year ago. I don't know about the bridges torn up down there. They were rotten. They were just made out of poles on a part of the farm just common poles and were rotting down in lots of places.

9/1

129 IMPERIAL SUGAR COMPANY RECORDS
TERRY NELSON (AKA) vs. IMPERIAL SUGAR COMPANY, 1911
RUBEN PAGE
B5, F29

H. VARNER, Recalled by Defendant, testified as follows:

Q. There is just one question I want to ask you that I overlooked yesterday: I want to ask you whether or not the chemical test indicating the purity of the cane determines, after a freeze, its sugarmaking qualities?

CROSSED BY THE PLAINTIFF:

I know about the test of cane by a chemical process. I don't know how to test cane for a purity test: I am not a chemist. I got the report of the test from each chemist.

THE PLAINTIFF OBJECTED TO THIS WITNESS TESTIFYING IN ANSWER TO THE QUESTION PROPOUNDED BY DEFENDANT ABOVE, BECAUSE IT IS NOT ADMISSIBLE FOR THE REASON THAT THIS CANE IS SOLD AT A PRICE BASED ON A PURITY TEST, - WHICH OBJECTION WAS BY THE COURT OVERRULED, TO WHICH RULING OF THE COURT THE PLAINTIFF EXCEPTED.

A chemical test after a freeze does not determine how much sugar you can get out of the cane: it is not reliable after a freeze.

CROSSED BY PLAINTIFF:

The freeze comes first and then the cane ferments. Cane can ferment without a freeze. I don't mean that the freeze affects the result but that the fermentation causes that.

D 6609 IMPERIAL SUGAR COMPANY RECORDS
TEXAS TRUSTEE COMMISSION
V. VARIOUS IMPERIAL SUGAR COMPANIES, 1911
EXHIBIT 1 of 2

922

F. W. HANCOCK, a witness for Defendant, testified as follows:

My initials are F. W. I live on the Cunningham Farm. I have lived there since about the first of February. I know that piece of land there that the State cultivated last year in Sorghum Cane.

THE PLAINTIFF OBJECTED TO ALL THIS TESTIMONY IN REGARD TO THE SORGHUM.

I saw this land when I first went there. The growth of sorghum stalks were still on that land. Part of it was cut and shocked, and part of it was standing and falling down. It had not been cut. It looked to be a very good crop of sorghum.

Q. How late did that crop stand on there?

PLAINTIFF OBJECTED TO THAT TESTIMONY BECAUSE IT IS IMATERIAL.

THE COURT: I WILL PERMIT THE TESTIMONY.

If you would set fire to that stuff, the leaves would burn and the stalk would remain. I noticed that an attempt had been made to burn it and it didn't burn. That land might have been cultivated some way or other with those stalks on it, but I didn't see it done. It might be done, but I didn't see it tried.

CROSSED BY THE PLAINTIFF:

You couldn't cultivate that land because there were so many of those stalks you couldn't do it. Part of the stalks were piled up on the ground. That that was cut down was piled. I presume about half of it was cut down and piled. I don't know how many acres it was. I expect perhaps there were a couple of hundred acres in it, may be two or three hundred. I was farming over there. I was just passing through this sorghum land. The stalks and trash there hindered the working of the land. Part of it was cut down. You could farm that part that was cut down. The sorghum that was shocked could be burned, but that lying on the ground could not be burned. That which was shocked has been burned up. I saw it burned later on in the spring after I made these observations. I don't know how much trouble it was to stick a match to it: it was burned.

F. W. HANCOCK, a witness for Defendant, testified as follows:

My initials are F. W. I live on the Cunningham Farm. I have lived there since about the first of February. I know that piece of land there that the State cultivated last year in Sorghum Cane.

THE PLAINTIFF OBJECTED TO ALL THIS TESTIMONY IN REGARD TO THE SORGHUM.

I saw this land when I first went there. The growth of sorghum stalks were still on that land. Part of it was cut and shocked, and part of it was standing and falling down. It had not been cut. It looked to be a very good crop of sorghum.

Q. How late did that crop stand on there?

PLAINTIFF OBJECTED TO THAT TESTIMONY BECAUSE IT IS IMMATERIAL.

THE COURT: I WILL PERMIT THE TESTIMONY.

If you would set fire to that stuff, the leaves would burn and the stalk would remain. I noticed that an attempt had been made to burn it and it didn't burn. That land might have been cultivated some way or other with those stalks on it, but I didn't see it done. It might be done, but I didn't see it tried.

CROSSED BY THE PLAINTIFF:

You couldn't cultivate that land because there were so many of those stalks you couldn't do it. Part of the stalks were piled up on the ground. That that was cut down was piled. I presume about half of it was cut down and piled. I don't know how many acres it was. I expect perhaps there were a couple of hundred acres in it, may be two or three hundred. I was farming over there. I was just passing through this sorghum land. The stalks and trash there hindered the working of the land. Part of it was cut down. You could farm that part that was cut down. The sorghum that was shocked could be burned, but that lying on the ground could not be burned. That which was shocked has been burned up. I saw it burned later on in the spring after I made these observations. I don't know how much trouble it was to stick a match to it: it was burned.

2009
IMPERIAL SUGAR COMPANY RECORDS
1911
VERMONT IMPERIAL SUGAR COMPANY'S 1911

A. MCNAMARA, a witness for Defendant, testified as follows:

I live at Sugarland, Texas. I am an Accountant. I have been engaged in accounting about four years. I have been accounting for the sugar manufacturing business for the same period- four years. I was about 2-1/2 years with the Lakeside Sugar Company at Eagle Lake and some time down at Harlingen and since that time I have been with the Imperial Sugar Company. As accountant, I have made up a complete Statement as to the cost of manufacturing the cane into sugar and molasses, embracing the operations of the Imperial Sugar Company Cunningham Mill during the season of 1911 and 1912. I did not keep them all in one period. The entire season has been divided in to three operations- Nos. 1, 2 and 3. No. 1 embraces the period up to and including December 2, 1911, from the beginning of the season up to and including December 2, 1911. Operation No. 2 embraces the time from December 3rd, to December 31st, 1911, inclusive. Operation No. 3 includes the period from January 1, 1912 to the end of the season.

Q. Will you please state to the Court how many tons of cane were ground in the period from the beginning of the season to the end of December 2nd?

THE PLAINTIFF OBJECTED TO THIS QUESTION, IF IT IS AN ATTEMPT TO PROVE UP AN ACCOUNT OF THE EXPENSES INCURRED BY THE SUGARLAND MILL, BECAUSE IT WOULD NOT BE PERMISSIBLE FOR THIS ACCOUNTANT TO PROVE IT WITHOUT FIRST ESTABLISHING THE ITEMS THAT GO INTO IT.

CROSSED BY THE PLAINTIFF:

I did not fill every capacity in the Office: I could not be Timekeeper and check freight as it came in. I wish to say that every invoice of a car of fuel oil is checked by one gentleman in the office and then it is turned over to the Bookkeeper with his signature on it.

THE COURT: WITH THE UNDERSTANDING THAT THESE ITEMS WILL BE PROVED UP I WILL PERMIT THE TESTIMONY. PLAINTIFF EXCEPTS TO THE RULING OF THE COURT.

RE-DIRECT BY THE DEFENDANT:

Will you please tell the Court what it cost to manufacture

004 IMPERIAL SUGAR COMPANY RECORDS TEXAS SUGAR COMMISSION V. SUGAR COMPANY'S 1911

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B5, F-29

First, I will ask you how many tons of cane you manufactured, ground and crushed during Period No. 1.

CROSSED BY THE PLAINTIFF:

This that I have here and from which I am preparing to read is a statement made from the Books of the Imperial Sugar Company. I am not the Bookkeeper in the correct sense of the word.

PLAINTIFF OBJECTS TO THIS TESTIMONY BECAUSE THE BOOKS WOULD BE THE BEST EVIDENCE.

RE-DIRECT BY THE DEFENDANT:

I made this up from the books, and it is correctly what the books show.

RE-CROSSED BY THE PLAINTIFF:

I don't know whether the books are correct or not: I have an Assistant that keeps the books.

RE-DIRECT BY THE DEFENDANT:

I feel that I am a good accountant. I can tell when books are kept by an experienced bookkeeper. Those books are kept by an experienced book keeper. Those books are correctly kept.

THE COURT: I HOLD THAT YOU ~~WILL~~ WILL HAVE TO PROVE UP THE BOOKS BY THE MAN THAT KEPT THEM, AND IF YOU WILL DO THAT, I WILL PERMIT THIS TESTIMONY, - TO WHICH RULING OF THE COURT THE PLAINTIFF IN OPEN COURT EXCEPTED.

Q. Will you please tell the Court how much cane you ground during Period No. 1 from the time you commenced until December 2nd?

THE PLAINTIFF OBJECTED TO THIS TESTIMONY, - WHICH OBJECTION WAS BY THE COURT OVERRULED AND TO THE RULING OF THE COURT THE PLAINTIFF IN OPEN COURT EXCEPTED.

29,255.18
There were ~~22,514~~ tons of cane ground at the Cunningham Mill up to December 2, 1911, and out of that we got ^{192,215} ~~192,215~~ pounds of sugar, costing 94.7 and that sold at ^{4.76} ~~6.76~~, value \$9149.43, and then there was syrup made under that operation, 816,383 gallons, sold at .24½ cents, making a total amount of \$198,072.57. There was also made 7400 gallons of Black Strap Molasses sold at .04½ cents, value ~~\$314.50~~ \$314.50, - making a Grand Total of \$207,536.50 or for each ton, \$7.09 per ton. It cost including the cane to do that \$192,929.06 or \$6.594 per ton. That left a profit of \$14,607.44 or .50 cents per

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D 2607 IMPERIAL SUGAR COMPANY RECORDS
7914 JAMES CUNNINGHAM VERSUS IMPERIAL SUGAR COMPANY 1911
Ruled 1. 22
B5, F-29

ton. During the period of Operation No. 2, extending from December 3rd down to December 31st, we ground 14,858.15 tons of cane, and from that we derived 641652 pounds of sugar, testing 94.7, price 4.564, value \$29,285.00. 63,288 pounds of second sugars, testing 88, market price, 3.27½, amount \$2072.68. 254,917 pounds of 3rd sugars, testing 83.75, market price 2.86, amount, \$7290.63. 91,200 Gallons of Black Strap Molasses at .425, Amount, \$3876.00. 110,203 Black Strap Molasses, same price, Amount \$4683.63,- making a Grand Total of \$47,207.94, or \$3.17-7/10 per ton. To manufacture that cane it cost \$56,768.54 or \$3.82 per ton. That cane was manufactured at a loss of \$9560.60 or 64-3/10 cents per ton.

Q. Was anything paid for that cane, have you charged anything for this? A. That covers 1723.20 tons of cane. There is 13,134 tons of cane that there is no charge for. There was 1723.20 tons of cane that we were charged for and 13,134.95 tons of cane that we were not charged for and still we lost 66-43/100 cents per ton. In Operation No. 3, we ground 10,561.65 tons of cane. There was a charge made for 218.31 tons of \$570.60. There were 10,343.35 tons of cane ground for which there was no charge. We got \$1.82-2/10 per ton out of that cane. It cost \$3.40-9/10 per ton to manufacture it. That was manufactured at a loss of \$16,769.73 or \$1.587 per ton. In making up these estimates, I have included every element of cost and have included everything in the nature of an expense. From the standpoint of an accountant, that is an accurate and true report of the results of my operations. I have audited small sets of books. I audited the entire system of books of the Imperial Sugar Company to an extent, but I have not been there long enough to go over the whole thing. I went over this part and am quite familiar with it. As Auditor, I have checked up all the books which enter into the making up of these results. I found them correctly kept.

CROSSED BY THE PLAINTIFF:

All the cane that was ground there goes into this statement. I would have to have the statement to tell you from whom Mr. Eldridge was buying cane during the time included in this statement. I will show you that in another part of the statement. The entire statement

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0009 IMPERIAL SUGAR COMPANY RECORDS
7543 ALABAMA COMMISSION RECORDS
FOLDER 1 OF 2
VERSES IMPERIAL SUGAR COMPANY'S 1911
B5, F29

includes all the cane that was ground at that mill. The Statement shows from whom the Imperial Sugar Company bought the cane during those various operations. This Statement does not show the test of the cane. For instance, Mr. Aldridge had a Farm at Faber and he shipped that cane and ground it, that went into that general Statement. That Statement does not make any separation of the Imperial State Farm Cane from any other cane. It does not make any separation we just mixed it all up together. This Statement is calculated on the basis of tons and not on tests. Q. If the Imperial State Farm cane was testing 79, 80 and 81 and 82 Purity Test, and the Faber cane was testing 40, they jumbled it all up together and the cost of the operation? A. I feel sure if the cane at Faber was testing 40, they would not grind it. I know a little about sugar. I didn't haul the cars into the mill. The Imperial Sugar Company bought the Adams Brothers cane. I don't know what that tested. I don't know whether it was gotten out quickly after the freeze or not. I don't know whether it was tested or what the result of the operation was as to the Adams Cane. It has not been separated from the other cane. Besides the State, the Imperial Sugar Company bought cane from the Faber Planting Company, A. J. Adams & Brothers, K. P. Lockridge, Dyer & Bertrand, J. D. Chapman, F. F. Herbert, G. C. Mick & Son, Juliffe S & S Co. B. F. Masterson, R. H. O. Sorrell, C. W. Nugent. From the Faber Planting Company, The Imperial Sugar Company got 10,402.35 tons: from A. J. Adams & Brothers, 4,704.45 tons: from K. P. Lockridge, 1,865.75 tons: from Dyer & Bertrand, 2,325.10 tons: From J. D. Chapman, 847.55 tons: from F. F. Herbert, 546.95: From G. C. Micks & Son, 299 tons: from Juliff S & S Co 108.45 tons: From B. F. Masterson, 498.05 tons: from R. H. O. Sorrell, 72.15 tons: from C. W. Nugent, 190.75 tons. From the States Farms, we received 36,465.63 tons. I did not buy the coal or the fuel that was used in boiling that juice. I did not employ the men. I did not know anything about what the terms of employment were until I became familiar with them in the time book. To an extent I am familiar with the expenses. I didn't sell the sugar. I didn't sell the syrup. What the sugar and syrup was sold for was not reported to me: I took

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D 009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS ALCOHOL & SUGAR COMPANY
EXHIBIT 1 of 2
WASCO'S ALCOHOL & SUGAR COMPANY'S 1911

85, F 24

it from the books. Somebody had to write it in the books. I know what it sold for. I did not sell it. I know it because it was reported to me by the Company and I have seen the invoices myself. When a sale would be made, I would see the correspondence covering it and perhaps it would be left to me to make out invoices covering that particular transaction. All I know is what the invoices show, and I have seen the checks come in, paying the invoices. I did not make the trade with the men that bought the sugar. All I know is what the correspondence, books, invoices and checks show. I have no personal knowledge whether those invoices and books tell the truth or not. I know whether they got the market prices for those things. I kept up with that. I worked almost in every capacity in the Clerical Department. There was another man there to sell the sugar. I can't remember what the market price of sugar was on the 2nd of December. I did know what it was. That is in my Department. I see the daily sugar market as it is quoted from Willett & Gray, and I see the daily telegrams and daily reports. I checked some of them up with these invoices I can point out the particular ones I did have based on those daily reports those prices were charged. I couldn't tell you how much it cost to manufacture the Adams cane per ton. I couldn't tell you how much it cost to manufacture the Dyer & Bertrand cane per ton. I have nothing to do with the labor. That record is turned over to me and I can refer to it as often as I please. I don't know whether any chemical test was kept of the Adams cane or not. I began to work for the Imperial Sugar Company last March. I went there in March, 1912.

PLAINTIFF ASKS THAT THIS WITNESS'S TESTIMONY BE STRICKEN FROM THE RECORD BECAUSE HE WASN'T ON THE PLACE AT THE TIME OF THE OPERATIONS HE HAS TESTIFIED ABOUT, AND BECAUSE HIS TESTIMONY IS NOT COMPETENT TESTIMONY.

THE COURT: I WILL HEAR YOU FURTHER WHEN I HEAR THE BOOKKEEPER.
PLAINTIFF INSISTS THAT THE COURT STRIKE OUT SUCH PARTS OF HIS TESTIMONY AS MIGHT BY INFERENCE OR BY DIRECT STATEMENT WOULD SHOW THAT HE KNEW AND WAS FAMILIAR WITH THE MARKET REPORTS AND SALES OF

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IMPERIAL SUGAR COMPANY RECORDS
TEXAS REVENUE COMMISSION
ORDER 1912
VEASO'S IMPERIAL SUGAR COMPANY'S 1911

85, F29

CANE AND MANUFACTURE THAT HE TESTIFIED TO AS INDEPENDENT KNOWLEDGE
OF TRANSACTIONS BEFORE HE CAME THERE.

THE COURT: NOTHING LIKE THAT WILL BE CONSIDERED.

RE-DIRECT BY THE DEFENDANT:

The facts that I have testified to I have had taken from the
books by those who made the books. That is a correct summary of the
books.

IMPERIAL SUGAR COMPANY RECORDS

TEXAS PERSON CORPORATION VERSUS IMPERIAL SUGAR COMPANY, 1911
Ruler 1 of 2

85, F29

99.

JOSEPH VICKERMAN, a witness for Defendant, testified as follows:

I live at Sugarland. I am a Clerk and Bookkeeper. I keep books for the Imperial Sugar Company. I have been a bookkeeper all my life, ever since I started working. I am familiar with bookkeeping and know when books are correctly kept or incorrectly kept. I am familiar with the books of the Imperial Sugar Company. Their system is a correct and comprehensive system of bookkeeping, and the books are correctly kept. I know Mr. MoNamara, and have known him since he came there. Mr. MoNamara as Auditor has audited and checked over the books of the Imperial Sugar Company, and they are correctly kept. I have the copy of the plaintiff's amended petition which you furnished me. Q. Over here in the last part of that petition, I pointed out to you the exhibit attached, in which the plaintiff sets up the amount of cane that they claim they delivered to the Imperial Sugar Company during the season of 1911 and 1912, and asked you to check it against the books of the Cunningham Sugar Company to see whether they tallied or not? A. Yes sir. They tallied within about 47 tons. The petition shows 47 tons more than our books show. That is the only difference. I have compared the tests made by their chemist, Mr. Richardson, and the test made by our chemist. They tallied practically- just a slight difference in a few cars, but not enough to amount to anything. There is 47 tons difference in the estimates of the tonnage, that is all. There were 4792.35 tons of cane delivered from the Ramsey Farm after December 2nd, as shown by our statement. I have theirs in total for the season and ours in total for the season, but this is our books after December 2nd. There were 8185.85 tons of cane delivered from the Share Farm after December 2nd. That is all of it. There were 5964.1 tons of cane delivered from the Imperial Farm after December 2nd.

CROSSED BY THE PLAINTIFF:

I can't tell you where that difference of 47 tons occurs. We checked it over car by car. I couldn't tell you where the 47 tons difference occurs. Where the mistake is I couldn't tell. I could tell whether the cars checked alike. That 47 tons difference is not

D 1009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS DEPOSITION COMMISSION
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VERSUS IMPERIAL SUGAR COMPANY 1911

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in the weight of the cars: it is a mistake in addition. I checked them over, and it might be that I was wrong. I sat up all night with it. Some of the weights of the cars differed perhaps 500 pounds or a thousand pounds. I got them all, but the difference is not all made up there. I made my additions without a machine, and I sat up all night. An adding machine is not always right: it is possible for a man to run them up wrong. If he checked them against his figures, and found the figures right, the total would be right.

IMPERIAL SUGAR COMPANY RECORDS

REVENUE DIVISION (AMERICAN SUGAR COMPANY) 1911

REVENUE DIVISION (AMERICAN SUGAR COMPANY) 1911

85, F-24

101.

W. T. ELDRIDGE, a witness for Defendant, testified as follows:

I am W. T. Eldridge. I live at Sugarland. I am Vice President and General Manager of the Imperial Sugar Company. I know Mr. Ben F. Cabell, Mr. Louis W. Tittle and Mr. J. W. Brennan. I know Captain Addison, the man who has charge of the Imperial Farm for the penitentiary. I know Capt. Mills, who has charge of the Share Farm. I know Mr. South, who has charge of the Ramsey Farm. I know Calvin Blackley, who has charge of the Harlem Farm. I commenced raising sugar cane in 1896 I didn't go into it very heavily the first year. I gradually got into it on a fair scale. I first raised cane on a place known as the Bonus Plantation in Wharton County in 1896. I had my acreage up to about 600 acres, - that is the first year or two. Before I sold the place, I got it up to 2000 acres. I sold the place in 1904. I own a place at a point called Labor on the Colorado River. I have about a thousand acres in cane there. I have been farming, growing and selling cane since 1896. I commenced at Sugarland in 1907. I can recall another freeze prior the freeze of last year, since I have been raising cane. I lost a crop in 1901 by that freeze, practically the whole crop. I was a stockholder in the Lakeside Sugar Company mill. I sold cane made there: I commenced selling in 1901, and sold 1902 and 1903 and sold a lot in 1904, and I think a little each year since that time: I am not positive. I think since 1901 Lakeside got a few cars that came from my place. The reason why I didn't sell that cane after it froze in 1901 was that the mills would not receive it. They said they couldn't make anything out of it.

Q. What did you do with it?

THE PLAINTIFF OBJECTED TO ANY TESTIMONY AS TO WHAT HE DID IN 1901

THE COURT: I AM LETTING ALL THIS TESTIMONY IN ON THE ALLEGATIONS IN THAT SUPPLEMENTAL CONTRACT.

I said that I didn't sell it because none of the mills would buy it.

Q. Was it of any account for anything after it froze?

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XXXXXX

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D 009 IMPERIAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMPANY (LAW SUIT) VERSUS IMPERIAL SUGAR COMPANY (1911)
RECORD 1 of 2
B5: F29

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE IT IS NOT SHOWN THAT THE CANE FROZEN IN 1901 WAS FROZEN LIKE THE CANE IN 1911 OR THAT THE SAME CONDITIONS EXISTED WITH RESPECT TO TEMPERATURE.

THE COURT: I WILL SUSTAIN THAT OBJECTION UNLESS IT IS SHOWN THAT THE TEMPERATURE WASN'T LOWER.

The 1911 freeze was the hardest.

THE COURT: I WILL OVERRULE THE OBJECTION, - TO WHICH PLAINTIFF EXCEPTED.

During my experience as a sugar man, I never have been able to sell any frozen cane. It has no market value that I ever heard of. After that freeze in the latter part of November, 1911, I would not have bought any cane that was frozen. I don't think any cane man would.

Q. Do you know of any man who raised cane and had it frozen who had gall enough to try to sell it except the penitentiary folks?

THE PLAINTIFF OBJECTED TO THIS QUESTION.

THE COURT: I DON'T THINK THE QUESTION IS COINED IN PROPER LANGUAGE.

Q. Do you know of any farmer who raised cane, and anybody except the Board of Prison Commissioners who offered for sale or tried to sell frozen cane?

THE PLAINTIFF OBJECTED TO THAT QUESTION BECAUSE IT DOES NOT APPLY TO THE FACTS IN THIS CASE, BECAUSE THE PLAINTIFF HAD A CONTRACT WITH THEM BEFORE THIS FREEZE, - WHICH OBJECTION WAS BY THE COURT SUSTAINED? AND TO THE RULING OF THE COURT THE DEFENDANT EXCEPTED.

I have never known of any manufacturer or person in my experience who was in the market to buy frozen cane. I gave all of the personal attention to the operations at Sugarland that I am capable of doing. I am giving all of my time to it. I am always there if I think my presence is needed. I made personal examination of many cars that were shipped by the Board of Prison Commissioners to the mill of the Imperial Sugar Company from the Rutsey Farm, the Share Farm and the Imperial Farm, and from each place, ^{After December 2nd.} The cane had been frozen. There was nothing that I would have bought after the freeze. It was not sane that any manufacturer could have bought and manufactured

D 609 IMPERIAL SUGAR COMPANY RECORDS

REAR ROOM COLLECTION VERSUS IMPERIAL SUGAR COMPANY 1911
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at a profit. No market value could be determined for it.

THE PLAINTIFF EXCEPTS TO ALL SUCH QUESTIONS AND ANSWERS.

I went to the Imperial Mill in April, 1907. I operated that during the seasons of 1907, 1908, 1909, 1910 and 1911,- five years. I gave it close attention. It is not practicable at all to take cane as it was shipped to the mill by the State and separate the good stalks from the bad stalks and grind them separately. It is not practical in any mill to do that. In handling that cane, I certainly adopted the most practical and safe methods that I knew of to get the best results, or that I could learn of from my men. In fact, I went against my own judgment. They wanted to close the mill down, and I wouldn't consent to it. I have inspected other sugar mills in Texas besides that one. I have been through the Clemens Mill, Arcola Mill, Lakeside Mill and the Wharton Mill, and I have been through three sugar mills at Brownsville. There isn't a sugar mill of any consequence in Texas that I have not been through. The Cunningham Mill, from all the knowledge I can get, makes the best extraction and ~~gum~~ gets the best results of any mill in Texas. The Cunningham Mill has a refinery and makes granulated sugar. I don't know of any improvements or of any process or any means that could be employed to get better extraction and better results than we are getting at the Cunningham mill. I don't know of any from my own knowledge. I am always looking, reading, and investigating to find better methods than we have. That freeze came the 29th of November, according to my recollection. I couldn't say the exact days that the weather began to moderate and get warm after that freeze, but it began to moderate considerably after ~~that~~ four or five days. I instructed the Chemist to report to me the first trouble he found in the laboratory resulting from the freeze on the cane, and he came to me on December 2nd, and told me he would have to change the solution in order to bring about proper tests and that the trouble had already set in. On that day, I notified every man where we had a contract to reject frozen cane. I notified every shipper from whom I was buying where I had a right to reject frozen cane. That included the Board of Prison Commissioners. I gave them notice, and they received

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TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY, 1911
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it: I have an acknowledgment from them that they did, and they each told me personally afterward when I had a conference with them. I have a letter from them in reply.

The Defendant offered in evidence Letter from W. T. Eldridge to the Prison Commission, dated December 2nd, 1911, as follows:

December 2nd, 1911.

Mr. Ben E. Cabell, Chairman,
Board of Prison Commissioners,
Huntsville, Texas.

Dear Sir:-

On account of recent damage to the cane crop by freezing we are compelled to notify you that all cane received from this date on will be subject to your own risk, and will be used by us at whatever price we feel justified in paying for it, to be determined by the results we are able to obtain from grinding and the sale of such products.

The cane is practically ruined and a few days of warm weather in the present condition will complete this, and will render it absolutely ~~xxx~~ unfit for use.

We will continue to grind it as long as possible or as long as we think it will pay us to do so.

Kindly acknowledge receipt.

W/c

Yours very truly,

Vice Pres & Gen Mgr.

The Defendant offered in evidence a letter written by J. E. Stubblefield to W. T. Eldridge, dated December 5th, 1911, as follows:

Huntsville, Texas, December 5, 1911.

Mr. W. T. Eldridge,
Sugarland, Texas.

Dear Sir:-

The three Commissioners will be in Houston tomorrow, and will be pleased to meet you at Mr. Lane's office at eight o'clock tomorrow evening.

I have been trying to get you over the phone all morning to advise you to this effect.

Yours truly,

J. E. Stubblefield

JES-LS

Ass't Secretary.

W. T. ELDRIDGE, further testified:

The three Commissioners met me in your (Mr. Lane's) Office as suggested in that letter. I met the Commissioners there, and we discussed the freeze and the frozen cane, and I told them that we would, under no circumstances, receive any cane from them after that date under the contract: that no man knew or could tell what the re-

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION
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VEASUS IMPERIAL SUGAR COMPANY, 1911
B5, F-29

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sult would be ~~xxxxxxxxxxxx~~ that it would be just a few days before it would be questionable whether the cane was worthless, and under no circumstances would I agree to pay any fixed price based on the contract, and that I could only agree to take it for a price based on the result after the manufacture. Quite a little discussion followed, and Mr. Cabell spoke up and said, "We would be wholly at the mercy of you as to what we would get for it," and I said, "Not necessarily so: put a man in charge of it and watch it and see where it goes to and what becomes of it, who comes to buy it and what we can get for it", and I told him just as fully and in detail as I was capable of advising him how to protect himself, and Mr. Tittle spoke up and said, "That is fair: what do you think about it Brahan, or Bob", or whatever he called him, "You are more of a cane man than any of us", and he says, "Well, that looks right to me", and that then was agreed upon that they would put a man in charge and watch the result of it, and from that a letter was written to the Chemist, and they asked me to hand it to him, and under my suggestion it was agreed that they would do that, and I have the letter here that I delivered to the Chemist, and I could tell the substance of it. There was no request on the part of any of them that I receive that cane and pay for it as sound cane. There was no statement that I should do so I thoroughly understood the agreement to be that I was to grind it and the result would be determined then. I first knew that they were making an opposite contention about the time I heard they were going to file suit for it. I did not know one syllable about any adverse contention on their part until about the 2nd of January when this suit was filed. Mr. Hill wrote that letter to the Chemist, this gentleman here (indicating Mr. Hill) He was in your (Mr. Lane's) office when he wrote it. He wrote it on your (Mr. Lane's) paper. Mr. Cabell signed it. They handed it to me and requested me to give it to the Chemist. This was that night after we had agreed what to do with the cane.

Defendant offers in evidence the letter in question, which is as follows:

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MERRILL SUGAR COMPANY RECORDS
TERRY TAYLOR (ADMINISTRATOR)
Folder 1 of 2
VELOS MERRILL SUGAR COMPANY 1911

B5, F29

Houston, Texas, December 6, 1911.

Mr. Richardson,
Sugarland, Texas.

Dear Sir,

You will please make a test of the cane being delivered from the Ramsey Farm and also that delivered by Capt. B. B. Mills from the Cunningham Farm. Keep a record of your tests.

Yours truly,

Ben E. Cabell,
Chairman.

W. T. ELDRIDGE FURTHER TESTIFIED:

After that night of December 6th, there was never any conference between me and them as to how I was to pay for that frozen cane- not by a living man. There was not a word of correspondence about it. Q. They allege here in their supplemental petition, and I want to ask you if this is true: They say that all three of the individual members, constituting the Prison Commission, met with W. T. Eldridge General Manager of defendant Company at Sugarland, Texas, in response to the letter set out on page 7 of the petition and together examined the condition of the cane and the chemical tests thereof and there upon notified the said defendant that they would not agree to the proposal made in its letter of December 2, 1911: have you any recollection of these three gentlemen meeting you at that place and discussing this question and giving you that notice? A. I have not. I wrote them on the 2nd giving them that notice and Mr. Cabell replied to me on the 3rd that they would be in Houston next day, on the fourth: on the 5th their Secretary wrote that they would be at your (Mr. Lane's) office on the night of the 6th. If they were out there at Sugarland on the 4th of December, I did not see them. I can't say that I can recall any fact or meeting or conversation at sugarland that might be construed into this kind of a statement. I can't recall any statement or anything. The way this item of \$4200. for racking 120 cars arose was that Mr. Brahan and I discussed the proposition after we got together on the purchase of the Ramsey cane the latter part of February.

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MEXICAN SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION
V. MEXICAN SUGAR COMPANY 1911
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THE PLAINTIFF OBJECTED TO THIS ITEM BECAUSE IT IS NOT ADMISSIBLE AS A COUNTER CLAIM AGAINST THE STATE AND IN ADDITION IT ARISES OUT OF AN INDEPENDENT CONTRACT AND NOT THE CONTRACT SUED ON.

THE COURT: I WILL OVERRULE THE OBJECTION FOR THE PRESENTS

It was discussed by Mr. Brahan and I personally and he was anxious to get the cane cars racked and said they were not in position to rack them and didn't have the material to get the cars racked and I told Mr. Brahan that we would rack the cars for him at \$35.00 per car, and we agreed on the number we would rack and I closed the trade by correspondence, confirming that agreement, and I told Mr. Brahan that we would be glad to rack the cars for him and deduct it from the cane as he delivered it on the first pay day after the cars were racked. He agreed that that should be done, that I would rack the cars at the price named and deduct it from the first cane that they delivered to me. I have some letters that passed between Mr. Brahan and me in regard to that. I told Mr. Brahan that I would have the cars racked: that the Mercantile Company had the lumber in a lumber yard, and that between the Sugar Company and the Mercantile Company I would have it done.

PLAINTIFF OBJECTS TO THIS TESTIMONY FURTHER BECAUSE WHAT THE MERCANTILE COMPANY DID CAN'T BE SET UP IN THIS CASE AND CAN'T BE SET UP AS A COUNTER CLAIM.

I made the agreement with Mr. Brahan: I told him the Mercantile Company owned the lumber yard, but the Imperial Sugar Company would have the cars racked and have them ready for service in harvesting the cane, at \$35.00 per car

THE COURT: I WILL OVERRULE THE OBJECTION FOR THE PRESENT.

Defendant offers in evidence a Letter from R. W. Brahan to W. T. Eldridge, dated October 6, 1911. as follows:

Huntsville, Texas, 10/6/11.

Mr. W. T. Eldridge,
General Manager,
Imperial, Texas.

Dear Mr. Eldridge:

Replying to yours of the 5th instant, relative to the racking of the cane cars, beg to advise the price you name is satisfactory,

10/8/11

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TEXAS PERSON COMMISSION VESSOS IMPERIAL SUGAR COMPANY'S 1911
EXHIBIT 1 of 2

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\$35.00 per car.

You can equip these cars with racking for the Imperial State Farm, Ramsey State Farm and Harlem State Farm crops.

Yours very truly,

R. W. Brahan

Prison Commissioner.

RWB/g

THE PLAINTIFF OBJECTED TO THIS LETTER BECAUSE ONE COMMISSIONER CANNOT MAKE A CONTRACT BINDING UPON THE COMMISSION AS A WHOLE. W. T. ELDRIDGE FURTHER TESTIFIED:

I have a letter from Mr. Cabell making requisition on me for the number of cars required for the farms. I replied to this letter of Mr. Brahan's under date of October 7, 1911. This (indicating letter) is a carbon copy of the letter that I wrote to Mr. Brahan replying to his letter.

Defendant offers in evidence Letter from W. T. Eldridge to R. W. Brahan, as follows:

Sugarland Texas, October 7, 1911.

Mr. R. W. Brahan,

Prison Commissioner,

Huntsville, Texas.

Dear Mr. Brahan:-

I am in receipt of your favor of the 6th inst., and note you wish us to proceed with the racking of cane cars at the price of \$35.00 per car, and we will go to work on these cars at once, racking thirty (30) for your Harlem Farm: thirty (30) for your Imperial Farm, and sixty (60) for the Ramsey Farm.

The latter in accordance with letter from your Mr. Ben E. Cabell Chairman, under date of Sept. 23rd, 1911, which states in part as follows:

"Also, that the State should have the cars racked. We estimate that it will take sixty (60) cars for this season. This is to advise you that we shall expect you to furnish sufficient cars at the Ramsey Farm beginning November 1st, 1911, to move said crop, and continue until said crop is removed, and to transport the same as provided in said contract."

Yours very truly

Vice Pres & Gen Mgr.

W-G

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSIONER
FOLDER 1 42

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THE PLAINTIFF OBJECTED TO THE ADMISSION OF ABOVE LETTER IN EVIDENCE BECAUSE IT SAYS THIRTY CARS FOR THE IMPERIAL FARM, THIRTY FOR THE HARLEM FARM AND SIXTY FOR THE RAMSEY FARM, AND THERE IS NOTHING IN THE LETTERS EITHER FROM BRAHAN OR CABELL DIRECTING THAT THESE CARS BE RACKED.

Defendant offers in evidence letter from Ben E. Cabell to W. T. Eldridge, dated September 23, 1911, as follows:

Huntsville, Texas, September 23, 1911.

Mr. W. T. Eldridge,
Sugarland, Texas.

Dear Sir:-

We advised you by letter of August 10th, 1911, that we would exercise the option given the State in the contract between the Prison Commissioners and yourself, dated August 20, 1909, to grind the cane on the Ramsey Farm, and that we would not sell you the cane on that farm this year, but would grind it ourselves.

It is provided in said contract and in the contract of sale of the railroad leading from the Ramsey Farm to Anchor, dated September 7, 1909, that in the event the State elected to grind the cane on the Ramsey Farm, you should furnish to the State in due time sufficient cars to enable the State to move its crop during the usual harvest season, and should transport the loaded cars to the mill. Also that the State should have the cars racked. We estimate that it will take sixty (60) cars for this season.

This is to advise you that we shall expect you to furnish sufficient cars at the Ramsey Farm beginning November 1st, 1911, to move said crop, and continue until said crop is removed, and to transport the same as provided in said contract.

We are advised that you construe the contracts referred to above to give you the right to abandon the railroad from Ramsey Farm to Anchor when you have made other connections with railroads, and that you have completed a railroad north from Ramsey Farm to the State sugar mill at Harlem. Without waiving any of our rights under the contracts referred to, we wish to state that if you desire to transport said cane over the road leading from Ramsey Farm to Anchor, then

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we wish you to deliver the cane to the State sugar mill at Clemens Farm. If you desire to transport the cane North over your new road, we will hereafter instruct you as to its delivery. Please advise us at once which route you elect to use.

We are ready to begin racking the cars at once, and to that end request that you deliver them to us at Ramsey Farm as soon as convenient.

Yours truly,

Ben E. Cabell

Chairman, Prison Commission.

THE PLAINTIFF OBJECTED TO THIS LETTER BECAUSE THERE IS NO CONTRACT AUTHORIZING THEM TO RACK ANY CARS AT ALL.

THE COURT: I WILL LET IT IN FOR WHAT IT IS WORTH.

W. T. ELDRIDGE FURTHER TESTIFIED:

I can't tell whether I received any response to my letter of October 7, 1911, wherein I stated that I would rack 30 cars for Harlem, 30 for Imperial and 60 for Ramsey, or not. I can't find the response to my letter here if I have it. I saw Mr. Brahan and had a talk with him about racking these cars after I had racked them and put them in service.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE DEFENDANT HAS ALLEGED A WRITTEN CONTRACT BY VIRTUE OF THOSE LETTERS, AND NOW ARE UNDERTAKING TO PROVE UP A VERBAL CONTRACT FOR THE RACKING OF THE CARS AND HAVEN'T ALLEGED IT, AND THE ADDITIONAL OBJECTION THAT THEY CAN'T MAKE A CONTRACT WITH ONE COMMISSIONER, AS THE LAW MAKES THE BOARD OF COMMISSIONERS THE OFFICIAL PERSON.

THE COURT: I WILL HEAR YOU ON THAT LATER: I WILL HEAR THE TESTIMONY NOW.

Mr. Brahan was up there after the cars were racked and put in service. It was getting late, and we were working hard to get the Imperial Mill ready to grind, and I told Mr. Brahan that we could use some more cars to good advantage, and when the other mill started it would be a good idea to have them. Your Honor, when I saw Mr. Brahan shortly after these 120 cars had been racked and put in the service, I told him, "We are working hard to get the other mill start

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ed", and I said, "We can use more cars to good advantage, and I can get some more cars, that we call coal cars, and I can get as many as you want to put in the Harlem service, and they will answer the same as racked cars there, and that will put 150 cars in your service, and with the understanding that 120 cars have been racked for your account, I will get these additional coal cars", and he said it will be to our benefit, and I said yes, and he said "It will be perfectly agreeable".

THE PLAINTIFF OBJECTED TO ALL OF THIS TESTIMONY AND ASKS THAT IT BE EXCLUDED FROM THE RECORD BECAUSE IT DOES NOT SHOW A CONTRACT TO RACK ANY CARS. THE LETTER INTRODUCED FROM MR. CABELL IS A DEMAND BY THE PRISON COMMISSION TO FURNISH THE CARS SO THE PRISON COMMISSION COULD RACK THEM, AND THE ONLY THING THAT SUGGESTS THE NUMBER OF CARS IS MR. MCDRIDGE'S LETTER STATING THAT HE RACKED 30 CARS FOR THE SHARE FARM, 30 FOR HARLEM AND 60 FOR THE RAMSEY FARM.

THE COURT: WE WILL HAVE TO BIFT THAT OUT AND SEE WHAT THE CONTRACT SHOWS.

After the cars were racked, there were 150 cars placed in the service of the state,- 120 racked cars and 30 coal cars that were not racked. There were 150 cars that were actually placed in the service.

Q. After the cane season was over, who took the lumber off that 120 cars?

THE PLAINTIFF OBJECTED TO THAT BECAUSE IT DOES NOT MATTER WHO GOT THE LUMBER AND ON THE FURTHER GROUND THAT RATIFICATION HAS NOT BEEN PLEADED TO THIS FURTHER ITEM.

THE COURT: I WILL HEAR THE TESTIMONY. PLAINTIFF EXCEPTS.

Part of these cars were unracked at Harlem and the other part over at the Imperial place. They unracked 125 cars and by mistake the Conductor set five cars out. I notified Mr. Blakeley to unrack his cars first, and he said he wasn't going to unrack a damned car, and I said, "Calvin, we have got to unrack those cars for the roads we got them from and unless you do unrack them we will have to return them to the road with the racking on, and in the meantime I was informed by one of the Commissioners that they had given instructions

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to Capt. Addison to unrack them, and by this time thirty of the cars had gotten up to Calvin's. They unracked 125 cars and kept the lumber. I guess that is the 125 cars that Calvin referred to yesterday when he said that he saw a chance to get some lumber and kept the lumber off of these cars. . I told Mr. Brahan that it would cost about \$35.00 per car to rack the cane cars. Our agreement was that I was to do it at \$35.00 per car. It was never intimated that I was to do it at cost. I told Mr. Brahan I didn't think they could do it for that price. Mr. Cabell never did by phone or otherwise than by this letter in which he demanded these 60 cars for the Ramsey place tell me how many cars he demanded. I don't think I discussed that with Mr. Cabell until we made the contract and then it was discussed before all of them one time as to the number of cars it would take to move the crop.

Q. We have here a charge of \$150. cane cars at \$7.50 each.

THE PLAINTIFF OBJECTED TO THIS BECAUSE IT IS AN INDEPENDENT CONTRACT, NOT GROWING OUT OF THE CONTRACT SUED ON.

The Defendant offered in evidence a letter dated January 22, 1912, from J. E. Stubblefield to W. T. Eldridge, as follows:

Huntsville, Texas, January 22, 1912.

Mr. W. T. Eldridge,

Sugar Land, Texas.

Dear Sir:-

Further replying to your letter of January 12th, beg to advise that the Commission has instructed me to notify you with reference to unranking of cars, as follows: All cars ordered for the account of Ramsey Farm should be placed at said farm to be unracked; all cars ordered for the account of Imperial State Farm should be placed at said farm to be unracked, and all cars ordered to be racked for Harlem Farm (if any) should be placed at said farm to be unracked.

We are today notifying managers of above farms to this effect.

Yours truly,

JRS-LS

J. E. Stubblefield, Asst Secretary

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Defendant offers in evidence Carbon Copy of reply to above letter as follows:

January 23, 1912.

Mr. J. W. Stubblefield, Ass't. Secretary,
Board of Prison Commissioners,
Huntsville, Texas.

Dear Sir:-

Replying to your favor of Jan. 22nd addressed to our Mr. W. T. Eldridge, we beg to advise you that Mr. Eldridge will be absent from the city for a day or two, and immediately upon his return, this letter will be given his attention.

Yours very truly.

W. T. ELDRIDGE FURTHER TESTIFIED:

Upon my return, I called up the Commission, any one that I could get, and I got Mr. Tittle, and I told Mr. Tittle the hardship it would work on us to take the cars down to Ramsey to be unracked. They had a part of them at Capt. Addison's and a part of them at Blakeley's, and I asked him if it would not be agreeable to have them unracked at those places, and he said he thought that it could be arranged, and the next information I had was from Mr. Addison that he had instructions to unrack the cars.

Q. Now then, this \$150.00 for racking cane cars done during the cane season of 1910 under the direction of A. M. Barton, Financial Agent of the Penitentiary--

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE IT IS NOT CONNECTED WITH THE CONTRACT.

THE COURT: I SUSTAIN THE OBJECTION BECAUSE IT IS NOT CONNECTED WITH THIS CONTRACT BECAUSE I THINK IT IS NOT ONLY NECESSARY TO SHOW THAT IT IS INCIDENT TO THE CONTRACT BUT NECESSARY TO ALLEGE IT. I WILL SAY THIS, THAT I READ THE AUTHORITIES FURNISHED ME BY BOTH SIDE AND THOSE AUTHORITIES SO FAR AS I WAS ABLE TO READ AND ASCERTAIN HOLD THAT OFFSETS GROWING OUT OF A CONTRACT SUED UPON CAN BE PLEADED BUT OUTSIDE MATTERS CANNOT BE PLEADED AND I HOLD THAT THIS IS A SUIT BY THE STATE AND ON THAT ACCOUNT YOU CAN ONLY PLEAD MATTERS INCIDENT TO THAT CONTRACT.

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I CAME TO THE CONCLUSION THAT YOU COULDN'T SUE THIS COMMISSION FOR ANY CONTRACT THEY MADE OR FORCE THE STATE TO PAY UNDER ANY CONTRACT THEY MADE. I HAVE NOT RULED ON IT. I AM WILLING TO ADMIT THE TESTIMONY SUBJECT TO THAT.

What this \$150.00 was for, I called Mr. Barton up over the phone and told him that the State had the racking at Sugarland for 20 cars, and that he was wanting cars racked, and that we would put the racking on for him at \$7.50 per car and furnish the labor, and he agreed to it. That was when he was Financial Agent. That was to be used to haul cane off the Share Farm, the Cunningham place. That was under this same contract they are suing on here now. Those cars were used on the Imperial Place; they were used on both places. The racking belonged to the State previously from the year before. We put the racking on for Mr. Wright the year before and then it was taken off at Sugarland and used in connection with the Imperial place and the Cunningham place. It was used at both places. I would like to tell a little more about it, if it is agreeable. I rendered a bill a time or two to Mr. Barton, but it didn't get in the books in some way, and I was over here personally and met Mr. Barton and Mr. Cabell and Mr. Tittle and Mr. Brahan in the office, and I presented this bill with some other bills, and I had the assurance of these gentlemen that anything the State would owe us they would give us credit for and I closed up my account by note, and I never could get credit for this item. They never denied to me that they owed it. Mr. Barton is their Auditor yet. He is right there at the penitentiary. It was reasonably worth the sum of \$7.50 per car to rack these cars. I charged them just for the labor, just what we paid for it. About that charge for 20 days service of an engine and crew. Mr. Brahan and I were down at the Ramsey Farm together and were discussing the putting in of a sidetrack and shaping up their yards at their leading station, and the question arose about where he would get dirt to fill up a good, big hole that was dug out to the side of where the gin was and he said he hated to go out in the cane field

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and dig a big hole, and I said, "Bob, we have a sand pit here a short distance, and just for the actual cost of the engine and of the crew I will furnish you what flat cars are necessary and the engine to haul that dirt down here, and he wanted to know what it would be, and I told him about twenty dollars a day, and we agreed on \$20.00 a day, and we had 25 or 30 flat cars and the engine and crew and we hauled the dirt there. It is \$20.00 a day for ~~25~~ 25 days. As near as we could calculate it, that was actual cost for fuel and labor. Mr. Brahan agreed to it. It was to be credited on the cane: he instructed Mr. South to do the work in my presence. That thousand dollar item grew out of a trade that I made with Mr. Wright during his administration that when I purchased the Ramsey cane, the State was to pay half for the racking of the cars and we were to pay half, and that fall we had to operate by Arcola on the I. & G. N. and down to the State Farm, and I told Mr. Wright I didn't think we could handle the cane with less than 60 cars the way we had to go, and he said he thought that was too many, and we discussed it considerably, and finally I agreed..

THE PLAINTIFF OBJECTED TO ALL THIS TESTIMONY ON THAT CONTRACT WITH MR. WRIGHT BECAUSE NOTHING LIKE THAT HAS BEEN PLEADED.

THE COURT: I WILL HEAR HEAR YOU LATER.

PLAINTIFF MAKES THE FURTHER OBJECTION THAT THEY CAN'T PROVE IT THAT WAY.

About the cancellation of that contract and my claim of a thousand dollars, Your Honor, it was this way: I agreed to furnish the cars necessary to handle the Ramsey Cane for \$2000.00 and the State was to pay half of that and they paid me \$1000.00 for their half of racking the cars, and they agreed that they should have 30 cars as their half and 10 cars were unracked at Ramsey Farm and the other 20 cars at Sugarland that I mentioned and that happened to be at that end of the line, and these twenty cars that I racked for Mr. Barton were the twenty that Mr. Wright had agreed we could take back at the end of the season.

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THE PLAINTIFF OBJECTED FURTHER TO ANY TESTIMONY IN REGARD TO THIS ITEM OF ONE THOUSAND DOLLARS, BECAUSE SAID ITEM IS AN INDEPENDENT TRANSACTION AND DID NOT ARISE UNDER THE CONTRACT SUED ON IN THIS CASE. THEY ALLEGE IN THEIR ANSWER AS A BASIS OF THE CHARGE THAT WE CANCELLED THE CONTRACTS BETWEEN THEM AND WRIGHT, AND WE DO NOT SUE ON THAT CONTRACT IN OUR PETITION. THE CONTRACT BETWEEN ELDRIDGE AND WRIGHT IS NOT A PART OF THE PETITION AND ANY AGREEMENT THEY MAY HAVE MADE IS AN INDEPENDENT CONTRACT.

THE COURT: I WILL HEAR YOU ON THAT FURTHER.

I haven't got accurately what it cost to rack these cars: it cost more than \$2000.00 to rack these cars, but I agreed I would furnish the cars whenever it was necessary and they were to pay half of it. Mr. Cabell cancelled the obligation to sell me the Ramsey cane. It was afterwards bought by contract under an absolutely different consideration. I assigned that original contracts and its benefits to the Imperial Sugar Company before Mr. Cabell cancelled that provision. That item of \$451.95 charges for October and November 1911 for tram crews is absolutely just what we paid for the labor. That was for the service of the crew on the tram track and some little repairs that might have been necessary to the crossings. I discussed this with Mr. Cabell and Mr. Brahan both and called attention to the fact that the cane was to be delivered to the mill and that the Company was to furnish the engine and keep it in repair, and called attention to the fact that the year before the Company had furnished an engineer and fireman and two brakemen, and Capt. Herring preferred that to furnishing convicts because we had to work it day and night and Mr. Cabell said, "I don't know whether we have to pay for it or not", and I said, "The contract is very plain and he said, "If it does say so, we will pay for it", and I took the matter up with Mr. Brahan and asked if Mr. Cabell had settled it, and he said he didn't know, but I could go ahead and do the labor there and if the contract called for it they would pay me. The labor was reasonably worth that amount. I furnished Capt. E. B. Mills labor in October and November, 1911, for harvesting. I furnished the labor indicated by those charges and they are reason-

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able charges. It is just what we paid the laborers for work on the Cunningham Share Farm for the year 1911. The amount of the charge is \$614.09. Mr. Brahan requested me to furnish these laborers to Capt. Mills.

Q. Now, Mr. Eldridge, we come to that item of \$961.90 for that track up there at Harlem State Farm?

THE PLAINTIFF OBJECTED TO ANY TESTIMONY IN REGARD TO THIS BECAUSE IT IS AN INDEPENDENT CONTRACT, NOT CONNECTED WITH THIS SUIT. FURTHER BECAUSE NEITHER MR. BRAHAN NOR ANY INDIVIDUAL COMMISSIONER CAN MAKE A CONTRACT TO BUY A RAILROAD FOR THE COMMISSION. FURTHER, IF THERE WAS EVER ANY SUCH AGREEMENT ON THE PART OF MR. BRAHAN IT WAS AN INDEPENDENT AGREEMENT AND NOT BINDING ON THE COMMISSION.

THE COURT: I WILL STATE TO COUNSEL IN THE CASE THAT UNLESS I SEE SOME AUTHORITIES THAT WILL THROW LIGHT ON IT, I DON'T THINK IT IS ADMISSIBLE.

Now, we had a railroad, or did have at that time, that we had never put under the jurisdiction of the Railroad Commission, running up to this point. That is the State railroad there (indicating on map) Now our track here is the way it is surveyed out to be built. It is not built. We built this up to Harlem to a connection with the State Railroad, and have been operating into the sugar mill yards, and Mr. Brahan asked me if Mr. Blakeley could put a derrick right here (indicating on map) and I said no, that that would block the main line, and he said, "Won't you build out this way so he could lead his cane right on here and build a derrick". I said, "Where do you want to haul cane from Bob", and he said, "Both places- right in here (indicating on map). He said, "You intend to build out this way with your road", and I said "Yes, that is our intention", and he said, "Suppose you confine yourself to our hundred feet right of way and sell us this place here"? I said, "That wouldn't relieve the situation: we will still be blocked," and I said, "I tell you what I will do. I will let you have the transfer track there: you repair this piece of road on down here and put your derrick anywhere down in here that suits your convenience, and you take this piece of track over, less a reasonable amount for the time it has been down there

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and I will agree for the railroad company that they will come in here and come down here and pull your cars out for you", and he said, "All right", and we rendered this bill accordingly and furnished them switch stands to replace. They replaced these stands and put up the derrick and we went on down there and hauled their cane for them. The total valuation was something like \$1100.00, something over \$1100.00, and I rendered a bill for something over \$900.00. I made that deduction. It was reasonably worth \$961.99. Mr. Brahan agreed to pay that for it. It was just like the other contract we made in regard to the Harlem Yards.

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A. J. REAMS, a witness for Defendant, testified as follows:

I live in Fort Bend County: Stafford is my Post Office. I am engaged in farming. I was raised on a farm, but have been farming for myself about 18 years. I farm on my own farm. It is situated east of the Cunningham Plantation, right on the line. My line joins the Cunningham Plantation on their east line. I am adjacent to and adjoin the Cunningham Plantation. The Cunningham Plantation referred to is the one worked by the State. I raised Sugar Cane: I had 500 acres of cane I have been raising sugar cane 12 years. During that time, I have had trouble with the freezing of the cane: I have had trouble with freezes three times. The freeze soured the cane. It ruined it. It was not salable after it was frozen. You can't sell frozen cane at all. I have never been able to sell frozen cane. You can't find any market for it. I remember the freeze that occurred on the 29th of November last year. I think the mercury went to about 16 degrees below freezing at that time. That freeze injured my cane: it froze it through and through. I don't remember how long the weather stayed cold exactly: it was only about three or four days if I remember right. It was about three or four days after the freeze before the cane began to ferment. After cane has been frozen, there is no way for anybody to tell how long the weather will stay cold enough to keep the cane from fermenting. It would be unsafe to say. My cane was subjected to about the same conditions as that on the Cunningham Place. It is in the same latitude, right adjoining the Cunningham Place. I sold my cane last year for manufacturing purposes. I sold it to Mr. Eldridge and the Imperial Sugar Company.

Q. Did you at any time receive notice from Mr. Eldridge that he would not receive any more cane from you?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT WOULD NOT BE BINDING ON THE PLAINTIFF AND DOES NOT AFFECT THE PLAINTIFF,-- WHICH OBJECTION WAS BY THE COURT SUSTAINED BECAUSE IT IS IMMATERIAL.

Q. After the 2nd of December, did Mr. Eldridge receive any more cane from you at the contract price, after the second of December, after he gave you that notice, did he receive any more cane from you

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at the contract price? A. No sir.

THE PLAINTIFF OBJECTED TO THAT ON THE SAME GROUND, - WHICH OBJECTION WAS BY THE COURT OVERRULED BECAUSE THERE IS A QUESTION AT ISSUE TO WHICH THE TESTIMONY RELATES,

He received the cane under conditions depending on what he could make out of it. He would take the cane and grind it up and what he paid for it would depend on what he made out of it. We never had a settlement: the result has never been determined. I had some cane left in my field that was stacked and that wasn't hauled off. I have had such conditions before after freezes. I know approximately what it costs to remove cane from the field that was left after the freeze. To haul cane off and dump it in the creek or low places costs about a dollar a ton. It costs more to take cane off than it would to haul it in the cars. It costs more because in hauling it with cars, we have the derrick for handling cane and putting it on the cars, and the other way, you have to handle it by hand. It does not cost near so much to pile it up, say four rows into one: I imagine it costs about half. The effect on the two rows on each side where you pile it up that way is that those two rows make about what one row ought to make. They make about half what the other rows make. The rental value of that land down there depends on what you plant. We get six dollars an acre, money rent.

THE PLAINTIFF OBJECTS TO THIS TESTIMONY BECAUSE THERE IS NO RENTAL DAMAGE PLEADED.

THE COURT: I WILL HEAR THE TESTIMONY ON ACCOUNT OF THE ALLEGATION THAT THEY FAILED TO MOVE THE CANE OFF.

We get in the neighborhood of six dollars an acre: of course I didn't rent any that way. That is the rent in that vicinity. I didn't rent mine out: I worked mine on shares. I have had occasion to pass over and look at the roads and turn rows and ditches and culverts on the Cunningham place. I have been over it a good deal.

PLAINTIFF MAKES SAME OBJECTION TO THE TESTIMONY.

I went over it before and after the State turned it loose. When they left there, they left all the drain ditches looking to me like they were in very bad condition: the roads were cut up pretty

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badly, and the ditches were full of weeds and filled up. It is customary and necessary, in order for these ditches to perform the purposes for which they are built, to keep them cleaned out. They had some bridges that were all right, and lots of them were down. They piled cane tops in these places where they get out the turn rows I don't know anything about the value of sorghum: we use sorghum for feed only. I never thrash the seed. I noticed some damage to houses there by these people where they taken the corn out of the cribs.

CROSSED BY PLAINTIFF:

I didn't see anybody do that

THE PLAINTIFF OBJECTED TO THIS TESTIMONY, UNLESS IT IS SHOWN THAT IT WAS CAUSED BY THE PRISON COMMISSION.

I noticed where the corn had been taken out of these cribs, and they had cut holes in the sides of the crib with an axe or some sharp instrument, just cut the planks in two and took the corn out. I saw that a few days after they got the convicts away from there.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY FOR REASONS STATED.

THE COURT: WITH THE UNDERSTANDING THAT THEY WILL FOLLOW IT UP WITH PROPER SHOWING I WILL ADMIT THE TESTIMONY.

CROSSED BY THE PLAINTIFF:

There were two cribs that holes cut in them with an axe at what they call the Grand Central Camp on the Sugarland Plantation. These holes were cut in the side of the crib. The cribs were made with a concrete foundation, 2 X 6 upright pieces and ceiled on the inside and covered with iron roofing. I do not undertake to swear that Capt. Mills did that. I didn't say that. These cribs belonged to the Sugarland Plantation. I didn't see it. I said that the holes were cut in it and the corn thrown out of the holes. The corn was taken out. I didn't try to make any impression that the Prison Commission did it. I don't know who cut the holes in there. I don't know how long it was after the convicts first left there that I saw these holes--a few days. It was long about the first of January I think. I saw the holes in the cribs shortly after they left. I don't know how shortly it was. I knew it was a few days. I never saw the holes cut, and don't know how long they had been out. I

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said the corn had been thrown out. I knew that because I could see
shucks lying around in front of the holes. I don't know whether the
Prison Commission took it out or not: I didn't see them take it out.
I lived over there and I ride around, and I have to go to Richmond
and Sugarland, and I ride where I please: that is a pretty free
country. I pass by that farm going to Richmond or Sugarland. I went
by there. I didn't stop to make any particular inspection. I wasn't
requested to do it. I have been there a dozen times. I think I
saw these holes but in these cribs before the convicts left there.
They moved the corn before they left. I don't know exactly when I
saw it before they left. I go by there very often. The hole looked
to be about two feet wide: there were two or three holes cut in it.
There were several, I don't know exactly how many. I never counted
them. I don't know whether there were two or not: I don't know
whether there were three or not. There were more than one. There
were holes cut in both cribs. I didn't say that there was a hole cut
in each crib. I have already said. I don't know whether there
was one hole cut in each crib: there were several holes cut in the
cribs. . . I don't know how many there were: I knew there was more
than one. I don't know whether there were more than two or not.
I don't know as it makes any difference whether there were more
than three or not. I don't know which it was. I swore there were
several because there were. I swear there was more than one hole
cut in the cribs, but I don't know how many. They were cut in the
side of the crib. There is one north and one south: the cribs set
north and south of each other, and the holes were cut in the west
sides of the cribs. I don't know how many holes were in the other
crib. I don't know how many holes there were in the crib on the
south. I emphatically knew that there were holes cut in these
cribs. I never counted the number of bridges that I saw filled up.
I just saw them as I rode through the place. I didn't say that all
the bridges were down. I don't know how many bridges were down.
There were some down. I didn't count them. I have ridden over the
field. I never rode over it particularly to look at the bridges.
I was riding over the field going from one place to another.

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I was just going along the road. I never counted the bridges that I crossed. I can't tell you exactly how many there were. I can't give you any idea. I didn't say any of the ditches were stepped up. I said they all had weeds in them that caused them to be stepped up. I did not mean to swear that the big ditches were filled up. I meant the water furrow. The water furrow is the furrow across the row to drain water out of the field. They were stepped up. I don't know how many of them were stepped up: I never counted them: I couldn't swear to any definite number. There were a good many: I couldn't tell you exactly -- just riding through the field, I wouldn't count them. I went through the field a number of times, but I couldn't tell you how many there are on my place. I couldn't tell you what proportion of them were stepped up. I don't know how many bridges were down. I don't know how many water furrows were stepped up. All of the drain ditches had weeds in them that I saw. There was a whole lot of that place that I didn't ride over: I would just ride through it. That place is several thousand acres. If you were to ride across it east and west, you could see as much as you could see. I undertake to swear about what I saw in riding along the road. All of the ditches had weeds in them that I saw. Weeds stop up a ditch. I couldn't see any water dammed up in any of the ditches. I didn't see any obstruction in the ditches except the weeds. That is all. I don't know what ditches they were or how many of them. I said that it cost more to haul cane off a piece of land and dump it in the ditch or gully than it does to load it on a car. Half the time, we don't haul the cane in cane wagons. All cane wagons are not made so you can dump the cane: mine are not. Some of the cane wagons on this Sugarland place are dump wagons and some of them are not. You can't haul but a few loads out and dump it. You can do that if you have a dozen loads, but if you have a dozen hundred acres of it you can't. . If you haul cane in wagons and go ahead and dump it you can do that very easily, but if you have to get it off your land, it costs a good deal. The river in some places is five miles. I told you that it cost a dollar a ton.

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RECORD 1442
VERDUS MOOREHEAD SUGAR COMPANY'S 1911

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I did not say that it would cost a dollar a ton to haul cane in a dump wagon: I said it cost me that to get my cane off. . . Some of my cane I hauled a mile, and some of it different distances. . . I have some idea about how far this cane on this place would have to be hauled. . . Some of it would have to be hauled a hundred yards. It is from 100 yards to three or four miles. You would have to haul all that along the creek 100 yards. I don't know how many acres that is. I hauled some of my cane two miles and some of it half a mile and some of it a few hundred yards. . . It is practical to pile that cane in the rows. It is much cheaper that way.

AMERICAN SUGAR COMPANY RECORDS

TEXAS SUGAR COMMISSION VERSUS AMERICAN SUGAR COMPANY 1911
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D. S. CAGE, a witness for Defendant, testified as follows:

I live at Houston, Texas. I was raised in Southern Louisiana. I had been connected with sugarmaking and cane raising off and on until about the time I came to Texas in 1890, and all of my life practically after that time. I was raised on a sugar plantation, in Louisiana. I have had something to do with sugar and sugar products since I came to Texas. I have had opportunity to observe and know what the effect of a freeze is on cane. A freeze injures the cane where fermentation takes place. As soon as fermentation takes place, it renders the cane practically valueless. I have never known any manufacturer of sugar that would buy frozen cane. . Frozen cane has no market value that I know of. After cane has been subjected to a freeze going as low as 16 degrees, I shouldn't think that anyone could safely rely on buying that cane for the purpose of making it into sugar.

PLAINTIFF MAKES SAME OBJECTION TO THIS TESTIMONY

During last season, I had occasion to go out to Sugarland and inspect the cane being ground and crushed and the juices extracted from it: I went out and looked at the cane they were grinding. I think that was the early part of December. I did not think that cane could be profitably manufactured. I don't know of any product that could have been made with that cane that it would have paid to manufacture. I don't think you could manufacture it with any degree of profit whatsoever. It would not have made a good quality of black strap molasses. Black strap was worth three to four and a half cents a gallon in the market. There is no relation between blackstrap and syrup. A good average price for good syrup would be 26 to 28 cents per gallon, as against four or four and a half for black strap. I hardly think that this cane at that time would have made a product equal to blackstrap, - that is, it could not have been subjected to as many commercial uses as blackstrap. They might have sold it for as much as blackstrap, - I mean to say you might have obtained black strap prices for it. I still deal in the products of cane largely.

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CROSSED BY THE PLAINTIFF:

I don't know anything about the chemical test of cane. I have not had any practical experience in chemical analysis myself.

Q. Do you know at what degree of purity in a chemical test that cane becomes merchantable? A. I couldn't answer that question scientifically. Of course, I would place my estimate of the value of a commodity of that kind more by observing the cane or the juice: I couldn't answer any of your questions scientifically. I think there is an understanding among cane men as to what is the lowest test at which cane is considered merchantable, but what that is, I am not prepared to say. I haven't had any experience with that kind of test business.

APPELLAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION RECORD 1 of 2

VERSUS APPELLAL SUGAR COMPANY 1911

W. T. HUBBARD, a witness for Defendant, testified as follows:
Q. Mr. Hubbard, we allege here that on or about the first of
January, 1910, we placed in the possession of the Penitentiary Com-
mission in behalf of the State a plantation belonging to the Imperial
Sugar Company, which had been cultivated during the year 1910 and
1911.

THE PLAINTIFF OBJECTED TO ALL OF THESE ITEMS WITH REFERENCE
TO THIS CASE BECAUSE THEY CANNOT BE SET UP AGAINST THE STATE, AND
WE HAVE THE VARIOUS EXEMPTIONS UNDER THE SUPPLEMENTAL PETITION
AGAINST THEM.

When I turned that plantation over to the Prison Commission, the
roads and turn rows were in good condition. The Drain Ditches were
in good condition; they were open. The culverts and bridges across
these ditches were in good condition. At the time they first took
charge of the plantation there were some buildings on it that were
old, but I built some new ones during that period- the best in the
State. I built new cribs for them. Along the latter part of January
or sometime in January this year is when they got through with it
and turned it back to me. . . The condition then of my turnrows and
bridges was certainly bad; the turnrows were cut up, and cane tops
and poles and anything they could come in contact with were filled
in the ditches there to allow them to pass over. The ditches were
not in condition to carry off the water because they had not been
cleaned out and many of them had not been touched at all, and the
crossings for the cane fields were closed up, and they piled those
cane tops and poles in the ditches and obstructed the flow of the wa-
ter. I got three different contractors to go over this place and
make me a bid as to what it would cost to restore the damage done
there and put it back in good condition.

THE PLAINTIFF OBJECTED TO WHAT THE CONTRACTORS' BIDS WERE BECAUSE
IT IS PURELY HEARSAY; IT DON'T PROVE THAT IT COSTS THAT MUCH OR
THAT THAT IS THE REASONABLE VALUE OF THE WORK DONE.

THE COURT: I WILL HEAR THE TESTIMONY AND LATER ON WILL ALLOW YOU
TO ARGUE YOUR OBJECTION.

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THE PLAINTIFF OBJECTED FURTHER TO THIS TESTIMONY BECAUSE IT IS NOT ITEMIZED AND IN DETAIL IN THE PLEADINGS SO THAT PLAINTIFFS COULD BE PUT ON NOTICE.

The lowest bid I had was for the bridges, \$1787.00 for labor and for the culverts \$2075.00: for the road work and the ditches, \$122.00 per mile. As near as we could estimate--I had the engineer to estimate it, there were 116 miles, at \$122.00 a mile. I advertised for bids, and that was the best bid I got. I think it would cost me that much to restore the damage done there: I doubt seriously if a man could do it for that, according to my judgment. Something like 2000 acres were planted in cane on that place during the year 1911. Most of it was an excellent crop. My calculation is that it was right at a thousand acres of cane, or a little over, that was not harvested and saved. The cane on that thousand acres was frozen. They just piled it up in the water furrow, the water middle. They left it on the ground, part of it standing and part of it cut down. There was only a small amount of it standing: most of it had been cut down. . . My best estimate as to the number of tons of cane left on that thousand acres of land is 25,000 tons. I could not have that land planted and cultivated this year without removing that cane. To haul that cane out to vacant places I think would cost a dollar a ton: that would be a conservative estimate for getting it to the sloughs or ditches. I piled it all in every sixth row. I took all of five rows and piled it into the sixth rows, all of five rows and piled it into one, and left what there was in the sixth row. I removed five rows. It cost me about 37½ cents a ton to pick that cane up and carry it off of five rows and put it in the sixth row. I lost the cultivation and the rental of the land this year by reason of the cane on it. The rows that the cane is piled in, the two rows on the side grew very little cane. I don't know whether I lose hardly one sixth of the land. The rental value of my land, money rent, is from six to ten dollars an acre, depending on the location and character of the land. There could have been a good deal more of that cane saved with proper diligence on the part of the penitentiary commission, with the facilities at their command

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SERIAL SUGAR COMPANY RECORDS

TEXAS PENITENTIARY COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
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All of the cane could have been windrowed before the freeze, and the windrowed cane after the freeze, we got some results from that, but I couldn't tell to what extent it had been damaged. I think half of that cane could have been hauled off to the mill before the freeze easily. The Penitentiary Commission didn't have sufficient labor there to handle this cane. They had sufficient teams and wagons. The mill could have taken care of a good deal more cane than we got. I suspect they could have delivered more than they did deliver, if they had had the force there. Half of that cane belonged to the Imperial Sugar Company, and the other half to the State. That cane was worth \$2.00 a ton, if it had been delivered in proper condition to the mill before the freeze: it was easily worth four dollars per ton. If I am correct in my estimate of 25,000 tons left there in the field, they could have gotten 12,500 tons off. I just know how many able-bodied working convicts they had on the place there at harvesting time from what Capt. Mills told me. He was in charge of the place there and was the man I would naturally go to to find out. He was representing the State. He told me that he had a little less than 200 men, and only a little more than 100 able-bodied men. We had thirty or forty cripples there, one-legged men etc. They needed at least 350 men there to have properly harvested the crop. I don't know exactly how many acres in cane they had over on the Imperial Farm, adjoining there, but I knew approximately. I knew how many convicts they had on that place from what Capt. Addison told me. He told me they had 385 men at harvesting time, when I asked him. The Commission planted some sorghum on the Imperial Sugar Company's place there, about 300 acres. They let the crop go to waste - destroyed it. They cut some of it along in the summer, I would say in July and August. They left what they cut there in the field, except they hauled a little of it out over on their place. I don't know what they did with it besides cut it and leave it. They had a corn harvester, and they tied it up in bundles and checked it and left it, except a little that was hauled away. The portion that they didn't cut and check, they left standing on the ground. My Company was interested in that sorghum crop: they owned half of it. I figured the

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value of our half of that crop at \$25.00 per acre. It was worth every cent of that. They could have gathered that crop by proper diligence: there were no conditions to prevent them from gathering it. If they had had the labor there, there was nothing to keep them from saving it. The land that they left the sorghum standing on, we have not been able to cultivate this year. That was something like half of it, - 150 acres. That land was worth the rental value of six dollars per acre - if you speak of the sorghum land, I put that at six dollars an acre, money rent. I have never been able to determine that frozen cane had any value. If I had gotten out there and picked up my half of that cane, it would have been worth nothing to me: all the frozen cane that I have ever handled cost me money. They never delivered to me as much as 750 tons of cane per day before the freeze. I would have to look at the scale sheets to determine how much they did deliver. I know there were lots of days that they didn't deliver that much, but I couldn't answer the question without checking up the records. I told you what it would cost to put the drain ditches in order. The damage done to my prison was \$750.00. I had a very competent man to make a bid on the prison to restore it, and he made a bid of \$750.00 to repair it and place it in good shape.

PLAINTIFF MAKES SAME OBJECTION TO THIS TESTIMONY

I had put up a very fine building and screened it in with copper wire, and had it all nicely painted and water works, sanitary closets and hot and cold water baths, and I put in a cement pool in there for the convicts to take a plunge in, and hot and cold water tanks and shower baths, and when Capt. Mills vacated the place, the kitchen was a mass of smoke and soot and the copper screens had been busted off and the property had been badly depredated on, and the waterworks were out of fix and someone had hauled the corn out of these two cribs and had taken axes and cut the two by six uprights in two in two places and knocked the boards off of the sides of the cribs, I think in about four different places in each crib, along the west side. They left the lots in bad condition and the manure was piled up around the fences, and it looked to me like it

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could not have been in worse condition than it was. I turned that prison over to the Prison Commission brand new and in first class condition, inside and out, eight months before that. That is the prison that Capt. Herring said was the best in the State, and if it is repaired, it is the best in the State today. This is the same place that they are asking me to pay for a part of the crop taken off of it in this suit. I think I turned over something like 600 tram cars to the Prison Commission. They were in good condition. When they turned them back, they were scattered in different places in the fields along the railroad track, and torn to pieces, many of them and badly delapidated. They were injured to such an extent, 151 of them, that it was out of the question to repair them. It would have been as cheap to buy new ones as it would have to repair them. I think they are worth about \$25.00 a car. They cost a good deal more than that: they cost about \$75.00 a car. They were tram cars. They planted some cotton on that farm last year. I think there was something like 2000 acres in cotton. They did not gather all of it: I think there was about 50 bales that they did not gather. We had forty per cent interest in that cotton. They didn't gather it because they didn't have the labor there to gather it and do the balance of the farm work. What our forty per cent was worth, would depend on the price of cotton: I think cotton was bringing about \$50.00 a bale. We owned forty per cent of the value of 50 bales of cotton at \$50.00 a bale. It would have been very expensive to remove that serghum cane off of that 150 acres that was left there. I don't know what it would have cost. I don't think we could have moved it for a thousand dollars. This cotton and cane were on the same land- this share farm- that they are asking me to pay for part of the crop taken off of my land. Your honor understands that the land belongs to the Imperial Sugar Company. Capt. Mills was the State's Manager in their undertaking to carry out and perform the obligations in its contract to work the Imperial Sugar Company's Share Farm. Mr. R. W. Brahan was the man that I recognized above Capt Mills. He is one of the Commissioners. It is my understanding

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that he is the man that the Prison Commission and the State of Texas recognized as the proper man in charge of the conduct of this business. He is the man that did business with me. He assumed to have the right to act. I had not been informed until this morning by the Board of Prison Commissioners that in their dealings with me by a representative of the State, that the trades of these commissioners and when they bought goods and made contracts, that such trades and contracts were void and worthless unless all three of them acted together. I have heard it from Mr. Cabell to the contrary, that Mr. Brahan was the Farm Manager and any deals I made with him would apply to the whole Commission. I never heard until this morning that they claimed the right to repudiate my sales they made, unless all three of them went into it. I had a contract to buy the State Ramsey cane at three dollars per ton, so long as it was merchantable cane. They did not deliver all that they grew down there except such as they wanted to plant for seed. I don't know how much they lacked of delivering all of that cane. If that cane had been delivered to me in good and sound condition, I could have made a profit on it. There was a quantity of it that they did not deliver. I am sure they could have delivered more cane if they had put the labor there. I only know how much labor they had there from what Mr. Brahan told me. Our first operation showed a profit of fifty cents a ton, but if we could have gotten enough cane to keep the mill going full time, we could have made more. Of course, it depends on conditions to some extent. I would be conservative in saying we could have made at least a dollar a ton profit if that cane had been delivered to us at \$3.00 a ton before the freeze. Taking the cotton that we did receive and the cane that we did receive and any other products that we received, we did not receive first and last as much as half of the value of the product that they raised on that place. Taking all that they delivered to us off that share farm, they did not deliver us much as half of the products raised on it.

Q. The Imperial Sugar Company has charged the Board of Prison Commissioners with \$5406.49 freight paid for them to the Sugarland Railroad Company--

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THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE THAT IS A CONTRACT BETWEEN THE SUGARLAND RAILROAD COMPANY AND THE PRISON COMMISSION AND NOT BETWEEN THE IMPERIAL SUGAR COMPANY AND THE PRISON COMMISSION.

THE COURT: I WILL HEAR THE PROOF AND HEAR YOU LATER ON THE OBJECTION.

Mr. Tittle asked me to pay that \$5406.49 for him to the Sugarland Railroad Company. I paid it and charged it against the cane. I mean the Imperial Sugar Company paid it. When I say "I", I mean the Imperial Sugar Company always. It was agreed between Mr. Tittle and myself that I could charge it and take it out of the first cane money: that was the agreement before I paid it. That was the agreement upon which I did pay it. I have a letter about it here (handing counsel letter). I don't know who J. E. Haines is.

Defendant offers in evidence letter from J. E. Stubblefield, Ass't secretary to W. T. Eldridge, as follows:

Huntsville, Texas, March 12, 1912.

Mr. W. T. Eldridge,
Sugarland, Texas.

Dear Sir:-

We desire to settle all accounts now owing to the Sugar Land Railroad, inasmuch as Mr. A. Crewther, Auditor, advises us that he is personally liable for this amount, and this letter is to ask you if you would be willing to settle our account against said railroad with funds now in your possession belonging to us, charging same against our account.

Yours truly,

J. E. Stubblefield,

Ass't Secretary

JES-LS

Defendant offers in evidence letter from Board of Prison Commissioners to W. T. Eldridge, dated January 27, 1912, as follows:
Huntsville, Texas, January 27, 1912.

Mr. W. T. Eldridge,
Sugarland, Texas.

Dear Sir:-

Answering your letter of the 22nd instant, and I note you have

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paid the labor bill for December 1911, \$1286.36, to Mr. Grewther, on freight due the Sugarland Ry. Co. I think in as much as you are due the Prison system quite a sum of money for care, etc., that you should have remitted your check to cover this labor, as it was a cash item, and we expected your check to cover same.

As to furnishing you statement of charges made against you will say that I would be pleased to have an itemized statement of our account with you, showing all care received by you and price of same

Yours very truly,

Louis W. Tittle,

Prison Commissioner

LWT-d

THE PLAINTIFF OBJECTED TO THIS LETTER BECAUSE IT DOES NOT PROMISE ANYTHING ABOUT IT, AND BECAUSE IT DON'T PROMISE TO PAY ANY BILL AND MERELY ASKS THEM TO SEND THEM A BILL.

W. T. ELDRIDGE FURTHER TESTIFIED:

They asked me orally to pay that bill: Mr. Tittle asked me to pay all freight bills personally and called me up over the telephone. I paid it for them: he said it would be an accommodation to them, that they were hard up and needed the money.

Defendant offered in evidence a letter from the Prison Commission to the Imperial Mercantile Company, dated October 7, 1911, as follows:

Huntsville, Texas, October 7, 1911.

Imperial Mercantile Company,

Sugarland, Texas.

Gentlemen:-

Owing to the very heavy expense incurred by the Board of Prison Commissioners of the Texas State Penitentiary System in order to carry out the provisions of the new law governing the management and transaction of the business affairs connected with the penitentiaries, the Prison Board finds that they are unable to settle all bills due for merchandise, etc. just at this time, and in view of this fact, we are compelled to ask the indulgence of these merchants and dealers with whom we transact business and are indebted

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to at this time, and trust that as one of such, you will bear with us with patience until such time as we are able to market our crop of sugars, the proceeds of which will be ample to meet all obligations of the penitentiaries.

We expect to begin moving our sugar crop within about thirty days from this time, and in the meantime, as a matter of equity and justice, a reasonable rate of interest will be paid by the Prison Board on these accounts which are now due and unpaid.

Thanking you in advance for your indulgence in the premises, and with assurance that the amount due you by the Prison Board will be properly taken care of at the earliest possible time, I am,

Yours very truly,

Louis W. Tittle

LWT

Finance Commissioner.

THE PLAINTIFF OBJECTED TO THE ABOVE LETTER BECAUSE IT IS NOT ADMISSIBLE FOR ANY PURPOSE, BECAUSE IT DOES NOT PROMISE TO PAY ANYTHING.

THE COURT: I WILL TAKE THAT LETTER ALONG WITH THE OTHERS.

W. T. KIDRIDGE, FURTHER TESTIFIED:

I am interested in the Imperial Mercantile Company too, Mr. Kampner and I both. With reference to this letter, I straightway had a conversation with Mr. Tittle. I saw Mr. Tittle and called his attention to the letter the Mercantile Company had gotten, and I said that in view of the differences we have just settled, about the trouble we had in getting our money out of our cotton that we refused to let him ship off the place until he had paid us for it, "Now with the understanding that I can deduct all that the Mercantile Company owes them on the first pay day out of the cane, I will agree to let you have what you want", and he said, "Mr. Kidridge, it will be an accommodation and will be all right. Tittle agreed that the Imperial Sugar Company should pay that account, and agreed that it could be carried as a credit on the cane crop, and previous to that he had tried hard to let the cash advances we made him come out of the cane crop instead of the cotton crop. They tried to take the cotton crop

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off too, and I had to notify the merchants not to pay the sixty per cent. I agreed to let him have this time. I paid the Mercantile Company something over six thousand dollars. I paid them \$6371.01. That is the account I paid for them. I paid it at the request of Mr. Tittle, and charged it against this cane. They have never paid me. I charged their account with it. This is the identical account he asked me to pay for him, and I did pay it. I paid an account against them to the Imperial Mercantile Company of \$2155.87, under that same request. I paid that account at the request of Mr. Tittle too. I paid those two accounts to the Imperial Mercantile Company at the request of Mr. Tittle and the Commission. This charge here for \$1086.00 for damaged cotton seed occurred this way: They would bring cotton in from the field after a heavy dew or shower and store it in the seed house wet. As General Manager of the Imperial Sugar Company, I will say that during the month of December, last year, we manufactured at a loss. The loss was caused by the heavy freeze damaging the cane. We manufactured at a loss in the month of January, on account of the frozen cane. There was no profit in the manufacture of the cane received by me from the State after December 2, 1911. It was a big loss. There was no material or substantial difference between the cane that I received from the State and the cane I received from other people in the same vicinity. It was practically the same. The damage to the cotton seed resulted in this way: The cotton would be brought up from the field after being picked after a heavy dew and it would be fresh and green and they put it in a big warehouse that we called a sugar house that we didn't use at that time of year and they would put the cotton in there, and from not being properly stirred, it heated in that house and therefore destroyed the seed. It destroyed a thousand and some odd dollars worth of seed for us. I got at that by figuring out each car that we would ship from time to time. It made the seed unmanufacturable for oil purposes: we could use them for feed. Every car that was shipped off, as fast as they got returns on it, the damage was sent right into the office. I reported to the Prison Commission that I had charged them with these seed. I never heard a word of objection

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Those we shipped off we sold at different places and a portion of the seed was hauled out of the Imperial Place. We shipped some of it off to the oil mills and they made a deduction for bad seed and we charged them with the deduction. Those that they didn't ship out, they hauled out in the field, Capt. Addison did. We gave them notice that we wanted them to remove them out of our seed house, and we had a letter from the Commission, instructing Capt. Addison to move them and he did move them. I had notice from the agent of the State, Capt. Addison, that he had instructions to move them and he did so. There may be a letter there from the prison commission bearing on it. Gus Ulrich is Secretary of the Imperial Sugar Company and Manager of the Imperial Mercantile Company and he is assistant Manager of the Imperial Sugar Company.

The Defendant offered in evidence letter from ~~XXXXXXXXXXXX~~ L. W. Tittle to G. D. Ulrich, as follows:

Mr. G. D. Ulrich,

Sugarland, Texas.

Dear Sir:-

I beg to acknowledge receipt of your letter of 9th inst., in which you state that you wrote me a letter sometime ago in regard to bad seed in your warehouse and asked to have same removed. I beg to say that this office has never received such letter from you. At any rate, I am today writing A. K. Addison to investigate the matter and take care of the seed.

W. F. MELDRIDGE FURTHER TESTIFIED:

It is not practicable for a sugar mill to separate the cane it receives and manufacture each fellow's cane separately. It could not be done without great loss: it is out of the question. My obligation was to take as many as 750 tons of cane per day from the Prison Commission. Before the freeze, my records show that they delivered 502 tons per day, practically. I have no record as to what was delivered during the second period: I have not figured that out. The Prison Commission didn't take off the harvest. I never hired any free labor for the purpose of taking off the crop. I used every-

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thing I could get, outside of the few men that I furnished Capt. Hills. Labor wasn't available in that country. The only labor that was available to take off that cotton crop was to be furnished under the contract by the penitentiary- convict labor.

CROSSED BY THE PLAINTIFF:

I have now and did have connection with the Sugarland Railroad Company, during the year 1911. I was president of the Sugarland Railroad Company. I am not the largest stockholder in that road: there is another one as large as I am. I am a large stockholder in it. I had some connection during the fall of 1911 with the Imperial Mercantile Company. I am a stockholder in it. I am President of it and have general supervision over it. I am Vice President and General Manager of the Imperial Sugar Company. I also had the Sealey Mattress Company and the Sugarland Pulp and Paper Mill Company located at Sugarland at that time. I was engaged in planting cane elsewhere than on the share farm. That was at Faber, up on the Colorado River, in Eagle Lake. I think I stated that I had about a thousand acres in cane there. That is a corporation: it is known as the Faber Planting Company. I am President of it. I am not Manager: I have a manager there. I go there once a year, probably. I direct the affairs of that corporation. The Ramsey Farm is a little over 25 miles, about 25 miles from Sugarland, south. The Sugarland railroad runs from Sugarland to Ramsey Farm now. Part of it did then, and the Sugarland road took over an extension of the track down there in the fall of 1911. That extension of the track went to the Ramsey Farm. I. H. Kempner and W. T. Eldridge and the Sugarland Railroad Company took it over. Before the Sugarland Railroad took it over, I. H. Kempner and W. T. Eldridge owned it. I. H. Kempner is a stockholder in the Imperial Sugar Company, the Imperial Mercantile Company and the Sugarland Railroad Company. Besides the State, we had a cane contract with A. J. Adams & Brothers, in 1911, and we bought two crops of cane without written contract, just on verbal agreement: I can get a list of the names of all of them if you want me to. I made the agreement for racking 120 cars aggregating \$4200.00 with Mr. Brahan. That agreement was made out there at Sugarland: I couldn't tell you the date of the agreement: it was after we bought the Ramsey

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Cane I think: I am not positive. Mr. Brahan and myself were present when the agreement was made. There was nobody else present at all not that I know of. I did not have the agreement with Mr. Brahan and Mr. Cahell both: Mr. Cahell wrote me about the number of cars he wanted for the Ramsey Dam. The price to be paid for racking those cars was \$35.00 per car. That was to be paid by the Prison Commission to the Imperial Sugar Company. It was to be paid by the Prison Commission by deducting it from the cane delivered to the Imperial Sugar Company. That price applied to every car that I racked for them. There is a difference in the cost of racking different kinds of cars. I have heretofore racked flat cars from the floor up. I rack some every year. Q. That was the cost of racking cars for handling cane? A. Whatever you could get it done at. There is a very great difference in the cost of racking a flat car and a coal car. There is a difference in the racking of some cars: some cost you more than others. I suppose the difference in the cost of racking a flat car and an ordinary coal car would be, perhaps, \$12.50. I said that the agreement was that they were to pay \$35.00 per car for every car that was racked, regardless of whether it was a coal car or a flat car: they were to pay \$35.00 per car for 120 cars. I told Mr. Brahan at the time I was going to get as many coal cars as I could. I always want my contract. I was going to get as many coal cars as I could that cost the least to rack because if I could not have gotten the coal cars, I would have had to have gotten the racked cars. Q. Don't you think you would have provided what should be paid for racking flat cars and what should be paid for racking coal cars? A. I am not representing the State. I think I would have provided it myself. I made a contract to rack 120 cars at \$35.00 per car. I thought I could get enough coal cars to come out I wasn't looking out for Mr. Brahan. I said that under the contract I made with Mr. Brahan I expected to put in all the coal cars I could get, and that it cost \$12.50 less to rack them than it does a flat car: I would not have racked a flat car if I could have gotten coal cars. I said at the time I made the contract that I would get all the coal cars I could: I don't know that I had it in mind at the time. I was the

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President and Manager of the Sugarland Railroad Company at the time. That Company owned a few cars at that time. They got cars from connecting lines. It did not make it easy for me to get cars: it was quite difficult. It is probable that it made it easier for me than it was for a man that did not have railroad connections. I don't know that it was easier for me to get cars than it was for an individual: I know lots of individuals that could get cars easier than I could. Mr. Brahan did not make the agreement with me that he would pay or recommend to the Commission to pay for the actual cost of racking those cars: he never said anything about that. He made a verbal contract and afterwards confirmed it in writing to rack 120 cars at \$35.00 per car. I did not agree with Mr. Brahan to rack the cars at actual cost. I agreed with him to rack them for \$35.00 per car. I would have to get my records and see how many feet of lumber was used and how many men were employed, in order to see to what extent the item of labor entered into that cost. I could get it from the books. I put some racking on the cars that was there for the previous administration at \$7.50 per car. I haven't figured out how much more it costs to rack a car than it does to put the racking on, but it is more because the racking you have is already fitted to the cars and all you have to do is to put the racking on and bolt it up. I think that if it cost \$7.50 to rack a car, it would cost more to make the racking and fit it. The State had three big forces contiguous to the places where the cane was shipped from. It had convicts there. I don't know whether they had any carpenters there or not. I do not know that they had citizens as head carpenters and that they had carpenters among the convicts. I know that they had a force on the Ramsey Farm and a force on the Imperial Farm and a force on the Share Farm. I did not say that \$10.00 a car was for labor alone. This contract that I made with Mr. Brahan was for furnishing the lumber, nails, bolts, etc. Mr. Brahan told me they were not in position to rack the cars. I didn't ask him why and he didn't tell me. The Imperial Mercantile Company owned the money that was put into racking those cars. It is one of my companies. All labor there and work done generally is done under my direction. I general-

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ly supervise all the work. After Mr. Brahan made the deal, he laughed and said, "I am very much relieved of the burden of getting these cars ready, and I don't know where we could have gotten done". That was after the deal was made. That was after the deal was made in which he agreed that I was to rack the cars at \$35.00 per car. He said that he wasn't in position to do it. I said that there was no agreement between Mr. Brahan and me that this labor was to be done at cost. I don't remember making any such statement to the effect that I could do the work much cheaper than anybody else could do it, because of the fact that I already had the material on the ground and the labor and that I would do it at the lowest possible cost. I don't remember making any such statement as that to Mr. Brahan and Mr. Cabell there in Mr. Lane's office; I don't remember making any such statement as that to Mr. Cabell anywhere. I don't remember making that statement to Mr. Cabell and Mr. Brahan at the time we were figuring on and discussing the number of cars that would be needed on these places. To the best of my recollection, I did not say it. I will say this, that Mr. Cabell was not present around Sugarland the day I made this trade with Mr. Brahan. I know positive ly that I did not make any contact with Mr. Brahan and Mr. Cabell that I would rack those cars as cheaply as possible. I don't think I ever stated to them that \$35.00 per car was the lowest cost of racking cars. I know I made no such agreement, and I have no recollection of making any such statement. I have no way of showing the number and the ownership of the cars that I racked. The Sugarland Railroad would cut the initials and number on the cars that were in the cane service, but we had something over 300 cars in the cane service and there was no specific car allotted to any one person, because it would make it impracticable to separate those cars because of the numerous switching necessary. I told Mr. Brahan that 120 cars should be racked and put in the State service. I know that a great many more cars than these were racked. I did not rack cars for my Faber Farm. The Imperial Sugar Company furnished those cars racked. The Imperial Sugar Company had some cars racked to haul the Faber cane. I couldn't tell you how many they had racked. We had put his in a swing, may be a thousand pounds or a ton in a swing

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an assorted lot of railroad cars in the cane service. I can't tell you the number of those cars and the names of the roads that owned them. We had cars from the Pennsylvania Central, the New York Central and cars of all descriptions. Cars might come in this evening loaded with cane and be ground off tonight and be put in the Fabor service tomorrow and cars might come in tomorrow from Fabor and be put in some other service. We can't separate those cars. There are something over 300 cars racked out there, according to my recollection. I haven't got any record of the cars racked here. The railroad has it. I think I can bring it back with me Monday. It would take a good deal of work to dig it out, but I could do it. All the cane that was delivered to the Imperial Sugar Company's mill was hauled in railroad cars, except the tram cars. The names of the other places were all given here this morning. All of them hauled in railroad cars. There was none of it hauled in tram cars. The share farm was the only place that hauled by tram cars. All of those farms named by Mr. McNameara used railroad cars for hauling their cane to the Imperial Sugar Company's mill. We didn't furnish any specific amount of cars for Adams Brothers: they usually shipped from seven to ten cars a day. Adams Brothers did not pay for those cars: the Imperial Sugar Company furnished those cars racked. Dyer & Bertrand are the only ones that paid for racked cars, and the Imperial Sugar Company furnished them, but they had paid a fair price for the use of the racked cars. That is all done under agreement, whether we will furnish cars racked or not. We couldn't separate the cars used by the various other farms and planters from whom we were buying cane, except as by the number of cars we received from them per day. The cars racked were put in the cane service and they were switched whenever necessary from one place to the other. I couldn't tell you how many coal cars we had in the cane service. Other people besides Mr. Blakeley used cars that didn't come to my mill. We couldn't use a coal car that wasn't racked, we had to have everything racked. Blakeley used some, but he handled his differently from the way we handled ours. We unload our cars a whole car at a time. We hook chains in the hoist and dump it out on the incline, but Mr. Blakeley put his in a swing, may be a thousand pounds or a ton in a swing

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and loaded it up that way. I never saw it done, but that is the way
he did it, as I understand it. I will have to check them over to
see how many cars the Imperial Sugar Company had racked in the fall
of 1912. I told you there were something like 300, all told. I
didn't put racking on any cars, except cars that were never unracked.
I couldn't tell you how many there were. They are included in the
300. These sugarland cars that were used the year before and never
unracked were used promiscuously between all farms as we did last
year. These cars belonged to the Sugarland Railroad. I couldn't
tell you how many there were. They only had 54 cars. I couldn't
tell you how many cars were racked. My idea would be about 50. I
did not say that about 50 of the 300 cars that were in the service
of the railroad for hauling cane were cars that had been racked the
previous year. I said the cars that racking was left on. I can't
tell you how many cars the racking was left on. I have no way of
determining that. I don't know that I racked 300 cars last year.
I couldn't tell you accurately. I don't contend that I have the
right to charge for cars that I did not rack just the same as I have
for cars that I did rack. About the first of the month I saw that it
looked like we needed more cars, and I had a chance to get these
coal cars, and I happened to see Mr. Brahan and I told him I thought
I could get more cars, and it would be a good idea to get them, and
if agreeable to him I could get cars that would answer Mr. Blakeley's
purpose without racking them, and that I would put 120 in the cane
service and that I would return 120 to him when the service was over
and that that would make 180 cars, and he said certainly, that is all
right. I think Mr. Blakeley used about thirty unracked cars. Var-
ious people used the other cars. We don't separate the cane cars
as cars: each man has a certain number of cars racked and allotted
to him. As to what one of these cars would hold varies: the average
is about 18 tons per car. The number of cane cars used by the Im-
perial State Farm during that cane season varied: some days more
and some days less. I can't tell from my papers here how many cars
Capt. Addison used per day. I could tell how many were delivered.
We might set out ten or 15 farms this evening and it might rain and

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they would stay there 24 hours. They would not come up in our yard and set there unloaded, if there was any demand. They might not get the same cars, but they would get some other cars. I couldn't tell how many cars were actually in the service of the Imperial State Farm from day to day. I could tell from my records how many cars were delivered per day, but I couldn't tell you how many were in the service. Your records show how many were delivered per day. I think my records agree with yours as to the number of cars delivered to the Imperial State Farm per day. The same thing would apply to the Ramsey State Farm, but there might be 18 or 20 cars sitting down ~~there~~ there and none being used. I know there were some there that were not being used, but I couldn't tell you how many. The custom in handling that business was, for instance, if Mr. South wanted to load 20 cars a day, we would try to keep 20 cars going to him and bring back whatever loads he had. We tried to run everyday. We did not try to get the same cars to him every day, but we tried to keep him supplied with cars. It is a fact that we were using these cars that were racked for the State in the general service and it is a fact that the State used the other people's cars in their service. That is true. I don't know the number; we had about 300 cars there and sometimes a couple of hundred of them would get accumulated in the yard and we would get a big lot of empties and we would just scatter them out. The distance from the Imperial Sugar Company's mill to where they load the cane on the Imperial State Farm is about $3\frac{1}{2}$ miles, a mile to $3\frac{1}{2}$ miles. Some of it is in sight of our mill. They got scarce of cars at times and that is why, the occasion for having so many cars for that farm. It was not because we were using them in our other business; we might send them down to Mr. South and he would get 20 or 30 cars standing there a day or two and not loaded. If I were running the State farm, I wouldn't want to deliver a few thousand tons of cane and deliver it in a reasonable time with less than 40 cars in the service. I wouldn't want to undertake to deliver it with less than forty cars. As to how long it would take the force on the Imperial to load ten cars, would depend on how much force they had. We would send a string out that night or in the

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when read, it would take longer. It would take about two hours
evening and sometimes we would get them back in a few hours. Mr.
Brahan suggested racking thirty cars for the Imperial. The first
intimation I had for racking sixty cars for the Ramsey Farm was from
Mr. Cabell's letter and Mr. Brahan and I discussed it. Suppose we
had 20 cars at the Ramsey Farm, and the train goes down and leaves 20
empties: now we had to have some cars accumulated in the mill and so
it would take sixty cars, and they would have to be moved just
regularly. The more cars they had the greater relief it would be to
the mill and the greater relief it would be to the farmer to get the
cane out. It was a benefit to the farmer in order to get their cane
out to get it to the mill if I had taken those cars from the Ramsey
Farm and Imperial Farm and had properly unloaded them and had not
been grinding other people's cane, they could not have done on less
cars than I have them charged up with. This suggestion of Mr.
Cabell's letter of sixty cars for the Ramsey Farm comes in the same
letter wherein he notified me that they were going to mill their own
cane and directs me how to deliver it to the other road. They
stated that they wanted to mill the cane on the Clemens' farm.
The Clemens farm is in Brazoria County, south of the Ramsey Farm.
In going from the Ramsey Farm to Clemens Farm, you would go to
Anchor, the route they directed us to take and then on to Angleton
about five miles, that is 12 miles and then over to Brazoria, and
I think that is about 12 miles and then it was 20 or 25 miles to
the State Farm. They would have to go over two railroads, on the
one other than that they own and the piece of track I own. There
would be four altogether. There would not necessarily be four dif-
ferent switchings: they might run through trains. That was the ef-
fect of Mr. Cabell's letter to me. If they did run through trains,
they would not have to make four stops: To get on another line, you
don't make a stop: there might be four stops in transferring it to
the other road. In handling it over the Sugarland Railroad to the
Imperial Sugar Company's mill, there would be two stops necessary,
three, because it would take as long to stop at a crossing as it does
to go on a switch. If the train was not there to take it on the

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other road. It would take longer. It would take about four hours to put a train of cars from Ramsey to the Imperial Mill. I couldn't tell you how long it would take, in the course of ordinary railroad operations to deliver a car of cane from Ramsey to Clemens Farm. As to whether it would take longer and take more cars to deliver cane to the Clemens Farm than it would to deliver the cane to the Imperial Mill would depend on what sort of service you put on. It would depend on what kind of track you could go over and what kind of time you could make. I am a railroad man. I do not know that it takes longer to get service over four railroads than it does over one because some roads don't run as many trains ~~xxx~~ as others and some roads do. There would be very little difference in handling a train, a through train over four railroads and over one railroad. It would depend on the kind of time you made. Four railroads connected with a switch don't necessarily take up much time. We have run many trains for the State. I am not acquainted with the service on the Brownsville road and the I. & G. N. I stated that I racked 120 cars, for Mr. Brahan. I agreed to rack sixty cars for the Ramsey Farm. The reason I delivered 125 cars to the State Farm to be unracked was just because of an error of the conductor's. He put five cars more there than he ought to have put. The reason I sent those 30 cars up to Mr. Blakeley's, I was just going to divide them around as the contract called for, but after we got all the cars up there I asked Mr. Tittle or some one of the Commissioners to collect them at those two places to be unracked, and he agreed to it. It is my recollection that Mr. Tittle made that agreement. The agreement between Mr. Brahan and me was that he was to pay me \$35.00 a car regardless as to whether they were coal cars or flat cars or what it cost to rack them. My recollection is that the conversation I had with Mr. Tittle was over the phone. I couldn't tell you when it was it was before the cars were unracked. I couldn't say positively, but I think it was Mr. Tittle. I put a call in for any one of the Commission I could get, and my recollection is that it was Mr. Tittle that I got. That item for racking 30 cars at \$7.50 a car occurred this way: I called Mr. Barton over the phone and told him he had the

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racking for 20 cars at Sugarland, or the State had, and I told him I would put them on at \$7.50 per car, and he didn't know it was there, and authorized me to do it. I had a settlement with the Commission and Mr. Barton at the expiration of his term of office. The settlement was no more with Mr. Barton than the others there. It was a general statement. I rendered a statement of my account, and Mr. Barton rendered the State's account, and I gave my note for the amount I was due the State. That did not wind up the affair. Mr. Barton said that if he owed the amount there it was all right. I couldn't say positively one way or the other, but he said if I said so, he guessed it would be all right, and these gentlemen said they would pay whatever was owing us and I went back with the assurance that they would pay whatever they owed, if they owed it. This item was included in the account I rendered Mr. Barton. It was not settled for. The balance I owed the state was not settled in that settlement. This item was not settled just because it was not credited. We rendered it, but Mr. Barton didn't seem to credit it. I had a settlement with Mr. Barton and I paid the balance due according to that settlement. I don't remember the amount I kept this out because I had the assurance that it would be paid. I did not settle it because of lack of good business on my part in not deducting it before I made the note I just didn't deduct it. I was sure Mr. Barton had given these other gentlemen that statement before I gave the note. As to when the note was due, they could furnish you that from the note. I paid it. I couldn't tell you just why I didn't take it out when I paid the note: I think the note was hypothecated. I didn't make a demand for a credit on the note because I thought it would be credited. It was not refused when it was presented. They did not refuse to allow it in this settlement. I made my settlement independent of this note. We had other unfinished business between us - open accounts, etc. I made other statements besides that. It was not allowed in this settlement and others were not allowed. I settled that account with a note. I am very certain of that. I had a contract with the previous administration for the cane on the Ramsey place. Under that contract, I was required to take that cane for a

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term of five years. The State did not have the right under that contract to mill the cane any year it saw fit; it had the right to mill the cane any year after the first two years, and in the year, 1911, they notified us that they would mill that cane. They did not mill it. The Imperial Sugar Company milled the cane. This thousand dollars damages accrued against them for the cancellation of that contract because there were other considerations. The contract shows for itself what those considerations were. We had to make an agreement in order to get that cane that was we would haul the cane out on the basis of regular railroad commission charges, unless we put it under the jurisdiction of the railroad commission before that. In the old contract regarding the hauling of that cane, we were to furnish a certain number of cars and haul it out or permit them to do it. We did not bind ourselves in the old contract to have this cane hauled on this railroad. I was not bound under the old contract to haul this cane out and deliver it to the Imperial Sugar Company; I was bound to haul it out to Anchor. The other consideration was that we were to haul it out after a year from then for a term of years under the same railroad rates if the railroad was under the jurisdiction of the Railroad Commission. It cost us something to make that railroad company haul cars out at the rates fixed by the railroad commission, because if we had been permitted to haul it out without being under the Commission, we could charge a higher rate. That was not the Sugarland Railroad Company; the Sugarland Railroad Company didn't own it. I. H. Kempner and W. T. Eldridge owned it. Q. And because of that you claim the right to charge them a thousand dollars and the right to charge them \$4200.00 for racking the cars the same year? A. That is the basis of their contract. I did rack the cars. They notified me that they wanted to mill their own cane, and demanded of me to be prepared to deliver the cane, and said if I were not prepared they would file suit against me. Kempner and I owned the short piece of track that connected the Ramsey Farm with the Sugar Land Railroad. We didn't refuse to deliver the cane; we would have made a trade to haul it out. We did not do it because they never asked us to name their a price.

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Q. Isn't it a fact that you refused to haul that cane over that track owned by you and Kemper, and because of that fact the Prison Commission was compelled to make this new contract with you to mill this cane? A. I would have made a trade; I didn't hold that over them. I made a trade to grind their cane for the Imperial Sugar Company. I didn't make a trade with them to haul that cane over the piece of road that Kemper and I owned. You couldn't put it exactly that I refused to do it. I didn't do it. Q. You held it over them to force them to sell you that cane? A. No sir, that wasn't all of it: if you will let me tell you all--I submitted three contracts to those people to be signed and all to be accepted and I had a letter from Mr. Sen Cabell to the effect that they were satisfied and I was holding that piece of tract in between there in order to effect a lease of the Gunningham property. It is a fact that Kemper and I owned the connecting piece of track between the Ramsey Farm and the Sugarland Railroad. Q. Is it not a fact that you refused to make a contract with the Prison Commission to haul that cane, in order to force them to let you mill the cane, and after doing that you have them charged with a thousand dollars for cancelling this contract, when you forced them to cancel it? A. I would have been tickled to death if they had carried that contract out: I will knock off the thousand dollars now if you will renew the contract. This item of \$151.95 is a charge for hauling those little tram cars from the yards up to the mill. Under the share farm contract, I was to furnish the mules and the cars to pull them cane out of the field and up to the mill--not the mules to pull it up to the mill--get the contract and let us read the clause. We pulled the tram cars from the scale house to the mill with this engine. The scale house is a mile and a half or two miles from the sugar mill. Capt. Mills pulled some cars up there and the engine pulled some too. I have no idea at all about how many he pulled. They pulled lots of them up there with the engine. It is not a fact that our yards were so crowded that Capt. Mills could not deliver the cars and that this engine was made necessary as a result of the crowded condition of our yards. We used the switch the year before that: it was for the purpose of

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saving mules over that track. They were saving the Company's mules. Not only did we save the mules, but we saved the state a good deal of labor. The engine was simply doing the pulling and hauling that our mules would have had to have done and saved labor for the State. It would save our teams and save labor for the State. I said that it saved mules and labor by going out there and doing that hauling. I think two mules would pull eight cars and two hands to the car to the train. I was sending out that engine there to save my mules and to save labor for the State: it was mutual. I have tried to save labor for the State. In regard to that item attached to my answer for fixing track, Mr. Brahan and Capt. Mills both said they would rather I would do that work and I claimed it was their duty to do it. They had done it all the time. I couldn't answer whether there is any clause in the contract that says that the State had to keep our railroad track. I have read the contract, but I couldn't carry it all in my head. Will you let me read the part that refers to the tram track. There is a part of it here that says, "If the cane is delivered by the party of the first part on the tramroad, the party of the second part agrees to furnish and keep in good condition for the use of the party of the first part in delivering said cane to the sugar mill of the Imperial Sugar Company". There is another clause that says they shall do the general repair work incident to the farm work: those two clauses cover it fully. I think the Court can interpret that. I think the contract, generally speaking, covers it fully. I want to read over the contract and refresh my memory. I think I have a record here of the days that my mill ran. I will have it gotten out. Now, this item of \$961.99 for that curved piece of track, I made the trade with Mr. Brahan to sell him that track. There was nobody else present, just Mr. Brahan and I by ourselves. That trade was made at Sugarland. We discussed it there in my office. There was nobody else present at all. Q. Either at this trade or the other trade? A. Yes sir, I can get you a man if you want to that heard that conversation with Mr. Brahan and agreed with him on that \$35.00 a car. The Sugarland Road has used this curved track this last fall

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exclusively. The State is using that track now, hauling freight over it. They haven't got an engine: they are fixing to get one. We have a request to operate to Cabell daily, and Cabell is up the other side of there. Between the Sugarland Railroad and the State, they have been using that track. The state has been using it to get their freight over it, all that comes over that road to them, over the Sugarland Railroad. We push the cars up on that curve for them and they pull them up in their yards with the mules. At times we run over that track and charge the State for that service. We charge for the service from Sugarland up to Cabell: the other service is free of charge. We do their switching, spotting cars, and don't get anything for it. We have to go over their track to get to the yards. We could deliver freight to them without going on that track on the Harlem place: we had two side tracks. Cabell is on the Harlem place: we honored Mr. Cabell with a station. I built the track about two years ago. Mr. Brahan agreed to buy that track if I would knock off a little for wear and tear in order to connect with their yards. They couldn't get to their yards without that track. I have been hauling my sugarland engine and cars over it from that day up until now, for their benefit. I don't charge them for it: I charge to Cabell. After we made the contract, we put in those places up there, and we have one named Brahan and one named Tittle, and one named Cabell. Cabell is out there in the middle of the field. Cabell is right at the end of this curve. It is at the end of this track. This is the station we reported to the Railroad Commission, and this is the connecting track in our operations from this point up to there yards. This is the proposed extension of the Sugarland Road. (Indicating all places on map)

Your Honor, before we start, I want to make an explanation: I looked up and found the statement made by Mr. Ferguson as to the price of that engine and crew. It was for 20 days at \$25.00 a day, instead of 25 days at \$20.00 a day.

I arrived at that item of \$1096.58 for damaged cottonseed by charging up the damaged seed from car to car and time to time, as they were received by us from the State. I can get a statement of it

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FERGUSON (MAGNISON) RECEIVED 1912
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and bring it back to you Monday morning. Some of the seed were re-
fused and some of them were turned. Some of the seed that were re-
turned were sold and the State given credit for its part of it. Part
of the seed that they hauled out of the seedhouse themselves and
that were not shipped at all, we charged them up with our forty per
cent of them as good seed. They hauled the seed out and piled them
up right close to their gin house and the cattle ate a good portion
of them during the winter. It was done by Mr. Addison's men. They
hauled the seed a few hundred yards from the seed house. That was
on the share farm. They were ginned at the Share Farm, at my gin.
The way we arrived at that statement, if a bale of cotton ginned 500
pounds, we charged the State with a thousand pounds of seed. I
would have to get the number of bales of cotton that were there from
the books. The damaged seed was caused by the cotton being picked
wet from dew or showers of rain or it would get wet in bringing it to
the ware house, and because it was not given proper attention to
it after they were put in the house. We operated the gin on this
place. The Imperial Sugar Company operated the gin through the Im-
perial Mercantile Company. It was under my control. The ginning was
done under my direction. We ginned for other people besides those
crops grown on the share farm. Our gin had a capacity of forty odd
bales a day: we ginned forty odd bales a day. It is not a fact that
this cotton was picked and brought there to and stored in this ware
house and that it accumulated there as much as 200 bales in bulk at
a time because of the fact that we were not ginning this cotton but
were ginning for other people. That is not a fact. They would
bring in cotton morning and evening picked in heavy dews and the way
the cotton accumulated in the house, most of the cotton that would
come in there could not be ginned as they would haul it from the
fields: it would not be in condition to gin. I provided the house
for the cotton to be stored in, and asked special attention to be
given to it. I saw the cotton and went in many times and examined
the cotton and I told Capt. Mills if the cotton was not stirred, it
would destroy the seed from the heat. Capt. Mills told me that he
would not let it be destroyed. At times he said he would like to

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VERNON ADDISON, ADMISTRATOR, VERSUS IMPERIAL SUGAR COMPANY, 1911

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have the cotton ginned. Capt. Mills did not demand of me a number of times that I gin the cotton piled in that warehouse: he would request me sometimes to set a certain date that we would relieve the warehouse of the State's cotton. We kept the warehouse relieved, and would gin for him whenever he requested, approximately so. I don't know how much cotton that warehouse would hold. I couldn't tell you whether it would hold as much as 200 bales. I think the dimensions of that house are 100 X 150 feet. Its height is about eight or nine feet. That warehouse was very nearly full. They were not compelled to put the cotton in there for lack of other places to store it: we could have furnished other places, but that was most convenient. I never had a request to furnish any other places. I didn't say that cotton was stored in that room for its entire length, seven or eight feet deep. The warehouse was pretty nearly full of cotton. I never saw that house at a time when there was not plenty of room to stir that cotton. If you would handle the cotton properly, it would take only a few men, but if you would pile it up, it would take more men. If I piled up six bales of cotton wet and go back tomorrow and stir it, it would be enough, but if I neglected it, you would have to stir it several times. That warehouse was in no such condition at any time I saw it, and I saw it frequently, that that cotton could not have been properly handled and the seed saved. I make that statement, and I saw it frequently. They stirred the cotton at times, but they would neglect it and I told Capt. Mills a number of times that it was being neglected. I never saw more than five or six men in there stirring the cotton, and I would go up there and I would find the niggers sitting around outside the house, smoking cigarettes, and a great many of them asleep and the guards ask ep. I caught the guards asleep twice and reported them to Capt. Mills and I saw the men not working numerous times. I never saw as many as 25 or 30 men working there: Capt. Mills told me he was going to send two or three squads up there, but I didn't see them. I do not know that it is a fact that from time to time Capt. Mills had several squads, aggregating 25 or 30 men trying to save that cotton when my gin was blocked up, ginning for outside people. Under that share contract, under which that share farm was

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TEXAS RAILROAD COMMISSION RECORDS REPOSE 1 OF 2

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operated last year, Capt. Mills was the Manager. I always regarded it that the State was in charge of the Farm. I think the contract provides how the crops shall be planted. I had an assistant there for Capt. Mills, principally to look after the mules, wagons and harness and farm implements. I did not have a man on that place directing the management of that place. I told Capt. Mills that I had the utmost confidence in him as a farm manager and was perfectly willing to abide by his suggestions. I did have a man there named Williamson the first of the year, but he was not employed in the light you put it. After Mr. Williamson died, I told Capt. Mills it wasn't necessary for me to put a man there to look after the teams and tools and implements. I did not agree with Capt. Mills that he should represent me and represent my interest in the management and control of that place. I did not make that agreement with him. I just told him, "How you know how much cane is here and I told him how much cotton, cane and corn and sorghum, and I said, "You know what to do with it, and I want Mr. Williamson here to assist you and do anything he can to help you, but merely to look after our mules and when one gets disabled to have him cut out and another one put in his place. I did not say to Capt. Mills, after Mr. Williamson left there, that I wanted him to represent me in the management and control of that farm. I told Capt. Mills it was not necessary for me to put anybody else to look after the teams, tools and implements: that I would leave it to him. I did leave it to him: he would call me up and tell me sometimes that there was a mule needed ^{man} and I would send a ~~mule~~ up there to get him. I would go down to the place and make suggestions to Capt. Mills, but not for the purpose of directing things. Capt. Mills would come to me frequently and ask me for advice. Some times he acceded to the advice and sometimes he did not, and when he differed with me, I acquiesced in his ideas. It always appeared to me that Capt. Mills went as far as he could in harvesting and making that crop. There was no disagreement between me and Capt. Mills. I had known of Capt. Mills quite a while before he took charge of this place this time, but I met him about five years ago the first time. It has been my information that

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Capt. Mills is a man of ability and good judgment for a proposition of that kind. My experience has been satisfactory with Capt. Mills as far as he was permitted to go. I had a phone connection from my office to Capt. Mills' office, and I talked with him frequently. I was in connection with him whenever I wanted to be. I certainly did call Capt. Mills' attention to the fact that those seed were piled up in that house and were ruined. I couldn't name the specific day that I suggested to Capt. Mills that those seed were being ruined but while the cotton was stored there, I spoke to Capt. Mills several times, and he would say, "Colonel, I am going to have that attended to," or, "I will have it attended to", or something to that effect. The seed were destroyed. He may have made an effort to save the seed and no doubt did do it, but the seed were destroyed. Capt. Mills never refused to put a force of men in there to stir those seed. He failed to save the seed. If Capt. Mills would tell me he was going to stir the seed, I didn't watch him to see whether he did or not, but I told you that he failed to save the seed. I do not say that Capt. Mills did not send a force of men to stir those seed when ever I requested him to do so, but I do say that he lost the seed. Q. I think we will show that you caused the loss? A. I will regret it very much if you do. I had a very fair gin near this place where the seed were piled. It had a capacity of forty bales a day. As to how long it takes seed to heat so that they will be destroyed depends on how wet they are. I didn't examine the seed when they were first put in the house, but I couldn't state exactly how long it would take them to heat. Cotton, if wet, might get pretty hot in 48 hours. We ran our gins sometimes a little at night. Green cotton will heat without being wet, and I will say further that green cotton does not gin very satisfactorily when it first comes from the field. Q. Did you testify yesterday anything with reference to this item of \$5400.00 for building spurs on the Harlem Farm? A. I don't remember the exact amount of it, but I testified about building the sidetrack on the Harlem Farm: I think I testified that. At least I built two sidetracks on the Harlem Farm: I didn't build any spur track. The Harlem Farm is a separate farm from this Cunningham

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TERESA PATSON (MAM) 1930N. VERSES APPELLAL SUGAR COMPANY'S 1911

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Share Farm. It belongs to the State. The work done on the Harlem farm was under a contract, but I can't say that it would be absolutely separate from the contract sued on in this case. . . I think I have that contract. If you will permit me, while on that subject, I would like to make a statement concerning that portion of the work. I would say this, that while I made the trade with Mr. Brahan and Mr. Cabell about the building of the sidetracks, right shortly after that is when I had this understanding with Mr. Brahan with reference to the connecting track. I made a deal with him in good faith, presuming that he knew what he and the rest of the Commissioners wanted and if they have now decided that that track is of no worth to them, with the consent of all three of them and the approval of the Court, I will begin moving that material off their own land and put it on our property. It is on their property- our switch furniture, etc. I will say in passing they have a bill against you for several hundred dollars that we did on that track: we didn't do any work on that track. I make the proposition of withdrawal of the bill if you have found you don't need it, if you will relinquish title to the material. The Material is on the State's land. I testified on yesterday that the Commission or a member of the Commission requested me to pay this Sugarland Railway Company account. I paid whatever they owed. The Prison Commission requested me to pay their account with the Sugarland Railroad Company. I paid the Sugarland Railroad Company \$5406.49. The Sugarland Railroad Company was not indebted to the Prison Commission for a large amount to my knowledge. They did not do a lot of work down there on that railroad for the Sugarland Railroad Company. They did not do a lot of work on the track of the Sugarland Railroad at my request. The work was done on the track belonging to I. H. Kempner and W. T. Eldridge That was on the track between the Sugarland Railroad and the Ramsey Farm. I couldn't state whether the work was done as stated in that account or not: I could not say whether all the work was done or not. I was furnished a statement of it from time to time. I stated that the labor performed by those convicts on that railroad was not on the Sugarland Railroad track but on that piece of track belonging to me and I. H. Kempner.

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RE: I. H. KEMPNER'S APPEAL FROM THE SUPREME COURT OF MISSISSIPPI
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When they sent bills into the Sugarland Railroad I returned them and told them the work was done for W. T. Eldridge and I. H. Kempner. I think the beginning of that contract was made by personal conversation, and afterward by letter. I wrote a letter to the Prison Commission regarding that work. That (indicating letter) is signed W. T. Eldridge, President. You asked me where the work was done. The work was done on the track between the Ramsey Farm and the Sugarland Railroad. That (indicating letter) is the letter under which the men were furnished.

Plaintiff offered in evidence letter from W. T. Eldridge to J. A. Palmer, dated July 11, 1911, as follows:-

July 5, 1911.

Mr. J. A. Palmer, Secretary,

Board of Prison Commissioners,

Huntsville, Texas.

Dear Sir:-

Replying to your favor of the 1st. inst. in regard to the force of 50 to 75 first class negroes, I beg to advise you that it will be entirely satisfactory with us to take this force at the rate named of \$1.25 per day, per man, based on ten hours work per day for the days actually worked with the understanding that we will have the right to turn these men back when we are thru with them.

We notice you advise they will be ready on or about the 10th of July and we can prepare to take them on that date, but would not be able to use them prior to that time.

Yours very truly,

W. T. Eldridge
President

W/P

W. T. ELDRIDGE FURTHER TESTIFIED ON CROSS EXAMINATION:

The Cunningham Sugar Company and the Imperial Sugar Company were very much interested in having that road operated. They did not operate it. The same stockholders that owned the Cunningham Sugar Company owned it. The Cunningham Sugar Company was then in business-refining sugar. I suppose I got a letter from Mr. Palmer. That (indicating letter) is probably the reply to my letter which I received from Mr. Palmer. If you will allow me, I have a statement of the credits on account that I sent into the Prison Commission- the account I sent in for something over \$20,000.00, the account that I

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sent into the Prison Commission-Mr. Tittle. It is the cane account. We charged it up to him and credited it to him. To the best of my knowledge the item stated there of \$810.00 for labor for 648 days is correct. Q. This item of September 11, to 1297 1/2 days labor, \$1621.87: is that a correct charge? A. That was credited on that account that I sent in. I don't know about its being credited in my answer in this suit. I think you will find that item of \$306.25 in the account that I sent in. If you will look over the account we rendered to the Penitentiary Commission, you will find this item credited to them. I admit this item as correct, according to my recollection. The account attached to my petition showing a balance of \$6400.00 is not entitled to these credits: they have credit for everything they are entitled to. I can't say about the petition: I am speaking of the account. We gave the Penitentiary Commission credit on account of the Imperial Sugar Company in those amounts. I can't get the statements today. Mr. Tittle asked me to pay that account of \$6571. account of the Imperial Mercantile Company. Mr. Tittle asked me to pay what they were owing to the Mercantile Company and Mr. Brahan stated to me that the racking of the cane cars would be deducted from the first pay day on the cane. Mr. Tittle asked me to pay this Mercantile Company's account right after I took up this proposition of credit at the store. I can't give the date: I know it was right after that letter was written. What is contained in that letter is got the only request that Mr. Tittle ever made to me: he asked me out at Sugarland a good deal later if I wouldn't pay the Sugarland Railroad and the Mercantile Company's accounts. Mr. Tittle requested me to pay the Imperial Mercantile Company's account. Mr. Tittle didn't tell me that he had an account against them. I presumed they knew what they owed them. I simply paid that account as presented to me by the Mercantile Company, believing it to be correct. I couldn't tell you whether the Prison Commission had an account against the Mercantile Company or whether they were entitled to that offset. If they had an account against the Mercantile Company, it would be credited, I presume. I did not know the condition of the accounts between the two concerns. I had some knowledge

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in a general way. I just had the statement of Mr. Ulrich that he let them have some things for the Prison Commission. I know that the Mercantile Company bought a smoke stack from the Prison Commission. That is the only specific item I can recall. Mr. Tittle just requested me to pay his account with the Mercantile Company, and his freight bills with the Railroad Company, That was the request made to me by Mr. Tittle. The Commission requested me to pay their accounts--I am speaking now of Mr. Tittle. I couldn't tell you where the first request was made: the last one he made was out at Sugarland I couldn't fix the date of it. Both of the requests were after the writing of the letter. There was no one present with Mr. Tittle.

Q. Now, you have two accounts here against the Prison Commission for the Imperial Mercantile Company, one of \$6571.02 beginning March 14, and running down to October 31st, and another beginning December 16 and running up to March 7th: which one of these accounts was it he requested you to pay? A. He didn't separate it: he said his account with the Mercantile Company. This request was made after that letter was written. October 7th is the date of the letter. I said that his request was made to me after that letter was written. I didn't intend to say that he wrote me and requested me to pay this account. I do not say that now: I didn't intend to say it. I told you that the first agreement, I took up the matter with him with this letter that I told him that we would be glad to credit him for whatever he wanted from the store. That is the letter you have in your hand. I didn't say anything about a letter I sent the Prison Commission. I said that Mr. Tittle and I discussed the proposition of his credit at the store and I said to Mr. Tittle I would be glad to sell him anything he wanted if he would permit me to deduct it from the cane as it came in. That was right after that letter and he said "Mr Eldridge, it will be quite an accommodation. That is the letter on which I paid that account. I want to say that to the best of my belief Mr. Tittle called me up over the telephone and asked me to settle the railroad accounts. On two occasions the Mercantile account was discussed between Mr. Tittle and myself about paying the account of the Mercantile Company. I cannot tell you the

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dates. That statement must have been made to me prior to the payment of the account, or I don't think I would have paid the account if we had not had an agreement with him. Mr. Tittle never asked me specifically asked me to pay this item of \$2195.00. He asked me to pay his account with the Mercantile Company. I couldn't say that he specifically asked me to pay this account of \$2155.87. I can't say that I have offered in evidence all the letters that I have that show a contract or agreement to pay these accounts. I can't recall any others right now. I have been handling convicts a good many years. I think the first convict labor I handled was in 1896. I think I was fairly familiar with the general operation of convict farms at the time this contract was made. I couldn't say that I was on these farms from day to day. I went over the farm quite often. I saw what was going on and it made me sick to look at it, and I wouldn't go back for sometime. I never reported my sickness to Capt. Mills or the Prison Commission not exactly as a plea for a doctor, but for help and relief on the place, I did. I certainly did go to Capt. Mills and tell him that the farm was not being kept up as it should be under the contract. I couldn't tell you how many times I went to him, but it was quite often, but I will name a specific time. I think it was in May, I would not be positive, but I rode down just after a rain one day and told Capt. Mills that the ditches were getting in mighty bad shape. and that some of the bridges needed repairing, and that while he couldn't work in the field, I would like for this work to be done. That I thought he ought to be beginning to do something on this work, and I called his attention to some places that I had in mind that I thought needed attention, and he said, "Colonel, I would be glad to do this for you, and I know it ought to be done, but I have instructions that it must not be done", and I asked him if he would mind showing me the letter and he said no, and he showed me the letter, and I told him I would like to take a copy of that letter. I took a copy of the letter and I think I have a copy. I don't think those ditches were touched: they were not to my knowledge. I know the special places that I called his attention to

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were not touched. That place was down in what is known as the Bullhead neighborhood: there were some ditches clogged up there: that is the name of an old camp. The ditches were so frequent there you couldn't count them. At that particular time there were several of them and the culverts had been fallen in and the water was being blocked, and I called his attention so he would not have any trouble in finding it. I said that he did not clean out those ditches. The land adjoining those ditches was cultivated. Some of the crops were damaged with water on that land. They did make a crop on all of the land, but some of it was overflowed. I don't know how much of it, I didn't measure it. It was less than 100 acres. I know that place I couldn't tell you how much it was: it was less than 100 acres. I wouldn't attempt to say that it was less than 50 acres: there were several cuts that were damaged. Some of that land was planted in corn and some in cotton and some in cane. It is not on the part of the farm near the river. Bullhead is centrally located, between Oyster Creek and the River. Now, I can give you another specific instance. Water backed out of the ditches from the caving in of these culverts and filled up the ditches. The culverts would fall in and that would make a dam in the ditch and that caused the water to stream out. The filling up of the ditches was caused by the falling in of the culverts. We have to furnish material outside of the general custom of what has been done before, to build culverts. I did not furnish any material for building any culverts at that particular place, but Capt. Mills knew that all he had to do was to send for what he wanted. He did not call for material to rebuild culverts and I refused it. I furnished it every time he ever called for it. He got two or three times a little lumber to patch up a few bridges between the camps and the houses, not the ditches that I spoke of. Those culverts are called the Cunningham Standard. They are generally known as that on these farms. They are made of willow poles and dirt thrown in on them. Willow poles don't last very long, about six months service is long enough, but they generally patch them up and get through that year. This is the letter that Capt. Mills showed me when I made the request of him. That is the instruc-

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tions he told me he had. I said that Capt. Mills had instructions that he couldn't do the work I asked for and that letter is what he based his refusal on. That is the letter (indicating Letter).

Huntsville, Texas, May 25, 1911.

Capt. E. B. Mills,
Sugarland, Texas.

Dear Captain:-

It has recently come to the attention of the Commission, that in some instances, the cultivation of the regular crops on the different share farms is being interfered with owing to the fact that the force is being employed in doing work for the owners of the plantation that seriously conflicts with the proper cultivation of the crop owned by the State, and his is to advise that it is not our desire that you let anything interfere with the cultivation of your crop in a thorough manner, or such a part of it as you can cultivate. It is better to sacrifice part of your crop than to let all of it get too foul. We feel that you should cultivate all you possibly can in the best possible manner, and let the rest go if necessary, as we do not see any chance of furnishing you more men than called for by your contract, which is 125. On account of the pardons and regular discharges, the men are going out faster than they are being received.

It is our desire that you do no more work than is absolutely necessary towards fixing turn rows, etc. Any new ditches or turn rows that are made, will have to be made at the expense of the owner, as this is the last year that the contracts are in force, and none of the share farms will be operated another year, except in one or two cases where the contracts do not expire for another year. We wish to ask that you read over your contract carefully, and charge everything to the farm that should be charged, keeping separate account, and sending in to this office at the end of the month.

Yours very truly,

R. W. Brahan, Prison Commissioner

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That is the letter that Capt Mills said he had that instructed him not clean out the ditches. I couldn't state how many ditches were clogged up. I said that another time I requested Capt. Mills to do some work. It was sometime after that when another rain occurred. I rode down to the Captain and said to Capt. Mills, "We had quite a rain yesterday evening, and it don't look like you will get in the fields tomorrow anyway, and there are some ditches here getting in bad shape and you ought to take advantage of this rain to have some work done on them", and he said, "Colonel, you know it would be a pleasure to me to do anything I could if I were permitted to do it, but my men are all in the building with their night shirts on- they all got wet yesterday evening, and I had didn't have any dry clothes for them and I had to dry their clothes by a fire." He couldn't send out the men because they didn't have any clothes to work in. He did no do the work I requested him to do. He didn't do it at that time or any other time. . The particular place that I wanted him to work on then was in the neighborhood of the sorghum crop: I told him some ditches were getting in bad shape. That is my statement of what occurred between me and Capt. Mills. I can't mention any other specific times. I asked him to generally overhaul the place. I had part of that farm cultivated this year. I suppose there is some five or six hundred acres that I couldn't cultivate: that would be my estimate. I partially cultivated the rest of the land. I have given to the Court the various estimates of cost of cleaning out the ditches, fixing the bridges and culverts and fixing the roads, according to the bills. I couldn't tell you what I actually spent towards cleaning out ditches and fixing bridges. I have done something. We have done a good deal. We had a force of carpenters at work when I left home and had had them doing certain work, such as cleaning out the culverts and putting in bridges and overhauling them. We made a crop on part of the place before we had any culverts cleaned out or tiches cleaned out. Some of it got hurt a little and we planted again and got a good stand. We had some of the ditches cleaned out before we planted that crop, and we told the renters to clean out the ditches and render a bill against us. I couldn't tell you the

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names of the tenants. I couldn't tell you how much the bills were.
I think the majority of those bridges are made out of willow poles.
If they had been put in new in 1911, we would have gotten through
this year with them.

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A. CROWTHER, a witness for Defendant, testified as follows:

I am not the Auditor of the Sugarland Railroad at the present time. I was the Auditor of that railroad last fall, 1911. I remained as such auditor until last April. Q. Look at these bills that are attached to the Imperial Sugar Company's answer in this suit?

A. Yes sir.

THE PLAINTIFF OBJECTED TO THIS EVIDENCE BECAUSE IT IS AN ACCOUNT BETWEEN THE SUGARLAND RAILROAD COMPANY AND THE PRISON COMMISSION AND DOES NOT ARISE UNDER THE CONTRACT SUED ON.

THE COURT: I WILL HEAR YOU FURTHER ON THAT.

I have looked at those bills and I made them out. It is a correct bill for freight and passenger fare charged against them. That is what they owed. The Imperial Sugar Company paid that bill. That bill was not paid promptly. I had all kinds of trouble: I couldn't collect anything. I wrote to Mr. Tittle several times. I saw Mr. Tittle about it too. I don't know the exact date that I saw Mr. Tittle, but I saw him on the front gallery of the office: I think Mr. Tittle and Mr. Brahan were there, and probably Mr. Barton- I am not positive about that, but I saw Mr. Tittle on the front gallery of our office in Sugarland and I introduced myself to Mr. Tittle and told him who I was and asked him if he couldn't do something towards reimbursing me for these freight bills, and he said he would see, and I tried to make some arrangements with Mr. Eldridge to settle the bill. After that Mr. Eldridge for the Imperial Sugar Company settled with me, I think it was the latter part of November sometime.

CROSSED BY THE DEFENDANT: PLAINTIFF:

I wrote that letter (indicating letter)

Q. The letter reads as follows:- Sugarland, Texas, 11/3/11

Mr. L. W. Tittle,

Prison Commissioner,

Huntsville, Texas.

Dear Sir:-

On October 3rd, I sent you quite a number of freight bills for various camps as shown below: Capt. A. K. Addison, \$167.95: T. C.

IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION V. IMPERIAL SUGAR COMPANY (1911)
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Blakely, \$392.85; J. N. South, \$662.67. Will you ~~please~~ kindly let me have check to cover these amounts at the earliest possible date as I am anxious to close out these accounts. Signed. Yours truly, A. Crowther. " Now, those are the bills you were writing Mr. Tittle about? A. That was part of the account- I suppose it was. I wrote him other letters about accounts other than that. I don't know whether Mr. Eldridge paid me those accounts out of money due by him to the Prison Commission for the Labor Cane or not: He just gave me a voucher for the money. The only thing I know anything about is the amount, \$5000.00, or whatever it was. When I had this talk with Mr. Tittle, I didn't know anything about the Sugarland Railroad Company being indebted to the Prison Commission for a large sum for work done on its track. It was out of my province entirely. I asked Mr. Tittle to help me out, and he said he would do all in his power to help me and tried to make arrangements with Mr. Eldridge to have it paid. The understanding was with reference to the freight accounts that I charged. That conversation was in the fore part of November, I suppose, but I am not sure. That account there includes every item up to November 30th. It does not include anything after November 30th: that bill includes everything up to November 30th. I wrote that letter (indicating letter). That was on business after that. I made the bill up to November 30th the fore part of December, I can't tell you exactly what the exact date of payment is. It was paid immediately after we rendered statement.

Plaintiff offered in evidence letter dated February 3, 1912, fr
from A. Crowther to L. W. Tittle, as follows:

February 3, 1912.

Mr. L. W. Tittle, P. C.,
Huntsville, Texas.
Dear Sir:-

Please refer to your letter dated January 29th, 1912, with reference to your indebtedness to me, and to which I have delayed answering on account of sickness, whether caused by the tone of your letter, or other causes, I am unable to say.

Permit me to say, Mr. Tittle, that the position you take is entirely wrong. In the first place, I do not see why you should drag Mr. Eldridge's name (personally) into this matter. I am employed by the Sugar Land Rwy Co., which is a corporation duly chartered by the State of Texas, and operating under the regulations of the Railroad Commission, and I am under bond to that corporation, and

PERIN Sugar COMPANY RECORDS

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Responsible to that Company for my acts.

In extending credit to patrons of the road, I have exceeded my authority, and am now personally "holding the bag", which I simply cannot afford to do. I am already out \$435.17, and if you do not pay me an additional \$841.03 for January business, I will be asked to pay that, which I cannot do, and the Company will naturally refer the matter to the Bond Company.

I am not interested in any controversy covering prison system matters, but I certainly am interested in money that is due me, and when my position is in jeopardy.

Would like to hear from you by return mail with check to cover.

Yours very truly,
A. Crowther,

Ac-L

Auditor

Yours very truly,

Delano Crowther

Defendant's Affidavit in witness Whereof from Imperial Sugar Company
your co signatory following receipt, dated 11/20/11, for \$100.00,
as follows:

Imperial Sugar Company 11/20/11, Texas
Agreement in Dec. 1911

11-20-11

11-20-11

11/21

2/11/12-344

2/2

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION
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VERSUS IMPERIAL SUGAR COMPANY'S 1911

Plaintiff offered in evidence letter to W. T. Eldridge from
The Prison Commission, dated January 27, 1912, as follows:

January 27, 1912.

W. T. Eldridge,
Sugarland, Texas.

Dear Sir:-

Answering your letter of the 22nd instant, and I note you have
paid the labor bill for December 1911, \$1286.36, to Mr. Crowther, on
freight due the Sugarland Ry. Co. I think in as much as you are due
the Prison ~~xxx~~ system quite a sum of money for cane, etc., that you
should have remitted your check to cover this labor, as it was a cash
item, and we expected your check to cover same.

As to furnishing you statement of charges made against you,
will say that I would be pleased to have an itemized statement of our
account with you, showing all cane received by you and price of same

Yours very truly,

Prison Commissioner

LWT
d

Defendant offered in evidence Voucher from Imperial Sugar Com-
pany to Sugarland Railroad Company, dated 11/30/11, for \$5406.49,
as follows:

IMPERIAL SUGAR COMPANY	Audit No. 195, Series C
Sugarland, Texas	Recorded in Nov. 1911
To Sugarland Railway Co.,	Dr
City	
11-30-1911	
11-30	In full payment your Nov. bill against Texas State Penitentiaries, dated 12-1-1911
B/R	Charges on freight delivered to September 30, '11, - \$1458.43
"	" " " " " during October, 1911 2157.23
"	" " " " " " November 1911 467.11
B/Attached "	" " " " " " 1911 1221.15
B/R	" " " forwarded " October 1911 64.77
"	" " " Transportation of Commissioners, guards and convicts as per bills rendered----- 57.80
	<u>\$5406.49</u>

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Examined by
A. H. W

Countersigned,
W. T. Eldridge, Manager.

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Acc't No. Amount

Texas State \$5406.49

Penitentiaries

Received from Imperial Sugar Company Fifty-four Hundred Six & 49/100 Dollars in full payment of above account.

Sugarland Ry. Co.

\$5406.49.

A. Crowther,

Aud.

IMPERIAL SUGAR COMPANY RECORDS

TEXAS PENITENTIARY COMMISSION

VERDUS IMPERIAL SUGAR COMPANY'S 1911

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G. D. ULRICH, a witness for Defendant, testified as follows:

My name is Gus Ulrich. I live at Sugarland, Texas. I am General Manager in charge of the business of the Imperial Mercantile Company. I was such during last year, and am yet. That (indicating bill) is a correct bill. It was due the Imperial Mercantile Company ~~the~~ by the Prison Commission at the time Mr. Eldridge paid it. Those goods were bought by the Prison Commission or its agents. Those are reasonable sums charged for them. I recognize that bill (indicating bill) It is a bill of the Imperial Mercantile Company against the Prison Commission. It is absolutely a correct bill. The goods are reasonably worth the sums charged therefor. They were sold to the Prison Commission or its agents. Mr. Eldridge paid it for the Imperial Sugar Company. There is an item thereof \$4200.00 for racking cars. I had a conversation with one of the commissioners concerning the racking of those cars. I had a conversation with Mr. Brahan. Mr. Eldridge told me that he and Mr. Brahan had had some conversation about racking some cars, and ~~xxxxxxx~~ Mr. Brahan told him he would not have time to do it and he asked me did I have time to rack them. Mr. Eldridge told me to go to the depot, that Mr. Brahan was about to get away on the train and told me about the conversation he had had about racking the cars. I went over and asked Mr. Brahan if that was correct that Mr. Eldridge had stated that he made him a price of \$35.00 per car and asked him if he had accepted it, because I was going to do the work, and I was to turn the bill over to the Imperial Sugar Company to be paid by them, and he said yes, and I asked him to rush his confirmation so we could get our money. I didn't get a letter from Mr. Brahan afterwards, but Mr. Eldridge did. The Imperial Mercantile Company furnished the material asked for by the Superintendent of the Share farm for the Imperial Sugar Company. I know Capt. Mills. Capt. Mills never made any requisition on me for lumber to repair bridges and culverts that could be repaired with lumber that he did not get. He never made requisition for material that was refused him. I was in charge of and directing the running of the gin that belonged to the Company there. Some cotton accumulated last season when it was coming in. The reason it was not

THE SUGAR COMPANY RECORDS

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ginned quicker than it was, was because most of it was in such bad condition, with green foliage and bolls until it clogged the gin, and we could not gin it until it had been dried and cleaned out the foliage that was in it. We ginned it as soon as we could. We were ginning cotton for the public. We ginned it just as it came.

CROSSED BY THE PLAINTIFF:

We did not give the general public the preference over this share farm cotton. We didn't give no preference until we stopped ginning the share farm cotton. I don't know of any instance where we turned a man down that came there with cotton to gin. They had to wait. If there was any cotton there under the shed for the state we did not make them stand aside and did not give others the preference. We did not let as much as 250 bales of this share farm cotton pile up in the house waiting while we ginned outside cotton. We probably had as much as 100 bales piled up there, because it could not be ginned. Piling cotton that way does not injure the seed, if it is properly cared for. If it is properly cared for it will improve it. I did not say that the State had to keep a force of men moving that cotton while we ginned cotton for other people. We did not do that. We didn't gin it because it wasn't in shape to gin. It improved it from what it was to pile it up that way. I didn't hear the conversation ~~between~~ between Mr. Brahan and Mr. Eldridge. I don't know what induced Mr. Brahan to pay \$35.00 per car if he did do it, nothing more than Mr. Eldridge told me. I didn't hear what Mr. Eldridge said to Mr. Brahan. To the best of our ability, our gin was ready to begin ginning cotton when the state's cotton came in there. We did not have to wait for the gin. It was along late in the season that we had to get Mr. Addison to gin a lot of cotton over on the State Farm. It is a fact that we let him gin some. We let him gin it because we didn't gin it as fast as they wanted it. There is a credit on the bills showing how much Addison ginned. I don't recollect, I think it was about sixty bales.

RE-DIRECT BY THE DEFENDANT:

The State was anxious to get the cotton ginned faster than we could gin it. There was never any time that our warehouse was so

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SPRING SUGAR COMPANY RECORDS
TERRY WALSON (DAMIEN) VERSUS FEDERAL SUGAR COMPANY (1911)
FOLDER 1 OF 2

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full of that cotton that it could not be handled properly. It could have been handled. It was green and damp and not fit to gin when they brought it in there. I have a statement of that damaged cotton seed. I got the data for that statement right off the books. I keep the books, and I made the charges. I inspected the seed, all of it.

The Defendant offered in evidence a correct Statement of the Damaged Cotton seed as follows:

OUR CHARGES IN DETAIL ACCOUNT OF BAD SEED AND LOSS ON SEED CHARGED TO LOUIS W. TITTLE, PRISON COMMISSIONER, HURTSVILLE, TEXAS. SEASON 1911

Item One

54318# Seed stored at Imperial Warehouse)
our proportion 40% at \$16.00 per ton) 173.81

Item Two.

45900# Seed ~~at~~ Car S.P. 23061, sold to Peoples Oil & Cotton Co., Wharton, Tex. @ \$18.00 per ton and \$2.50 for loading refused by them account being bad and resold at \$16.00 per ton delivered Edna, Texas. difference in price @ \$2.00 ton) 45.90
Freight paid from Sugarland to Wharton and Wharton to Edna) 75.12
121.02

Item Three

35400# Seed @ \$7.00 per ton and \$2.50 for loading account seed sold to Peoples Oil & Cotton Co., Wharton, Texas, at \$11.00 per ton, fob here, market that day on sound seed \$18.00 per ton fob here. Car C&M 83174) 116.40

Item Four

38800# Seed @ \$6.00 per ton and \$2.50 for loading Car DL&W 32311, sold to Dairy at \$11.00 per ton, after having been previously sold to the Fidelity Cotton Oil & Fertilizer Co. at \$17.00 per ton and \$2.50 for loading, rejected by them, your account received credit at original price sold at) 118.90

Item Five

42700# Seed Car MP27322, sold Peoples Oil & Cotton Co., at \$11.00 per ton, market that day \$18.00 per ton, and \$2.50 for loading, loss on above \$7.00 per ton and \$2.50 for loading amounting to \$151.85, less your 60% 53.58) 98.27

Item Six

53100# Seed Car R.I. 59438, sold Magnolia Cotton Oil Houston, Texas, at \$17.00 per ton and \$2.50 for loading fob here, refused and reshipped and resold to the Peoples Oil and Cotton Co. Wharton, Texas at \$14.00 per ton, delivered Edna pens, loss per ton in price \$3.00 per ton, amounting to \$82.15 freight loss sugarland to Houston, Houston to Edna pens \$76.23 Total loss this car, your A/C recd. credit at) 158.38

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TEXAS PRISON COMMISSION READER 1 of 2

VESSELS IMPERIAL SUGAR COMPANY 1911

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Item Seven

55800# Seed Car IC 29004, Sold to Magnolia Cotton Oil Co, Houston, Texas, at \$17.00 per ton and \$2.50 for loading fob here, refused and re-shipped and resold to the Peoples Oil & Cotton Co. Wharton, Texas, at \$14.00 per ton, Delivered Edna pens, loss per ton in price, \$3.00 per ton amounting to \$86.20, freight loss Sugarland to Houston, Houston to Edna pens, \$76.23 162.43
Your account received credit at original price sold at.

Item Eight

58400# Cotton Seed, LA 35397, shipped and sold to South Texas Cotton Oil Co, Houston, Texas at \$18.00 per ton, and \$2.50 for loading fob here rejected and sold for our account resulting in net loss of \$7.42 per ton, amounting to 221.20
Your A/C recvd credit at original price sold at.

\$1170.41

REKINE SUGAR COMPANY RECORDS

TEXAS COTTON OIL COMPANY RECORDS

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THIS DOCUMENT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.

G. D. ULRICH FURTHER TESTIFIED

Those (indicating letters) are copies of letters that I wrote to Mr. Tittle I mailed them in the United States Mail, addressed to Mr. Tittle. I never received any reply to those letters except the one ~~in there~~ in there.

The Defendant offered said letters in evidence.

THE PLAINTIFF OBJECTED TO THESE LETTERS ON THE GROUND THAT THEY ARE IMMATERIAL AND SELF SERVING,-

Said letters are as follows:

October 13, 1911

Mr. Louis W. Tittle, P. C.,
Huntsville, Texas.

Dear Sir:

Herewith enclosed you will please find statement of your account up to September 28th with the exception of a few small merchandise bills which have come in since, including ginning and cotton seed debits and credits up to bale No. 560.

Referring to the charges of loss on cotton seed, beg to advise that this seed became bad in the warehouse at Imperial and was no doubt caused by being put in there wet and not given the proper attention after it was put in. The other items I think you already have invoices for, however, in case you should not have, these will answer your purpose.

We are sending you this statement by request of your Bookkeeper who was here some time ago, so he can reconcile the accounts,

Yours truly

Manager

GDU/C

October 21, 1911.

Mr. Louis W. Tittle, P.C.C.,
Huntsville, Texas.

Dear Sir:

Herewith enclosed we beg to hand you invoice covering loss on two cars of cotton seed C R I & P #59423 and I C #59004.

In explanation of the above, wish to state that your proportion of this seed will appear credited to you at \$18.00 per ton and upon

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TEXAS PRISON COMMISSION RECORDS IMPERIAL SUGAR COMPANY (1911)
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arrival at Houston it was turned down on us and we were forced to dispose of it at the loss indicated. The condition of this seed we contend was caused by the cotton you had in the wareroom at Imperial not being stirred properly and becoming heated.

Yours truly,

GDU/C

Manager

December 9, 1911.

Mr. Louis W. Tittle, P. C.
Huntsville, Texas.

Dear Sir:-

Sometime ago we wrote you relative to bad seed you have in our warehouse at Imperial, asking you to make arrangements to have same moved. So far, however, we have not heard from you.

We are very sorry to have to ask you to move this seed promptly but it is absolutely essential that we have this room for storing sugars, etc., and we must insist upon your giving this matter prompt attention.

Yours truly

GDU/C

Manager

December 12, 1911.

Mr. Louis W. Tittle, P. C.,
Huntsville, Texas.

Dear Sir:-

We have yours of the 11th instant relative to bad seed which we have in our warehouse for you and note you have not received our former letter in regard to this subject, which seems very strange indeed. We trust, however, that you will arrange to have same moved at an early date, as we are in need of room very badly.

Yours truly,

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Manager

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W. T. ELDRIDGE, a witness for Defendant, on Continued Cross Examination, testified as follows:

Those tram cars were built in Sugarland before I came there in 1907, and they were used on the Cunningham Farm one year before I came there: when they were built, I don't know. I think there were about 600 of these tram cars in service in 1911. They hold about a ton of cane. These cars are built in an oval shape, wider at the top than they are at the bottom. These cars get off the track very easily, but they don't turn over. They don't have heavy tops, and they don't turn over. They flare out at the top for the purpose of letting the full load get in. They run off quicker empty than they do loaded. They do run off easily when loaded. If the ties are well in the ground and a fellow is careful, they don't break up as a result of the turn over, not much. I didn't say that the cars overturned. They don't overturn if a fellow is careful. Of course they break up some. When we carry these cars into the mill, we carry them up an incline and unload them, and when you turn them loose they are let go down the other incline. They do not break up badly there. They break up some like any other incline, but that incline is easier than any other place on the road. Whenever you handle the cars there is wear and tear. The turning loose of those cars and letting them run down that incline does not break them up anymore than it does anywhere else on the track, and not as much so. . . There is a certain amount of wear and tear on them of course. The running of those cars down that incline does not break them up more or less. Sometimes they break up going down that incline. I will tell you who repaired those cars year before last. I think it was the State's duty under the contract to repair the cars. It was done by them the year before, repairing those cars was done by them the year before. The year before last, the State furnished the labor and we furnished the material. I don't know for sure whether we furnished any material for repairing those cars last year or not, I think we did. When a car loaded with cane gets off the track, one nigger will get out and lift it on, as a rule. He don't lift the whole car: the little rails are only about an inch and a half high, may be an inch

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TEXAS REISSON COMMISSION
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VERDICKS APPELLATE SUGAR COMPANY'S 1911

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and three quarters. I have seen one nigger do it many a time. He would get it back on just simply by lifting. Q. Now, Mr. Redridge, with reference to the settling of this cane on the Imperial State Farm, you have seen these statements introduced here, rendered by the Imperial Sugar Company to the State- Those are correct statements as to the methods you have heretofore adopted in arriving at the amount due on this cane? A. We rendered that differently last season to what we did before, on part of it. We took the cane under 79 on a basis of \$3.00 per ton this last year. We changed the agreement. Mr. Cabell and Mr. Brahan came in my office and told me they were going to repudiate that cane contract, and I notified them and told them that that cane contract didn't provide for any cane under 79 purity test. That was sometime in the summer of last year, before fall set in- I don't know the exact date. They said they were going to repudiate the cane contract on the Imperial Farm. They said they didn't construe it like we did and wouldn't recognize it any further. That was about the acreage and delivery of the cane on the Imperial Farm. They said they didn't feel under any obligations to leave a ton of cane, and Mr. Brahan stated that the man that made the contract for the State was either a crook or a jackass, and the State wasn't going to carry it out, and Mr. Cabell said "We want you sir to understand that we don't recognize it and we will not consider it for a minute because it is not fair to the State". That was sometime in the summer. I notified them both that we would take that cane at \$3.00 basis, the price we had heretofore bought the cane under 79 purity test. They never made any objection to it. I just called their attention to that part of it when they were so pronounced in their repudiation of the contract. I have told you all that transpired on that basis. I think I have the letter there that was written in Mr. Lane's office to the Chemist that I introduced in evidence the other day. It would be my recollection that the date on that letter, December 6th, states the date correctly on which that letter was written; you might have dated it wrong, but I don't think so. It was written in my presence in Mr. Lane's Office. There were present at that conference that I told about, Mr. Hill,

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Mr. Brahan, Mr. Cabell, Mr. Tittle, Mr. Lane and myself. You are the gentleman I had reference to when I spoke of Mr. Hill. I tell the Court that in that conference it was agreed that the Commission would turn over that cane to ~~you~~^{me} and let me mill it up and settle for it according to the basis I obtained from the manufacture. I certainly make that statement to the Court. I saw you and Mr. Brahan and Mr. Cabell after that, at Sugarland, but I don't know that it was the next day after that: I couldn't fix the date. I couldn't tell you how many times I ever saw you (Mr. Hill) at Sugarland. I do not know positively whether I saw you there more than once. I wouldn't attempt to say whether I ever saw you there more than once or not. I swear to this Court that it was absolutely my understanding of the agreement there in Mr. Lane's office that night, that the Prison Commissioners agreed to turn over to me all of this cane to be accounted for according to the result I might obtain from the manufacture of it. Q. Didn't you submit your proposition to the commissioners, and didn't they retire with me into an inside room in that office and come back to you and tell you they would go out to Sugarland next day and ~~submit to you~~ examine the conditions there and then give you an answer to your proposition? A. I didn't understand that. I couldn't say whether they went to Sugarland next day or not. I took you and Mr. Cabell into my laboratory and introduced you to my chemist, but I couldn't say it was the next day: you came there and told me you wanted to study something about this chemistry in testing cane. I couldn't tell you whether this was on the day after that conference in Mr. Lane's office. I went home that night of the conference. I couldn't say that it was the next day after this conference that you and Mr. Cabell and Mr. Brahan and Mr. Tittle came to my office and had a conference regarding this proposition. You did come there, you (Mr. Hill) and Mr. Cabell. I know you and Mr. Cabell and Mr. Brahan and Mr. Tittle were all there together on one occasion, but I can't say that was the occasion. Q. Didn't we all go there and make an investigation, and didn't the chemist's report show cane running above 79 and didn't the Commission come back and tell you they would not accept your proposition?

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A. No sir, they did not and you did not. They certainly did not make that statement. I certainly swear that to this Court. All that I can recollect that was said was that these people wanted some money on the cane they had already delivered, and Mr. Cabell said to me that he didn't think the cane was as bad as I thought it was, and that is all you said to me on that occasion. I did not demand there that this cane be delivered to me. I did not make the statement that they had to deliver it to me under the contract. I did not demand of the prison commissioners that they continue to deliver cane to me under that contract. Q. Didn't Mr. Cabell tell you and didn't I tell you that you had the right to take the cane or refuse to take it, and if you demanded the delivery of the cane you would have to pay for it according to contract? A. If you had insinuated such a thing to me, I would have told you that we would close down that night. I swear to this Court that neither you nor Mr. Cabell made any such suggestion to me. Nothing like that was even suggested. They had the chemist to test this cane. So far as my knowledge goes the chemist tested and continued to test it. They continued to have it weighed. They had their weighers there weighing this cane up to the time this delivery ceased. I know that to be a fact. Q. Don't you know that it was right there in your office in your presence in Sugarland we discussed with you the question they had taken up with Calvin Bhakely, the milling of this cane, and you demanded that this cane be delivered to you? A. Mr. Hill, that is ~~xxxxxxxxxxxxxxxx~~ so absurd that you ought not to even insinuate that such a thing occurred. I never said it. I couldn't tell you how many mules I had on that share farm during the crop season. I would have to look over our books to see. I had more than the required number under the contract. I had more than 250 mules on the place. I had 60 to 75 standing in the lot the best part of the year last year, and Mr. Brahan told me he would furnish labor and didn't think there was enough and I went out and bought a lot of mules, and I can show you a letter to that effect. I don't know how many acres are in that farm. We estimate it at about 7000 acres.

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IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911
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The Defendant offered in evidence record of operations of the Imperial Sugar Company's Mill from the beginning of the season to the second of December and from the second of December to the end of the Season, as follows:

I M P E R I A L S U G A R C O M P A N Y.
S E A S O N 1 9 1 1 - 1 2 .

REVIEW---CUNNINGHAM MILL OPERATIONS.

RESULTS:	TONS	VALUE	RESULTS PER TON
Opr. #1,	29,255.18	\$207,536.50	\$7.094
2,	14,858.15	47,207.94	3.177
3,	10,561.65	19,249.24	1.822
	54,674.98,	\$273,993.68	\$5.011.
COSTS:	TONS	VALUE	RESULTS PER TON
Opr. #1,	29,255.18	\$192,929.06	\$6.594
2,	14,858.15	58,768.54	3.920
3,	10,561.65	36,018.97	3.400
	54,674.98	\$285,716.57	\$5.236
LOSS-- ENTIRE SEASON		\$ 11,732.89.	\$..215.

IMPERIAL SUGAR COMPANY RECORDS

TEXAS TRUST CO. (ORIGINATOR) VERSUS IMPERIAL SUGAR COMPANY'S 1911
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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

PRODUCTION BY GRADES:

	lbs	
Operation #1, Firsts,	198,215,	\$9,149.45
2, "	641,652	29,285.00
3, "	000	.00
	<u>839,867</u>	<u>\$38,434.45.</u>
Operation #1, Syrup, Gals.	816,383.	\$198,072.57
Operation #1, Seconds,	000	.00
2, "	65,288	2,072.68
3, "	316,442	10,363.47
	<u>379,730</u>	<u>\$ 12,436.15</u>
Operation #1, Thirds,	000	.00
2, "	254,917	7,290.63
3, "	181,206	5,182.49
	<u>436,123</u>	<u>\$ 12,473.12</u>
Operation #1 Molasses,	7,400	314.60
2, "	301,403	8,559.63
3, "	87,136,	3,703.28
	<u>395,939</u>	<u>\$ 12,577.41.</u>
		<u>\$275,993.68.</u>

RESULTS BY OPERATIONS:

Operation #1.....	\$207,536.50
2.....	47,207.94
3.....	19,249.24
	<u>\$273,993.68.</u>

IMPERIAL SUGAR COMPANY RECORDS

TEXAS REFINING COMPANY RECORDS

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VERSUS IMPERIAL SUGAR COMPANY, 1911-12

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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION #1, CUNNINGHAM MILL.

CANE GROUND THIS OPERATION 29,258.18 TONS.

	TEST	MARKET PRICE	VALUE	PRODUCED PER TON	VALUE PER TON
192,215 # Firsts	94.7 at	4.76	\$ 9,149.43	6.57 lbs.	\$.313
816,383 # Gals Syrup		.2428	198,072.57	27.90 Gals.	6.770
7,400 Gals B/S		.425	314.50	.25 Gals	.011
			<u>\$207,536.50</u>		<u>\$ 7.094.</u>

Cane, 29,258.18 Tons	96,494.86	\$3.998
Cane Freight	9,557.58	.320
Fuel Oil,	5,378.27	.184
Reserve	14,627.59	.500
Opr. Exp. Other Than Fuel.	14,980.38	.512
Cane Car Racking.....	1,236.35	.0422
Rent of Mill & Mch.	9,751.73	.333
General Expense 6 Months ending Jany. 31, 1912 & Int. on Opr. Capital	19,869.09	.4228
Interest, Insurance & Taxes 1 yr ending Jany 31, '12.	28,745.21	.9825
	<u>\$198,929.06</u>	<u>\$6.504</u>
Gain, This Operation,	14,607.44	.500
	<u>\$207,536.50</u>	<u>\$7.094.</u>

Operation #1, covers the period up to and including Dec. 31st.

IMPERIAL SUGAR COMPANY RECORDS
 TEXAS WISCONSIN COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
 FOLDER 1 of 2

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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION #2, CUNNINGHAM MILL

GROUND THIS OPERATION, 14,858.15 Tons.

RESULTS	TEST	MARKET PRICE	VALUE	PRODUCED PER TON	VALUE PER TON
641,652 # Firsts	92.7	at 4.564	\$29,286.00	43.21 lbs	\$1.971
63,288 # Seconds	88.0	3.275	2,072.68	4.26 lbs	.140
254,917 # Thirds	83.76	2.86	7,290.63	17.16 lbs	.490
91,300 Gals B/S (Winter)		.425	3,876.00	13.56 gals	.576
110,203 Gals B/S (Summer)		.425	4,685.65		
			<u>\$47,207.94</u>		<u>\$5.177</u>

COSTS			
1,723.20 Tons (Vouchered)		\$4,215.30	\$2.446
13,134.95 Tons (Unvouchered)	Loss	see	Below
14,858.15 Tons (Total)		\$4,215.30	\$.284
Cane Freight (Total Tons)		5,318.46	.358
Fuel Oil		4,394.08	.296
Reserve		7,429.07	.500
Opr. Exp. Other Than Fuel Oil		7,921.13	.533
Racking Cane Cars		627.01	.042
Rent Mill & Machinery		4,952.72	.333
Labor (Running off Thirds)		374.43	.0251
Fuel Oil (Running off Thirds)		653.65	.0439
General Exp. 9 mos. & Interest on Opr. Capital, detailed elsewhere		6,282.39	.4228
Interest, Insurance & Taxes, 1 yr. ending Jan'y 31, 1912		14,600.32	.9825
		\$56,768.54	\$3.820
Loss on this Operation		<u>9,560.60</u>	<u>.643</u>
		\$47,207.94	\$5.177

THEREFORE:

Loss on 14,858.15 Tons \$.643 per Ton.
 Loss on 13,134.95 Tons728 Per Ton.

This Operations extends from
 Dec. 3rd to Dec. 31st. Inc.

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IMPERIAL SUGAR COMPANY RECORDS
 TESTS TAKEN ON CUNNINGHAM MILL
 PAPER 1 of 2

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION #3, CUNNINGHAM MILL

GROUND THIS OPERATION. 10,561.65 Tons.

316,443 # Seconds	88.0	At	5.875	\$	10,365.47	29.95 lbs	\$.981
181,206 # Thirds	83.76		2.86		5,182.49	17.16 lbs		.490
8,800 Gals B/S (Winter)			.425		374.00			
78,336 Gals B/S (Summer)			.425		5,329.88	8.25 Gals		.351
				\$	<u>19,249.84</u>			<u>\$1.622</u>

318.30 Tons (Vouchered)	\$	570.60	---	\$2.614
10,343.35 Tons (Unvouchered)	Loss ...	see	Below
10,561.65 Tons (Total)		\$	570.60	PER TON
Freight on Total Tons			3,509.23	.338
Fuel Oil			3,522.06	.333
Reserve			5,285.32	.500
Opr. Exp. Other Than Fuel Oil			4,592.50	.435
Racking Cane Cars			448.08	.042
Rent of Mill & Machinery ...			3,520.55	.333
Labor (Running off Thirds) ..			266.57	.025
Fuel (Running Off thirds) ..			462.85	.044
General Exp. Six months & int. on				
Opr. Capital, detaild. elsewhere			4,465.64	.4228
Interest, Insurance & Taxes, 1 yr				
ending Jany 31, 1912			<u>10,377.57</u>	<u>.9826</u>
Loss on This Operation			<u>\$38,018.97</u>	<u>\$3.409</u>
			<u>16,769.73</u>	<u>1.587</u>
			\$19,249.24	\$1.822

THEREFORE:

Loss on 10,561.65 Tons \$1.587 Per Ton.
 Loss on 10,343.35 Tons 1.621 Per Ton.

This Operation extends from
 Jany 1st to end season.

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IMPERIAL SUGAR COMPANY RECORDS
 TEXAS COMMISSION VEGETABLES IMPERIAL SUGAR COMPANY
 RIDGE 1 of 2

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

Interest, Insurance & Taxes, for one year ending
January 31, 1912.

Interest on Bonds,.....	\$37,820.00.
INSURANCE.....	13,061.37
Taxes.....	8,049.53
	<u>\$58,930.90.</u>

THE ABOVE AMOUNT IS CHARGED THUS:

Opr. #		TONS	
1	Cunningham Hill,	29,255.18	\$28,743.21
2	Ditto	14,858.15	14,600.32
3	Do	10,561.85	10,377.37
		<u>54,675.18</u>	<u>\$53,720.90</u>

Average per ton \$.96255.

186.

IMPERIAL SUGAR COMPANY RECORDS

THIS REASON COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
FOLDER 1 of 2

85,7-27

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

CUNNINGHAM MILL:

OPERATING EXPENSES:

	OCTOBER	NOVEMBER	DECEMBER 1st & 2d.	DECEMBER 3d to 31	JANUARY
Cane Weighed	\$ 81.80	\$ 128.09	\$ 16.87	\$190.00	\$92.96
Cane Hoist.....	50.88	212.00	12.20	170.98	164.10
Cane Shed	202.88	1,512.42	84.12	1220.52	722.20
Clarification.....	220.71	2,412.15	78.00	1122.55	822.01
Filer Presses.....	112.17	727.25	46.00	662.24	65.75
Hot Room & Crystallizer		19.10	1.60	23.40	12.98
Mill Room.....	227.90	1,722.99	52.05	767.75	405.54
Oilers & Oil.....		322.42	9.50	152.20	100.25
Steam Power.....	100.20	722.94	21.10	740.20	642.62
Laboratory.....	122.65	621.62	19.21	222.04	40.62
Effects.....		301.12	22.22	222.12	214.12
Pans.....	62.40	222.22	20.22	40.42	22.22
Weighing & Pkg Sugar.....	4.22	2.10	11.47	122.22	127.02
Warehouse & Shipping.....	9.42	27.02		2.22	
Electric Lights	220.00	222.72			
Water Supply.....	22.10	24.22	10.40	121.00	
Machine Shop.....	20.00	412.04			
Switching & Demurrage....		1,227.22	22.22	201.07	702.22
Shipping Syrup.....		222.22			
Cooperage & Barrels.....	222.22	42.00			
Centrifugals.....	70.11	402.20	24.02	422.27	122.22
Incidentals.....		7.00		14.70	
Superintendence.....	24.20		41.20	222.70	
Fuel Oil.....	\$ 2,222.19	12,222.02	\$ 242.12	7221.12	4,221.22
	212.92	4,121.21	202.04	4224.02	2,222.02
	\$ 2,422.11	16,222.24	\$ 422.20	12212.12	6,222.21

REVIEW:

October expenses.....	\$ 2,422.11
November.....	16,222.24
December 1st & 2nd.....	422.20
December 2nd to 31st, Incl.....	12,212.12
Jan (Not Itemized).....	6,022.21
January Fuel A/C.....	
February (Not Itemized).....	21.22

\$40,722.40

Operation #1.....	\$14,222.22
Fuel, Opr. #1.....	2,222.27
Operation #2.....	7,221.12
Fuel, Operation #2.....	4,224.02
Operation #3.....	4,222.20
Fuel, Operation #3.....	2,222.02

\$40,722.40

Additional Labor & Material Running off Thirds:

Labor.....	\$ 241.00
Fuel Oil.....	1,112.50

\$ 1,257.50

GRAND TOTAL..... \$42,245.00.

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IMPERIAL SUGAR COMPANY RECORDS
1911-12
PAGE 1 of 2

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

GENERAL EXPENSE, BOTH MILLS, SIX MONTHS ENDING
JANUARY 31, 1912.

	CUNNINGHAM	IMPERIAL	TOTAL
Salary of General Officers,	\$2,000.00	\$.00	\$ 2,000.00
Salary of Gen. Office Clerk,	\$2,490.80	6,561.85	9,042.65
Postage, Ptg. & Stationery,	90.39	339.58	438.97
Telegraph & Telephone...	590.30	475.98	1,066.28
Interest, Disc. & Exchange	1,390.50	26.45	1,416.95
Gen. Office Expense & Supplies, Incl. Travelling Expenses	588.36	1,351.15	1,939.51
W. T. Eldridge, Board Acct.	.00	596.75	596.75
Incidentals.....	.00	367.37	367.37
	<u>\$7,149.35</u>	<u>\$9,719.13</u>	<u>\$16,868.48</u>
Less Credit, Vo. 308-C		207.35	207.35
	<u>\$7,149.35</u>	<u>\$ 9,511.78</u>	<u>\$16,661.13</u>

General Expense as above.....	\$16,661.13
Plus \$100,000 Working Capital for one year at 6%.....	8,000.00
	<u>\$24,661.13</u>

THE ABOVE AMOUNT IS CHARGED THUS:

Opr. #	MILL	Tons		
1	IMPERIAL MILL	450.48	\$190.45	
2	Ditto	2,042.25	1,243.98	
3	"	258.70	109.38	
		<u>3,651.40</u>		\$ 1,543.81
1	Cunningham Mill	29,255.18	\$12,368.09	
2	Ditto	14,858.18	6,392.59	
3	"	10,561.65	4,465.84	
		<u>54,674.98</u>		\$35,117.32
		<u>58,326.38</u>		<u>\$24,661.13</u>

Average Per Ton.....\$4228.

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D 409 IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY
ALDRE 1 of 2

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

REVIEW-- IMPERIAL MILL OPERATIONS.

RESULTS:	TONS	AMOUNT	RESULTS PER TON
Opr. #1	450.45	\$ 3,216.49	\$7.140
2,	2,942.25	14,182.30	4.820
3,	258.70	1,177.98	4.554
	<u>3,651.40</u>	<u>\$18,576.78</u>	<u>\$5.087</u>
COSTS:			
Opr. #1,	450.45	\$ 3,760.87	\$8.349
2	2,942.25	14,182.30	4.820
3	258.70	1,608.34	6.217
	<u>3,651.40</u>	<u>\$19,551.51</u>	<u>\$ 5.354</u>
LOSS-- ENTIRE SEASON.....		\$ 974.75	\$.267

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IMPERIAL SUGAR COMPANY
 RIDGE 1 1/2 C

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

PRODUCTION BY GRADES, IMPERIAL MILL

Operation #1, Firsts,	82,110	\$ 2,554.69	
2, "	188,835	8,746.32	
3, "	18,159	710.59	
	<u>284,104.</u>		\$12,011.60

Operation #1, Seconds,	18,100	\$ 574.67	
2, "	112,241	3,563.65	
3, "	9,760	309.88	
	<u>140,101</u>		\$ 4,448.20

Operation #1, Thirds	000	\$.00	
2, "	5,875	179.77	
3, "	518	15.78	
	<u>6,391</u>		\$ 195.55

Operation #1, Molasses	2,050	\$ 87.12	
2, "	39,825	1692.56	
3, "	3,335	141.73	
	<u>45,210</u>		\$ 1,921.41
			<u>\$18,576.76</u>

RESULTS BY OPERATIONS:

Operation #1	\$ 5,216.48	
2	14,182.50	
3	<u>1,177.98</u>	
		\$18,576.76.

209 IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
PUDGE 1 of 2

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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION #1, IMPERIAL MILL

GROUND THIS OPERATION, 450.45 Tons.

	TEST	at	MARKET	VALUE	PRODUCED PER TON	PRODUCED PER TON
52,110 # Firsts	98.2		4.9025	\$ 2,554.49	115.69 lbs.	\$5.871
18,100 # Seconds	87.0		3.176	574.67	40.18 lbs	1.276
2,050 Galn B/S (Winter)			.425	87.12	4.55 galn	.193
				<u>\$ 3,216.48</u>		<u>\$7.140</u>
<hr/>						
450.45 Tons Cane (Paid)			\$ 1,652.89		\$ 3.669	
Cane Freight.....			180.25		.358	
Fuel Oil.....			294.17		.653	
Reserve.....			225.12		.500	
Opr. Exp. Other Than Fuel Oil.			584.82		.854	
<hr/>						
General Exp. Six Months & Int on.			100.45		.4228	
Operating Capital, detailed elsewhere			853.37		1.8945	
Insurance & Taxes, detailed elsewhere						
			<u>\$ 3,780.87</u>		<u>\$ 8.349</u>	
Loss on This Operation.....			\$ 844.39		1.209	
			<u>\$ 3,216.48</u>		<u>\$ 7.140</u>	

This Operation covers the period up to & including December End.

IMPERIAL SUGAR COMPANY RECORDS

Folder 1 of 2

TEXAS RUSSELL COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911

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85,424

IMPERIAL SUGAR COMPANY,

SEASON 1911-12.

OPERATION #2, IMPERIAL MILL

GROUND THIS OPERATION, 2, 942.25 TONS.

RESULTS	TEST	MARKET PRICE	VALUE	PRODUCED PER TON	VALUE PER TON
185,855 # Firsts	98.2 at	4.7065	\$8,746.32	63.16 lbs.	\$ 2.973
112,241 # Seconds	87.0	3.175	3,563.65	38.15 lbs	1.211
5,875 # Thirds	86.0	3.06	179.77	1.99 lbs	.061
16,910 Gals B/S (Winter)		.425	714.42		
23,015 Gals B/S (Summer)		.425	978.14	13.53 Gals	.575
			<u>\$14,182.30</u>		<u>\$4.520</u>

----- COSTS -----

270.15 Tons (Vouchered)	\$831.61 -- \$3.079	
2,672.10 Tons (Unvouchered)	51.61 -- .018	
2,942.25 Tons (Total).....	\$ 883.42	Per Ton \$.300
Cane Freight.....	811.22	.276
Fuel Oil.....	970.43	.330
Reserve.....	1,471.12	.500
Corp. Exp. Other Than Fuel Oil,	3,022.70	1.027
Labor (Running Off Thirds) ..	75.88	.026
Fuel (Running Off Thirds) .. (Est)	129.46	.044
General Exp. for Six Mos. & Int. On.		
Opr. Capital, detailed elsewhere	1,243.98	.4226
Insurance & Taxes, detailed elsewhere	5,574.09	1.8945
	<u>\$14,182.30</u>	<u>\$4.520</u>

This Operation extends from
Dec. 3rd to 31st, Inc.

D. 004 IMPERIAL SUGAR COMPANY RECORDS
72143 ALISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
PAGE 1 of 2

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B5, F29

IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION #3, IMPERIAL MILL

GROUND THIS OPERATION, 258.70 Tons.

RESULTS	TESTS	MARKET PRICE	VALUE	PRODUCED PER TON	VALUE PER TON
16,189 # Firsts	at	4.3975	\$ 710.59	62.46 lbs	\$2.747
9,760 # Seconds		3.175	309.68	37.73 lbs.	1.198
516 # Thirds	86.0	3.08	15.78	1.99 lbs.	.061
1,290 Gals B/S (Winter)		.425	54.82	12.00 Gals.	.548
2,045 Gals B/S (Summer)		.425	86.91		
			\$1,177.98		\$ 4.554.

258.70 Tons Cane (Unpaid) (Loss-see Below)		PER TON
Cane Freight.....	\$ 75.59	.292
Fuel Oil.....	384.59	1.371
Reserve.....	120.35	.500
Opr.Ex.Other Than Fuel Oil	481.29	1.667
Labor (Running off Thirds)	6.67	.026
Fuel (Running Off Thirds) (Est)	11.38	.044
General Exp. for Six Months & Int. On Opr.Capital,detailed elsewhere	109.38	.4228
Insurance & Taxes,detailed elsewhr	490.10	1.8945
	\$ 1,608.34	\$6.217
Loss on This Operation.....	430.36	1.663
	\$1,177.98	\$ 4.554

This Operation extends from Jany. 1st to end season.

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1120

IMPERIAL SUGAR COMPANY'S RECORDS
 TEXAS WISCONSIN COMMISSION VERSUS IMPERIAL SUGAR COMPANY'S 1911
 FOLDER 1 of 2
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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

OPERATION EXPENSES:	NOV.	DECEMBER 1st & 2d	DECEMBER 3d to 31.	
Switching & Demurrage...		\$ 52.40	\$ 761.65	
Cane Shed.....		22.70	322.40	\$50.50
Centrifugals.....		10.80	156.45	14.50
Clarification.....	11.60	21.20	307.31	113.95
Cutter Room.....		7.32	106.07	78.45
Diffusion Battery.....		16.47	238.88	
Incidentals.....	78.60	7.28	105.60	5.75
Oilers & Cile.....	38.50	5.70	82.75	
Sugar Weighing & Pkg....		1.79	25.91	
Steam Power.....		16.45	238.55	49.74
Superintendence.....		4.94	71.66	
Effects.....	33.36	4.30	62.45	51.75
Pans.....	19.31	14.27	208.93	55.80
Warehouse & Shipping....	.10	.30	196.72	
Housing Labor.....	15.00	.00	1.25	
Hot Room.....		4.75	83.82	4.85
Weighing Cane.....				
Shipping Blackstrap.....			062.50	
	<u>\$194.47</u>	<u>\$190.35</u>	<u>3,022.70</u>	<u>\$ 431.29</u>
Fuel Oil.....	226.55	67.62	970.43	354.59
	<u>\$421.02</u>	<u>\$257.97</u>	<u>3,993.13</u>	<u>\$ 785.88</u>

REVIEW OF ABOVE

NOVEMBER:			
Operating	\$ 194.47		
Fuel.....	226.55		
	<u>421.02</u>		
December:			
1st & 2nd,	\$ 190.35		
3rd to 31st,	3022.70		
FUEL:			
1st & 2nd,	67.62		
3rd to 31st	970.43		
	<u>4251.10</u>		
JANUARY:			
Operating	431.29		
Fuel.....	354.59		
	<u>785.88</u>		
			\$5,458.00
Operation #1.....		\$ 678.00	
Operation #2.....		3995.13	
Operation #3.....		785.88	
		<u>5458.00</u>	

ADDITIONAL EXPENSES RUNNING OFF THIRDS:

Fuel Oil (Estimated)....	\$140.84	
Labor.....	82.55	
	<u>223.39</u>	

GRAND TOTAL..... \$5,681.39

194.
121

IMPERIAL SUGAR COMPANY RECORDS
 REVENUE PERSON (GAIN) 1911-1912 VERSUS IMPERIAL SUGAR COMPANY'S 1911
 FOLDER 1 of 2
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IMPERIAL SUGAR COMPANY.

SEASON 1911-12.

INSURANCE & TAXES, IMPERIAL MILL, One Year
ENDING JANUARY 31, 1912.

Insurance.....	\$4,098.16
Taxes.....	\$3,838.80
One-half Charged to Operation, thus,	<u>1,919.40</u>
	<u>\$1,919.40</u>

TOTAL----- \$6,917.56.

THE ABOVE AMOUNT IS CHARGED THUS:

	TONS	
Cpr. #1 Imperial Mill	450.45	\$853.37
" " " "	2,942.25	5,574.09
" " " "	358.70	<u>490.10</u>
	3,651.40	\$ 6,917.56.

Average Per Ton..... \$1.8945.

2009 IMPERIAL SUGAR COMPANY RECORDS
 THE PERSON COMMISSIONER VERSUS IMPERIAL SUGAR COMPANY'S 1911

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1320

B5; F29

SEASON 1911-12.

Cane Ground Cunningham Mill	54,874.98 tons.
Cane Vouchered	31,196.68
Cane not Vouchered	23,478.30
	<u>54,874.98</u>

Value Cane Vouchered & Frt. Cumm.	\$118,456.03
Value Cane Vouchered Alone	\$101,270.76
Freight on all cane rec'd by Cumm. Mill.	17,185.27
	<u>\$118,456.03.</u>

Cane Ground Imperial Mill	3,651.40 tons.
Tons Cane Vouchered	721.00
Tons Cane not Vouchered	2,930.40
	<u>3,651.40 tons.</u>

Value Cane Vouchered & Frt. Imperial Mill,	\$ 3,531.55
Value Cane Vouchered Alone	\$2,484.50
Freight on all Cane Rec'd by Imperial	1,047.05
	<u>\$ 3,531.55.</u>

Tons Cane Received by Both Mills,	58,526.38 tons.
Cane Vouchered	31,917.68
Cane not vouchered	26,408.70
	<u>58,326.38 tons.</u>

Value Cane Vouchered & Frt. Both Mills	\$121,987.58
Value Cane Vouchered Alone	\$ 105,755.26
Freight on all Cane	16,232.32
	<u>\$121,987.58.</u>

09 IMPERIAL SUGAR COMPANY RECORDS
 TEXAS TRUST COMPANY RECORDS
 VOLUME 1 OF 2
 VOUCHERS IMPERIAL SUGAR COMPANY 1911

1916
135

SEASON 1911-12.

(CANE GROUND BY OPERATIONS)

CUNNINGHAM MILL:

	TONS
Operation #1 (Up to and including Dec. 31st)	29,255.18
Operation #2 (Dec. 31st to Dec. 31st, Incl.)	14,858.15
Operation #3 (Jany 1st to end season)	10,561.65
	<hr/>
	54,674.98

IMPERIAL MILL:

	TONS
Opr. #1 (Up to & including Dec. 31st)	450.45
Opr. #2 (Dec. 31st to Dec. 31st, Incl.)	2,642.25
Opr. #3 (Jany 1st to end season)	258.70
	<hr/>
	3,351.40

BOTH MILLS:

	TONS
Opr. #1 (Dec. Up to & Incl. Dec. 31st)	29,705.63
Opr. #2 (Dec. 31st to Dec. 31st, Incl.)	17,800.40
Opr. #3 (Jany. 1st to end season.)	10,820.35
	<hr/>
	58,326.38

April 9, 1912.

IMPERIAL SUGAR COMPANY RECORDS

TEXAS SUGAR COMMISSION VESSELS IMPERIAL SUGAR COMPANY'S 1911

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CANE GROUND --- CUNNINGHAM & IMPERIAL MILLS.

SEASON 1911-12.

CANE RECD	TONS CANE VOUCHERED	TONS NOT VOUCHERED	VALUE CANE VOUCHERED	TOTAL FREIGHT	CANE PAID & FREIGHT
Imp State F 11,908.65	8,970.45	5,938.20	\$10,155.91	\$2,984.11	\$19,120.02
EB Mills 14,500.43	8,314.58	8,165.85	20,522.38	1,702.94	22,224.62
Ramsay S Farm 10,056.75	5,264.40	4,792.35	15,793.20	2,388.71	19,149.91
	<u>17,549.43</u>	<u>18,918.40</u>			
Faber Plant 10,402.35	5,634.50	4,767.85	22,539.00	6,232.28	28,770.28
AJ Adams & Bro 4,704.45	3,245.00	1,459.45	11,024.55	1,169.37	12,193.92
Lockridge 1,885.75	1,074.65	790.80	4,099.26	1,123.14	5,222.40
Dyer & Bertrand 2,325.10	2,325.10	--	7,701.56	610.19	8,311.75
J.D. Chapman 847.55	847.55	--	2,835.48	224.61	2,760.09
FP. Herbert 546.95	144.00	402.05	579.60	328.17	907.77
GC Mick & Son 299.00	299.00	--	830.35	125.59	955.94
Juliffe S&S Co. 108.45	108.45	----	200.82	44.50	245.32
BF Masterson 498.05	498.05	--	1,494.15	160.50	1654.65
RHO Sorrell 72.15	.00	72.15	--	40.40	40.40
OW Nugent 190.75	190.75	----	300.00	130.51	430.51
<u>58,326.38</u>	<u>31,917.68</u>	<u>28,408.70</u>	<u>\$103,755.26</u>	<u>\$18,232.32</u>	<u>\$121,987.58</u>
		28,408.70			

IMPERIAL SUGAR COMPANY RECORDS
 TEXAS REVENUE COMMISSION VERSUS IMPERIAL SUGAR COMPANY, 1911
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CANE GROUND---CUEHINGHAM MILL.

SEASON 1911-12.

CANE RECD Imp State Farm;	TONS CANE VOUCHERED	TONS NOT VOUCHERED	VALUE CANE VOUCHERED	TOTAL FREIGHT	CANE PAID & FREIGHT
9,834.25	5,710.55	4,123.70	\$15,867.99	\$28,465.75	\$17,733.74
EB Mills 14,154.03	6,514.68	7,839.45	20,522.38	1,613.88	22,136.26
Ramsay S Farm 9,835.10	5,264.40	4,570.70	15,793.20	3,281.35	19,074.55
Faber Plant 10,284.55	5,558.65	4,725.90	22,234.60	6,161.60	28,396.20
A.J Adams & Bro. 4,250.70	3,245.00	1,015.70	11,924.55	1,058.45	12,983.00
Lockridge 1,884.25	1,074.95	769.30	4,099.26	1,110.24	5,209.50
Dyer & Bertrand 2,139.25	2,139.25	--	7,000.73	535.85	7,536.58
JD Chapman 762.70	762.70	--	2,266.78	190.67	2,457.45
FP Herbert 506.30	144.90	361.40	579.60	303.78	983.38
GO Hick & Son 299.00	299.00	--	850.35	125.59	955.94
Julifoe S & S Co. 108.45	108.45	--	200.82	44.50	245.32
EP Masterson 383.50	383.50	--	1,150.80	132.70	1,273.20
RHO Sorrell 72.15	.00	72.15	.00	40.40	40.40
OW Rugent 190.75	190.75	--	300.00	130.51	430.51
<u>54,674.98</u>	<u>31,196.68</u>	<u>25,478.30</u>	<u>\$101,270.78</u>	<u>\$17,185.27</u>	<u>\$118,456.03</u>

SPECIAL SUGAR COMPANY RECORDS

TEXAS SUGAR COMMISSION VERDUS S. SHERMAN SUGAR COMPANY'S 1911

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CANE GROUND---IMPERIAL MILL,
SEASON 1911-12.

	CANE REC.	TONS CANE VOUCHERED	TONS NOT VOUCHERED	VALUE CANE VOUCHERED	TOTAL FREIGHT	CANE PAID & FREIGHT
Imp State Farm	2,074.40	239.90	1,814.50	\$867.92	\$519.36.	\$1,388.28
E B Mills	346.40	.00	346.40	-----	68.36	68.36
Ramsey S Fr	221.65	.00	221.65	-----	75.56	75.56
Faber Plt.	117.80	75.85	41.95	303.40	70.68	374.08
AJ Adams & B	443.75	.00	443.75	----	110.92	110.92
Lockridge	21.50	.00	21.50	---	12.90	12.90
Dyar & Ber.	185.85	185.85	.00	700.83	74.34	775.17
JD Chapman	84.85	84.85	.00	262.70	33.94	302.64
FP Herbert	40.65	.00	40.65	---	24.39	24.39
BF Masterson	114.55	114.55	.00	343.65	37.80	381.45
	<u>2,651.40</u>	<u>721.00</u>	<u>2,930.40</u>	<u>2,494.50</u>	<u>1,047.05</u>	<u>\$3,531.55</u>

IMPERIAL SUGAR COMPANY RECORDS
 TEXAS AGRICULTURAL EXPERIMENT STATION

200.

The Defendant offered in evidence Contract between I. H. Kampner and W. T. Eldridge, parties of the First part and the three Commissioners, parties of the second part, bearing date October 21, 1911.

THE PLAINTIFF OBJECTED TO THE COPY OF THE CONTRACT BOUGHT TO BE INTRODUCED BECAUSE IT IS AN INDEPENDENT CONTRACT AND NOT RELATED TO THE CONTRACT SHED ON:

THE COURT: A LARGE PART OF IT I DON'T THINK WOULD BE ADMISSIBLE BUT ON SOME OF THE ALLEGATIONS MADE IN THE SUIT I WILL PERMIT IT.

Said Contract is as follows:

THE STATE OF TEXAS)
County of Harris)

THIS CONTRACT made and entered into by and between W. T. Eldridge, of Fort Bend County, Texas, and I. H. Kampner of Galveston County, Texas, parties of the first part, and the Board of Prison Commissioners of the State of Texas, composed of Ben R. Cabell, L. W. Tittle and R. W. Brahan, party of the second part,
WITNESSETH:

I.

That the parties of the first part hereby contract, promise and agree to keep up and maintain the railroad now situated on the Harlan Farm, in Fort Bend County, Texas, and owned by them, for a period of five years from this date, and during said period of five years to haul for the party of the second part, and their successors in office, all of the cane grown on said Harlan Farm during said period, and to deliver the same at the sugar mill on said farm, loaded on the cars. The parties of the first part shall receive for hauling said cane the sum of ~~25~~ Twenty-five (\$25) Cents per ton, which the party of the second part hereby agrees to pay to the said parties of the first part at Sugarland, Texas. Said cane shall be delivered by the party of the second part at convenient points along said line of railroad, loaded on the cars. The said parties of the first part shall furnish all cars necessary for the hauling of said cane, and the party of the second part shall rack all of said cars used in the hauling of said cane. Said cars shall be loaded by the party of the second part with fifteen tons of cane, which shall be the minimum

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REINHOLD SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911

weight per car, and in the event any of said cars are not loaded with fifteen tons, the party of the second part shall, nevertheless, be liable to pay to the parties of the first part for hauling said car at the rate of fifteen tons.

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The party of the second part is to do all the work of grading, building and putting in any and all side tracks that are necessary in the hauling of said cane at their expense, provided that the parties of the first part are to furnish all steel, ties and other material necessary for the putting in of said side tracks. Provided, however, that the party of the second part is to pay the parties of the first part for all steel and ties so furnished at the reasonable market value thereof. Provided that in the event the parties of the first part should sell said railroad to an incorporated railroad company, or same should become a part of said incorporated railroad company, or common carrier, then the obligation on the part of the parties of the first party to maintain said railroad and to haul said cane shall be abrogated.

EXECUTED in triplicate, on this 21st day of October, 1911.

W. T. Eldridge (signed)

I. H. Kempner, (signed)
Parties of the first part.

Ben B. Cabell (signed)

Louis W. Tittle (signed)

ATTEST:

J. E. Stubblefield,
Asst. Secretary.

R. W. Brahan, (signed)
BOARD OF PRISON COMMISSIONERS
Party of the second part

(SEAL)

DEFENDANT RESTS

202.

MINERAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSIONERS VERSUS MINERAL SUGAR COMPANY 1911

The Plaintiff offered in evidence, in rebuttal, a Statement dated October 5, 1912, signed by W. K. Goree, Acting Chief Clerk, Criminal Record Office, State Penitentiary, showing the number of men on this Share farm each month during the year, 1911, as follows:

Huntsville, Texas, October 5th, 1912.

Hon. Ben E. Cabell,
Chairman Prison Commission,
Huntsville, Texas.

Dear Sir:-

Complying with your request I beg to hand you herewith a statement showing the daily average by months, for the Imperial Sugar Co. for the year 1911, to-wit:

M O N T H	NO. Men on hand.
January	241
February	235
March	222
April	229
May	223
June	217
July	213
August	235
September	245
October	253
November	185
December	213
January 1912	525.

Trusting you will find this satisfactory, I beg to remain,

yours very truly,

W. K. Goree

Act. Chief Clerk. Criminal Record Office.

IMPERIAL SUGAR COMPANY RECORDS TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911

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E. B. MILLS, a witness for the Plaintiff, in rebuttal, testified as follows:

I am the Manager who was in charge of the Imperial Sugar Company Share Farm during the year 1911. In the management of that farm, I had a free hand as far as the Prison Commission was concerned: I was not molested by anyone at all. They turned the farm over to me and told me to manage it according to my best judgment. I had a conference with Mr. Eldridge, regarding my management of the farm. When I first went there, we had a talk about it. A great many times Mr. Eldridge and I talked about the farm. Those were frequent conversations. Mr. Eldridge lived right at Sugarland, and was in touch with the conditions all the time. Sugarland is right in the Farm. There was a telephone in my office communicating with Mr. Eldridge's office. I was in constant touch with him so far as the management and control of the affairs of the farm were concerned. We had a good deal of rain long about May and the ditches got full of water, and of course they came out in low places. That farm is very level. Some places are higher than others. The general contour of the farm is level. It is right on the Brazos river and on Oyster Creek. There is right sharp fall to that land going south. The land over flows easily when we have heavy rains there. Whenever there are heavy rains the ditches become full after a very heavy rain and they will come out in low places, but not in the higher places. We cut the weeds on the ditch banks on that place after the crop was laid by, that is, we cut the weeds on most of it, but we didn't get down in the ditches and make a thorough cleaning of them, but we cut the weeds on the banks of the ditches and reached down and cut the weeds back and pulled them out of a great many, but we didn't make a thorough cleaning of the entire place. It is not customary to do ditching until after the crop is made. As a general thing, when all of the crops were laid by the ditches were cleaned out for the next year. That has been the custom on all of these farms. I never cleaned out ditches in the spring in my life- that is, make a thorough cleaning. I took the hands around over the place after these rains, and we let out water everywhere we found water backed out, it out the best we could. Of course, I found the
and we let it

IMPERIAL SUGAR COMPANY RECORDS
PRISON COMMISSION V. SUGAR COMPANY: 1911

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ditches in bad shape and the bridges in bad shape. I went there in January 1911, as well as I remember. I had a copy of this contract before me. I thought I knew what the contents of the contract were. I used that force to the best of my ability for the purpose of making a good crop and for the purpose of subserving the best interests of both parties. I did everything I could do. I used my best judgment for the benefit of both parties. I don't remember any complaint coming from Mr. Eldridge that I was not cultivating the crop properly. I never refused to carry out any instructions of Mr. Eldridge in regard to the management of the force as regarded the cultivation and handling of the crop and the management of the force. Mr. Eldridge never gave a great many orders, but he would confer with me sometimes and I would always try to carry out his instructions. I never refused to carry out any instructions that he gave me. I made daily reports to the Prison System from time to time. Those reports were required under the Prison Rules. I made those reports in compliance with the prison rules- a daily report every day. Those reports as they were sent in, reflected the truth as to what they contained. In regard to the ditches, I will say this, that I left the ditches in better shape than I found them. From the looks of the ditches when I went there, they had not been cleaned out for years. They were full of weeds and grass and there were places stopped up, long bridges that had caved in in places and were filled in, and they had the appearance of not having been cleaned out in years. Some of those willow pole bridges were good, and a whole lot of them were bad. There were a whole lot that had caved in and fallen in. In lots of places, there were no bridges at all: they had rotted down and they had pulled them out in lots of places. One place was near the Bullhead Camp down there. I couldn't say what proportion of those bridges were bad. It was a large proportion of them. There was a many a one that was bad. I couldn't say in what proportion. In putting in those pole bridges, they don't last long and they become waterlogged and rot fast. There were lots of them rotted down, especially on the end that Sibley used to work. I suppose may be a third of them were bad, to the best of my belief.

APPELLANT SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION VERSUS APPELLANT SUGAR COMPANY, 1911

The turn rows were in fairly good condition when I went there. I left the turn rows in worse condition than they were when I received them, from the fact that we had been hauling over them and taking the crop off and it was in very wet weather, the worst I ever saw, and turn rows will naturally cut up when hauling over them, and they were cut up pretty badly. According to the wet weather, they were cut up worse last year than I ever saw, because we had so much more rain. The last cane season was an unusually wet season for hauling cane, one of the worst I ever saw. I couldn't say that there was any damage to the building on the premises, more than of course, the kitchen was smoked up and there were a few, and there were a few windows where they would break them out as they will, and I thought when I left that so far as the cleaning up was concerned, I cleaned the building up and had it scoured and everything swept out and left it in a good, clean shape. I don't know of any other damage. A few of the screens were broke loose and there might have been some of the glasses broken out. Whenever the glasses got broken, I always sent to Col. Eldridge and he always sent me the glass down and I had them put in. From time to time during the year, if anything got broke, I would repair it. Of course, I got that through Col. Eldridge, and I always had things fixed up that I could have fixed up, such as window lights and screens and such like as that. A nigger did cut holes in the crib to take the corn out. That crib was a very long crib, and they cut holes in the sides to get the corn out, and as soon as I found out it was out and I found out that the nigger that done the cutting was out, I investigated it, and I went to work and got a nigger from the shop and put another man with him and had those plank nailed back on. I didn't see anything but the planks cut. They cut the planks so they could make a hole to throw the corn out in the wagons and I didn't notice anything but the planks being cut. As well as I remember, there were two of those places, one in each crib, a good long place out in each crib, as well as I remember. I could not say that I repaired it just as good as it was before, but I repaired it and had the planks put back on. Nothing else but the plank were cut, I didn't see anything else. I didn't go inside the crib.

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PERMANENT SUGAR COMPANY RECORDS

THE SUGAR COMMISSION VERSUS THE PERMANENT SUGAR COMPANY - 1911

I looked from the outside, and if there was anything else out, I didn't see it. The uprights were not out that I know of: I didn't see any. I think there were between six and seven thousand acres of land in cultivation on that place, according to my best judgment. I was under the impression that it was about six thousand acres. According to the contract, a mule for each 20 acres, it would take 3000 mules to cultivate it. We never had as many as 300 mules on that place. I can't say that if we had had more mules, I would have had more time for my men to do repair work such as cleaning out ditches and fixing bridges: of course, we could have done more plowing, but in the time of cultivating season, you have mighty little time to fix bridges or do anything more than cultivate your land. We generally fix the bridges after we laid the crop by. As a result of not doing as much plowing as we could have done if we had had more mules, of course we had to do more hoeing: the less plows you run the more hoeing you have to do. In regard to that damaged cotton seed, we picked that cotton and put it in a long building where they stored sugar, and we put it in there in bulk and the cotton got very hot in there, and of course the seed went through a heat and it ruined a great many of them. The reason why we put such a bulk of cotton in there was when we went to picking cotton the gin wasn't ready in the first place, it wasn't complete and it was quite a little while before they got the gin ready, and after the gin got ready, the man that put it up had a great deal of trouble with it and it broke a great many times, and another reason was they ginned for the public and they ginned quite a lot for the public and whenever the cotton come for the public, of course if my wagon was under the suction they would let it stay there and gin that out, but after that was out they would then gin for the public until they got the cotton ginned. In the event no cotton come from the public, we would load up our wagons and bring them around and if two, three or four bales come up from the public, we would have to wait and take our turn again. This cotton accumulated in the house as a result of the condition I have testified about. I don't know how much cotton accumulated in that house. I suppose it was 100 or 150 bales, may be,

I wouldn't say positively: there was a terrible lot of it. I tried to avoid the cottonseed becoming damaged. I had at least a hundred men in there two different times stirring the cotton, but the room was so badly crowded- there were a lot of sugar barrels in there, and we finally taken the barrels out, but we didn't have the room to pick the cotton up and throw it back and cool it as it ought to have been, but we cooled it as best we could. I had as many as a hundred men there stirring that cotton. I run the whole force there twice. Between those times I had a smaller force there. I think there were eight or ten men that handled the cotton and hauled it to the gin: we kept men there that loaded the wagons up and hauled it to the gin, and we kept those men there all the time and my instructions to the guard were that they would stir that cotton whenever necessary. The suction on the gin operated all right. They took it out of the house and brought it around to the suction. There was no suction in the cotton house. We just loaded the wagons up and brought it around to the suction, on the opposite side of the gin house under a shed. Not all of the crop on that place was ginned at that gin. Capt. Addison ginned a good deal of it. That was on account of the congested conditions there. We had lots of cotton in there and it was hot, and it was ruining, and Mr. Ulrich run the gin of a night there and put on an extra crew and run the gin at night, trying to get this cotton caught up with, and finally they agreed- I don't know who agreed to it or when- but Capt. Addison ginned a good deal of the cotton. I could have given them all they could have ginned at that gin if they had taken out cotton instead of ginning for other people. I couldn't state how long this cotton stayed in bulk in that house: it was there quite awhile. We went to picking and it had to stay quite awhile. We would pick 18 or 20 bales of cotton aday and in storing it that way it accumulated very fast and when we put it in there, it would naturally be damp from the dew and sometimes a shower would come along and catch us and we didn't have any-where else to put it and we had to put it in that house. They didn't furnish us a separate house to put it in. I had nowhere else to put it and had ~~to~~ to put it in that house. We had a freeze down

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TEXAS DAWSON COMMISSION RECORDS
IMPERIAL SUGAR COMPANY 1911

there in November. It was about the 29th of November I think. We had mighty bad weather after that freeze and it stayed bad, cold and rainy. Of course, some days we would have fair weather, but there was a great deal of rain. That soil down there is a kind of sandy loam. It gets wet: it gets so it is impossible to get mules in and out of the field: they would bog down. I did everything in the world that I could do to harvest that cane. Mr. Brahan and I had a conversation with Mr. Eldridge regarding the harvesting of that cane crop before the freeze came. Mr. Brahan was out there and I spoke to Mr. Brahan and Mr. Eldridge and Mr. Eldridge and told them that it was my idea that we ought to windrow this cane. We had a great deal of it standing and I suggested that we windrow it, even if we had to come back and take the windrowed cane up and I told them we were liable to have a freeze, and Mr. Eldridge remarked that it would look like bloody murder to cut it down at this stage: he was speaking to Bob and not to me: so he and Mr. Bob agreed to go ahead and not windrow the cane. That was when that first little freeze came, I think about the 13th of ~~xxxxxxx~~ October, I think it was. It was about the time of the first little freeze. That first freeze killed some of the bud of the cane and some was not killed. Where it was very thick the bud was not killed, but where it was thin, the bud was killed. Q. If you had windrowed that cane at the time you suggested it, what effect would it have had on your ability to save the cane after the big freeze came? A. I feel this way about it, that the windrowed cane was injured practically as bad or very nearly so as the standing cane. I noticed in gathering that cane and taking it up that all of the windrowed cane was frozen. I would find in taking up cane next to the ground where the cane would strike the ground was preserved, but part of those stalks were frozen. The windrowed cane was frozen very nearly as badly as the windrowed cane: there wasn't a great deal of difference. In regard to getting it out, we could take up windrowed cane and get it out faster than we could standing cane. I don't know exactly how much faster, I know we could take it up some faster: always in handling cane we figured

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APPELLANT SUGAR COMPANY RECORDS
TEXAS PEARSON COMMISSION VERDICTS APPELLANT SUGAR COMPANY 1911

on taking up windrowed cane faster than standing cane. After the cane has been cut down awhile, the chucks come off easily and standing cane, you have to strip that. Q. I notice here in this report where the number of men you had fell from 255 in October to 165 in November, state whether or not there were any men sent from your force during the month? A. Yes sir, there were 50 sent to Capt. South on the Ramsey Farm. I came in the office, and Mr. Brahan and Mr. Eldridge were talking, and I walked in and Col. Eldridge spoke to me and says they were speaking about sending 50 men away, he and Mr. Brahan were, and I said, "Gentlemen, if it were left with me, I wouldn't send those men, because we are short now and need them, and Mr. Eldridge said, if it was necessary he would agree to get some Mexicans and said if it was necessary, he could get 150 Mexicans there, I forgot the length but it was in a short while and he did, and we sent the men to the Ramsey Farm. I think Mr. Eldridge was getting the cane from the Ramsey Farm. The men were sent down to that farm. I think he consented to those men being sent to that farm. When we began cutting cane and delivering that cane, I had other convict forces assisting me: they sent me a force of men, I think it was 20 or 30 from the Passet Blakely Farm. Capt. Addison came over and windrowed for me. He windrowed a good deal of cane shortly after the first freeze. I said just now the first freeze was the 13th of October, but I don't know exactly the date, but after the freeze he came over and windrowed a good deal of cane for me. I think he had something over 100 men employed in that service when he first started and finally he got up to a good many over a hundred. He had quite a large force, and they were employed in assisting me in harvesting the cane crop. After they first came over after that first little freeze, I suppose they continued there five or six days, and he came back again after the freeze and windrowed for quite awhile, I don't know just the number of days. Part of the cane was delivered to the sugar mill in tram cars from that farm, and part of it in standard gauge cars. By standard gauge cars, I mean large cars that they rack, regular railroad cars. There were several times that we stopp-

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APPELLANT SUGAR COMPANY RECORDS TEXAS SUGAR COMMISSION VERSUS APPELLANT SUGAR COMPANY 1911

ed and picked cotton and gathered corn and done diffe ent things on the farm on account of not being able to get cars. The cane was in the cars and the cars were at the mill. I would load the cars with the cane and they would take it into the mill. I had to stop my force from delivering cane because I couldn't get cars to load it in. Because of the congested condition of the mill. I don't know how often that occurred, but it was several times. I don't know just exactly how often. That is my signature and I wrote that letter (indicating letter).

The Plaintiff offered in evidence a letter dated November 17, 1911, addressed to Col. R. W. Brahan, Farm Commissioner, Huntsville, Texas.

THE DEFENDANT OBJECTED TO THIS LETTER BECAUSE IT IS MERELY MR. MILLS REPORT TO MR. BRAHAN ABOUT HIS OPINION AS TO CONDITIONS ON THE FARM WHICH MERELY CORROBORATES MILLS WITH MILLS, AND THE LETTER IS MERELY CORROBORATING HIMSELF WITH HIMSELF AND THE LETTER IS NOT SWORN TO. THE COURT: I WILL HEAR IT.

That letter states the facts as they existed at that time: I suppose it is dated right. I had that letter written, I didn't write it myself: I had it written and I signed it, and it states the truth

Said Letter referred to is as follows:

Sugarland, Texas, November 17, 1911.

Col. R. W. Brahan, Farm Com.,
Huntsville, Texas.

Dear Sir:-

I desire to inform you of conditions here regarding harvesting of cane. I have been unable to deliver cane to the mill but one day since last Saturday, on account of mill being overstocked with cane. I am schapping cotton today, and if the mill don't make any better progress than it has been making I will be forced to winrow cane in order to save the crop. The corn is all gathered and we will finish cotton today.

Very truly yours,

E. B. Mills.

211.
E. B. MILLS FURTHER TESTIFIED:

ORIGINAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMMISSION VERDICTS APPELLATE SUGAR COMPANY 1911

That is my signature to that letter dated November 3, 1911.

Plaintiff offered said letter in evidence

THE DEFENDANT OBJECTED TO THIS LETTER ON THE GROUND THAT ~~XXXXXX~~
~~XXXX~~ IT STATES NO PERTINENT FACT AND IS IRRELEVANT. PLAINTIFF
WITHDREW THIS LETTER.

F. B. MILLS FURTHER TESTIFIED:

I was not furnished with cars to take off the cane crop as fast
as I could have delivered it with the force I had. There were a
good many times we didn't have the cars on account of not getting
them back from the mill. Some days we would get a few and some days
we would get more and some days we would get none. The canewas
crowded around the sugarmill on every spur and everywhere there
was plenty of cane there. When these long wet spells would come,
then we would be flooded with cars, from the fact that we couldn't
haul and they would catch up with us. I guess Mr. Eldridge was
grinding cane for other people at that time. I couldn't swear to that
though, that that cane was coming in from other people. Cane was
coming in the yard from other people. I couldn't deliver cane be-
cause at times we just couldn't get cars. Q. They have charged up
here against the State an item of \$451.00 for a switch engine in
hauling cars up to the mill: state to the court how you did that,
how you delivered the cars? A. We weighed the cane and brought the
cars down the track. We had to bring them a good piece ahead in or-
der to give us room to keep our days weighing and the engine would
come down with the crew and take them into the sugarcane so. I could
have pulled the cars up further: I could have pulled them up in the
yard, but the understanding was the engine was to come and take
them into the yard. At times I did pull them into the yard. That
understanding was with Mr. Eldridge. He and I had a talk and he
said he would furnish the engine and crew and the State was to pay
for them and he was to pull them into the yard. Mr. Eldridge's
mules were used in pulling those cars into the yard. It didn't make
any material difference to me whether I pulled the cars on up there
or not or leave them where I did leave them. I could have pulled
them in the yard as far as that is concerned. This congested con-

AMERICAN SUGAR COMPANY RECORDS

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dition that I spoke of would continue until one of those rainy spells would come in: it was that way all the time, but when those rainy spells would come on they would then grind up everything and get everything off the yard. When the weather was clear and good so I could work and deliver the cane, I was interfered with by reason of the fact that I couldn't get the cars back. When we first started to grinding there, for a long long time the conditions were so we couldn't get cars. My daily reports will show that we did other work I used the force at my command to the best advantage to deliver and harvest that cane crop. I did everything I could.

THE DEFENDANT OBJECTED TO THIS QUESTION AND ANSWER LAST ABOVE BECAUSE IT IS LEADING, SUGGESTIVE AND CALLS FOR A CONCLUSION OF THE WITNESS:

THE COURT: I THINK A GREAT MANY OF THEM ARE SUBJECT TO OBJECTION BUT THE OBJECTION SHOULD BE MADE AT THE TIME THE QUESTION IS ASKED.

THE DEFENDANT MOVED THE COURT TO EXCLUDE IT FROM THE RECORD BECAUSE IT STATES A CONCLUSION OF THE WITNESS.

I have been in the cane business since 1877. Assuming that I had had 300 men on that farm under my control during this cane harvesting season, at times I could not have delivered more cane to this Imperial Sugar Company than I did deliver. Of course, when we had those cars, when they were all empty, I could have put more cane with more help, but there were times there I could not have put more cane if I had had a thousand men because I didn't have any cars: the yards were full of cane, and we couldn't get the cars. Sometimes we would have a breakdown too. It was only when the ground was wet and boggy so we couldn't get in the fields that they caught up with us in the delivery of the cars. The cars were loaded and pulled up to the scales in the yard and weighed and then carried to the carrier, unloaded and ground and they would be empty and sent back and distributed around at different places. I could not get them back because they were full of cane that was not ground. Cars were standing in the yard full of cane. Q. They have an item of damage here for 151 cars they said were broken up and injured- State to the Court the condition of the cars when you took charge of them?

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A. I had all of the cars put in the shop, and Mr. Eldridge had them repaired at the shop, and he taken a great many of the old cars and would take the best part of them and repair the others and when we started in, they were in fairly good condition. Of course there were cars there that had been in use a number of years and while they looked good, the timbers were not as sound as they ought to have been. They were out in the weather and a great many of them couldn't stand much of a jar without breaking them. There was no reckless handling of those cars that I saw, not any more than they generally handle them on that farm. Sometimes they handle them pretty rough. They handled them as they usually did. This car track run right up by the side of a ditch and these cars flared out at the top and in loading them, and if the track is not mighty smooth they run off and sometimes if the wheels are not exactly plumb they will run off and whenever they do, whoever is driving, if he don't happen to be looking back and sees them they will turn over and sometimes they will turn over, and if they do turn over, it will take a squad of men to right them and a nigger on there by himself, he just hooks on to it and turns it over in the ditch. That is customary and they have been doing it ever since I have been in the business. I worked for Col. Cunningham a number of years, and sometimes you would have to turn one in the ditch, because the mill wants your cane, and if you stay there two or three hours fooling with one car, it throws you way behind. Nothing was ever done to those cars during the year 1911, nor more than is ordinarily incident to handling cars of that kind. With the exception of the turnrows, I left that farm in as good condition when I left there as it was when I took charge of it. The turnrows were cut up by hauling over them and some of them were pretty badly cut up. That was occasioned by the fact that it was a very wet season. If it had been dry, the turn rows would have been the same as they were when I found them, but the ditches and bridges and ~~fences~~ ^{fences} I left them in better shape than I found them, and I don't mean to say by that that they were in first class condition at all. I did leave them in better condition than I found them. I have had Mr. Eldridge to tell me that the fences were broken, and I would send

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TEXAS HOUSON COMMISSION VERSUS APPELLANT SUGAR COMPANY 1911

around and repair them, and I would go around a great many times without being told and the wire was rotten and on the south-east corner was where we had our trouble, and the stock there would break in. I never ~~fix~~ failed to fix any fence that Mr. Eldridge asked me to, only Mr. Eldridge spoke to me about building a new fence. I never refused to do anything that the Colonel asked me to do. He asked me to build a new fence between me and the Adams Brothers. The fence was down. I told him that I would take the matter up with the Commission and I believe I mentioned it to Mr. Brahan. I didn't build the fence because I was instructed not to build it. That it was not in the contract to build any new fences: that they were to keep the old fences up but if there were any new fences built, Mr. Eldridge would have to pay for it. I had no desire in the world to injure Mr. Eldridge. I did not do anything wilfully to injure the place. Mr. Eldridge and I got along all right. Mr. Eldridge always treated me mighty nice. The way I understood about the sorghum, we planted about 300 acres may be, or 325 acres I don't remember exactly which, at Mr. Eldridge's request and after it was planted and ready for harvesting, Mr. Eldridge's mill wasn't ready: he had his rollers off having them repaired and they didn't get back time enough. That was the sugar mill and they didn't get back time enough to grind this sorghum and then Mr. Eldridge some thrashers and binders and as well as I remember I run three, and he told me to cut the sorghum and shock it and I cut and shocked it in the field, - that is, I didn't cut all of it: I think I cut over two thirds of it and shocked it in the field, and Mr. Eldridge spoke of getting a thrasher and thrashing the seed out, but we never thrashed them. My understanding was - I don't know that anyone ever told me, but my understanding was that the purpose in planting the sorghum was to make syrup out of it. We didn't make into syrup on account of the mill not being ready. There was never any demand or request made of me to cut this sorghum and deliver it to the mill. No one ever asked me to do that. I was present at a conversation between Mr. Eldridge and Mr. Brahan regarding the planting of this sorghum. I heard Mr. Eldridge tell Mr. Brahan, "I got you into it by planting this sorghum and if you will

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TEXAS SORGHUM COMMISSION VERSUS SPECIAL SORGHUM COMPANY: 1911

leave it to me, I will get you out of it and make some money out of it too by thrashing the seed": that the seed was worth so much a bushel, I don't remember now, but I don't know why they were never thrashed. He never requested me to thrash them. He never furnished me a machine or anything to thrash them with. I didn't have anything on the place that I could thrash these seed with. Not that I know. I am not much of a grain man, and I don't know anything about thrashing seed: I didn't know how I was going to do it, only Mr. Eldridge said he was going to get a thrashing machine. I stated that I cut two thirds of it. The balance wasn't cut because we needed the men. I had to quit and go to picking cotton. I cut as much as I could, but I thought we could get more out of the cotton than we could out of the sorghum and I just quit it. Nobody ever asked me to cut it. Mr. Eldridge never made demand on me to cut the sorghum, not that I remember of. The cotton come in and everybody saw the sorghum was a loss and my idea was to save the cotton. That was my idea and nobody didn't say anything one way or the other and I just went to picking cotton. We left some cotton in the field, I don't know- may be 20 or 25 bales: I don't think it would go over that and might not go that much: a man can't tell by looking at cotton loose that way how much there is. There was a good deal of cotton planted in the stubble cane and I think that was about where we left the cotton. All of the solid cotton, I think we got that. The reason we didn't get this other cotton, there was a heap of it in the cane, and it was so thick we couldn't well get in there and pick it with convict labor until after the cane was out. I scrapped out the stubble where it was thin and where the cane turned out to be thick ~~ixthroughtixt~~ ~~xxxxxxxx~~ to be better than I thought it would be, it was thicker and consequently we left that in there until we could cut the cane off and then after we got the cane out off we were working with the cane up to the time I left there. I had orders to move and I ~~ixix~~ cleaned out everything and turned the men over to Capt. Addison and I went down and took charge of the House Place about the 28th of January, as well as I remember. This cotton that was left in the

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TEXAS SUGAR COMPANY RECORDS
TEXAS SUGAR COMPANY COMMISSION VERSUS IMPERIAL SUGAR COMPANY (1911)

field might have been worth something, although it would have taken a world of trouble, but still I believe it could have been saved at a profit. I don't remember Mr. Eldridge saying anything to me about that cotton left in the field. It strikes me Mr. Eldridge asked me one day what we were going to do about that cotton or something like that: there was something said, but I don't remember now what it was. Mr. Eldridge had free labor around his sugar house there: I don't think he had any outside labor, only the labor around his sugar house I couldn't say how much force he employed there: I suppose may be three or four hundred men. His cotton was there after the sugar mill shut down: it was there when I left there: I left some cotton in the field. The mill stopped running when I left there: they kept cooking parts of the sugar. He furnished me those Mexicans to assist me in harvesting the cane. I think may be he furnished as high as sixty or sixty-five. Some of them were not there very long: they would come one day and leave the next, but I don't remember just how long we worked them. I don't think we worked the Mexicans altogether more than five or six days. I don't think we did. I could tell exactly from the slips at home. Owing to the wet weather, the lots were cut up when I left there but I had cleaned the lots out in the spring and summer. I got all the manure out of the lots and took scrapers and things and cleaned them out and put the manure on the outside. The lots were not in any condition that could have been avoided under the circumstances and the weather as it existed at that time. I don't see how anyone could do it unless he went there and put a plank floor or brick floor there. The lots were not covered over. All the lots that I have ever seen mules will cut them up mighty bad in wet weather when they run in there. Mr. Eldridge had had the lots cleaned out just before sugar rolling comes and his were mighty bad in terrible shape, but he had his cleaned out just before I left there. All the lots in the whole country were cut up. Where mules run in a lot that way when it is wet, they will cut them up. There was a railroad force brought in to assist me. Capt. Ferguson brought in a force of about 50: I am not sure, but I think that was in June. Everybody in the country said that was the best crop made in 15 years

there on that place. Mr. Eldridge said it was a good crop. Mr. Eldridge did not furnish me any men to assist me in making that crop. That force that Mr. Addison had there assisting me were there after the heavy freeze as well as before it. They came after the freeze and they helped me to gather the cane and cut it. They stayed over there at my camp: I don't remember how many men, but I think about 100, may be 125. Q. Now this record from the Criminal Clerk's Office up here does not show as many men as you have testified to here just explain to the Court how that occurred if you know: say if Addison had men working on your farm, would they be charged against you or against Addison? A. They were charged up against Addison. That report would show them charged against Addison. It would be the same way with Ferguson's men. He kept his men on his record and sent them in. I could not have done a thing more in the world than I did do to save that cane crop. When that freeze came, it went to souring pretty quick. That sugarmill had some little breakdown, but I don't know the nature of it. Of course, the mill was shut down sometimes on account of breakdowns, but I wasn't up around the mill a great deal and right smart too. I didn't notice the mill particularly: I went up there one evening while they were fixing some thing around there and they shut down quite awhile. The Imperial Sugar Company had another mill on the place they sold the State. I don't know what name they call that mill: it is on the old Ellis Plantation, I suppose three quarters of a mile from the Sugarland Mill or a mile. That mill was put in operation after that freeze. They ran it sometimes the latter part of the season. I don't know what time it was: it was the last of the season. They had a great many men working on it to get it ready, but it was late before they got it ready and I don't know exactly when it started. My contract calls for the delivery of 250 tons of cane per day. They didn't take that much from me on an average from day to day. Niggers were worked on that place, - that is my force were niggers. Capt. Addison had some Mexicans. My force were all niggers. I said that when the sorghum got ripe and ready to grind, the mill was

IMPERIAL SUGAR COMPANY RECORDS
TEXAS RAILROAD COMMISSION VERGUS VS IMPERIAL SUGAR COMPANY 1911

not ready. I think they were late in getting the mill in. I will say this, that that is my recollection now, and I will say that I was never called on to deliver any sorghum to the mill, and the best of my recollection is that the mill had just come back from New Orleans where they had had some work done on it and I don't think the mill was in readiness. In any event, I was never called on to deliver any sorghum for grinding. The general wear and tear to plows, implements, etc. is heavy on any place. In handling wagons and plows, you will break a plow handle or break a tongue out of a wagon or break a wagon cog out--those things will occur. Sometimes convicts break them up worse than free labor. There was no more breakage or destruction of property on this particular place than there was incident to working convicts on these places during my experience I think it was about the same. We had fair discipline. I think the weather had cleared up several days before I left there. When I moved from there, the weather was dry. Of course in the fields the ground was wet, but it was a good deal dryer than it had been I think I left there the 28th of January: I think that was about the time. I put in some bridges on that place. I don't know how many, but we put in several whole bridges and we cut the poles and hauled them and put them in. Mr. Eldridge spoke about the bridges and said it was the State's place to put them in and he was going to have them put them all in. I fixed up all the bridges that I could fix so we could take the crop off, but there were a great many bridges, pole bridges that we didn't reach-- those that had caved in from decay, small bridges over the turnrows, there were some of them that we didn't reach and left down. We built our bridges out of poles. We cut the poles out of the woods. None of the bridges that were made of lumber were in bad condition. I fixed up the bridges, that is all the bridges that had lumber in them. I sent up to the Sugar house and got lumber and fixed them up, patched them up. There is one big bridge across the creek that we never touched at all. That bridge is in a manner down. It is a big bridge, I suppose it is 50 feet long, and that bridge was in a manner down when I left there. It was in bad shape when I went there. It is in the turnrow going from one place to another. It is not in a public road: it was in one of the turn rows where you go from one field to ther other.

ORIGINAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMMISSION VERBOS APPELLAL SUGAR COMPANY 1911

CROSSED BY THE DEFENDANT:

Mr. Eldridge never paid me anything to represent him out there. He told me that he wanted me to look after his business there for him. That was just awhile prior to Mr. Williamson's death. It was prior to his death: I can relate the conversation. Mr. Eldridge told me that he wanted to see me and talk to me, and he said, "I have decided to let you look after my interests"; and he said, "I have watched you pretty close and I believe you are a man that wants to be right", and I said, "Mr. Eldridge, I would rather you would keep Mr. Williamson: he and I have been getting along mighty nice together and Mr. Eldridge says, "That would be like throwing that much money in the river", and he says, "How would you like to have that house he is in", and I says, "If you are going to let him go, I would like to have it, because it has more room in it than my house" and in the meantime, Mr. Williamson was taken down sick, and I rode up there and saw Mr. Eldridge, and he says, "Just as soon as Williamson gets well, I will tell him about this, and I want you to look after my business". I don't know what his business was- looking after his gear and implements that I was using. There was no other business in the world, only to look after the shop and the tools and gear on the farm. That was Mr. Eldridge's shop. Mr. Eldridge used the shop. It was located about 250 yards from my house. The shop was used for the plantation, and there was a good deal of outside work done there. The implements that I used were sharpened and repaired there, and outside work was done there. I don't know what it amounted to: there was a good deal of horseshoeing done there. I was employed by the Prison Commission and they paid me a salary. The only business that Williamson had there was to look after the harness and shop. There was nothing more for me to look after than the implements and the harness and the shop, and I did nothing more than I would have done anyhow: I would have done just what I did if he had not said anything to me. From what Mr. Eldridge told me, he wanted me to look after his interests. I repeated just exactly the words that came from Mr. Eldridge's lips. I don't know just exactly when Lin Williamson died. I think it was in March or April, in one of the

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TERNS PRISON COMMISSION VERSUS APPELLAL SUGAR COMPANY 1911

two months. After Mr. Williamson died, Mr. Eldridge had no one representing him on my end of the place. When I say my end--Mr. Eldridge had a farm on the north side. We had everything south of the railroad, except 45 or 50 acres north of the railroad. There were seven or eight thousand acres in cultivation. I think it was all in cultivation. I am sure of it: I don't recall anything left out except the timber land. That first freeze was early: I wouldn't attempt to state the date because I couldn't swear that. I wouldn't to state the date. The next freeze was on the 29th of November. If the 13th of October is the right date, it was a month and a half before we had another freeze. Right after that freeze Addison brought over 100 or more convicts and windrowed cane. He brought a number of men. I don't think there was any milling commenced until the 25th of October. My recollection is there was a little milling done before the freeze. I suppose 100 convicts could cut down 50 or 75 acres of cane a day. I think Capt. Addison's force worked several days, six or seven days may be. If you take the lowest number, six days, that would be about 450 acres of cane that he cut down - I think it was something like that. That conversation between Brahan and Eldridge in which Eldridge said it would look like bloody murder to windrow the cane, was before the freeze. I don't remember if I said while ago that it was right after the freeze: I was wrong: I think that was before the freeze. I don't remember exactly the date, but I do know that conversation took place. Cane generally grows until the cold weather stops it. I guess I meant that that freeze was on the 13th of November. Sometimes we will make mistakes. I don't think I have made any others as big as that: I didn't make one about our conversation. That mistake about the date of the freeze is a pretty big one. Addison did not windrow 450 acres of cane in the middle of October. I think Capt. Addison came over there after the freeze. Whatever that date was, I don't pretend to say, but I know he came over after the first little freeze and commenced to windrow cane. It is not possible that it was the year before that Addison windrowed the cane: it was 1911. I am very sure of that. I know that because I wasn't there in 1910: I couldn't testify to

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TERRY BRASCO (COMMISSIONER) VERSUS APPELLAL SIGNAL COMPANY, 1911

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anything that happened in 1910. I raised a good crop there: I am supposed to be a good farmer. I have been at it a long time. I had six acres of cane cut and measured it, and it made a little over 42 tons to the acre. There was a good lot of that cane on the place as good as that. I don't mean to say that we left a thousand acres that averaged 42 tons to the acre. If we had, we would have left 42000 tons of cane. I don't know how much cane we left. We cut all the worst cane first. I think that was good judgment: it is judgment that everybody has followed. Mr. Eldridge himself and everybody else follows that judgment from the fact when you get your sorriest cane, it is-- and you cut your sorry cane because you don't want to injure the stubble for another year and it makes no difference whether you kill that stubble or not. If a freeze comes, of course you lose your best cane. I think this suited everybody-- what I did. I figured that we had about 25,000 tons of cane on the place. There was a whole lot of it. We had 1800 acres and there is a whole lot of it mighty bad and scattering. It is a hard matter to get at the average of cane that is scattering. Where we had good stubble, we made a splendid crop, but the old stubble had worms in it and ought to have been plowed up. Most of the best cane was left on the land and frozen. The best cane was left. It would be a hard matter to say what that crop would average. The best cane was left and frozen. I said awhile ago that I could haul more windrowed cane than I could cane that was standing. You take cane standing, some of the men will cut it first from the bottom and strip it. I first strip it and cut the bottom and then the top. In the windrow, you don't strip it/ you leave the fodder on it. Instead of stripping it standing up, every stalk you have to pick up: you understand after it stays there a little while, you can pick them up and a man can knock the tops off and all the fodder will knock off. The fodder is loose and you will cut a whole lot more. There is a blade coming out at each joint. You hit the top, and just pass the stalk right over with the knife or they will cut it off that way and run it down. A heap of them run it down and a great many ~~xxxxxxx~~

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times the fodder will fall off. The practice of windrowing it is to pile it up with the fodder on top to keep it from freezing. That is the only object. As a matter of fact, from the moment you windrow it it begins to deteriorate. If I was not mistaken about October the 13th being the date of that freeze, that cane would have ruined before I got to it. I was under the control of the Commission in the management of that farm. That was Col. Brahan. I took orders from Col. Brahan. In general I took my orders from Mr. Brahan. Generally, I took orders from any of the Commission that saw fit to write to me. Mr. Brahan is the Farm Commissioner, Mr. Tittle is the accountant, and Mr. Cabell is the all around man. I took my orders from them about anything they saw fit to give me. If Eldridge gave an order at variance with Col. Brahan or Col. Tittle or General Cabell, I most certainly obeyed them. I didn't obey Eldridge. I meant that I was representing Eldridge when Eldridge's commands were in accordance with the other people's commands. When they were in conflict, I would let them settle it. I couldn't tell you about every day that it rained. The cane began to sour shortly after the freeze. I couldn't get much cane out of the field between the freeze and the time it commenced souring: It commenced souring shortly after the freeze. I am not sure about when it rained. I couldn't come in thirty days of it: It rained a great deal. I suspect the rain at Sugarland and the rain at Houston was about the same. I suppose you could go by the weather report all right. I don't believe I have looked over the delivery I made right after December 2nd and back to see whether there was much difference in the deliveries I made. I will say this about our deliveries: Before the freeze when they first started the mill it was crowded with cane all the time and we couldn't deliver any more than we did deliver. I had the privilege of delivering 250 tons per day. I don't remember whether I delivered that much any day or not. I don't know whether I delivered over 150 tons any day: the report will show. It would be a hard matter to say how many cars I used in delivering cane from that farm: whenever we wanted cars, I would phone up there, or sometimes I would ride up, and if we could get them they would put down what-

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TEXAS RICE AND COMMISSION VERSUS SPECIAL SUGAR COMPANY 1911

ever they had. I didn't have any particular cars in that service. They just gave them to me as I needed them. Sometimes they would run in eight or ten, and sometimes twelve, whatever the switches would hold. Where I first commenced loading cars was about a mile or a mile and a quarter from the mill. The next one was probably a mile further or a mile and a half, something like that. If the cane is handy you could load ten cars in an hour. If it is not handy, it would take two hours, per car. It would have taken all day to load ten cars if they were handy. If they were unhandy I could only load five cars a day. Sometimes, I think the best we did was to load 12 cars 12 of those large cars a day. When they were loaded they would generally come down there to look after them if we didn't notify them. Sometimes they wouldn't bring the cars until late in the evening: the engine was busy. I didn't load them all, but they could have gotten some of them out of the way. That is the method they followed if they had the cars. I didn't know there was any particular number of cars assigned to me: I didn't know they assigned me any particular number: there was nothing said to me about that at all. . . If they would take ten cars down there and it was raining that day, they cars would stand on the track. If it rained two or three days, they would stay right on the track. That happened a good many times. I am sure of that. Sometimes we would have cars and we could load them. I couldn't tell you what proportion of that crop was carried out over the railroad cars, as compared to that carried out in the tram cars: I think they have it in our report. I think on the tram cars some days we would get out 50 tons on the tram cars, and some times we would get out 150 or 200 tons: I am satisfied we sent out more than 250 tons per day to the mill. We worked the tram cars and standard cars: I had part of the force loading tram cars and part loading standard guage cars. If I had had more men I could have gotten out more cane, if they could have taken it and given us cars. We didn't have cars and lots of times when we did get cars it would be raining. If we had had more men we could have gotten out more cane if we had had something to do it in. That mill is supposed to be a 1200 ton mill, 1200 tons each 24 hours. I think the capacity

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of the Ellis mill is about 600 tons. That would make 1800 tons a day for the two mills. But the Ellis mill did not run until along the last part of the sugar season. I am not very accurate about dates, but I do know it didn't commence running until late. I think that mill commenced running sometime in December, after the freeze. I couldn't say that there was at any time a delivery there equal to 600 tons a day from me or anybody else: I couldn't possibly say that because I don't know. I suppose the State delivered more cane from the Ramsey Place, the Imperial Place, the Ellis Place and the Cunningham Place than anybody else. I know that the mill stood idle for the want of cane when those rainy spells would come: they would catch up then: I know of several times after they would catch up they would wait for cane a few days. At first when the mill started there was lots and cars of cane there at the mill: I don't know where it came from but there was cane there all the time, but after the freeze come, it took them two or three days it looked like to me to start off and the consequence was couldn't get right in this cane. To the best of my knowledge I don't think I mean before the freeze we waited for cars before the freeze: my reports will show where I picked cotton and pulled corn for want of cars. When you strike that frozen stuff, you can't cook it as fast as the mill can get it to you: you are bound to shut your mill down. The boiler was unable to keep up with the crusher. I have been working with cane a long time, quite awhile, and judging from the time I have been retained, I have worked satisfactorily. I said that frozen stuff begins to sour soon after and that it takes two or three days to boil it, and I shouldn't think it was worth much after a freeze. After fermentation sets in, it is no account. It is absolutely worthless. I ran a mill down on the Clemens place. I put the cane there to the mill and looked around to see that everything was all right, but I had men there to do the cooking. I superintended and directed things I have estimate what it cost to get windrowed cane off the ground and get it in the cars. It costs about 50 cents per ton. In doing that I never keep account of the convict labor: I did that with free labor once. I cut it and hauled it and put it in the cars at

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TEXAS RANSOM COMMISSION VERGUS IMPERIAL SUGAR COMPANY 1911

50 cents per ton. That was where I was doing close hauling when I did that. The cost would be more owing to the distance you had to haul it. You can haul it half a mile for fifty cents a ton. A mile away wouldn't cost a dollar a ton but it would cost a little additional expense ~~xx~~: you would have to put in the expense for more wagons. It wouldn't cost twice the amount I named for half a mile because the only additional expense would be in the wagons and teams. When you haul cane to a standard car, you have chains in your wagon and a trip that closes and swings it right over and then snatches it and it goes in instantly into the car. If you had to pitch the cane in the car with hands, it would cost more than that, a lot more. I suspect it would cost three times as much. That would be about \$1.50 per ton. If you had to pick up frozen cane and haul it half a mile, ~~xxxxxxx~~ and unload it with a derrick, it would cost you 50 cents a ton, and if you had to handle it by hand it would cost \$1.50 per ton. It would cost you a whole lot more to handle it by hand. If the drain ditches on the Cunningham Plantation was regulated so that if they are open they would drain the land: the place is well ditched. They are put in scientifically so as to properly drain the land. If they are filled up they will not drain the land. The vegetation on that place and on all other places along the Brozos River grows very rank if it is not stopped. If you let vegetation grown in those ditches, it will of course obstruct the flow of the water, to the extent that the place is filled by the weeds. I said awhile ago that it was the custom to go and put in your crop and then lay your crop by and then go and clean out the ditches when the crop was laid by. I cut the weeds off the ditch banks after the crops were laid by on this place. Of course, I didn't put the hands down in the ditches. The weeds on the bank are not the weeds that obstruct the water. It is the weeds down in the ditches that I did not cut that obstruct the water. It is customary to do that after the crop is laid by so as to have it ready for the next crop. I didn't do that. The very things that I did not take out were the very things that would obstruct the water. The grass and weeds, if you don't cut it will more or less stop the flow of the water. The growth

MEADOW SUGAR COMPANY RECORDS

TERMS (ASUS) COMMISSION NEGOTIUS MEADOW SUGAR COMPANY, 1911

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in those ditches were annual growths. If I went there in January and looked at a growth after a freeze like or several freezes in the winter and a great big crop of ravenous growths was there, I couldn't tell whether it had been there one year or two years. I couldn't tell how long it had been there. I do know that the growth was in the ditches all right, but how long it had been there I could not tell. When I got there in January the ditches were in that fix. There are some men here who can tell you how long that growth had been there. I couldn't swear for them; I don't know how long it had been there. It might have been there one or two years or three years. I know when Col. Cunningham put those ditches there and I helped put some of them there and they were put there wide. That is a level piece of land Oyster creek runs right through it and it is the crookedest creek I ever saw in my life. I don't believe you could drain all of that land into Oyster Creek All that was tributary to Oyster Creek would drain into Oyster Creek. All the balance of it could drain into Bullhead Bayou or the River. You would have to cut a canal to go into the river. You find natural ditches there and all you have to do is to keep the ditches open. All farms ought to be drained where it is necessary for them to be drained and it is important to drain that land If the land is well drained and a rain comes in hauling time, You would have much less trouble in getting in the fields than you would if you had water backed up over the field. That is a fact. A good deal of the time that I was stopped by bad weather was caused by water backing out of those ditches. There was a good deal of the place that the ditches don't effect, that it wasn't necessary for a ditch to be there. Turn rows are thrown up and graded to an oval shape. If water stands on them they cut down and cut them all to pieces. In order to preserve the turn rows, it was necessary to have that land drained. Water would naturally cut them up anyhow. If I had picked a bale of cotton out of that cane and given Eldridge half of it, if it was good staple, it would have been worth just as much as any other half bale of cotton. I said awhile ago that it would have been profitable

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MEMORANDUM SUGAR COMPANY RECORDS
TEXAS COTTON COMMISSION VERSUS IMPERIAL SUGAR COMPANY: 1911

to have picked that cotton. If the State had picked that cotton with its labor, no matter what it would have cost, it would not have hurt Eldridge. His cotton would have been worth just as much. I think it would have been profitable to all of them to have picked that cotton. I did not pick it. They moved me away before I got through there and I didn't have time to pick it. If they had moved me away before any of it had been picked, ~~ik~~ I would not have picked any of it, but they didn't do that. I suppose there were about 20 or 25 bales of cotton in there. I couldn't raise that estimate any. I am honest to both sides. I have seen the time I could raise it but I don't believe I could do it now. If we had stayed there we could have scraped that cotton. I think that place is about fifty miles from the coast. . We have heavy fogs and dews there. I suppose by the time we got to where we had our cotton, it would be about seven thirty in the morning. There was dew and fog on the ground up to nine o'clock sometimes. We would have about 1 1/2 ~~hour~~ hours picking wet cotton. I have seen dews where you could take a boll of cotton and squeeze water out of it. The men picking that cotton would pick it in sacks. We would not put in the wagon: we would spread it in the shade. He would pick a sack probably a half or two thirds full. We hauled that seed cotton out there every day: we had wagons running just to take it right on and put it in the house and sometimes our last load we would ~~stacked~~ drive them up under the sheds and let them alone and next morning hitch on them and take it to the cotton house. I suppose the dimensions of that warehouse were about 50 X 90, something like that. I don't know whether it was 100 by 150: I ~~it~~ was a good big house. We pretty near filled the house: we had pretty near all we could put in there at one time. There were barrels all stacked up on this side that took up a terrible big lot of room. Those barrels were taken out after we got out a big bulk of cotton. Those seed were destroyed. They were destroyed by reason of the fact that they heated in there. That is what spoiled them. I will say this, that if the gin had been ready and they had taken that cotton and ginned it and if they had not ginned for the public, that cotton would not have been destroyed. We had

plenty of dry cotton for them to gin. All the cotton we picked in the evening was perfectly dry and that cotton could have been stored separate and not stored like it was: it could have been ginned and not lost. They had a gin of forty bales per day capacity, but they didn't gin that. Somedays they ginned four or five bales. I never saw any machinery that was perfect, but there were some days it was out of fix and it got out of fix quite often. I never saw any machinery that didn't get out of fix. I don't think they ever ginned as many as forty bales a day. They had three gin stands there I think it was. I think 35 bales is about the biggest ginning as well as I remember for any one day. I don't know whether there are four gin stands: I thought there were three. They could have ginned a hundred bales of cotton in three days if the gin had been ready. I don't know exactly what it could gin, but I know whatever its capacity was they have run it up to its capacity and. I think we saved about a thousand and five bales of cotton all told off of that place. So if they had ginned 35 bales a day, and had ginned right on they could have ginned the entire crop in thirty days. . They didn't have to stay long in a bulk like that for these seed to heat. I suppose the seed would go through a heat in eight or ten days bulked up like that. I most certainly let them stay there eight or ten days. I suspect they stayed there eight or ten days, and I run the men in there as soon as I noticed they were getting hot. I took every bit of a hundred men up there. I didn't take my whole force up there. I suspect it was fully a hundred men that I had up there. It was close in there and that cotton was piled up there and it was so close in there a man could hardly stay in there, and I would have to let them come out and get their breath. That house will hold 100 men and you can work them pretty well. You understand they come into this house and it is full of cotton. There will be some men standing here throwing cotton back and there will be another lot throwing to them and to keep them going you to have space and it was so crowded in there--the sum total is that the seed were destroyed and Eldridge lost his forty per cent, and somebody is to blame for

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APPELLAL SUGAR COMPANY RECORDS
TEXAS PARSAN COMMISSION VERSUS APPELLAL SUGAR COMPANY 1911

it sure. I spoke to Mr. Ulrich about letting these outside people cotton go, and when I spoke to Gus, I said, "We ought to let these outside cotton alone, in order to catch up with this cotton", and he laughed and said, "We couldn't do that: we have started in with the public and we got to keep on", and he said, "I will run this thing at night to try to keep up", and they run it that night, and I think they ginned three or four bales that night as well as I remember. I can give you the number of men I had there in the month of October I have it on the daily reports. I had 242 men on the 26th, 242 on the 27th, 242 on the 28th, 242 on the 29th. I am not mistaken about that it was not 292: it was 292. No, it was 192. On October 30 there were 192, Oct. 31, there were 192. On November 4th, there were 190. November 5th, 190. On the 6th, 7th, 8th, 9th, 10th, 11th, there were 190 men. On the 12th there was 149. On the 14th, 188. 15th, 187, 16th, 186, 17th, 184, 18th, 183, 19th, 183, 20th, 182, 21st, 182, 22nd, 181, 23rd, 181, 24th, 180, 25th, 180, 26th, 180 27th, 179, 28th, 178, 29th, 177, 30th,--I don't believe I have the 30th here. On December 3rd, I had 172. I began harvesting cane on the 26th of October and had 242 men. I gradually went on down, in the number of men I had until I had 175. The reason I had fewer men, there were 50 sent off to the Ramsey Farm and there were some discharges. There were no new ones coming in. The force of 250 men that I had, whatever time it may have been kept up, it was not kept up during the harvesting season, not my force. I know as an experienced farmer that 190 men is not a sufficient force to harvest 2000 acres of cane. I believe anybody will admit that that is not enough to harvest a full crop. No other man could harvest it with that number of men successfully. I spoke of Ferguson coming over with a force of 50 men. They came from the railroad, from the Santa Fe. The Santa Fe had them engaged. It might have been that Eldridge had these men employed and turned them loose and let them go there. I think the Santa Fe people had them. I don't remember what day my letter written November 17th was written on, what day of the week. I said in that letter that I had not been able to get cane to the mill but one day since last Saturday, on account of the mill

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APPELLANT SUGAR COMPANY RECORDS
TERRY FERGUSON COMMISSION VERCUS APPELLANT SUGAR COMPANY 1911

being overstocked with cane. Of course if the mill was overstocked with cane, the cars were all full of cane. I intended to convey the idea that I didn't have cars to haul the cane in. As to how many cars you could load in a day would depend entirely on how many wagons you had and how many men. It would take an hour to load a car with the force I had if I was close by and two hours if I were a good ways off from the car. I wrote this letter on the 17th. That total of 1429½ tons of cane delivered on the 16th includes the small cars I suppose. I could not have put it in 95 cars. I could not have possibly loaded 95 big cars with cane. We were not supposed to deliver but 250 tons and we never did put in 1400 tons. Q. I made a mistake in calculation? A. You will excuse me for making mistakes then. I got 143 tons on the 16th: that would be about 9½ cars? I don't know whether that was a full days work that I did on the 16th. Very likely it was a part of a days work. Very likely I loaded all this on tram cars, and none on the big cars at all. There were days we loaded all on the tram cars on account of not having big cars. Q. That would be all right but for the fact that on a separate sheet here you have all the tram car delivery separate? A. I don't know. Q. Imperial Sugar Company Share Farm: there is where I get that from (indicating on report) A. Yes sir. Q. Now right after that you give Imperial Sugar Company Share Farm Tram Car Delivery? A. Yes sir. Q. And here you have the tram car delivery November 16th, 85 cars, in addition to these over here? A. Yes sir. I didn't get any cars on the 17th. I couldn't go to work and explain why I said I hadn't had any cars since last Saturday. Maybe I only delivered cane one day. I guess it was the 16th that I referred to when I said I had not been able to deliver cane to the mill but one day since last Saturday. . We worked some Sunday. I guess I delivered them 199 tons. I said that it was on account of the mill being broke. I know the mill was broken because I went up there and saw the cars in the yard full of cane, and we couldn't get cars. I suppose that mill could handle sixty standard cars a day if it were running. I suppose that would require a trackage space of half a mile, I don't know. I know that a mill ought to have a days run ahead

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IMPERIAL SUGAR COMPANY RECORDS
TEXAS SUGAR COMMISSION
VERGUS IMPERIAL SUGAR COMPANY 1911

It is necessary for them to have the cane to grind, ^{kn} but if they fail ^{ould} to grind it--I don't know what the trouble was those days: when I went to picking cotton, I know it was because I couldn't get the cars to put cane in. I couldn't say whether the mill was running on the 13th, 14th and 15th of November, 1911. I wrote that letter because I wasn't getting any cars. I took it for granted there was something wrong with the mill--I heard there was but I don't know. On the 16th I did have 9½ cars because I loaded 149½ tons. I couldn't say whether it was wet on the 13th, 14th and 15th or not. I don't remember. I said yesterday that I couldn't load cane because there would be a rainy spell of two or three days and that is true. If it had been bad weather about that time, I don't think I would have written that letter, but to say positively whether it was fair weather or not I couldn't say. Q. On the 12th, while this don't show it, as a matter of fact didn't you deliver a great deal of cane when this record doesn't show it? A. I haven't got that in my memory. I didn't commit that to memory and don't know whether I did or not. I don't remember whether I delivered any on Sunday or not. I was out of tram cars from the 11th to the 16th. I say I was out of tram cars--as I stated before, it might have been this day, I don't know, I suppose our reports will show. I haven't got these things in my memory. They have reports that will show exactly the day: it might have been that the rain caught us and caused not to load on the days you speak of. A great many times we were out of tram cars, but the dates, I can't tell you. Very often we would have neither standard nor tram cars, but I couldn't give you the dates. It happened pretty often that we were out of tram cars and standard cars the same day. They would give us tram cars. We didn't have the tram cars ourselves--Mr. Eldridge had them at the sugar house full of cane. When they were not at the sugar house I sent and got them and hauled them back I had absolute control over them except when they were loaded. I don't think there were over 480 tram cars. That is sufficient to load 480 tons unless the cane is very crooked. They hold a ton of good, straight cane. Q. You got out there at the lowest 54 tons and at the highest 131 tons, so you had three times as many cars as

you furnished cane? A. Sometimes you know there would be a lot of cars full of cane in the yards. Sometimes they would deliver only a part of them. Lots of times these cars stood there several days loaded and we would get them as we could, and sometimes we would have an overplus that we didn't load in a day. You can load more cane in a standard guage car than you can in a tram car. You can put more cars to the mill in standard cars than you can in tram cars. You see, a little tram cars, you have to bring them up to your derriek and it takes the same length of time to take a load of cane out of a wagon and put it in a tram car or longer, because you have to use a wagon with a division board in there, and then you got to move these little cars out of the way, bring them up and load them and pull them out of the way. You placed 15 of them, while in the other you only had to place one, and you have to make two lifts for the wagon in loading the cars, where you only make one lift from the wagon to load a standard car. You would have to do that in order to load the tram car. You load from the hind part and the front part of the wagon. You could load a third more on the standard guage cars. I couldn't say when it was what was caused from rain and sometimes from the rollers. I never made sorghum syrup in my life. That Mr. Eldridge's rollers were all to. I wasn't ready to grind the sorghum, I meant the big mill. I didn't see anything else for him to crush the sorghum in except the big mill. My idea was that he was going to crush this sorghum in the big sugar mill. Those are the rollers I spoke of. I couldn't say exactly when those rollers were in place, I think they got in just before we got ready to cut the ribbon cane. I never raised any sorghum, but I could make a rough estimate as to how many bushels of seed per acre you could get from the sorghum. I would think about ten or twelve bushels to the acre would be a fair estimate. I think that Sorghum was kind of mixed, It might have been a cross between a Chinaman and a nigger. It is hard to tell what a cross between a Chinaman and an african would produce. As well as I remember, we cut that

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either missing
or misnumbered

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D 0004 IMPERIAL SUGAR COMPANY RECORDS TEXAS SUGAR COMMISSION VETOSUS IMPERIAL SUGAR COMPANY 1911

you furnished cane? A. Sometimes you know there would be a lot of cars full of cane in the yards. Sometimes they would deliver only a part of them. Lots of times these cars stood there several days loaded and we would get them as we could, and sometimes we would have an overplus that we didn't load in a day. You can load more cane in a standard guage car than you can in a tram car. You can put more cars to the mill in standard cars than you can in tram cars. You see, a little tram cars, you have to bring them up to your derrick and it takes the same length of time to take a load of cane out of a wagon and put it in a tram car or longer, because you have to use a wagon with a division board in there, and then ~~you~~ you got to move these little cars out of the way, bring them up and load them and pull them out of the way. You placed 15 of them, while in the other you only had to place one, and you have to make two lifts for the wagon in loading the cars, where you only make one lift from the wagon to load a standard car. You would have to do that in order to load the tram car. You have to load from the hind part and the front part of the wagon. I believe you could load a third more on the standard guage cars than you could on tram cars. I couldn't say when it was we were kept waiting. Sometimes it was caused from rain and sometimes from overstocked cane at the mill. I never made sorghum syrup in my life. When I said yesterday that Mr. Eldridge's rollers were all to pieces and that he wasn't ready to grind the sorghum, I meant the rollers of the big mill. I didn't see anything else for him to crush this sorghum in except the big mill. My idea was that he was going to crush this sorghum in the big sugar mill. Those are the rollers I spoke of. I couldn't say exactly when those rollers were in place, I think they got in just before we got ready to cut the ribbon cane. I never raised any sorghum, but I could make a rough estimate as to how many bushels of seed per acre you could get from the sorghum. I would think about ten or twelve bushels to the acre would be a fair estimate. I think that Sorghum was kind of mixed, It might have been a cross between a Chinaman and a nigger. It is hard to tell what a cross between a Chinaman and a nigger would produce. As well as I remember, we cut that

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IMPERIAL SUGAR COMPANY RECORDS
TOMAS PULSON ADMINISTRATION
VERSUS IMPERIAL SUGAR COMPANY, 1911

sorghum as soon as Mr. Eldridge got his mowers, and I think that was in July. At that time there were no heavy rains to keep me from getting in the fields. If there had been heavy rains, I could not have gotten in there with a mower: of course, now and then there would come a rain and we couldn't cut it. I said that I cut two thirds of it. I didn't cut all of it because we went to picking cotton. That that I did cut, I shocked. The other remained standing. With the exception of what we fed- we fed some of that cane to the stock, and Mr. Addison sent his wagons over and hauled some over to the Imperial and the balance was left in the shock, standing on the ground. We fed some of it at my camp and Addison carried some over to the State Farm. I have no idea how much: we didn't weigh it. It was going to waste and we fed up what we could. It is valuable for feed, good feed. I never undertook to plow land with a good big crop of sorghum growing on it until after I had cleaned it up. Somebody has to take it off there. It wouldn't burn standing: it had to be cut down in piles. I left it in that condition. I don't know that I had any positive orders for anyone to leave it, but I do know I had orders to get ready and move, but I had no special orders about leaving that sorghum. I did not quit the sorghum in July. I commenced cutting in July and I cut as long as I could possibly spare the men. I had two or three mowers and ten or twelve men following the mowers shocking it and I cut as long as I could let them. I had about 13 or 15 ~~men~~ men working in the sorghum. I left it standing there because I needed the men to commence picking cotton. I could have cut the sorghum if I had had 13 or 15 men more. I had to take the men to pick cotton. As superintendent of that farm, I am expected to save the crops that I raise, if possible. I could have kept cutting it. I don't know of any way in the world that we could have saved that that was shocked. We shocked it and that is about the only thing we could do, unless we intended to work it up into something. I don't know that anyone ever saves that amount of sorghum: I have saved small quantities. I don't know that in the Panhandle, half of the country is devoted to raising sorghum. My idea is this, that to shock that stuff it would save better than it would by stacking it in big bulks

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MINERAL SUGAR COMPANY RECORDS
TEXAS RAILROAD COMMISSION
VERGUS APPELLAL SUGAR COMPANY 1911

I didn't find out any method to save a big crop, and nobody advanced any to me. If Mr. Eldridge had said to shock it or anything, I would have tried to have done it, but I thought I was doing the best I could. I don't remember having any conversation with Mr. Eldridge about thrashing it or about hauling it in, in which he told me to bring it in to the mill, that he had everything ready to thrash it. I don't remember any such conversation. I quit cutting the sorghum because I needed the men to pick cotton. I only got about two thirds through cutting. I could not have thrashed it until I cut it. If I had not had the men to cut it, I would not have had the men to thrash it. I could not have thrashed it and picked the cotton too. I did not have men enough to cut it and I had to abandon about a third of it. , on the theory that I thought the cotton was worth more than the cane. I saw some preparation made to thrash it and I thought it better to save the cotton I didn't inquire to find out, and no one said anything about it. When I say Eldridge was in constant communication with me, I don't mean to say that he was there every day or every week or every two weeks. I mean occasionally he would ring me up over the phone. Our relations were entirely pleasant: I never had a man to treat me nicer than Mr. Eldridge. All the men that I had there that the commission furnished me were employed in making the crop until I got ready to harvest the cane. When I started into the sorghum, I had to quit and go to gathering cotton. I suppose my camp is a mile and a half or a mile and three quarters from the mill. Up at Sugarland, there is a little village there and the main part of it is the manufactory and boarding houses and the white people and the niggers constitute the town. I couldn't hardly answer the question as to whether there is much business there at night, because at night I was always at home and I don't know what they were doing. I wasn't there at night, unless I went up there to meet my wife coming from Houston, and I stayed there then no longer than the train come. It has been a long time since I ran around at night. I was not there and I don't know how much they run or ground at night. Col. Brahan could tell you about when Col. Cunningham was there. He was around there a good deal then I don't know what the trackage is in the yard for placing cars. Mr. Eldridge came up there to my

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1004 IMPERIAL SUGAR COMPANY RECORDS
TERRY BRASHEAR COMMISSION TESTS VS IMPERIAL SUGAR COMPANY 1911

house and asked me to come on down to the camp with him that he wanted to show me something and I went down, and beside the fence there was a piece of gear for one scraper and they had some piled over this pile of gear. We had then only one gear house, and it wasn't large enough to hold them all without getting them all piled in there, and when you turn out in the morning, they would naturally steal from one another, - steal the hamestrings and backbands, and there was one fellow, Smith, who always prided himself on having his gear where he could get hold of it and he put his out there in order so they wouldn't get his gear, and Mr. Eldridge told me that he had said it was an outrage for his stuff to be piled there, and I told him it wasn't right, and I agreed with him and told him this fellow did it so the niggers wouldn't steal from him, and Mr. Eldridge told me if I would bring some brick down there that he would put up a gear house and put them into stalls and fix it so he could take care of the gear, and I hauled the brick and that is what I hauled the brick for. There were saddles too out there in the rain. There were two saddles as well as I remember: some guard come in that night and left them out in the weather and we tried to keep them out of the weather. It don't help leather harness and things of that kind a bit to leave them out in the weather. . About that corn we hauled from Adams Brothers, there wasn't any corn further down towards the river that we could have gotten just as well - not at that time, because the corn wasn't dry. It wasn't any further to Adams than it was down to ~~where~~ that corn was. I think it was pretty near the same distance. We bought hard corn from the Adams Brothers: it was not new corn. Those holes that were cut in the crib were not still there and open when I left that place. I will tell you about that: I have refreshed my memory. I had the holes fixed up and I remember when Capt. Addison's men came over. I stated that I had a crib of corn I had mine fixed up and when Capt. Addison came over to haul this corn that belonged to this place, those men knocked off several plank It was a long crib and there was no way to get the corn out except a one door in the end, but they knocked those planks off in order to drive the wagons up to the side of the crib and load this corn on and

I suspect they happened to be off. I had mine fixed. Another man came over and took them off again. The plank were nailed on the inside of the 2 X 6 that formed the uprights for those cribs and the framing was nailed on the outside. I did not notice that several of those uprights were absolutely cut in two. I do not say that it was not done. It might have been, but if was, I didn't see it. I told Capt. Barnes- he is my assistant- and I told him to get the shop man up there and have that fixed and he had that fixed. A kitchen is a very essential thing to a convict camp. They cook for a whole lot of people in there. That was as good a kitchen as I ever saw. ~~XXXXXXXXXX~~ the kitchen on that farm. The kitchen was smoked some but I never noticed about anything else. I don't know whether it would cost anything to restore that kitchen or not. It would cost something to scour it up and get all that black off, but all kitchens in convict camps have been smoked up more or less: it is impossible to keep them from smoking. The difference between convict kitchens and other peoples' kitchens is that you have those big, brick ovens in there and there is the stove and it will naturally smoke out ~~XXXXXXXXXX~~ sometimes. I don't know that there would be any difference the way you handled a kitchen with convict labor and with free labor. I don't know whether there would have been any difference, if they had had free labor in there cooking. It was smoked up. We had about the finest in the building and they smoked the ceiling where they hung- those gasoline torches. They were too far to heat the ceiling. I don't know whether there were a whole lot of locks broken: I didn't examine. Some few window panes might have been out. There might have been some sash broken. . I don't know that there was any plumbing out of order: if there was, it was not reported to me. If the lot s get muddy, and then it turns dry, they will get dry too, if it stays dry long enough. When I left there I just had my orders to move. I had no instructions to repair anything or any injury, nothing more than prior to my moving, that is during the year, Mr. Brahan told me he wanted me to keep the bridges and to keep the fences up. I talked to him about building new fences. I don't think that was the fence that had been down. I

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APPELLANT SUGAR COMPANY RECORDS
TEXAS PROBATION COMMISSION VERSUS APPELLANT SUGAR COMPANY 1911

worked on that place for a long time, and it wasn't kept up there while Col. Cunningham lived there I don't know what condition it was in when Capt. Herring took it in January 1908. I don't remember about Mr. Brahan writing me in substance sometime during the year that if I couldn't cultivate all that crop right to turn it out and cultivate what I could well, or whether that that was the letter in which he stated that he didn't want me to do anything in the way of improvements on the place. It strikes me there was something like that, but I don't remember. That engine that I testified about yesterday that Mr. Eldridge furnished to pull the tram cars and relieve the mules, that relief also extended to this mill: it took less time to put them there. He also restored to me in this way some of my men. Six or eight men were relieved by that. I don't know a thing in the world about Mr. Eldridge buying a lot of mules at the request of the Commission. I used all the mules I had there. At all times, whenever a mule got crippled or its neck got sore or its shoulder, Mr. Eldridge would supply me with a new mule. At all times, whenever I asked for a mule or mules, he gave them to me. I can't say a mule or mules: I will say this that whenever a mule's shoulder was sore or crippled Mr. Eldridge would supply us with fresh mules. I never asked Mr. Eldridge for a mule or mules that he did not furnish them to me. I didn't furnish any hands to run the engine. I do not know that it is a fact that I left a great number of those tram cars in very bad condition and scattered from one end of the farm to the other. I hauled a great many from around that sugar house after they were broken up after they left my hands. There were some broken on the farm. They were out in the fields: we would pull them out of the way. I don't know how many there were. I don't think there were as many as 151 of them. I don't know how many there were, but I am satisfied if it had been 150 they would have called my attention to it. I hauled a whole lot from around the sugar house and they might be included in that number. I don't know how many there would have had to have been there for me to have noticed them. I think the Cunningham Sugar Co. men cut wood where the old man had been, where we always been hauling through.

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The North fence was cut by me to get wood and haul it in- the rail- road fence. They cut I think where the old gap had been where we had always been hauling through. They did cut the fence to bring the wood around to get out to the big road. If you take a new wire fence and cut it it damages it for hundreds of yards each way. It slackens the wire. I don't know about cutting that fence twice. I think they used the same opening until they got through hauling.

THE PLAINTIFF ASKED THE COURT TO EXCLUDE THE TESTIMONY WITH REFERENCE TO THE CUTTING OF THIS FENCE FROM THE RECORD BECAUSE THERE IS NO ALLEGATION OF DAMAGE FROM THE CUTTING OF A WIRE FENCE.

THE COURT: OF COURSE? AS FAR AS CUTTING IT IS CONCERNED, RESULT- ING DAMAGES WOULD NOT BE ADMISSIBLE.

The guards did not cut the fences in chasing convicts around in training pups. If I had had a guard that would cut a fence in training these pups I would have fired him, but I will say this that in escapes they often cut fences, but I never had a man that cut a fence for training puppies, because the fields are too large to train puppies in.

RE-DIRECT BY THE PLAINTIFF:

My daily reports there show what my men were doing on the var- ious days in November and October. The way I looked at it, if I had had more men there it would not have been profitable to employ them in cutting down that sorghum that never was handled. I said that I hauled in a lot of cars that were broken up at the Sugar Mill. Mr. Eldridge requested me to send up and get them and I sent up and pull- ed them all down to the shop. They were broken after they left my hands. I couldn't say how many there were. There was a good many of them and I sent my men up and pulled them down to the shop. They got broken by the engine turning them over, a great many of them and in letting them down that incline sometimes they would turn over and break. I don't know that pulling these cars with an engine would break them up any worse than pulling them with mules. Of course, an engine would naturally be a little rougher on them than mules. There was a lot of them broken at the mill. Mr. Eldridge did come to me and request me to clean out these ditches and I told him I

didn't have any clothes for the men that they were in the building with their gowns on. Mr. Eldridge asked me to fix a dump by the lot after a big rain that had washed it away, and I told him that my men were all in the building wet and that I didn't have the dry clothes to change them with and I had their gowns on them and couldn't turn them out because I didn't have the dry clothes to put on them until the next day, and a day or two afterward I fixed the dump. The weather was wet and raining during that time. It had been so for sometime. The men had run out of dry clothes and I had their gowns on them until I could dry them some clothes. I had to cut that fence to bring wood that way because it was so wet in the fields and it was so much harder on the mules. I probably could have come that way but it was almost killing to the mules and I never gave that a thought to the fence and I knew we had to have winter wood and I cut this fence because it was so much better on the mules. A guard suggested to me that it was a so much better on the mules, and they could cut the fence for the purpose of getting out and getting wood around the camp. They pulled up about 300 cords of wood I guess.

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THOMAS PEARSON COMMISSION VERSUS MINERAL SUGAR COMPANY 1911

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A. K. ADDISON, a witness for the State in rebuttal, testified as follows:

I had some of the men of my force at work on the Imperial Sugar Company's share farm in the fall of 1911. They were engaged in windrowing cane and cutting mill cane. As well as I remember, we worked in the month of November something like 3000 days: I recollect I charged it up against the plantation and all told I think it was something over 4444 days- I can tell you exactly: it was 4544 days. My force was outside of and separate from Capt. Mills' force: my force was kept intact and I kept my daily reports: my men were not in Capt. Mills' report at all. I kept a daily report, and my reports show exactly what what ~~we~~ were working for the Imperial Sugar Company and what were working for the Imperial State Farm. I made a report from day to day and it was correct as made. When that report was made, I mailed it out in duplicate form and sent the Prison Commission the original and I kept the copy. My signature is signed to this package of papers. Those are my daily reports (indicating papers) Those reports were made by me,- that is, the bookkeeper made them out and I signed each one of them. They were correct.

The Plaintiff offered in evidence the daily reports sent in by the witness, A. K. Addison, which reports are as follows:

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION V. ADDISON
IMPERIAL SUGAR COMPANY, 1911

A. K. ADDISON FURTHER TESTIFIED:

There were 1223 days that we worked in November: 1806 days in December: 1515 days in January, - making 4544 days. I had more than one force over there: I moved my Number 3 Force over there and put them in the building with Capt. Mills' men and they stayed over there for three weeks. The Imperial State Farm is divided up into three camps, Nos. 1, 2 and 3, and I moved the Number 3 force over to the Imperial Sugar Company Share Farm, and they were still charged up to me. Those 28 men belonged to the Number 1 Camp on the River. Camps No. 1, 2 and 3 were all working there at times. While these men were at work, they were engaged in windrowing cane and cutting mill cane. They were engaged in harvesting the cane crop. I ginned some cotton for this Imperial Sugar Company Farm. I passed the gin on that farm every day: it was right on my road from my camp to my gin. They are situated right together. I would like to tell the Court just what I know about that gin. They bought a new gin- I don't remember now- my understanding was there were only two of them in Texas, and it looked to be as nice and complete an outfit as a man ever saw, but the gin just naturally wouldn't run: it was all the time breaking down, and it was for those reasons that caused the cotton to accumulate there: it was not because Mr. Ulrich didn't try to gin the cotton. I ginned on my two ginstands and they ginned on their five. I understood after the season was over that that gin was boxed up and sent back to the people they bought it from. It was in the gin machinery that I think was the cause of the cotton not being ginned. I think they did everything they could, but the gin was new and it was the most complete thing, just too look at it, you ever saw, but it wouldn't run. They ginned for outside people too. I took some cottonseed away from that share farm. Along in January, I think it was, I can't recall the time, I had a letter from Mr. Tittle saying that the Imperial Sugar Company had notified him that the State had some seed in the warehouse and that it needed the warehouse and requested me to move them out, and he told me to go down there and have the seed moved, and I went down to the store and saw Mr. Gus Ulrich, and the warehouse was locked, and I went

to get the key, and I asked him to go and show me the seed, and he went up and showed me the seed, and I asked him did all those seed belong to the State and he said yes all those seed belonged to the State. I took them out near my gin and piled them up in a large pile. I was going to use them for fertilizer and about 10 days after that I had another letter from Mr. Tittle wanting to know what seed I had bought from the Imperial Mercantile Company. I haven't got that letter but I have my reply to it. I took the letter down to Ulrich, and told him they had charged some cottonseed up to the State I said, "Here are some cottonseed that they have charged up to us", and he said, "That is part of these cottonseed that were damaged", and I said, "You told me all the seed belonged to the State", and he said, "They were and they were damaged and I just charged our forty per cent to the State" and here is my reply to Mr. Tittle, and Mr. Tittle further instructed me to notify him that his help was out there in the field and that the State wouldn't accept it and the seed were piled out there and left.

THE DEFENDANT OBJECTED TO ALL OF THIS WITNESSES STATEMENTS IN REGARD TO THE CONTENTS OF THOSE LETTERS, WHICH OBJECTION WAS BY THE COURT SUSTAINED.

I haven't got those letters: they are in Mr. Tittle's office. Mr. Tittle phoned me about those seed. I went over to see Mr. Ulrich and he took me down and pointed the seed out to me and made the statement to me that they were the State's seed. I asked him the question. I hauled them out, and he charged them up and sent in the bill to Mr. Tittle, and Mr. Tittle wanted to know when it was I had bought those seed and I showed Mr. Ulrich Mr. Tittle's letter and as I said awhile ago, he told me they were the State's seed and he charged their forty per cent against them because he thought it was their fault because they were damaged. It was under Mr. Brahan's the Prison Commissioner's orders that these men were worked on the Imperial Sugar Company's farm.

CROSSED BY THE DEFENDANT:

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If I have 103 men and they work one day, I call that 103 days and so on to make the 4544 days. I have a daily report from each

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY - 1911

assistant every day of the number of men sick. I know the number of working days and a report of the sick men from the whole, I deduct the number of men sick. This 4544 days is made up by counting each man a day and so on that way. I never figured how many men it would be a year. I never figured it that way. I don't know whether it would be 127 men a year. I never figured it. I did that on the orders of the Prison Commission. It was under Mr. Brahan's orders when the first freeze came. When the first freeze came, I pitched in and windrowed all my cane and the Commission was down there at the time, all of them, and it was generally understood that when I got through with min, I was to go over and help the Imperial Sugar Company. Mr. Brahan came by there and stayed all night, and ordered me to put my force over there. As a matter of fact, I got my orders from Mr. Brahan. They had all three told me before that. If Mr. Brahan had told me, I would have gone ahead and done it from the fact that the Commission might have all ordered him to do it. Mr. Brahan was the man that had charge of the farming operations, and I took orders from him without all three of them telling me. I had charge of the Ellis Place or Imperial State Farm. I had something between four and five thousand acres of land in cultivation on that farm: there were forty-five hundred and some odd acres. I had about 4500 acres in cultivation. I had 1700 acres of cane on there and the balance in other products. I was born on a farm and have been farming all my life. I didn't farm when I stayed in Huntsville, but I didn't stay here but six years. I am not as young as I look to be. I don't know how many men I had on that Imperial Farm in the month of January, 1911. I think I had about 220 or somewhere along there. I couldn't say as to the amount. As well as I remember, I don't think we had but something over 200. I couldn't testify to the amount. I only taken charge of that farm the latter part of January. There were 271 in March, 272 in April, 288 in May, 325 in June: 341 in July: 348 in August: 361 in September: 346 in October: 391 in December. I suppose that is correct: I couldn't testify as to the number of men. Q. Can you tell me how it is that Capt. Mills could cultivate 7000 acres with 190 men and harvest it when it took you

IMPERIAL SUGAR COMPANY RECORDS TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911

from the lowest , 272 to 391 men to cultivate that farm? A. On the Imperial State Farm we have more farm land. You asked me about the number of acres. We cultivate other farms. I cultivate the Basset Blakely place known as the Turner Place. The Basset Blakely place didn't have a force on it. It adjoins the Imperial State farm and we had the land in connection with the Imperial State Farm. There are about a thousand acres in cultivation on that place. I don't know anything about why it would take more men to cultivate 5500 acres when Hills had only 190 men to take care of 7000 acres. I suppose the Imperial Sugar Company's gin was no good because they turned it back to the Company and wouldn't accept it. I know they sent it off and shipped it back and got a new gin. I know that of my own personal knowledge, and I heard they couldn't run. I know that mill was torn down and moved back and they installed a new gin. They installed a new gin because the old gin would not run. It might be in storage, but that is what I was told. I know they are not running the same gin this year that they did last year. I don't know that it was torn down and broken up and shipped off. I take that back. There may have been just four ginstands on that gin. I said five because to the best of my recollection it was five. If it wasn't but four, I was mistaken. If it wasn't shipped off, I am mistaken about that. I don't know why they saw proper to exchange for a different gin: I know they had a great deal of trouble with it and I talked with Mr. Ulrich about it and he said they were going to turn it back. The trouble was continual breakdowns. The press gave them a great deal of trouble. They didn't send it back as a matter of fact, I don't know that there was a piece broken.

THE DEFENDANT MOVED THE COURT TO EXCLUDE ALL OF THIS WITNESS'S TESTIMONY IN REGARD TO THE GIN AS HEARSAY TESTIMONY. MOTION SUSTAINED.

I couldn't tell you how many days that gin was kept from working by reason of this trouble. I do not know how many hours. Of course I passed by there as I told you, and I do know there were a great many days they were broke down. I know they were not running : you could tell in passing by whether the gin was running or not.

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TEXAS SUGAR COMMISSION VERDICTS IMPERIAL SUGAR COMPANY 1911

I was told they were broke down. Mr. Ulrich told me.

THE COURT: WHATEVER MR. ULRICH TOLD YOU YOU CAN TELL.

I shipped my cotton and seed over the Sugarland Railroad, and during the season I would go to sugarland every day to get waybills. Mr. Ulrich told me that the gin was broken several times on the road, on horseback: I would meet him and he would say his mill was in trouble today. He didn't tell me what was broken. He told me how long it delayed him. We didn't have much trouble. I had some. I have worked about gins a good deal. We were very fortunate last year with our ginning. I had three gin stands and 300 saws. I think Ulrich had four ginstands and 470 saws. I think they had only 40 more saws than I had. I ginned 30 or 35 bales a day. We ginned something like 1300 bales all season. They ginned more than that. We didn't run all the time: there were lots of days I would take my crew and go in the fields and pick cotton and didn't gin any at night. I didn't gin any public cotton. I think I ginned 93 or 94 bales of cotton that was raised on the Imperial Sugar Company's Farm. I know it was more than 36: I think it was 93 or 94. I think it was 93 or 94 bales, but I couldn't be positive about that. It must have been in September or October that I ginned that cotton. It was the latter part of September before I went to cutting cane, just before the winding up of the ginning season. I did not gin it because the Commissioners were in a hurry to get the money and didn't want to wait. It was on account of the hot cotton. They had a lot of cotton that was hot in that house. They wanted it ginned to relieve the heat. I didn't spend the most of my time down at Sugarland. I spent the most of it at my place. Of course I would go to Sugarland when I had business there. I didn't work down there at night. I wasn't down there but mighty few nights. I was instructed to haul those seed, and I went down there and Ulrich pointed them out and I hauled them off and piled them up. There were about 12 tons of seed I think: it wasn't a car load. I hauled off sixty per cent of them and part of them are there yet. The cows were turned in the field that winter. I think we lost about one car of seed by reason of the heated cotton. One car would be about 20 tons- that is we didn't

see that we got half price for it

IMPERIAL SUGAR COMPANY RECORDS
TEXAS PERSON COMMISSION VERGES VS IMPERIAL SUGAR COMPANY, 1911

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RE-DIRECT BY THE PLAINTIFF:

The Commissionera instructed me to gin that cotton because of the fact that it was being ruined. I recall that. As well as I remember, it was Mr. Cabell or Mr. Tittle, and it wasn't me: it was Mr. Kirk there representing me, and they had a talk with him over the phone and wanted to know about the seed and they made arrangements with Mr. Kirven and he went down and saw Mr. Ulrich, and came back and notified me it would be all right. The cotton that I ginned, I got from the warehouse where Mr. Mills had his cotton stored. I took it out and ginned it because it was heating.

IMPELLANT SUGAR COMPANY RECORDS
TEXAS RAILROAD COMMISSION VERDUS IMPELLANT SUGAR COMPANY 1901

C. W. EDWARDS, a witness for the State, testified as follows:

I was employed in weighing cane and marking cotton at the Imperial Sugar Company's gin. I was there at their gin during the ginning season of 1911 from the beginning of the season until they ginned 900 bales of cotton. That ~~had~~ gin had several breakdowns between the beginning of the season and the time I left there. They stopped when they broke down. They would be stopped two or three days sometimes: I think the longest time was two or three days. I certainly do know of my own knowledge that they had those breakdowns. It was a new system of ginning: these gins didn't have brushes in them and they used air in the place of brushes, and this thing- I would call it an elevator, would get out of commission and on two occasions they had to send it to Houston to have it repaired. They forced the cotton away from the saws by compressed air. It was conveyed by air from the gin. That apparatus would get out of fix- I don't know exactly what they call that, but that was the cause. I think they had to send it to Houston twice to have it repaired. It would cause the gin to stop two or three days: they got it as quick as they could. This gin was ginning cotton for other people. They ginned for the neighborhood around there: I couldn't say to what extent. They ginned right smart. From my best recollection, the outside ginning amounted to about as much as altogether--now understand me, altogether it amounted to nearly as much as the Farm ginning.

That is my best recollection: I would not be positive of that. I was weighing and marking cotton. I know there was a great deal of hot cotton there where the State's share cotton was stored. . I think this gin could have ginned that cotton up in time to have prevented its getting hot but for these breakages and ginning for outside people. There might have been some slight damage: I don't say they could have ginned every bale of it: there might have been some slight damage: I think they could have ginned it practically all if they had caught it at the right time. The outside cotton was ginned and the State's cotton was piled in there.

CROSSED BY THE DEFENDANT:

I didn't mean to say that the Imperial Sugar Company piled that

IMPERIAL SUGAR COMPANY RECORDS
TEXAS HOUSTON COMMISSION VERSUS IMPERIAL SUGAR COMPANY 1911

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cotton in there. It was piled in there by the convicts that brought it there instead of hauling it to the gin, they piled it in there. I don't know of any power that Eldridge or anybody connected with the Imperial Sugar Company had to make the State pile it. I don't know about the State piling it in there of its own volition: I don't know anything about the volition part, but I know it was piled. I knew it by looking at it. I couldn't answer the question exactly as to how many bales were piled in there. I can tell you the system under which that cotton was handled. I will tell you--nearly all the cotton was put in that cotton house, pretty near the entire crop. I didn't say anything about a thousand bales being put in there: they had ginned 900 bales when I left there. I will say that practically all of that cotton was put in that house, except, I would say, probably thirty, forty or fifty bales. I didn't say anything about there being 900 bales in there. They had ginned when I left there about 900 bales of cotton. I certainly do not mean that it was all inside the house at the same time. What I mean is that there were thirty or forty bales ginned off the wagons. And the balance of it passed through the house, to the best of my knowledge. I would say that there was as much as 125 or 150 bales in there at one time. I determine that by observation, by looking at it. There was more cotton piled up there than I ever saw piled up in one pile in my life. I have never seen that much since. In guessing at the number of bales piled up there, I adopted the method, Colonel, that you or any other man would adopt. I just looked at it and guess at it, I just guessed at it and that was all. I claim farming as my occupation. I have farmed a great deal, Colonel. I run on a farm when I was a boy. If my recollection serves me right, I started to farming when I was about 15 years old, and I worked on the farm directly and indirectly until I was 35 years old. By working on the farm indirectly, I mean that I was bossing the labor but I wasn't doing the work directly. A man bossing labor would not be actually performing the duties. I can't give the days that I stayed around that gin, Colonel, but I stayed there practically all the time, day and night from the time that gin started to running until the sugarrolling be-

IMPERIAL SUGAR COMPANY RECORDS
TEXAS HOUSON COMMISSION VERSUS IMPERIAL SUGAR COMPANY: 1911

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as much as Mr. Hills saw proper to stir it. I think Mr. Hills acted on his own judgment in handling the crop. I told you that the part of that gin that was broken was that which created the power that give it the air power. It is what we would call a suction power. It was the machine which produced that suction to elevate the cotton that broke. I don't know the name of the machine to save my life. It was a piece of iron that I saw broke. I am not a machinist- I am just telling you the straight facts. . Col. Eldridge sent it to Houston. I judge it would weigh several hundred pounds. That was the whole machine. I don't know what part of that machine was broken I am not a machinist. . They told me it was broken. I looked at this machine pretty close and anything that would break about the gin I would very naturally look at it, and I was told it was broke by the ginner. I didn't see it when it broke. I saw those Rabbit bolts. They have a good machine shop there at the Cunningham Sugar Company's plant. Some of them there in Houston are bigger ones than that. I have just heard of those big iron men there. I saw it sent off. I saw it come back. It was gone two or three ^{at} ^{es} I know that because I saw it when it was sent off and saw it ^{en} ^{es} on it came back. I haven't got any record of it. I didn't tax ^{el} ^{el} mind with when it came back. I think it went off twice: that is my best recollection. It went off twice during the time I stayed there, about six weeks. It was the same machine each time. I don't know who they sent it to in Houston: I can't remember who they sent the machine to. They sent it there to have it repaired. I can't specify the exact number of days it was gone the second ^{el} ^{el} . The gin was stopped there half a dozen times on account of that machine that I have spoken of, and the beams breaking there. I saw the beams broken. My recollection that the beams breaking and that machine were the only things that stopped the gin from running. I couldn't tell you how many bales it ginned altogether. I went to weighing cans when I left there. I quit when I went to weighing cans.

ALL SUGAR COMPANY RECORDS
TEXAS SUGAR COMMISSION VERSUS IMPERIAL SUGAR COMPANY - 1911

B. R. SECREST, a witness for Plaintiff in rebuttal, testified as follows:

I have already been sworn in this case. I testified on my previous examination that I weighed the cane on the tram cars on the share farm. I kept a record of the number of days I weighed there. I have that record. I can state without looking at the record how many days I worked there. I worked there 96 days and lost 49 days and worked 47. I was employed there about 96 days. I was employed 47 days in weighing cane, and I lost 49 days. I weighed the tram cars. This record gives 25 days in October. That note there, "October 25th, Car 107", means the number of cars. That means 107 cars of cane. This over here (indicating), "91290" gives the number of pounds. On October 31st, I have here "nothing weighed". On November 5th, nothing weighed: November 8th, nothing weighed: November 12, 13th, 14th, 15th, nothing weighed: On November 16th, 179 cars weighed November 17th, 18th, 19th and 20th, nothing weighed: On the 21st, 22nd, 23rd, 24th I weighed and on the 25th, 26th, 27th, 28th, 29th and 30th, Nothing weighed. These books correctly state the days on which I weighed cars. That is the form in which these reports were compiled that I sent in to Mr. Tittle. I couldn't tell you how the men were handled. I was at the scale house and the men were in the field.

CROSSED BY THE DEFENDANT:

If Capt. Mills had brought the cane in there, I would have weighed it.

The Plaintiff offered in evidence the record testified to by this witness, of weights, as follows:

October 1911	Cars	Tons	
25th	107	92	1290
26th	162	132	1910
27th	152	133	200
28th	158	127	160
29th	184	144	110
30th	42	42	1600
31st	Nothing Weighed		
November			
1st	160	157	1010

EQUAL SUGAR COMPANY RECORDS
 TEXAS SUGAR COMMISSION VERSUS HARRIS SUGAR COMPANY - 1911

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GENERAL SUGAR COMPANY RECORDS

TEXAS RAILROAD COMMISSION VERSUS APPELLAL SUGAR COMPANY: 1911
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November 1911		Cars		Tons	
2nd		192		194	800
3rd		184		165	300
4th		200		156	1000
5th	Nothing		Weighed		
6th		194		155	600
7th		172		160	900
8th	Nothing		Weighed		
9th		154		135	300
10th		224		182	700
11th		280		194	1000
12th	Nothing		Weighed		
13th	"		"		
14th	"		"		
15th	"		"		
16th		170		140	1500
17th	Nothing		Weighed		
18th	"		"		
19th	"		"		
20th	"		"		
21st		197		162	400
22nd		208		185	1000
23rd		164		143	1700
24th		206		183	300
25th	Nothing		Weighed		
26th	"		"		
27th	"		"		
28th	"		"		
29th	"		"		
30th	"		"		
December 1911					
1st	Nothing		Weighed		
2nd		170		142	1000
3rd		180		160	1700
4th		200		169	900
5th	Nothing		Weighed		
6th	"		"		
7th		176		142	1000
8th	Nothing		Weighed		
9th		160		142	1700
10th	Nothing		Weighed		
11th	"		"		
12th	"		"		
13th	"		"		
14th	"		"		
15th	"		"		
16th		144		133	1300
17th		153		140	1000
18th		144		130	1400
19th	Nothing		Weighed		
20th	"		"		
21st		136		124	1900
22nd		104		90	700
23rd	Nothing		Weighed		
24th	"		"		
25th	"		"		
26th	"		"		
27th	"		"		
28th	*	136		105	1700
29th	Nothing		Weighed		
30th	"		"		
31st	"		"		
January 1912					
2nd	"		"		
3rd	"		"		

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IMPERIAL SUGAR COMPANY RECORDS

TEXAS RAILROAD COMMISSION VERDICTS IMPERIAL SUGAR COMPANY

January 1912		Cars		Tons	
4th	Nothing	262	Weighed	207	1500
5th		75		63	1800
6th	Nothing		Weighed		
7th	"		"		
8th	"		"		
9th		130		110	1500
10th	Nothing		Weighed		
11th	"		"		
12th	"		"		
13th	"		"		
14th		56		49	500
15th		358		309	1300
16th		272		232	1400
17th		237		199	800
18th		387		313	600
19th		325		297	1300
20th			Weighed		
21st	Nothing			834	900
22nd		366		293	1100
23rd		316		201	800
24th		214		272	1900
25th		371		192	200
26th		210		122	1100
27th		147		38	1100
28th		46			

E. E. WISBEY, a witness for the State in rebuttal, testified as follows:

During the time I was employed in weighing cane for the State at Sugarland, I was located at the scale house. The scale house is right at the crossing of the Southern Pacific and the Sugarland Railroad. It is about 500 yards from the mill. It is in the yards there I commenced weighing on the 11th or 12th of November. I weighed until the 15th of January. That mill yard was filled up with cane pretty much all the time I was there, with the exception of rainy weather, and then they would catch up. I couldn't tell you how much trackage they have in that mill yard. It is a large yard. Q. What was the prevailing condition in regard to the yard being full of cane or not? A. Well, they didn't unload the cane. Cane would stand there several days; I don't think they ever did catch up with the cane except in rainy weather. There was always 75 to 100 cars of cane on the track. The mill did not operate all the time. Some days there they would lose two and three hours. I have known them to lose six and seven hours a day. Sometimes it would be trouble on the inside of the mill, and other times it would be at the cane shed. The slats fell out of the chain or the chain would break. I said that those yards were always full of cane except rainy times when they would catch up, when the men couldn't get out in the field to load.

CROSSED BY THE DEFENDANT:

Those cane scales are south of the G. H. & S. A. Railroad track. I judge they are about 300 ~~xxxxxxxxxxxx~~ feet south. I should judge the scales are about a quarter of a mile from the mill, not very far. I testified the other day that I worked there day and night. It didn't take long to weigh the cane. I didn't stay there when there wasn't anything to weigh, and I could weigh up 50 cars of cane in 20 minutes. I always knew when they were coming in with cane - I got pretty close to it. Q. Didn't make any difference whether they came from Ramsey or Imperial or Share Farm? A. Yes sir. The railroad men gave me the information. The conductor, the men in charge of the train and another thing if ~~was~~ we were not there they would blow the

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TEXAS RAILROAD COMMISSION VERDICTS APPELLAL SUGAR COMPANY

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whistle. When the Conductor started out, he would tell us he was going after cane. If he would see us around the sugar house or anywhere he would tell us. I put my time in around the scale yard and around the drug store. I did not take careful note of when they stopped and when they ran. I didn't keep a record of their stops. It was no part of my business to do it. I was not employed to do that. I had no interest in the mill. What I did do was casually done without interest. I am speaking merely from memory. I know that mill didn't run no three weeks without a stop. I couldn't tell the date of any particular stop. I could tell what caused the stops I couldn't tell the date. Sometimes the slats fell out of the carriage. I didn't see the slats fall out. I saw them while they were out. I didn't count them and I don't know how many. I didn't stop to count them. If I was interested at that time, I would have stopped. I should judge there were about 25 or 30 or 35 of them. That was the carrier that carried the cane from the mill up to the crusher. I wasn't expecting the mill to run with half the slats out of the carrier. I couldn't tell you how many times I saw that, but I saw it several times. I would judge I saw that with my own eyes eight or ten times from the 3rd of November to the 15th of January. I went through there three times a day to get my meals. It did not always happen when I was going to my meals. I told you that sometimes the trouble was on the inside there, and what took place in the mill I don't know. I don't know what it was that broke; somebody would tell me that there was something wrong inside. I never went in the mill from the time they started grinding until they quit. I testified that I was told that something was wrong.

THE DEFENDANT MOVED THE COURT TO EXCLUDE FROM THE RECORD THIS WITNESS'S TESTIMONY AS TO WHAT HE WAS TOLD. MOTION SUSTAINED.

I couldn't tell you who was the party that told me but it was a general thing when the mill shut down I would always ask somebody what was the matter. I couldn't tell you when it was that somebody told me that something on the inside of the mill was broken. I couldn't tell you who it was that told me. It was a white man I guess. I guess that because I wouldn't go to a nigger for informatio

of that kind. If they didn't tell me, I didn't go to hunt up the trouble. I wouldn't object to a nigger telling me, so long as I got my information. I don't know how many hours that mill stopped, or nothing else about it.

RE-DIRECT BY THE PLAINTIFF:

I know that it did not run.

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R. W. BRAHAM, a witness for Plaintiff in rebuttal, testified as follows:

I am one of the Prison Commissioners. I did not have charge of the management of the Imperial Sugar Company's Farm: I was one of the Commissioners, and the three of us had charge of that, and that part of the business I looked after that part especially. I never agreed with Mr. Eldridge or with anyone representing the Sugarland Railroad Company to buy that piece of track running from the Sugarland Railroad Company's track to the Harlem Track. Q. With reference to the item of \$451.00 expense of tram engine and crew, hauling of tram cars- state whether or not you ever agreed to pay that item? A. I would have to do that with an explanation. I went in Mr. Eldridge's office one day and he asked me about the tram crew, and I said, "I don't know about it until I pass it up to my lawyer", and he stated that the year before Mr. Herring and Mr. Harton had paid for a tram crew and I told him if that was the contract I suppose we would have to pay for it, and to go ahead, and if it was right, we would pay for it, and if it was not right, we would not pay for it. I did not make any agreement to pay it. I never agreed with Mr. Eldridge in Mr. Lane's office or at Sugarland or anywhere else to turn over the cane that was left on these three farms on December 2nd, and to permit him to mill it up and to account to the Prison Commission for the results after he made the sales. No member of the Prison Commission in my presence ever agreed to any such contract. I wouldn't state what the date was, but the three Commissioners and Mr. Hill left here sometime about the 4th or 5th, may be it was the 5th or may be the 6th of December, and we went to Houston, and that night, or evening may be, or may be both evening and night- calling evening after dinner and night after supper or dinner as they call it in Houston, we met in Mr. Lane's office and Mr. Eldridge told us the cane was pretty badly hurt and that the freeze was soaring it, and that he must refuse to accept it any further, and I think Mr. Lane was present and the three Commissioners and Mr. Eldridge: I don't think Mr. Kempner was there. We went in the side room, Mr. Gab

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all and Mr. Tittle and you (Mr. Hill) and myself, and you told us that whenever we changed that contract any we were on dangerous ground, and that we had better go out there and see the conditions and give him an answer next day, and we came back in the office, and either you (Mr. Hill) or Mr. Cabell announced the decision to Mr. Eldridge. That decision was that we would give him an answer the next day after going over the proposition. We went to Sugarland the next day. I keep an expense account and kept a credential book up to the time this new mileage book went into effect, and it shows me how to make my expense account with other data I have, and I always have those and my sleeping car slips and that would show what day I went to Sugarland. My expense account shows railroad fare from Houston to Sugarland on December 6-7, 1911. We did go to Sugarland following this conversation in Mr. Lane's office next morning. Mr. Cabell and Mr. Tittle and Mr. Hill went with me. We talked the matter over with our chemist, Mr. Richards, who was there, and we went to the mill and looked around and talked among ourselves, and we came to the conclusion that we would tender them the cane and stand on our contract and Mr. Cabell or you (Mr. Hill) or myself announced that decision to Mr. Eldridge. There never was any agreement or any decision on the part of the Prison Commission so far as I know to turn over the cane to Mr. Eldridge and take the results of his operations. I was never present at any meeting of the Commissioners or with anyone of the Commissioners when anything of that sort was determined. Mr. Eldridge said he would expect the cane, that he would expect the Commission to deliver the cane. I think I spent the biggest part of the day there at Sugarland with these other Commissioners. I may have gone over to Capt. Addison's after dinner and I think we all came to Houston that evening in an auto, but we were there part of the day. We may have gone to Harlem. I think Mr. Eldridge may have asked for more men for this Imperial Sugar Company's Share Farm; and said that he thought more men ought to be there than was there during the harvesting season and during the cultivating season, Capt. Mills made a request to us for a few more

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TEXAS PRISON COMMISSION VERSUS IMPERIAL SUGAR COMPANY
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men, and I took the force of men off the railroad, the Santa Fe, and put them there and worked ten or fifteen days until Capt. Mills got out of a tight. We would have been glad to have put as many men everywhere as we could, according to our judgment and what the Managers would say to us.

Q. Just state to the Court whether or not you could, under the law, and under the rules and regulations of the penitentiary, have furnished any greater number of men to the Imperial Sugar Company than you did?

THE DEFENDANT OBJECTED TO THAT QUESTION BECAUSE THE QUESTION AS TO WHAT IS THE LAW IS FOR THE COURT TO SAY AND NOT FOR MR. BRAHAN, AND IF THEY WANT TO SHOW THAT ANYTHING WAS ATTEMPTED IN VIOLATION OF ANY RULES OF THE PENITENTIARY, THEY SHOULD INTRODUCE THOSE RULES AND NOT ASK FOR MR. BRAHAN'S INTERPRETATION OF THE RULES.

THE COURT: I DON'T THINK IT IS ADMISSIBLE FOR THE WITNESS TO SAY WHAT THE LAW IS, AND I SUSTAIN THE OBJECTION.

TO WHICH RULING OF THE COURT THE PLAINTIFF IN OPEN COURT EXCEPTED.

I furnished Counsel for the other side a statement of everything in the penitentiary system, with the exception of the insane, possibly 17 of them. During the year 1911, the Penitentiary System had contracts with various people. We were operating the penitentiary at Huntsville and at ~~Rusk~~ Rusk. We operated the Harlem Farm and the Imperial State Farm and the Ramsey Farm and the Clemens Farm and the Wynne or Gorse Farm. All of those farms were supplied with some men. If we had had the men to spare, I would have liked to have had more men on all of them, and sometimes we would be up with the work pretty well. That (indicating paper) is a statement of the men in the penitentiary system as made out by the various departments.

The plaintiff offered in evidence said Statement, which is as follows:

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R. W. BRAHAN FURTHER TESTIFIED:

There was never any demand made to me by Mr. Eldridge or anybody representing the Imperial Sugar Company for any work to be done on the Imperial Share Farm, that was not complied with, that I know of. I don't remember that Mr. Eldridge ever made any demand on me to have the ditches cleaned up. I have no recollection of his making a demand of that kind. There may have been letters, or he may have made it to the other Commissioners. He never made any complaint to me that the contract was not being carried out. He may have made it to Capt. Mills. He never made any complaint of that kind to me. He never made any complaint to me that the fences were not being fixed up that I remember of. I think I would remember it if he had. Towards the last he may have made complaint that we had failed to comply with the contract in some particular: when we were getting ready to move off, I think that he thought may be that we ought to take that frozen cane off the ground, and I think along about the first of January he made a demand about his ditches in a general way, but during the contract year, up to the first of January, I have no recollection of his making such demand of us. In order to have given Mr. Eldridge more men, I think it would have been necessary to deplete the forces of some of the other contractors or on the State farms or in the penitentiary. We could have given him more men to a certain extent, but if we thought Capt. Mills was well up with his work and he wasn't making any demand of us, we would use them somewhere else. We were all close together and frequently we would move men from one to another of the farms. The Prison did not make any new contracts for forces after they took charge, except that we changed one force. They had one that was the Dew Brothers Force, and we changed it from a share force to a contract force. We didn't make any new contracts; I think we rented a piece of land. We never made any contracts for any men during 1911. We found these contracts in existence when we took charge, with the exception of the change with Dew Brothers. I would have designated the force on the Eldridge Farm as what you would call a first class nigger force. The

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force on the Imperial State Farm was a dumping ground. We used that to concentrate men, and we would send them white men, Mexicans and niggers all there and we would draw from there and send them to other places, some at Bassett Blakely Place or some at Dew Brothers or Harlem Farm or some, I remember 50 or 60 men we took there and put in on the Sugarland Railroad for W. T. Eldridge and I. H. Kempner. It was a general place for cutting out men and sending them to difference places. We used every diligence that we possibly could to save that cane on the Imperial Sugar Company's Share Farm: we lost our own crop and everybody in the state that I know of and a great many people in Louisiana lost theirs, but there was a general loss all over Texas. I had Mr. Addison to take his force over there to assist in windrowing and cutting cane both. I don't know that there was a direct order of the Commission given, but it was agreed to by all three of us that we do that. It was an act of the Commission. I was in Sugarland one day and Mr. Eldridge was telling me that he could get Mexicans pretty easily, and we had not been having many men and to my mind on the Ramsey Farm there was the heaviest tonnage of cane in the State, possibly Trammell's place may have had as heavy, but I don't think so, and we were not getting as many men as we ought to get, and I asked him did he think we could get together and move some of Capt. Mills' men down there: I wouldn't state whether he brought it up or I did, but it was brought up between us, and he said yes, he was satisfied we could, and about that time, Capt. Mills came up and we told him about it, and he didn't seem to like it. No man that has ever worked niggers likes to work Mexicans or whitemen and he didn't disagree, and he said Let us take 50 of them, and the State of course, was to pay for the Mexicans. Mr. Eldridge stated that he could get plenty of Mexicans. He agreed to this force being transferred to the Ramsey Farm, and when I say Mr. Eldridge, I mean the Imperial Sugar Company. He stated that he could get Mexicans and I told him the Commission would pay for the Mexicans if he could get them. He put some Mexicans in there. I wouldn't say how many because I never saw them in the field and never saw them working

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TEXAS RAILROAD COMMISSION RECORDS IMPERIAL SUGAR COMPANY, 1911
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Mr. Eldridge never made an objection to moving those convicts away from there- not a bit. They were sent to the Ramsey Farm and put to harvesting cane there: they were sent down on the Sugarland Railroad. We continued to deliver the cane from the Ramsey Farm whenever we could, whenever the weather was good and we could get the cars, and there was less complaint at the Ramsey Farm about the cars than there was anywhere. I don't think Capt. South could have loaded many more cars than he got. I think there were the worst weather conditions I ever saw to move a cane crop in. It would get cold and then it would rain and warm up again and it was an unusual winter. When I was a little fellow, I used to go down with my father: he was Manager for Col. Cunningham until his death, and I used to go down there before he went with the Colonel as Manager and used to go there and hunt a little bit and when I was at home, I would go down and spend a part of the Christmas with my father, and during the years I have been with the penitentiary, there has never been a season that I have not been to one or more or all of the farms where they were operating convicts, especially if they had an interest in the crop. I was engaged in farming there with Col. Cunningham for two or three seasons, before I was Prison Commissioner. The weather was worse than I ever knew it. With continued rains, that land gets very bad, too bad to move an empty wagon over it. The wagons you move cane in are very much heavier than the wagons we know in this country I did everything we could do to save that cane crop: I would have loved to have saved it, every pound of it. I don't know of a thing that we could have done to save it that we did not do. I thought we had the best men in the State to put in those places. If the mill could have taken care of the cane, we might have saved a great deal more of it if we had had a bigger force, and if they had started the mill ten or twelve days earlier they might have absorbed a good deal more of it. The mill did not absorb the cane as fast as the forces could put it in, so far as I know. I couldn't tell you the mill operations. Our reports show that we gave them all the cane they could use up

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THE PLAINTIFF OBJECTED TO WHAT REPORTS SHOWED,- WHICH OBJECTION WAS BY THE COURT SUSTAINED. PLAINTIFF EXCEPTED.

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It is a fact that the report of our managers showed that he was delivering all the cane that he could; that he wasn't getting cars enough to keep the mill busy and in consequence of that, we didn't put any more men down there at those various farms. I had a conversation with Mr. Eldridge regarding the windrowing of the cane before this big freeze came. Capt. Mills and myself had a conference with Mr. Eldridge about windrowing the cane. We went up and talked to him about windrowing and he said he didn't believe it should be windrowed and he said he didn't think it was to the advantage of either side to windrow it, and he being equally interested with the State I agreed with Capt. Mills at that time that we would not go into a windrowing just like we did at Lakeside. My recollection is that that conversation took place- the weather report would be the best evidence and the rain gauges- but I think there was a good heavy frost sometime in the last few days of October, but on the morning of the 13th I was in Houston, and would go out to the places every day and my wife and sister-in-law were there and on the morning of the 13th, I heard the telephone ring about six o'clock in the morning, and I told my wife, I says, "I bet they had a freeze last night and either Capt. Addison or Capt. Blakely called me to the phone and told me the thermometer was either 27 or 28, I wouldn't state exactly, but long about there, and I got into an automobile and I am satisfied it was the same day- and I took Mr. Pat Murphy was one of them and one of them was the buyer for Pennick & Ford. No, I didn't take them with me then, but I told them I would take them back to town with me if they would go by Harlem and Dew Brothers. I had been up to Imperial and to Blakely's and Addison began windrowing- I wouldn't say whether he had or had not. That was not the day I had the conversation with Eldridge. I went on down to Addison's and Dew Brothers and talked to Jones, the Manager and Addison, and he didn't think it was bothered much, and I took him in the field with these two gentlemen- Murphy didn't seem to take any interest, but the other man did, and I showed them a great number of stalks that the bud was badly killed on the cane and I went on down to Dr. Dews and he told me the same condition existed and the bud was killed pretty

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TEXAS PERSON COMMISSION VERSES IMPERIAL SUGAR COMPANY 1911
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nearly everywhere. I went on into Houston that day, and came back the next day, may be the 15th, and Capt. Mills told me he was afraid to go to windrowing. It was between the 13th and 17th that this conversation took place. My judgment dictated that we ought to windrow that cane. I thought so. Mr. Eldridge did not agree with me at that time. We waited a few days after that before we windrowed the cane. I guess we waited four or five or six days, may be seven. I waited because I felt that Mr. Eldridge was equally interested in it, and I thought he had as much right as I did to be right about a windrow and we were both hoping that it would not freeze. There is no man's judgment good about a windrow. I postponed the windrowing out of deference to Mr. Eldridge's wishes. So far as I know, we never acted arbitrarily with Mr. Eldridge about any of the conduct of that business. He never made any suggestion about the harvesting of that crop to me. He never made any to any commissioner nor to the Managers, as far as I know. The Prison Commission continued to have this cane delivered to Mr. Eldridge after December 2nd up until January. We delivered it to him because I felt that we had to deliver it to him under the contract. He demanded it. It was in response to that demand that I was making the delivery. I think it got to the point where he couldn't run the mill any longer, the cane had gotten so bad, and Capt. Mills and the different Managers said that Mr. Eldridge had told them he would not receive any more cane, and that is why we stopped delivering it when we did stop. There was never any suggestion by Mr. Eldridge or anybody else representing the Imperial Sugar Company, or intimation to the effect that they understood they were not to pay for that cane, to me. There was never any intimation from Mr. Eldridge or anybody else that they understood they were to get that cane. Mr. Eldridge made that proposition in Mr. Lane's office ~~xxxxxxxSugarlandxxxxxxx~~ and we refused it. There was never any statement by Mr. Eldridge after that conference in Mr. Lane's office and at Sugarland on the 7th that he was not going to pay for that cane, but was going to receive the cane under the understanding that he was to account for the results after selling it and milling it. I had a talk with Mr. Eldridge

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TEXAS PRISON COMMISSION VERSUS APPELLAL SUGAR COMPANY, 1911
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about racking those cars. That was before this letter that they offered in evidence was written.

Q. Tell the Court what your conversation was and the agreement between you was with reference to the racking of the cars and the price to be paid?

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE THE CONTRACT IS IN WRITING AND IS BEFORE THE COURT AND EVERYTHING THAT WAS SAID BEFORE WAS REDUCED TO WRITING AND IS MERGED IN THE CONTRACT. THIS IS AN EFFORT TO PROVE THE NEGOTIATIONS THAT LED UP TO THE CONTRACT AND AN EFFORT TO CHANGE THE TERMS OF THE WRITTEN CONTRACT.

THE COURT: I DON'T KNOW WHAT THE TESTIMONY IS GOING TO BE: I WILL HEAR THE TESTIMONY AND NOTE YOUR EXCEPTION.

I think it was some time in September- Mr. Cabell and Mr. Tittle had never been through a sugar season and I was worried about getting the cane off and everything, and we went down to Houston and Mr. Hill was with us, and they submitted several propositions to us about the Harlem Cane and about the Imperial and Ramsey cane and different things that came up, and we sold the cane on the Ramsey Farm to Mr. Eldridge for \$3.00 a ton, or to the Imperial Sugar Company I would not state which, and made a trade about those switches in the yard at Harlem and especially those two switches, and when we got through, I asked Mr. Eldridge what he could do for cars, and he told us he could furnish us plenty of cars, and I asked him about the racking: we had no lumber and had not arranged for any, and he said that he had plenty of lumber, and may be said the Imperial Mercantile Company, I wouldn't say which, and I asked him about racking the cars and I think Mr. Hill, Mr. Cabell and I- I don't think Mr. Tittle was there, but Mr. Lane was there and Mr. Eldridge, but he said he would rack the cars for us at cost: that he had the lumber on hand and the carpenters and said he thought he could do it cheaper than we could, and I thought he could, because we were busy here and had to attend to the Harlem Farm and had all of our carpenters in, and I told him nothing could be more satisfactory than that, and we would accept that proposition, and when I got home, he called me up over the phone and we were in the Commission Room and he told me

REGINA SUGAR COMPANY RECORDS
TEXAS RAISON COMMISSION VERDUS IMPERIAL SUGAR COMPANY 1911
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that he could rack the cars at \$35.00 a piece, and I turned to the other Commissioners and told them what he said, and they said all right, go ahead, and I told him to please confirm that by letter, which he did, and I told him to go ahead, that it was satisfactory, thinking of course that that was the cost to him to rack those flat cars. When I wrote that letter, I did it, based on his statement that that was the cost. He said that he would rack them at cost. About that sorghum, early in the year, when we were laying out the crop, I had become very much impressed, and I am satisfied Mr. Eldridge had too, with making sorghum into syrup. The year before Dew had planted a good deal of sorghum and sold it pretty well and he was going to plant 100 or 125 acres again, and Mr. Eldridge said he thought we ought to have put in 300 acres, and I said I didn't know anything about sorghum except what Dew Brothers told me, and he said "I feel that we can make into syrup and ought to be able to get \$60.00 an acre out of it, and I thought that was a good crop, and it would come in just about the time, just before cotton picking, and I could throw part of Capt. Addison's men over there and harvest that crop and get through with it before cotton picking began and make a few thousand dollars that would come in at a good time. The sorghum was to be ground at Mr. Eldridge's mill. I don't know why it wasn't done: he never notified us that he was ready to take care of it, and I wouldn't make the statement whether his mill was ready or not, but Dew Brothers, who had a mill did mill there and we got our part of the syrup and we used a great deal of it for feeding our men. Mr. Eldridge never did make any request of me to deliver that sorghum that I know of. He never notified me that he was ready to grind it. I never refused to do anything with it. After the sorghum was not good for making syrup, Mr. Eldridge said he hated the loss of it in not making syrup, but that he was putting in a mixing plant and he could possibly use part of the sorghum in that, and he was going to get some thrashers and he would thrash the seed and possibly get ahead on them. I didn't know a thing in the world about sorghum: I had seen a few seeds saved. He never got the thrasher that I know of. He never notified me that the thrashers were ready, or that he be

GRAND SUGAR COMPANY RECORDS

TEXAS RUSSELL COMMISSION RECORDS
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furnished men to thrash the seed. He never made any request of me to have the cane hauled out or stored or anything of that kind. I told him I was going to haul a little over on Addison's place for feed, and he offered no objection to it. I think we used a little over there. He never asked me to store it or do anything with reference to saving it, only he told me he was going to get thrashers and try to save the seed.

CROSSED BY THE DEFENDANT:

~~furnish~~ I was sent down to the Dunovant place several years in succession to see how the crop was being moved and handled and made my reports to Mr. Wright. My position at that time was Financial Agent. Prior to the time I was employed by Cunningham Sugar Company, I had never engaged in farming in cane. I stayed there as an employee of the Cunningham Sugar Company I think for two years. I had ~~something~~ to do with raising cane between that time and the time of my appointment as one of the Commissioners. Since I have been one of the ~~Commissioners~~ ~~and have~~ ~~been~~ ~~one~~ ~~of~~ ~~the~~ ~~Commissioners~~, I have engaged in it in the manner I have testified. Mr. Cabell and Mr. Tittle have never gone through the experience of taking off a cane crop, to my knowledge. With the exception of what experience I have had which I have detailed, the whole Commission had had practically no experience. I don't know what line of business Mr. Tittle has been in up to the time of his appointment as Prison Commissioner. I don't know whether he was in the grocery business or not. I never saw Mr. Tittle but one time - well I saw him in Austin once and in Rusk once. He was a County Clerk. I would not say that he had had no experience in farming. He may have been raised on a farm. Mr. Cabell is from Arkansas. I never saw any ribbon cane grown in North Texas or heard of any. I think they fetched Mr. Cabell up a little like they did several others in the rice farming business. I think he came but about like you (Mr. Lane) did in rice farming. I don't know that Mr. Cabell ever planted any rice except that he told me that he had. I don't know that Mr. Cabell's experience has mostly been that of an office hunter. He would be the best man to prove that by. I don't think the mere fact

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TEXAS RICE SUGAR COMMISSION V. CUNNINGHAM SUGAR COMPANY 1911
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of cane being frozen would hurt it or ruin it unless it had soured. But if it had soured after a freeze, I think it would be bad. I don't think frozen cane would sell as well as cane that had not been frozen. It would sell a few days. How many days would be a matter of guess. If I were a mill man and there would come a freeze and freeze the cane, I would not know whether it would be a day or two days or three days before the weather would turn warm and spoil it. I couldn't tell that. I don't think I would buy it as a manufacturer not knowing that. As long as the cane was good, I would try to use it as long as I could for my customer. Nobody would buy frozen cane. It is my opinion that no sane man would do that.

THE PLAINTIFF OBJECTED TO THIS LAST STATEMENT OF THE WITNESS BECAUSE IT IS A CONCLUSION OF THE WITNESS, - WHICH OBJECTION WAS BY THE COURT SUSTAINED. ^{THE COURT SUSTAINED IT WOULD NOT HAVE} ~~THE COURT SUSTAINED~~ Have any market value after it would begin to sour. I never heard of anybody buying frozen cane : after cane freezes, you can use it ten, 15 or twenty days. I never heard of anybody making a contract for frozen cane. I never heard of its having any market value after it was frozen, I don't think, but if you were ~~grinding~~ grinding cane, you would still keep on grinding it. I think in about six or seven days after that freeze, fermentation began to show. I don't know that the Commission sought to inquire into the product resulting from the cane delivered after it was frozen for the purpose of determining the result. If we did it, I don't know why we did it.

Q. But if you did it, why did you do it?

THE PLAINTIFF OBJECTED TO THAT QUESTION, - WHICH OBJECTION WAS BY THE COURT SUSTAINED, AND TO THE RULING OF THE COURT THE DEFENDANT EXCEPTED.

We did not do it as late as the 27th of January, as I remember. I don't remember that if we did. We did not seek to make arrangements and to have an opportunity to investigate the result of the manufacture of that cane in order that we might determine what it was worth that I know of. I can't recall it now. I don't recall it now and if I did recall, I would say so. I do not know that within a few days after that cane began to ferment it was absolutely worthless

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for making sugar. I was trying it every day. We made sugar out of it. The thermometer was 16½ degrees there at the Clemens Farm and we made sugar there way up into January. Whether we made enough to pay for running the mill, you will have to prove by the bookkeeper. It was profitable to get it off the ground. Q. Independent of getting it off the ground, if you had been buying it would it have been profitable? A. We did buy it. We bought it from the people on little places that belonged to the State. We bought frozen cane, that had been through a freeze of 16½ degrees. As far as the test showed it was all right. Until way along in January. We paid 66% for 96 test sugar, and the last we paid for was along between 65 and 69, I wouldn't say exactly. We bought cane after the freeze. I think we bought cane after fermentation set in. After fermentation set in we made a great deal of sugar. We bought frozen cane for the State of Texas. Q. Can you account for buying it? A. I don't think that has anything to do with this case. We made money on the Clemens Farm. We made money on the whole operation of the mill. We thought we were making it on the frozen cane. When we got to where we thought we were not making expenses, we told them not deliver any more cane. I think we made some money on that frozen cane. I haven't got any record of the result. I know Mr. Eldridge and know him tolerably well. I don't know whether he is a cautious man or not. I would not say whether he is a man that is experienced in manufacturing sugar out of cane. The only time I ever heard of him running a mill was the Ellis mill. That was five or six years, ago. The first I knew of his raising cane to amount to anything was on the Bonus Place I wouldn't say exactly how long. That was when Rice was Financial Agent or Superintendent. I think it has been 10 or 12 years, not as much as 15. We hauled cane off the Bonus place a few days after the freeze. I don't know how many days exactly, the records would be the best evidence. My recollection is it was ten or twelve days. We quit because they notified us they would not receive it any longer. Because it wasn't profitable for them to run their mill. I should imagine it was because the cane was souring on them. They never told me that was why. That cane was frozen. I know that was what

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was the matter of my own knowledge. I admit getting that letter from Mr. Eldridge which read, "On account of the recent damage to the cane crop by freezing, we are compelled to notify you that all cane received from this date will be subject to your own risk, and will be used by us at whatever price we feel justified in paying for it, to be determined by the result of grinding and the sale of such product. I understood it. I don't think that Mr. Eldridge ever receded from that. That was his proposition under which he took the frozen cane. We continued to deliver the cane after receiving that letter. Mr. Eldridge had the right to reject the cane, but just as long as he received it, he must pay for it according to contract. We expected him to receive the cane or reject it. I wouldn't know whether that letter is a rejection subject to those conditions. We were like Mr. Eldridge: we had lawyers that we referred those things to and their judgment may have been bad. Mr. Eldridge also wrote in that letter, "The cane is practically ruined, and a few days of warm weather will complete this and render it absolutely unfit for use". I understood that and that Eldridge was receiving it under those conditions. We didn't think anything about it: we expected him as long as he received that cane to pay for it. I said that we consulted our lawyers. I didn't say that under the advice of our lawyer we were going to make him pay for no account cane. We consulted with him and he told us that whenever we altered that contract we were on dangerous ground. I didn't tell Mr. Eldridge that. We went on delivering the cane after he wrote us this letter. That was under advice. We gave our attorney the information upon which he prepared our pleadings: we gave him the information we had in our office and he heard a great many of the conferences we had in our office. We held two conferences in your office. I think we had two in your office and I think our attorney heard both of them. I didn't draw those pleadings up and I don't know why it does not state that he was bound to pay the contract price. I told you I didn't deliver the facts to our attorney: I may have helped on some of the facts, but I don't think I gave them those facts there. In regard to drawing those papers, I wouldn't say where Mr. Hill and the Attorney

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General got their information from. I don't think we got to Sugar-land on December 4th, as stated in the letter from Cabell to Eldridge. I think it was on the evening and night of the 6th that we met Mr. Eldridge at your office. I know we were there after supper, but we may have been there in the evening, but I am not certain of that. I know we were there that night because Mr. Eldridge said he was going on home that night. I was there and Mr. Tittle and Mr. Cabell and Mr. Hill and Mr. Eldridge and you (Mr. Lane) There was nobody else there that I remember of. The subject of that conference we had there was that frozen cane. I don't think there was anything else that I can recall. I don't remember whether the proposition to lease Mr. Eldridge's place for this year had been given up or not. I don't remember whether it had been given up at that time or not. I would not say whether on that night Mr. Eldridge delivered to us two contracts which had been pending for months or weeks. My memory is not clear on it. The day we went out there to see about the lease, Mr. Ed Lane, the Assistant Attorney General was in the office with us and we were going out the next morning, and it was Mr. Cabell and myself went and Mr. Hill and Mr. Tittle did not go and we went out and took dinner with Capt. Mills, and I don't think it was the same day that we went out to see about the cane. I know that on that day, the 7th, we did not go and look at any implements. I knew we did go out there just as you state, and Mr. Ed Lane was going with us and he said it was so cold that he wouldn't go or it may have been that something called him back to Austin. I know he didn't go back to Austin that day we come back to town in the evening and saw him again and he went to Austin that night.

Q. I will ask you if this didn't occur in substance: That this letter you already had advising what Eldridge would do: that Mr. Cabell sitting to my right said to Mr. Eldridge, who was in front of him, "why, if we turn that cane over to you to grind and wait the result we will absolutely be without information and at your mercy with reference to what you pay us for it": do you remember that? A. I think there was some such statement as that made. I wouldn't say that Eldridge said in response to that statement, "No, you don't have

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to do that: you can put a man there of your own selection and let him watch every motion and everything that goes with that cane, and know just what is done". I wouldn't say that he said that, but he said that we could have a chemist there. My memory is not clear as to whether he said, "You could have a man there that would know every step that is taken so you will know what is done". I think may be you (Mr. Lane) said something like, "It seems to me if you do that it is impossible that either cane be hurt", but I don't remember, but I will say this, I always thought that you would try to be fair to both sides. We did not agree that we would send a man there adopt that course. We never agreed to anything that night. We said we would go out next day and go over the situation and give Mr. Eldridge an answer. I did not think that Eldridge would take that frozen cane and pay for it as if it were perfectly good cane. I have had such an idea. The next day when we told him we would not accept his proposition and he accepted it then, I understood he was to pay for it according to contract. I think Mr. Hill or Mr. Cabell told him so. We didn't do it that night. I don't think we told him that we expected him to take the frozen cane and pay for it like good cane. If you were to tell me that that letter was written at your suggestion and would get on the stand and swear that--I say, if you say that is a fact I would take it as such. I don't remember that exactly, but whatever you would say, I would know that is just what you thought about it. I will try to remember and tell just what occurred that night. I don't think that that letter was written at your (Mr. Lane's suggestion) and that you (Mr. Lane) suggested that Mr. Eldridge was going home that night and he would take it back to our man and he would commence in the morning and from then on he would do it. I don't remember that. I think you saw Mr. Hill write the letter. Mr. Hill wrote the letter, folded it and put it in an envelope and gave it to Mr. Eldridge. That is a fact, and Mr. Eldridge said he was going on home that night, and I recollect it was a bad night. It wasn't bad where we were, but I think there was a piece of bad road in between there and Sugarland at that time.

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I went to Sugarland the next morning after that, on the train. Mr. Cabell and Mr. Tittle and Mr. Hill went with me. Nobody else went that I know of. We saw Mr. Eldridge a few minutes after we got there. We saw him in his office: I think he was in his office when we walked over there. I think Mr. Cabell and Mr. Hill suggested going to see the Chemist and the laboratory. I don't know what Mr. Hill said about it: I didn't go there with him: I walked on over to the mill, I don't know whether Mr. Tittle went to the laboratory with them or not: I saw Mr. Cabell and Mr. Hill, and I don't know whether Mr. Tittle was out talking to some of the weighers or Capt. Addison or not. I walked over to the sheds, and we all went over to the mill together after that. I don't know what occurred between Cabell and Tittle and Hill and Eldridge. I may have been there during that day. I was not there when they were there. I went over to the mill and then we all went over together. Nothing was said about Mr. Eldridge buying this frozen cane at full price before they went to the laboratory. We never told him anything about full price at any time: we just told him we expected him to stand on our contract. I don't think we had a contract for frozen cane. I think it is stated in the contract that he could refuse the cane, refuse frozen cane. There was nothing about his receiving or not receiving, paying or not paying for frozen cane before Cabell and Hill went to the laboratory. If anything was said it was after that- after we had talked to the Chemist, Mr. Cabell and Mr. Hill and Mr. Tittle and myself. When I refer to the Chemist, I mean Richards. After we talked to him, we all four went back to see Eldridge and Mr. Cabell or Mr. Hill served the notice- I think it was Mr. Cabell. It was in Eldridge's office. I don't remember who was in there with Eldridge when we went in. I didn't know anybody working for Mr. Eldridge except Mr. Ware who was around the office except Stiles and he was up in the front part of the office and I don't recall that either one was in the room. Eldridge was there by himself or with somebody, I don't remember. I don't know which one of us went in second, first, third or fourth. I do not know in what order we approached. Mr. Cabell was the

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spokesman for our crowd. I wouldn't undertake to quote his exact words to Mr. Eldridge, but the substance was that we expected him to mill that cane according to contract. I wouldn't say that was the first word that Cabell spoke on entering and beholding Mr. Eldridge. Eldridge's reply was that he didn't see how he could do that, or something like that. Eldridge said he didn't see how he could do that. Mr. Hill may have said something next. I don't remember what he said. He said in substance just about what Mr. Cabell did, that we expected him to mill the cane according to contract. Mr. Eldridge said that he didn't see how he could do that. We told him that we would expect him to comply with the contract. Mr. Cabell told him that. He told him that he could exercise his option under the contract, that if it was frozen, he needn't receive it. I don't know what Eldridge said then. I don't remember exactly whether he replied at all or not. I don't remember any reply that he made. We then went over to the mill. I think we probably went out of his office and broke up this conference. What I have said is the substance of what occurred and that broke up the conference. I imagine that is the contract that we advised Mr. Hill to frame this pleading on. If there is any other, I don't know anything about it. Q. In view of that conference and your already having received this letter from Mr. Eldridge to the effect that he was receiving the cane at your risk and that it was worthless, did you then believe that Eldridge was going to pay for that cane as good cane: was it your purpose that he should do so: was it your desire that he do so? A. Why, I didn't think Mr. Eldridge needed a guardian, and whenever that cane got so under the contract that he couldn't mill it at a profit that he would notify us and we could have stopped, and gone to putting our men at something else that would have been profitable to us. I think that the substance of what Eldridge said to us there in your (Mr. Lane's) office was, "I don't know whether it will pay or not: I don't think it will: I am willing to run the risk of trying to save it by using the mill and my force, if you are willing to haul it there". I think that is the substance of what he said. He was willing to run the risk with that plant to grind

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the cane and boil it, loss or gain, if we were willing to haul it there. I think that is about what he said. That is practically what we did do with Dew Brothers, and that is practically what we did with Trammell. We didn't have any contract of this sort with the Lakeside Sugar Company. When we made that contract with Dew Brothers and with Trammell, I thought it was an equitable and proper arrangement. I think it would have been just as much so with Eldridge as it would have with them.

Q. And the purpose of the State is to do that which is right and equitable?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE IT IS NOT PERTINENT TO ANY ISSUE IN THIS CASE. THE QUESTION BEING WHETHER OR NOT THE CONTRACT AS WRITTEN WAS BROKEN AND NOT WHAT THEIR PURPOSE WAS, - WHICH OBJECTION WAS BY THE COURT SUSTAINED, TO WHICH RULING OF THE COURT THE DEFENDANT EXCEPTED.

I didn't make the contract with Trammell. Mr. Cabbell and Mr. Tittle were there and I was not there and Mr. Cabell or Mr. Tittle told me what they had done and that Trammell had offered to turn his mill over to us to run, and that they refused to do that, and he then told them he would run the mill and if he made anything, he would give us half what he made and if he didn't make anything, we would not lose a dollar. I did not say to Trammell that I wanted him to be accurate about this thing, that the Commission had made the same sort of a trade with Eldridge and that I wanted him to be accurate with results. I wasn't there that day. I did not say that subsequently, or at any time, to him. I did not want him to keep an accurate record of what the results were in order that we might compare those results with those of Eldridge. I never said that to him at any time. I think we made the trade with Trammell and with Dew Brothers after the night that we were at your (Mr. Lane's) office, but I wouldn't say. I am nearly certain it was after that day. The trade we made with Dew Brothers and with Trammell was not the result of Eldridge's suggestion as to how we would get out of the business. Trammell said he was going to stop and turn the mill over to us, and he had poor cane and running down in purity as low as 35 and we didn't want to fool with it. Our chemist told me that and

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Mr. Smith. I didn't make the trade, but they called me up over the phone and told me what they had done and I told them it met with my approval. You will have to ask Mr. Cabell or Mr. Tittle whether we ever presented a bill or ever demanded of Eldridge that he pay the contract price for the frozen cane, because those things went through their office, and I don't know. I don't know whether we ever asked Mr. Eldridge, demanded of him or suggested to him that he would have to pay contract price for that cane until after he quit grinding. I ~~mean~~ ^{said that I did not} the trade for that railroad track. I don't know why it is that since that time Mr. Eldridge has caused the railroad to cease to use that track except for our business. I didn't make that trade for that railroad track, and have no recollection of having ever had it mentioned to me. I wouldn't consider that that track is in the Harlem yards. What I meant by Harlem yards was the two switches running nearly north and south by the sugar mill. There were several places we didn't have enough time for and may be not enough rails, and when he put in a few switch stands there, I told Mr. Eldridge I would like for him to fix up the yards and he said he would do it at the same cost of material. There was no way to get to the Harlem Mill at that time except by those track. If Mr. Eldridge were to take up that track, we couldn't get cars in Harlem yards. We never object to anybody getting freight from our Harlem yards. I think Mr. Patterson loads his stuff there. It wasn't a station, but we would accommodate our neighbors there. Long after we went an office, we had a warehouse up there, and I wouldn't say how many cars of rice people shipped out of there and they have to come up on our sidetrack, and we never objected. It is not advertised for use as a station. Its chief value is to get the freight into the Harlem Yards. If Eldridge were to take it up, we could get freight there now. We could not get it off the Sugarland Railroad. I don't know exactly where Cabell, Tittle and Brahan are and I would not make the statement that this piece of track is the last station Mr. Eldridge has never done us the courtesy to put up houses just exactly where we are. I don't know where Brahan is: I never heard of it until the other day. I know where both of them are but I don't

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know which is which. I know within a few hundred yards of where Cabell is. There is no depot there to mark it and I don't know it by the flesh marks. I will say that I thought Cabell was right where the State's track and Mr. Eldridge's track join. I thought Cabell was produced by a cross between the Sugarland Railroad and the State. We have been so busy in this lawsuit the last week, we have not had time to get together on Mr. Eldridge's proposition to withdraw this charge if we would let him take up the material. That track does not belong to the State, and we claim no supervision or control over it. The only thing we want is two hundred and some odd dollars. I think Mr. Eldridge will pay some things without suing and Mr. Blakely said he did that work at Mr. Eldridge's request. I don't know what it was that he did: I think the bills would show. I don't know that this grew out of the fact that MR. Eldridge told our Manager that he couldn't put any more cars there unless he did fix the track. Calvin Blakely never told me that, and I don't think he swore to that on the stand. He may have said that to Mr. Eldridge I wouldn't say that he did or did not. Mr. Eldridge said that Mr. Herring and Mr. Barton and Judge Gill and those other gentlemen, had so construed the contract that they did fix up that track track the year before. The books shows that they did that.

THE PLAINTIFF OBJECTED TO WHAT MR. HERRING AND MR. BARTON DID WITH REFERENCE TO THESE FARMS BECAUSE HOW THEY CONSTRUED THE CONTRACT DON'T AFFECT THE PARTIES TO THIS SUIT,- WHICH OBJECTION WAS BY THE COURT OVERRULED.

Mr. Eldridge told us at the time that we ought to pay for it. We told him that if the contract provided for it you ~~would~~ we would pay him. That is what I told Mr. Eldridge, and I don't think he will say that I told him we would pay for it. It was simply a question of how ~~we~~ ^{the courts} construed the contract. If the courts construed the contract that he did the work and we must pay him, we owe him. In order to keep a big mill running, you ought to have on hand a days or an day and a half's run ahead. If the mill would consume 50 cars a day, we ought to have had 75 cars on hand ahead. If you had 75 ahead and received 50 cars a day you would have 125 cars on hand.

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You would have to have 125 cars to keep the mill going: you ought always to have 25 or 30 cars in reserve so as to keep the mill going in case of bad weather. I mean you ought to have half a days run over a days run, and besides that other 50 that comes in a day. That would be 125 cars. I would say that 125 cars would make a ~~xxxx~~ yard look like it is full of cane. I think it would be a reasonable impression on one that ~~xxxx~~ did not have knowledge of mills that 125 cars would make it seem like the yards were crowded. In addition to that you would have a great many of these little cars in there that would make it seem like that much more. I think that is a good mill down there. I think it is the best mill in Texas. I ~~it~~ like the small mill at House's and the small mill at Ellis Mill better than the Cunningham Mill Company's mill. That is the best equipped mill that I know of. I don't know of any machinery that don't get out of fix and cause delay. When I contracted with Eldridge to grind that cane, I thought the mill would break down a little and get out of order. I wouldn't say whether we ever put 750 tons of cane per day to that mill or not. I never had Mr. Eldridge to refuse to receive any car of cane delivered to him. Whenever we sent it there, he was ready to receive it. He ground all that we sent to him: I think we did ask for cars a good many times when we didn't get them. I don't think the contract we made about racking cars ~~did~~ had anything to do with the share farm. I asked him to rack the cars for the Imperial State Farm, the Ramsey Farm and the Harlem State Farm. That didn't include the Cunningham Share Farm at all. We did not have any cars that were racked for service on the Cunningham Share farm that I know of. There were none that I arranged for. I wouldn't state that the cars that Eldridge was to furnish us was simply under the general duty of a common carrier to furnish cars. The contract for the state that we were trying to carry out may have called for him to furnish the cars. I don't know of a single instance when we asked for cars that we were not furnished them in a reasonable time, except what Capt. Mills told me--Of my own knowledge, I don't know. I imagine that cars stood there for days unloaded because a great many times you couldn't far as I know that the ~~message~~

THE COURT: THAT IS FOR THE WITNESS TO SAY.

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get in the field at all with the men. I don't know that somebody would ask for cars and they would rush and send cars down there and find cars already there unloaded. I never said that Eldridge managed that share farm. Mr. Mills I considered the direct representative of the State and Mr. Eldridge I considered as its direct representative and if there was any conflict between Capt. Mills and Mr. Eldridge, I have always--but I don't know of anything that ever occurred, and the only thing that he ever referred to us was something he didn't agree on. Capt. Mills under our direction managed that farm and we simply tried as we thought was proper to meet Mr. Eldridge's views. We did that with everybody. Whatever we did there was right in the judgment of the Commission. Whenever I acted, I acted for the Commission and I did what I thought I ought to do and within those bounds I tried to what was satisfactory to the people with whom I had dealings. That was my purpose. That is not all I did with Eldridge. Eldridge never interfered with our management of that place to my knowledge. The only time we ever disagreed ~~then~~ and then it was in a friendly way, we both didn't agree on things as a rule, but that time I was speaking about windowing the cane, and I don't think that Mr. Eldridge- I think if we had insisted on a windrow, Mr. Eldridge would have acceded to it then. He never did get in there and interfere so as to interfere with our growing or harvesting that crop. He did not want to windrow the cane and thought it would be better to take the risk, but I would not have waited on the windrow. Anyway, I acceded to that view. It is a serious question with every cane man as to whether to windrow or not. The cane deteriorates from the minute you begin windowing it. I will say that practically all of the cane froze, the windrowed cane and the other too. I will say for practical purposes, all of the cane in the windrow froze. If we had windrowed it, I don't believe it would have done any good. We didn't lose anything by the windrow, so that becomes absolutely immaterial. That is the only time I ever saw cane froze all through a windrow. Of course, if you have more men, you can cut more cane, but there never was a time, so far as I know that the mill had to stop on account of the cane

THIS COURT: THAT IS FOR THE WITNESS TO SAY.

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I don't know that: I mean when the weather would permit. If I had had more men, I could have cut more cane. If I had had more men to drive wagons, I could have hauled more cane. We could have gotten out our 250 tons if we had had cars enough. If we had had more mules to pull it and more men to cut it we could have hauled more cane. Eldridge never refused to give us any mules that we asked for. I wouldn't say that he bought a lot of mules and kept them in the lot there. I think there were times that we could have used a few more in the cultivating season, but we cultivated the crop all right without them. I have no reason to believe but that we had the mules: I believe we had the mules. I don't think we contracted to furnish him 250 men or more. I don't think we furnished him that many. Our statement shows that we didn't have that many on that particular force, but we took Mr. Addison's force over there. 4544 days for the time he worked would be 4 1/2 days for the men. If the harvesting season had run as long as it usually does, and this was the earliest freeze I think anyone in Texas knows of, I believe if the harvesting season had run the full length of time- of course we had a little crop on the Imperial Farm, and our intention there was to put that force on the share farm. We had a whole lot more there than we did on the Share Farm. We had a lot of ditching on the place and some turn row work. We had more men and had less land on the Imperial State Farm than we had on the share farm. Mr. Eldridge never made any demand on us that I remember of. I never testified at all about that. I don't remember it outright. We got in men from jail all the time. Under the law, they would have had to be taken from Huntsville.

Q. Why did you not furnish the 250 men or more to harvest that crop?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE THE CONTRACT DOES NOT SAY 250 MEN AND ON THE FURTHER GROUND THAT THE QUESTION IS NOT STATING THE FACT. WE CONTEND THAT THE PROOF SHOWS THAT WE DID FURNISH 250 MEN ON AN AVERAGE DURING THE MONTH OF NOVEMBER, DECEMBER AND JANUARY, DURING HARVESTING TIME.

THE COURT: THAT IS FOR THE WITNESS TO SAY.

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The reason we did not furnish the 250 men, we had the Imperial State Farm adjoining there, and our idea was, if we got to where we had to have a windrow, we could start in there and windrow the cane and put a few more men and windrow for them and after the crop was harvested on the Imperial Farm, we could have sent practically the whole force over there to cut Hills' cane.

Q. You didn't do it then because it was in violation of the law?

THE PLAINTIFF OBJECTED TO THAT QUESTION ON THE GROUND THAT WHEN ~~FRANKE~~ PLAINTIFF WAS ATTEMPTING TO INTERROGATE THE WITNESS ON THE SAME QUESTION COUNSEL MADE THE OBJECTION THAT IT WAS NOT FOR THE WITNESS TO INTERPRET THE LAW, AND FURTHER BECAUSE THE WITNESS HAS NEVER SAID THAT HE DID NOT FURNISH 250 MEN, - WHICH OBJECTION WAS BY THE COURT SUSTAINED, AND TO THE RULING OF THE COURT THE DEFENDANT EXCEPTED.

I stated that I had reformed one contract. We had a contract with Dew Brothers to hire them some convicts. We had two contracts. We merged it into one and made it a share force for the whole. The records there will show whether we increased the number of convicts there: if you will pass them over to me I will see. I don't know what force the year before shows we had with Dew Brothers. It shows that when we took charge of the Penitentiary, the Dew Brothers had 159 men in January, 135 in February, 123 in March, 122 in April, 132 in ~~May~~, 133 in ~~July~~, 191 in ~~August~~, 123 in ~~September~~, 166 in ~~October~~ in September, 179 in October, 145 in November and 140 in December. I don't know what the force was the year before and don't know whether we increased it or not. I don't think Gus Shaw had any convicts the year before. Gus Shaw's was a new contract. That was made before we went into office. We found Shaw's contract in existence when we came into office. I know that contract was not signed by us I am sure of that. I think that contract was made by the old Board: I think Capt. Herring and Mr. Barton and Judge Gill and all of them had to sign it. We had a great many more convicts at the Clemens place than we did at Sugarland. We had in last year on the Clemens Farm in our own cane, I could give it to you exactly, but my remembrance is we had 2900 acrs in cane

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there. My remembrance is that in the whole cultivated part of that farm we had something like 5200 or 5300 acres, in addition to that we had to harvest the cane from the Gulf Coast Growers Association. It was a contract Mr. Herring had made the year before that and we had to furnish so many men to harvest that cane and I think it was all carried by the Clemens Farm men. I said that Mr. Eldridge gave his consent to having these men moved from the Sugarland farm to Ramsey Farm. He was supposed to be paying for it. He was under contract to pay for it. If we establish our claim he will pay for it. We expect him to pay for it. It was to our interest to get it out and not Eldridge's, unless Eldridge made a profit on it. Mr. Eldridge consented that we might take these men down there and he would try to get labor for us which we were to pay for, and he did get labor and send it there. So there wasn't any loss there. We never returned those men.

Q. When you found out you couldn't keep the free labor, why didn't you return them?

THE PLAINTIFF OBJECTED TO THIS QUESTION BECAUSE MR. LANE IS MAKING THE STATEMENT

THE COURT: I HOLD THAT IS IS CROSS EXAMINATION.

The reason we didn't return those men there after the Mexicans left, we were never asked to return them, and I thought we could fill in with Capt. Addison's men about that time, and about that time we commenced putting his men over there. I didn't consider it the duty of Mr. Eldridge to request us to do what we ought to do: I don't think he had to make this request. It was no part of his business to request us to do right. About the racking of these cars, Mr. Eldridge was racking cars all the time, and would know we thought, what it cost, and when he told us, all of us, that he would do it at cost, I thought it would actually be done at cost. I thought Mr. Eldridge would do what he said he would do. I didn't know what it cost to rack these cars. There wasn't any difficulty to make the calculation as to how many standards we would need for each car and how high they would be, etc, but when Mr. Eldridge said he would do it at cost, we never thought any more of it. When he made this

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offer, I turned around to the other two commissioners and told them what he had said, that he would do it for \$35.00 a car, and then I told him to confirm that by letter, and he wrote me he would do it for that. I did not make any calculations. I was just like the mule that had not been hit over the head: I had not been hit over the head then, and I thought it was all right., and when we went to unrack the cars, I had the carpenters to figure out the cost. I don't know that that carpenter told me the truth: I just took his word. I relied on Eldridge when he said it would cost him \$35.00 a car. Now, I think it cost less, and I refuse to pay him for it. I don't think that Mr. Eldridge wrote me this: "Mr. R. W. Braham, Prison Commissioner, Huntsville, Texas. Dear Sir: I have taken the matter up with Mr. Ulrich in regard to racking cane cars, and find that we can rack these with No. 1 lumber, in a first class manner, equipping with handholds and center bolt, for \$35.00 per car. For your information I will say each car requires something like 1100 feet of lumber, and we have found it is poor economy to use anything but the best material, as even with this it is quite necessary that a great many of the cars be repaired during the season, and we will be glad to take care of these cars for you and will render you bills for repairs for the actual cost of labor and material to us.

It will ~~not~~ be necessary for us to have prompt advice in this matter, in order to make preparations to do this work for you in case you desire it.

Yours very truly".

I don't think there is anything in that letter to the effect that it would cost \$35.00 per car. The part of that letter in which he says he will repair the cars at actual cost is not where I got the idea that he would rack them at actual cost. I got my impression up in the office. I wouldn't say that I got that letter: a great many times I was away from home and didn't get the letters, and I wouldn't say I did or did not, but the conversation over the telephone, the talk to Mr. Eldridge himself and talked to the two Commissioners and I got the other letter about the \$35.00 per car. say that I would have been willing, if we had the labor, to haul it

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You understand, I don't deny getting that letter. If that was signed it wasn't signed by me. It has my name to it. I would imagine that Col. Dismick signed that. He might have consulted with the other Commissioners. I don't repudiate that at all, but I say that I told him over the phone- I never have denied about the \$35.00 per car, but that letter, I don't remember exactly, but I wouldn't deny that it wasn't written with my consent. As a rule, I sign my name to my letters, but he may have signed that and--

Q. The letter I referred you to was written on the 5th of October 1911, and says: "Dear Mr. Eldridge: Replying to yours of 5th inst., relative to racking of the cane cars, beg to advise the price you name is satisfactory, \$35.00 per car.

You can equip these cars with racking for the Imperial State Farm, Ramsey State Farm and Harlem State Farm crops.

Yours very truly, R. W. Brahan,
Prison Commissioner.

A. I will say this, that I would have written that letter if I had been here. I now repudiate this claim upon the theory that notwithstanding that plain letter and my reply that my idea was that Eldridge said he would do it for cost.

I expected him to crush that sorghum at his mill like Dew Brothers did his, at his big mill. I do not know whether Eldridge bought a thrasher and had it ready for me or not. I don't remember whether we could have done it any way or not. The way I understood that sorghum was to be handled-- I never handled any in my life, except in the Dutch settlements where you and I were raised, but the way I always understood that Dew handled it was that when it was ready to mill he would go in and strip it in a similar way as cane, only the fodder doesn't come up as easy and I understood he had lots of trouble from the mill going back on him and he would cut off the tops and haul it into the mill. I think thought, it was the intention of both of us that it was to be made into syrup. I don't remember a conference between Mr. Cabell and myself and Mr. Eldridge in which we decided that we didn't have the labor to spare from the other crops and that Eldridge said he would get a thrasher: I will say that I would have been willing, if we had the labor, to haul it

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up there and try to save it. I don't recall that conversation, but I would not have refused to have done that at all, and I felt a little bit to blame for the thing. I think both Mr. Eldridge and myself were too enthusiastic about the sorghum business. I don't remember whether after that we had a thrasher on hand and didn't have the men. I wouldn't say I did or did not. I don't know what it would have cost us to ship that cane at Bonus. I don't remember what the rates were: I think the rate is about between 55 and 67 cents per ton. I don't make that as an absolute statement. I just think that was what it was. I don't know what we could have shipped it to Harlem for: I think it would have been less--no, it would have been more to Harlem. We bought the frozen cane when we had cane already frozen on the ground because we were under obligations to these people that were our neighbors and had been taking their cane. We had more cane there than the mills capacity could handle. We could not have handled any more: we had more cane of our own than we could handle. We were thinking of grinding this share farm cane at House's if Eldridge had not taken it. I don't know whether House had all the cane he could handle or not.

RE-DIRECT BY THE PLAINTIFF:

Neither I nor any of the Commissioners ever agreed to this proposition made in Mr. Eldridge's letter of December 2nd, about the frozen cane. He demanded that this cane be delivered to him. That demand was made the day we were out there. We continued to deliver it to him until he notified us that he had shut the mill down. I never made any demand to put a man in the sugar house. We never did anything of that kind that I can recall.

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LOUIS W. TITTLE, a witness for Plaintiff in rebuttal, testified as follows:

The Prison Commission received this letter: "On account of the recent damage to the cane crop by freezing, we are compelled to notify you that all cane received from this date, December 2nd, on, will be subject to your own risk, and to be used by us at whatever price we will be justified in paying for it, to be determined from the results obtained from the grinding and sale of such product." In reply to that letter, on December 3rd, Ben K. Cabell wrote as follows: "I beg to acknowledge receipt of your letter of December 2nd relative to the condition of the cane crop, etc. Ben to say that Commissioners Cabell, Brahan and Tittle expect to be at Sugarland on Monday, Dec. 4th. We will then take up these matters with you". We went down to Houston, Mr. Hill, Mr. Cabell, Mr. Brahan and myself, on the evening of the 6th, and met Mr. Eldridge at Mr. Lane's office. At that meeting, the Prison Commission did not agree to the proposition contained in Mr. Eldridge's letter of December 2nd. There was no agreement reached there that night. We had a conference there that night with Mr. Lane and Mr. Eldridge, and talked over the situation generally, and after so long a time, yourself (Mr. Hill), Mr. Cabell and Mr. Brahan and I went into the adjoining room and had a conference and came back and told Mr. Eldridge we would be out at Sugarland the next morning and give him an answer. That was the result of that conference: that we told Mr. Eldridge we would be out at Sugarland next day and give him an answer. We went out to Sugarland the next morning. Yourself (Mr. Hill) Mr. Cabell, Mr. Brahan and myself all four went out there next morning. We did not accede to the proposition contained in Mr. Eldridge's letter of December 2nd the next day at Sugarland. After we got off the train, at Sugarland, we went over to Mr. Eldridge's office, and I think it was Mr. Cabell and you (Mr. Hill) and myself that went over to the mill together, and I believe Mr. Eldridge was with us, and we took a general look at the mill and the crusher, etc. and we went back and you and Mr. Cabell went into the laboratory and I afterward went by

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myself. I know there was no one with me that I remember of when I went in, and after we had been there half an hour or probably an hour, we went altogether on the gallery- yourself (Mr. Hill) Mr. Cabell, Mr. Brahan and myself- that is four- and we talked the matter over generally and agreed that we would hold Mr. Eldridge to the contract: that we would live up to the contract and have him to do the same. We had an informal meeting of the Commission and decided we would live up to the contract and demand Mr. Eldridge to do the same. Mr. Eldridge was notified of that fact. Neither nor the Prison Commission ever at any time agreed to deliver that cane to Mr. Eldridge and accept in settlement the result of his operations. I didn't do it, nor the Commission so far as I know. Mr. Eldridge demanded that the cane be delivered to him. The night before, in that conference the night before, my recollection is that Mr. Eldridge demanded that the cane be delivered to him, and the next day when you (Mr. Hill), Mr. Cabell and all four of us went in there, the three members of the Commission with you, Mr. Cabell did the talking and he told Mr. Eldridge that the Prison Commission was prepared and would carry out their contract, and would expect him to receive the cane, and he didn't say he would not receive it at all: He signified his willingness to receive the cane, and didn't object to it at all. The Prison Commission delivered him cane and continued to deliver him cane until up in January. He continued to deliver cane from that day up until January. Mr. Eldridge was given every opportunity I think, at that conference at his office in Sugarland, to decline to receive the cane. He did not decline to do so. In delivering that cane to the Imperial Sugar Company from that day on, I thought that Mr. Eldridge was to pay for it according to the contract price. That was my understanding: I thought he had a right to reject the cane and notify us that he couldn't mill the cane and wouldn't mill it, and he didn't do it so far as I know. I never heard of his notifying anyone that he would not receive it. I did request Mr. Eldridge to pay one account owing for freight to Mr. Crowther, but I did not request Mr. Eldridge to pay the Mercantile Company's account, never. I said that I requested him to pay one account owing to Mr. Crowther. Commission ever paid

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I don't know whether that is the account sued on. This account to Mr. Crowther is nearly \$2500.00; we have the expense bill for that, and they checked up and corrected it and the expense bill for this \$5000.00- I have never known anything about that, and having known nothing about it, I did not request him to pay it. I was in Sugarland in January after this suit was filed, and Mr. Crowther called to me on the front porch of the front of the office and asked me if I would not see that he got his money, and he said it was a personal matter with him and was liable to do him a great deal of injury: that he was under bond, and I told him I would do my best to get the account settled, and I said, "I will see Mr. Eldridge and see if I can't get him to settle it, and he said, "Mr. Eldridge is in Houston in Mr. Lane's office", and I went and called Mr. Eldridge and got him and asked him to meet me at the Bristol Hotel when the train came and he did so, and I then and there asked him to settle this account with Mr. Crowther because I didn't want to injure him. That is this account for freight: we have the letters that. Those letters there show it is about \$2596.00 I believe is the total. This letter which says, "Dear Sir: On October 3rd, I sent you quite a number of freight bills from the various camps as shown below: A. W. Addison, \$167.95; T. C. Blakely, \$392.84; J. N. South, \$662.67", - That is the account I have reference to. That is part of the account. I did not refer to the accounts attached to this answer. I had no knowledge of these accounts: I don't know anything about it. It was not my intention to pay this account set out in this answer for freight on the Sugarland Railroad, without their paying the account against the Imperial Sugar Company for labor for men on the Sugarland Railroad. I notice in this account there is a \$1275.00 labor bill that Mr. Eldridge owed for his Labor Plantation, and we expected Mr. Eldridge to refund that to the office and pay it out on account he owed us at the time, but he didn't do that.

Crossed by THE DEFENDANT:

I didn't lose anything by it. I as one of the Commissioners, had charge of the office and the financiering. I said that I didn't owe this bill for \$5406.40 for freight: I wouldn't say we didn't owe

Commission ever paid one dollar for freight

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it: I said so far as I know we didn't owe it. I know that the Sugar-land Railroad was hauling freight practically every day for the Prison Commission. I thought we owed a portion of that account. I thought we didn't owe that much. I have a couple of these letters I wrote Mr. Eldridge asking him for a statement of this account. I thought we owed the railroad some money, but I didn't know how much I don't know that we had paid this bill for May June, July, August and September. If we got it we owe it certainly. Crowther was advising me that he was liable on his bond to the Railroad company for the money. I knew that. I asked Crowther to see Eldridge and get him to pay it. He said he would pay it. I didn't see the voucher where Eldridge did pay it. If we owed for that freight, we ought to pay for it. I think we paid for all freight delivered in December and January. It was \$1286.36 that Eldridge paid. I wouldn't say that he paid that for freight that we received after November 30th: I don't know: I couldn't tell without seeing the expense bills and checking it up. All those expense bills were sent into my office from this Company. I don't know whether they were all after November 30th. There were quite a good many we never did get. You see the letter we wrote Mr. Eldridge about this expense bills and statements he never has got it and I asked the bookkeeper about it a time or two, and he told me all those expense bills had been credited to Mr. Eldridge's account. I certainly wrote Mr. Eldridge and asked him to pay this account. He wrote me and told me that he paid it. I don't think that I wrote and told him that I didn't mean for him to pay it but that I meant for the Imperial Sugar Company to pay it. I don't remember that. I don't think I ever wrote him to charge it against the same account: I owed bills for other matters and it was immaterial what account he charged it against. I think we paid something for freight besides what Mr. Eldridge paid last year. I wouldn't say when: I think we did. If we did I think we paid it by voucher, but as I said, the bookkeeper tells me that every expense bill that came into the office had been credited to Mr. Eldridge's account. Q. I asked you if the Prison Commission ever paid one dollar for freight in 1911 until after Mr. Crowther's statement as to

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Eldridge paid this, until after they refused to let you have any freight unless you did pay for it? A. I wouldn't answer that yes or no, without going to the records: I don't remember. Q. I will ask you if in March the 12th, this year, you wrote this letter.

"Mr. W. T. Eldridge, Sugar Land Texas,

Dear Sir: We desire to settle all accounts now owing to the Sugarland Railroad, inasmuch as Mr. A. Crowther, auditor, advises us that he is personally liable for these amounts, and this letter is to ask you if you will be willing to settle our account against that railroad with funds now in your possession belonging to us, charging same with our account? A. I expect I did--No, I didn't write that letter. Stubblefield wrote that letter. He is not my Secretary. He is the Commission's Secretary. Mr. Stubblefield wrote that letter at the request of the entire Commission. I don't think we requested Mr. Eldridge to pay it in full: all the same, I think we owed Mr. Eldridge for some freight last year. . By not in full, I mean this \$2500.00 didn't settle it all. I suppose that letter meant all of it? He paid the \$1276.00 I wrote him and told him he ought to have remitted what he owed the railroad.

Q. Did you wrote this: "Answering your letter of 22nd inst., and I note you have paid the labor bill for December 1911, \$1286.36 on freight due Sugarland Railroad Company. I think inasmuch as you are due the Prison System quite a sum of money for cane, that you should have remitted your check to cover this labor bill as it was a cash item:" right, then I will ask you this, is not freight a cash item? A. They were both cash items. It was to be charged to the general account: we knew he owed for labor and quite a number of other things and it didn't matter to what account he charged it. I don't know whether it was enough to cover this or not: he owed us \$1800.00 or \$2000.00. It would have been all right with me if he paid it out of the cane, just so he paid it. Mr. Haines, Chief Clerk of the Commission wrote that letter. I don't see a total here (Examining account) and I am not prepared to say what the amount is. I don't know whether that is the identical account used on or

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did you get that credit? A. I suppose it was mutual.
statement as to

not. It probably is but I wouldn't say.

Q. Now here your Chief Clerk, Mr. Haines, writes on February 3rd: "Sometime ago you sent us memorandum for \$5406.49"- that is this very account? A. Yes sir, I understand. It is the same account you sue on here.

Q. This is February 3rd: "Sometime ago, you sent us debit memorandum for \$5406.49 covering freight charges as follows: September, October and November"--giving some items there, referring to the first three items of freight delivered September 30th, 1911 for \$1438.43 charges on freight delivered, etc. "We are unable to find these bills covering these different charges, and we would appreciate it very much if you would have Mr. A. Crowther, Sugarland Railroad Company, furnish copy of expense bills comprising charges above mentioned"--You don't mean to say they didn't send them? A. If they sent them, I have never seen them. If they did send them I never did see them. I asked Mr. Robinett quite a number of times about the expense bills and he said he had not gotten them.

Q. "We have a few of this bills that have found their way to my office at different times, but we are unable to reconcile them with the amount as listed in your debit memorandum, and if you will favor us by having copies of expense bills as requested sent to us at once, we will check them up and enter the items of freight to our credit, thanking you in advance, etc." This is written by Mr. Haines A. Yes sir. The statement was sent in but the expense bills for each one of these items were never sent in as far as I know. I have inquired for them and never have been able to see them. I would not say that it was not true. As I said awhile ago, if the State owes Mr. Eldridge, they ought to pay it and will pay it. We wrote to the Imperial Mercantile Company requesting credit and an extension of time and we notified all our creditors: that was a general letter. I remember that letter to Ulrich. I think I wrote that letter myself. I never requested Mr. Eldridge to let me have credit there at the Mercantile Company. He never said anything to me personally. I never said anything to him about it. Q. By what means did you get that credit? A. I suppose it was mutual. The goods were

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bought by Capt. Addison and Capt. Mills. They furnished the goods without requisition: they may have had requisitions for them on a few articles, but in the main they were not. They didn't buy without authority: I think it was generally understood. I didn't request Mr. Eldridge to pay that account. When we balanced up this account with cane, we had never had no settlement. I have never offered to pay it. I think if we could get a settlement we could pay it. I did not authorize Mr. Eldridge to pay it: the only account I authorized Mr. Eldridge to pay was this account with Mr. Crowther, and he wouldn't say whether he would or would not. Mr. Eldridge did not say to me that it would be agreeable to pay that account provided he could charge it against the cane account, and I didn't say to him that that would be pleasing to me. He didn't ask me anything about the cane. It would have been agreeable to settle it out of the account he owed the State. I have no recollection of my ever telling him to settle the Mercantile Company account and asking him for a little credit. I didn't tell him to pay it. I will say this, if we owe Mr. Eldridge, we will pay him. It has been a long time due and he has not paid us. I think we were practically even when we settle that. This Mercantile Company account began in March and he didn't get my cane from us until the 28th of October. He owed us for that labor that was performed in June, July and August and quite a number of other items.

Q. I will ask you if you didn't get this letter from Mr. Eldridge, dated September 20, 1911: "We are today advising factors or persons to whom you are shipping cotton from the Cunningham Plantation, vended from us by your Board, that 40 per cent of said cotton belongs to us, and that we have a lien upon the remaining 60 per cent to secure advances heretofore made to you by us, and notifying them to make no settlement with you or with anybody else for the proceeds of said cotton. We realize that if this property upon which we hold a lien is converted and expended with our consent or without our protest that we would have no legal method of collecting what is due us, and your Board might not have the funds or be able to pay us out of other funds. We, therefore, feel it to be our duty and

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absolutely necessary to protect ourselves against all such possible conditions.

We have heretofore requested that you make payment out of these proceeds, but you declined, and we see no other course open to us but to protect ourselves as above stated; therefore, following out this purpose, decline to permit any other portion of the crop raised on said premises to be removed or sold until our part of it has been turned over to us and our advances paid for. We do not know whether there will be sufficient to pay us in full or not, and can never know until you have paid us.

Regretting to have to take this course, but your refusal to pay us makes it necessary, we are, yours very truly." Now, wasn't you taking the cotton and using his 40% as well as your 60%? A. No sir, I don't think so. My recollection is that we were to divide that property equally. He was to control the total until this debt that we owed was paid. We were not shipping the whole of it: we were taking our part of it. We paid it and I will state that that matter pertained to some notes which we settled.

THE PLAINTIFF OBJECTED TO THIS TESTIMONY BECAUSE THERE ARE NO PLEADINGS ABOUT ANY COTTON THAT WAS SHIPPED AND IT IS IMMATERIAL ABOUT HIS WRITING HIM THAT LETTER THAT HE WAS GOING TO HOLD THE COTTON: THERE IS NO PLEADING RAISING ANY ISSUE ABOUT ANY 40% OF THE COTTON.

THE COURT: THE POINT IS THIS: IF YOU PURPOSE TO SHOW THAT THEY MADE THE ARRANGEMENTS AFTER THIS LETTER WAS WRITTEN: THAT THOSE ADVANCES WERE PAID BY MR. ELDRIDGE AND TAKEN OUT OF THE CANE, THEN I WILL PERMIT THE TESTIMONY.

I have a letter to that effect: I don't know whether it is exactly that one or not. I met him in response to that letter at the Rice Hotel. I have no recollection of there trying to get him to let us take this money and receive his pay for cash advances out of the cane. If I did, I have no recollection of it: because it was my intention to pay Mr. Eldridge out of this cotton and he stopped it and we paid him. I have no recollection of his telling me that we would pay the cash advances out of this, the balance of what

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owed he would take out of the cane. I have no recollection of any such statement. I am just in this attitude that if the Prison Commission owes Mr. Eldridge, they ought to pay him, and if Mr. Eldridge owes them, he ought to pay them, but at the time when he began to render those statements for work on the railroad and all those things, we never had come to any settlement, but if the State owes Mr. Eldridge, they will pay him. Eldridge owes us for some labor besides the cane. He owed us for labor: I am not able to state the items. The statement filed there will better answer the question as to what it was that caused us not to pay those accounts from March year on down. He owed us for labor, and he owed us for cane. The Imperial Sugar Company owed us for cane. I am not prepared to say that they owed us anything in February or March. We expected to pay them. We didn't pay them because we were waiting for Mr. Eldridge to pay us. The Imperial Sugar Company owed us something. They owed us for cane. We never made any expense bills. If Mr. Eldridge would send them in there and my clerk would throw them away it wasn't his fault, but I don't think there is a man in the office that would do that. I suppose some of them found their way into my office by mail. That is what I mean by "found their way into my office." I do not remember which ones they were. Down to November 30th I owed the Mercantile Company. I wouldn't say whether the Imperial Sugar Company owed the Commission anything from May on down or not, without looking at the records up there: that is the only evidence I have. When we went to Sugarland on the 7th of December we first got off and went over and walked around--I don't know whether you would call it the sugar house or not--it was around about the mill: I guess it was part of the sugar house. I think Mr. Cabell and Mr. Hill went into the laboratory. I don't know of anything they did there or said there. Afterwards, I went into the laboratory alone and talked with Mr. Richardson and another young man there. Up to that time, we had had no conference with Mr. Eldridge. I don't know now, I think we had a conference--my recollection is we went into Mr. Eldridge's office when we first got there and talked a little while. We didn't have a conference about this cane matter, would be the result after that? A. I suppose it was. We never made

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After I had been in the laboratory, we three Commissioners and Mr. Hill met out on the front gallery. Eldridge was not there: he wasn't present. We didn't have a conference about this matter, before we went into the laboratory. We decided there on the gallery, at what was an informal meeting of the Commission that we would say to Mr. Eldridge, "We are going to carry out the contract, and we demand that you carry it out: we decided that we would tell Mr. Eldridge that we would carry out the contract and would demand that he carry it out. We all four went back in the office and Mr. Cabell did the talking. I don't remember that Mr. Cabell said that he would or would not carry out the contract. I know that Mr. Eldridge demanded that he get the cane. I don't ~~remember~~ remember what Mr. Eldridge said. I think we talked there three or five minutes. We did not talk about that business five minutes. We rely on that contract in getting pay for that frozen cane. I said that I expected if Mr. Eldridge didn't want it he would notify us that he rejected it.. That letter was the only notice we had. It was not a kind of a star chamber proceeding that we four were holding out there to trip up Eldridge and catch him on that. . We did not think that we would go in and demand that he take the cane and if he said he would not we would get it. There was nothing of that kind. There was no more demand that Mr. Eldridge pay contract price for this cane until this suit was filed than this: I asked Mr. Eldridge one day for a statement of our account over the 'Phone and so far as demanding pay for that cane we did demand it time and again. We demanded a statement. He sent us a statement clear up to the time the cane fro so. I have that now. Up to December 6th is what he gave me the statement in your office. I don't say it was December 6th, I don't remember about that. I wouldn't say whether it was the 2nd or the 6th. I think that we demanded of Eldridge that he pay for this frozen cane by asking for statements of account. There was no such agreement that he was to pay a reasonable price for the cane. Q. Now, if there was, if you were just writing for a statement that would call for a statement of the contract price to December 2nd, and what would be the result after that? A. I suppose it was. We never made

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no demand for the frozen cane. I thought we were complying with the contract: of course, I didn't know anything about this case. I didn't see it, and don't know that up to as late as March 3rd we were claiming only a reasonable price for this cane. I don't know much about cane. I don't remember that we made an investigation to find out the result of the manufacture of that cane ~~xxx~~ as late as January 27th. We didn't ask for it so far as I know. I have no recollection of it if the Board did it. That (indicating letter) was written by Mr. Haines, our chief clerk, on July 2, 1911.

There I think we notified Mr. Eldridge that we cancelled some of the things we sue for. I don't know why we sued for them if we admitted they were wrong: I think probably they escaped our minds some way. I remember the peas very well, but the others I don't. I think we concluded we would not charge him for shelling peas. I think the Commission agreed on that.

Defendant offered in evidence said letter, which is as follows:

"Gentlemen:-

Referring to enclosed correspondence and invoice for labor, I beg to advise that we are cancelling the charges for shelling peas, \$5.00; For Blacksmith work, \$8.25, \$2.00 for hauling brick".

If I didn't know anything about frozen cane before I became Commissioner, I know something about it now, a little. I don't know anything about it much now. What I know is hearsay. I don't think frozen cane would be worth much. I sold some of that we had at Bonus

I don't know anything about frozen cane. I don't know of anybody that ever bought any except us. We are the only people I ever heard of that bought frozen cane. It was in your office that night that Mr. Eldridge demanded that frozen cane.

RE-DIRECT BY THE PLAINTIFF:

I never requested anybody to pay the Imperial Mercantile Company and leave out this account of \$600.00 they owed us. I never requested Mr. Eldridge to settle the Imperial Sugar Company's account at all. The only account I asked Mr. Eldridge to settle was this matter with Mr. Crowther. I furnished them statement of these

statement as to

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various matters that they owed us. They knew what they were. Mr. Eldridge never agreed to release the Prison Commission from their obligation to deliver the cane. He demanded that the cane be delivered to him: that night in Mr. Lane's office he said he would expect to mill the cane, and he said something about mill results, and I remember about us asking what he would pay for the cane, and he said he couldn't tell until after it was run through the mill.

RE-CROSSED BY THE DEFENDANT:

004 IMPERIAL SUGAR COMPANY RECORDS
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We did not agree to accept the proposition and made this statement as to

BEN E. CABELL, a witness for Plaintiff in rebuttal, testified as follows:

Q. Mr. Cabell, it is alleged in the Defendant's Answer in this case that on the 2nd of December, 1911, the defendant wrote a letter addressed to Ben E. Cabell, Board of Prison Commissioners, Huntsville, Texas, in which the following language was said to have been contained: "On account of the recent damage to cane crop by freezing, we are compelled to notify you that all cane received from this date, December 2nd, on will be subject to your own risk and will be received by us at whatever price we feel justified in paying, to be determined from the result of the grinding and sale of such product". And that you replied to that advising them that you would be in Sugarland on Monday, December 4th; State to the Court whether or not you met Mr. Eldridge in response to the correspondence passing between you here? A. Yes sir; those are both correct. I think there is a subsequent letter from Mr. Stubblefield. My idea is that when that letter was written all the Commissioners were not here, and I think there was a subsequent letter asking him to meet us at Mr. Lane's office on the 6th and we met there. We did not, at Mr. Lane's office, or any other place, agree to permit Mr. Eldridge to use this cane at whatever price he felt justified in paying for it to be determined from the result of grinding and sale of such product. We met Mr. Eldridge there at Mr. Lane's office and Mr. Lane was there, and we discussed this matter, and Mr. Eldridge's proposition was that the State would be settled with according to the result of the manufacture and sale of the cane. The Commissioners then retired with you (Mr. Hill) as counsel and decided that we would go the next day to Sugarland and meet Mr. Eldridge and give him an answer as to whether we would accept this proposition or not, and so told Mr. Eldridge. We did not accept Mr. Eldridge's proposition as contained in this letter or any verbal proposition made by Mr. Eldridge, to permit him to mill the cane and pay for it according to the result he obtained after selling it. We went to Sugarland next day. Brahan, Tittle and yourself (Mr. Hill) went with me. We saw Mr. Eldridge there. We did not agree to accept the proposition contained in this letter and made this statement as to

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at Sugarland the next day, or any similar proposition. I think we got out to Sugarland on the ten o'clock train and met Mr. Eldridge there and told him we wanted to talk to the chemist, and wanted to look over the conditions generally, and some of us went to the mill. I don't know--I heard Mr. Tittle testify yesterday that Mr. Eldridge went ahead, but I don't know--My opinion is that he walked down to the mill with us, and after discussing the matter between ourselves-- We examined the Chemist's report to see what the cane was testing that day: we examined both chemist's reports. We went in the cane mill and saw how the cane was crushed and inquired how it was worked, etc and afterward, the Commissioners, all three, with yourself as counsel--I had requested you to go with us from Huntsville, and we decided that we could not accept Mr. Eldridge's proposition, and I was to inform him of that for the Commissioners, and I did inform him. I told Mr. Eldridge that we could not agree to deliver the cane there and for it to be settled for as stated in his letter, and as he stated, awaiting the result of the manufacture and sale of this cane before settling this, and that we had decided we could not do it, and that if he insisted on our bringing this cane to him, we would have to require him to settle according to contract, and we were instructed, or we had decided that if he wanted to reject the cane we could not force him to take it but if he received it, he would have to abide by the contract and we would not deliver it. He said that he expected that cane and that it had to be delivered there. He never did agree that we should not deliver the cane. There was no suggestion that we were willing for him to take that cane: my information is that when he stopped taking the cane we stopped hauling it. We continued to deliver it as long as he did take it. We stopped delivering the cane because my report from the Manager was that the mill had stopped receiving the cane.

THE DEFENDANT MOVED TO EXCLUDE THIS LAST STATEMENT OF THE WITNESS AS TO THE REPORT OF THE MANAGERS. MOTION SUSTAINED.

There was no demand from Mr. Eldridge to deliver any more cane after we stopped, that I received. I was present at a conversation

and made this statement as to

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held between Mr. Brahan and Mr. Tittle with reference to the racking of those cars. It was in Mr. Lane's office- I think it was the same evening, possibly at night, but my impression was it was in the evening that we had agreed on the Ramsey Cane Contract and the others. I think it was possibly the same day. I mean the contract for the sale of the Ramsey Cane for the year 1911. Anyhow, Mr. Brahan and Mr. Eldridge were discussing the number of cars that would be needed and Mr. Brahan thought it would take more cars than Mr. Eldridge thought, and they finally got to the agreement of 60 cars for the Ramsey and 30 for Imperial and 30 for Harlem, and I think it was Mr. Brahan asked Mr. Eldridge about racking the cars, and Mr. Eldridge remarked that he would try to get as many coal cars as possible, and that he would rack them and would rack them cheaper than anybody else, as he had his force organized and had his material on the ground, and that the cost would be the cost of material and labor. That was assented to by Mr. Brahan and myself. It was referred to me and I said, "Well, I think that is as cheap as we could do it," and there was nothing more said about it.

CROSSED BY THE DEFENDANT:

This conversation about the cars occurred in your (Mr. Lane's) office in Houston: I am quite certain it was there. I would not be certain that it was at the time the contracts were signed up for the Ramsey Cane, but I think it was. I think what brought us together was this contract and that was when that agreement was consummated. Eldridge said he would get as many coal cars as he could. He said that he was equipped for it and could rack them as cheap as anybody and that the cost would be the cost of material and labor. He never named any price. I don't recall the conversation between Brahan and Eldridge over the phone, Brahan in Huntsville with the other Commissioners in the same room and Eldridge in Sugarland, and Eldridge told him what he would charge for racking the cars and Brahan turned to us and asked if that was all right and I said yes. I don't recall that conversation but I think there was something said about it afterwards, but I don't recall that. I wouldn't say that it did happen or did not I don't think I was there. I don't know that Mr. Brahan made this statement as to

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TEXAS RAILROAD COMMISSION VERGUS IMPERIAL SUGAR COMPANY, 1911
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is mistaken if he says that occurred. I remember Mr. Brahan said he was going to rack the cars. I don't recollect it. I don't recollect about the time and place that Eldridge said he was going to get as many coal cars as he could. I am under the impression that I was not with the Commission when that was said- that telephone conversation. The other was the time of the telephone conversation and the other was when I had gone to talk with Mr. Eldridge on matters pertaining to these farms. I am satisfied that Mr. Brahan talked to me about it, afterwards, and said he would authorize Mr. Eldridge to go ahead and rack these cars. I would say that I am certain of that. I would give him the benefit of the doubt. I would do Eldridge just like I would the State. I am not at all partial in my testimony. My interests naturally cause me to think everything of what my duty is to the State, but I will try to state it exactly as it occurs to me. I don't repudiate that contract I made by letter: If Mr. Brahan said it was the Commission, the Commission will stand by it. Eldridge didn't mention to me the price per car at all. The coal cars were discussed in the conversation about racking the cars. I don't know what other kind of cars Mr. Eldridge intended besides coal cars, but I think flat cars. I think it would require more lumber to rack a flat car than it would a coal car, on account of part of the body of a coal car being already walled up. I don't know how much of the body of a coal car is already walled up: I never measured a coal car, I don't know how tall a racked car is: I never measured it. I would think it was eight feet. The sides of a coal car are may be three feet and may be four feet, may be less. If they were three feet, it would take three three inch boards around the car. I had absolute confidence that Mr. Eldridge would do what he said: he said he would go and rack these cars. I didn't attempt to make the calculation myself to see if he were right: I might have made it. It was not a difficult matter to do it. I suspect I could have done it in 15 minutes. If Mr. Brahan said the Commission did it, the Commission did it. In other words, I don't want to repudiate anything that is there or take any technical advantage at all and if Mr. Brahan made that for the Prison Commission, the Commission ought to

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one time we returned there and made this statement as to

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stand to it. I am sure I was there at this meeting on the night of the 6th of December. Mr. Tittle and Mr. Brahan were there, and Mr. Hill and Mr. Lane and Mr. Eldridge. I don't know that anybody else was there. There might have been somebody else there: I don't remember. I think we were up there may be thirty minutes and may be an hour discussing this matter. We came there to meet Mr. Eldridge to discuss this proposition. I think you will find that letter written Mr. Eldridge by the Secretary stating that we would like to meet him at your office. That is what we came there for. When we got there, Eldridge insisted on that same proposition. I may have said something like, "Well Mr. Eldridge, if we do that, we will be absolutely at your mercy, if you should not choose to give us proper results, the Commission would be at your mercy as to what you paid for the cane". Mr. Eldridge might have said something to this effect: "No, you can put a man there to see and know as much as I do". We did not then agree that we would send a man there and proceed on that course. We agreed to go there next morning. I am not mixing this with the meeting at which we signed up those two contracts, one to move the cane on the Ramsey Farm and the other on the Had em Farm We had done that at a previous meeting. I am not mixing the statement that we would go out and look at it with this time. It is a fact that under the contract we sold the Ramsey Cane at a flat price without test. I think it is the contract that we should sell this Imperial Sugar Company Share Farm Cane at \$3.25 without test. The reason we wanted a test when we intended to charge Mr. Eldridge a flat price of \$3.25 and \$3.00, we had been advised and we thought we should inform ourselves of everything about that cane until he rejected it. He had not refused to receive the cane: he said he would receive it. He stated that he would receive it at our risk, and we told him we wouldn't deliver it under that agreement, but if he expected the cane, he would have to pay for it according to contract. We wanted the cane tested because we wanted all the information we could get with reference to this cane transaction. We wanted the information because we thought it desirable to have the information with reference to the quality of the cane. It might have become

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When at the time we returned there and made this statement as to

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necessary that we would want to know. When I wrote that letter, I had the contract as a guide. We wrote that letter to our chemist to get the test of that cane and keep the test under the advice of our attorney. Our attorney wrote it for us. He was representing us. We wanted the test because in case we wanted the information we would have it. I suppose the Statement in the Petition that Eldridge owed us for the cane testing under 71 from the Ramsey place at the reasonable market value was gotten from the books in the record office. I suppose it is there because the attorney felt that was the proper way to put it. Q. Notwithstanding, you have a contract for him to pay \$3.25? A. The contract speaks for itself.

THE DEFENDANT OBJECTED TO THIS TESTIMONY BECAUSE THE WITNESS DID NOT MAKE ANY SUCH STATEMENT AND THE WITNESS HAS NOT SWORN THEY WERE THERE AND MADE A CONTRACT AND THERE WASN'T ANY LITTLE CONTRACT ABOUT IT AND THE TESTIMONY IS INADMISSIBLE AND OBJECTIONABLE FOR THE REASON THAT IS IS ARGUMENTATIVE AND DONE FOR THE PURPOSE OF MISLEADING THE WITNESS. WHICH OBJECTION WAS BY THE COURT OVERRULED.

All contracts and all information were given to the attorney from which to draw the pleadings. The Commission gave it to him. I gave them all the information I had. The contracts I handed to them to decide on as they thought proper, I turned over the contract to these gentlemen. I just turned them over, and I did not tell them to change the reasonable market value and that it was \$3.00. I gave them all the information ~~xxx~~ I had. I don't know how came them on yesterday a week ago to change it to \$3.25 again.

Q. Mr. Cabell, did you have written and sent and mailed to Eldridge a letter with that in it (handing witness letter)?

THE PLAINTIFF OBJECTED TO THIS QUESTION UNLESS THE LETTER IS PRODUCED OR THEY ACCOUNT FOR ITS NON PRODUCTION.

THE COURT: THEY DON'T HAVE TO PRODUCE THE LETTER.

I can't tell what I wrote in that letter. I can't tell to save my life whether I wrote a letter with that in it or not. If you have a letter of mine with that in it, I wrote it: I have no recollection of writing that letter. I think all of us went into Mr. Eldridge office at the time we returned there and made this statement as to

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TEXAS RAYSON COMMISSION VERSUS APPELLAL SUGAR COMPANY, 1911
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what we had decided. The three Commissioners and Mr. Hill. Mr. Hill goes around with us a good deal. We took him there for advice. I couldn't state who was there when we went in: I paid not attention to who was with Mr. Eldridge. We went there to transact business with Mr. Eldridge. I told him that we could not agree to his letter and proposition to deliver this cane to him and settle for it after obtaining the result of the sale and, and I stated that we would not deliver it to him any other way except upon the contract, and expected him to pay for it according to contract. He stated that he expected that cane and that he would pay for it exactly as stated in that letter. I told him he had a right to reject that cane, and if he rejected that cane, we would not deliver it, but if he forced us to deliver that cane, we would expect him to pay for it at contract price. He said, "I expect that cane". I told him he would have to pay for it at contract price. I don't know that he said anything more. We went off from him then. There was some other matter that Mr. Brahan and Mr. Eldridge got to discussing. That was practically all about this matter. I do remember saying to him that if he rejected that cane that we would have to make arrangements to mill it elsewhere. He just said, "I expect you to bring that cane to me. I said if you expect us to deliver that cane to you you will have to pay for it under contract. That is the substance of all that was said. We stated that we expected Mr. Eldridge to carry out the contract. I think I have stated it correctly as near as I can. I was there acting for the three. Q. At that time you knew the cane was not worth anything practically? A. I did not. I did not know that in a few days it would not be worth anything. I have had some little experience about cane. I signed that letter (indicating letter.

The defendant offered said letter in evidence, which is as follows:

Huntsville, Texas, January 22, 1912.

Mr. W. T. Eldridge, Pres.,

Imperial Sugar Company,

Sugarland, Texas.

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TEXAS PRISON COMMISSION VERGUS IMPERIAL SUGAR COMPANY, 1911
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Dear Sir:-

Judge W. L. Hill, of the firm of Hill & Elkins, Attorneys for the Prison Commission, will call on you within a few days for the purpose of conferring with you with reference to the result obtained from manufacture of such cane as the State may be interested in.

We would thank you to accord to Judge Hill every facility in your power which would aid in getting this information.

Yours truly,

Ben M. Cabell,

Chairman.

Q. Now, if you had a contract with Mr. Eldridge by which he was to pay \$3.25 for cane on the share farm and \$3.00 for cane on the Ramsey Farm, what did you care about the result? A. That letter was given to Judge Hill ---

Q. You heard my question: what business or interest did you have in the result if you were to get \$3.25 and \$3.00 flat? A. What interest did I have in the result? We wanted all the information possible, with a view to getting our transactions straightened up with Mr. Eldridge. We had already sued Mr. Eldridge on the 2nd of January.

RE-DIRECT BY THE PLAINTIFF:

If we had agreed to turn this cane over to Mr. Eldridge and to accept his statement as to the result of it, there would have been no necessity of keeping any test of the Ramsey Cane or the Imperial Sugar Company Share Farm cane. We kept that test to give us all the information possible, to know what the cane was doing. We continued to have that chemist makes these tests, and we continued to weigh that cane from all the places. We continued to do everything we could to keep in touch with the situation and what was being done. At the date of the writing of this letter, suit had already been filed: suit was filed on the 2nd of January and this letter is dated the 22nd. I did not at Sugarland on the 7th of December or have not at any time since that date agreed to any modification of that written contract. I have not at any time agreed to accept any results that Mr. Eldridge might obtain from the sale of that cane.

Imperial Sugar Company Records

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VERSUS IMPERIAL SUGAR COMPANY, 1911

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J. N. SOUTH, a witness for Plaintiff, in rebuttal, testified as follows:

I was employed by the State during the year 1911. I was employed on the Ramsey Farm as Manager. I had a larger force of men there after the Cane harvesting season begun: 50 men larger. The reason that cane was not delivered to the Imperial Sugar Company was because it was too wet and boggy to get in the fields. After the freeze, we couldn't deliver much of it on account of its being so wet and cold. The weather was very bad and very wet after that freeze. There was a great deal of rain- more rain than I have ever seen in that country. That land is flat: of course the Oyster Creek banks are high, but it slopes off to very flat land. I did everything possible, everything that I could do to save that cane and deliver it according to contract. I continued to deliver cane up to as long as the Imperial Sugar Company would receive it. I was on the Cunningham Farm and had charge of it: I taken charge the 20th day of February, 1910, and left there the first of August, 1910. The bridges were in pretty bad condition when I left there- all broken in,- that is a great many of them were. I will say that 75% of those bridges were broken in. I repaired a great many of those bridges on the south side that Capt. Florence had charge of- repaired all the bridges on that side. Capt. Florence repaired about forty or fifty of those bridges. There were no other bridges repaired on the place up to the time I left. While I was there, part of the ditches were in good shape and the south side that Capt. Florence had charge of was in pretty bad condition, filled in and the bridges were broken in. The condition of them when I left there was much better on the south side of the farm. They were all in good condition. Those bridges are built of poles and moss and covered with dirt and they rot and fall in, and when we repaired the ditches, we cleaned them out. I left it in much better condition than it was when I received it.

CROSSED BY THE DEFENDANT:

I went on that farm about the 20th of February 1911, and left there the first of August. When I left the ditches and bridges were in good condition. I put them in good condition.

IMPERIAL SUGAR COMPANY RECORDS
TEXAS RUSSELL COMMISSION VERSUS IMPERIAL SUGAR COMPANY, 1911
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S. M. FLORENCE, a witness for the State, testified as follows:

I was employed by the State on the Cunningham Share Farm during the year 1910, with the exception of one month- January. I went there in 1907. That was when I went out one month in the year 1910, January. I worked the balance of the months on that place. I took charge of the convict force on that place in 1910. The year previous there was one part of it that Mr. Sibley worked: that is on the east side, south-east. It borders Mr. Adams line on the east. When the State took charge of that place, part of the bridges were in bad shape. They were pole bridges, and they were all broke in. He hadn't put in any at all for two years. I repaired all of those bridges and built new ones. I cleaned out those ditches and used moss and grass and weeds on top to keep the dirt from falling through the bridges. When I left there, those bridges were all still up and in pretty fair shape. They were in better condition than when the State took charge. I built about 50 bridges on that place. I left there in February, 1911. I was there under Capt. Mills just a short time. When I went there, I cleaned out the ditches on this place with hoes, when I went there, - that is I cut the grass and weeds out of them. On the Sibley part of that place the ditches were in much better shape when I left there than they were when I came. I had charge of the Sibley place. I had charge of part of the farm. The bridges were in good condition on the other part of the farm: I kept them cleaned out with hoes.

CROSSED BY THE DEFENDANT:

A couple of years before I left there, I kept the ditches clean. There were 1600 acres in the tract and about 800 acres that were used. The other ditches were in good shape: I put in some changes in them. These pole bridges fall in ever year and you have to fix them up. I fixed up the bridges in 1910 on the Sibley Part. When I left there they were in better condition than when I taken it. I left there in January 1911. The other part was about the same. When Capt. Mills took charge they were in good condition.

RE-DIRECT BY THE PLAINTIFF:

Those 50 bridges were built on Plantation C, known as the Sibley Place.

APPELLAL SUGAR COMPANY v. REYNOLDS
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P. B. SMITH, a witness for Plaintiff, testified as follows:

I have had 12 years experience in the cane business. I have had experience in handling cane and grinding sugar. . . During that 12 years, I have been engaged in that business down at House's Plantation and the Harlem State farm and the Clemens State Farm. It is hard to tell at what test sugar cane ceases to have a market value, but it is considered pretty generally among sugar men all over the country, at least in parts of the country that 70 is the low test, and that is the low test where they turn it back. Cane testing 70 is understood by sugar men to have a market value. Cane at 70 and above 70 is considered to have a market value. It is possible to get some value out of cane testing below 70. It is possible to get sugar out of cane testing below 70 but that is all according to conditions.

CROSSED BY THE DEFENDANT:

Assuming that cane has not been damaged by fermentation or freezing, 79 is the standard test by which you measure the value of cane. It is considered standard cane at 79 test. Every point above 79 is worth ten cents a ton and every point below 79 makes it ten cents less. So if 70 is the point at which sugar can be manufactured that would be ninety cents a ton less. So if the cane is worth \$3.00 at that standard of 79, it would only be worth \$2.10 at 70. The test that I refer to indicates the amount of sugar matter in cane. When I speak of market value according to test, I don't have reference to fermenting cane. No fermenting cane is good cane. I mean good cane. I do not speak of cane at all that has been frozen and fermenting from the effects of it. As to whether fermented cane is good cane at all, depends on how badly it is fermented. It is all according to conditions- whether it is good for market or not. If cane has been frozen and the weather turns warm, it will ferment. That is natural. It is impossible for any man to tell how many days it will be before it will be warm. Cane is not marketable when a man knows it will be ruined- not for three days ahead of time. Nobody would buy it away ahead. There is no market for that sort of cane

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APPELLAL SUGAR COMPANY RECORDS
TEXAS PRISON COMMISSION VERSUS APPELLAL SUGAR COMPANY, 1911
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RE-DIRECT BY THE PLAINTIFF:

When cane has been frozen and a chemical test of it reveals a test of 70 or above 70, that shows that there is a certain amount of fermentation that has taken place. If the cane tested 70 it would be worth some value. That value is determined by the results you get in the sugar house. There is no rule to determine it: it would determine just what results you got at the plant, but there is no rule on that, unless you could see the result you got at the sugar house. The general understanding among cane men is that cane testing 70 and above is marketable cane.

EXAMINATION BY THE COURT:

Fermented cane will hardly test above 70, if it is fermented badly, but there is cane that is just fermented that will go above 70. If the cane would go above 70 that answer would apply to fermented cane, if the test goes above 70, it would apply to any kind of cane. The market value would be your result as tested ten per cent below 79, - that is the result you get. It would be the result of the test, deducting ten per cent on each point below 79. I mean that you would get the same results out of fermented cane that you would get out of fermented cane, if it goes above 70.

RE-DIRECT BY THE PLAINTIFF:

If cane tests 70, that indicates that there is still enough sucrose matter in it to give it a value, regardless of whether it has been frozen or not. In determining the value, the custom is to deduct ten cents per ton for each point below 79.

RE-CROSSED BY THE DEFENDANT:

I am not a graduate chemist at all. I am in charge of the sugar house in general. I do not make all of the tests. I make very few tests, chemical tests. I am not a chemist. If cane has been frozen and even though it tests at the time it is crushed at a rate that probably would indicate sugar might be made out of it, you can't recover all of that sugar matter. It loses a certain per cent. It loses greatly. You can't recover the sugar that is in it, all of it. It takes longer to boil frozen juices. It does not take four or five hours longer. It is all according to how many days it has been

GENERAL SUGAR COMPANY RECORDS

TEXAS TRUST COMPANY COMMISSION VEGETABLE SUGAR COMPANY, 1911
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frozen. It will take from two to three hours longer after fermentation has set in. It takes money to boil it longer. It costs more to produce it, and you don't recover all of it. The price would be reduced in value.

RE-DIRECT BY THE PLAINTIFF:

I mean it would take longer to get the juice out of cane that has been frozen, after it has fermented. . The fact that cane is frozen does not affect the quality of the cane. It is the fermentation that does the damage.

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MINERAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION VERSUS APPELLAL SUGAR COMPANY, 1911

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J. B. ROBINETT, a witness for the State in rebuttal, testified as follows:

These papers here and records (indicating papers) were furnished to me by the Imperial Sugar Company. I settled on those accounts in 1908 and 1909.

The Plaintiff offered in evidence the Account Sales, above referred to.

THE DEFENDANT OBJECTED TO SAID ACCOUNTS SALES BECAUSE THE CONTRACT SHOWS THAT WAS NOT THE PRICE AND THE FACT THAT THE DEFENDANT GAVE THEM THAT PRICE THAT YEAR IS NO REASON WHY HE SHOULD CONTINUE TO DO SO.

THE COURT: I DON'T THINK IT IS CLAIMED BY EITHER SIDE THAT THEY WERE TO PAY \$3.00. IT IS CLAIMED BY PLAINTIFF THAT THEY WERE TO PAY FOR CANE TESTING ABOVE 79 TEN CENTS PER TON FOR EACH DEGREE, AND IF THEY OFFER IT FOR THE PURPOSE OF SHOWING THEY NEVER SETTLED UNDER \$3.00 I SHALL SUSTAIN THE OBJECTION. IF IT SHOWS THE OTHER I WOULD NOT SUSTAIN THE OBJECTION. I WILL ADMIT IT FOR WHAT IT IS WORTH.

It is agreed by and between the Plaintiff and Defendant herein that the price of Sugar at New Orleans at the date mentioned in the Contract was \$5.75 per ton for 96 test sugar on the day that this was to take effect, the date being January 24th, 1908.

PLAINTIFF RESTS

IMPERIAL SUGAR COMPANY RECORDS
TERRY PAULSON COMMISSIONER VERSUS IMPERIAL SUGAR COMPANY, 1911
FOLDER 2 OF 2

B5; F30

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I. G. WIRTZ, a witness for Defendant, testified as follows:

I live at Sugarland. I am a Civil Engineer. I am in the employ of both the Imperial Sugar Company and the Sugarland Railroad Company.

Q. Will you please look at that itemized statement attached to this answer and see if that is a correct itemized bill of what this siding cost, of the material of the siding? A. I made that estimate myself of the cost of the material. It is a correct estimate. That is the reasonable value of the material put on this side track. That is the actual cost to the Sugarland Railroad on that date. I understand that it was built for the Prison Commission.

Defendant offers in evidence said contract in evidence for all purposes, showing the contract to build that siding, - which is as follows:

IMPERIAL SUGAR COMPANY RECORDS

TEXAS PRISON COMMISSION
FOLDER 2 of 2
VERSUS IMPERIAL SUGAR COMPANY, 1911

B5;F30

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MINERAL SUITE

The Defendant offered in evidence Paragraph 4 of the Plaintiff's Amended Original Petition, filed March 29th, 1912, for the purpose of showing that on the 29th of March, they were claiming only the reasonable market value of all cane testing under 71.

The Defendant offered in evidence the same paragraph of the Second Amended Petition, as follows:

XXXXXXXXXXXX

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W. T. MERRINGS, a witness for plaintiff, testified as follows:

When the citation was served on me was the first time that I know that the Plaintiffs were claiming that I was to pay contract price for this frozen cane or for any cane delivered after December 2, 1911. I do not know when the citation was served.

The Defendant offered in evidence copy of Citation served on Defendant, showing that it was issued on the 19th day of January, 1912.

DEFENDANT HEREBY
RESPONSES TO THE
CITATION.

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