

difference in the grade of gasoline used in dissolving the cement before application to the iron; the smoothness of the iron itself, which should be first roughened; or variable-ness in the degree of heat applied.

The defendants say they purchase and use gasoline of uniform grade, which they have found no difficulty with, and it was used on both the sample and the bulk, and also on their other rollers. They also say they treated all alike as to heat, and that, as to the smoothness of the iron, they obviate that, not by mechanical roughening, but by the use of an acid, which is subsequently washed off, and the plaintiffs themselves actually failed, when using the iron furnished by the defendants, although the plaintiffs thought they had succeeded.

On the one hand, we have the plaintiffs' manager asserting that the cement sold was made exactly like, though not made at the same time as, the sample which the defendants, after testing, approved of. On the other hand, we have the defendants' manager asserting uniformity of treatment for each, and yet differing results.

The plaintiffs' position is, that they could not tell whether the cement, of which they forwarded a sample, was suitable for the defendants' purpose, and they expressly asked the defendants to test it and see if it was, and the defendants must have failed to test it properly, but cannot blame the plaintiffs for supplying cement in accordance with their order, which asked for cement the same as the sample.

Now, if the defendants did fail to test the samples as to cohesion with the iron, are the plaintiffs justified in saying that they throw that burden on the defendants? Mr. Thornton does indeed say (p. 28) that he mixed up a sample and sent it to Ottawa to see if it would cure or vulcanise with their rubber cover and the shaft. Nowhere else does he make the assertion. Reading his letter of 3rd January in the light of the evidence, I would consider that by the words "see if it cures with your stock" he referred only to vulcanisation with the rubber forming the outer part of the roller. That appears to be the meaning put upon it by Mr. Carroll, the plaintiffs' sales manager. He says: "Mr. Thornton wrote them (defendants) and asked them to test it and ascertain if it would cement with the outer cover." Mr. Thurnton himself (p. 26) says he asked the defendants to