some respects, by certain corrections suggested by the claimant; and as thus amended definitely accepted by the claimant by letter of February 28th. The libelant did business in Philadelphia, whence the letter of February 17th was written. The claimant's acceptance was written from his residence in Newburgh, N. Y. The essential parts of these letters, as respects the questions at issue, are as follows, namely, the letter of Mr. Griscom, the president of the libelant company, addressed to Mr. Bigler at Newburgh, and dated February 17, 1891:

"Dear Sir: I have just seen Mr. Bates who confirms the rough estimate I made to you the other day in answer to your request for a price on refitting the Electron with two hundred and fifty (250) cells of storage battery and with the original motor rewound so as to produce 15 horse power, or 25 horse power at a spurt, or to produce readily about 10 horse power in ordinary service. We therefore propose to furnish you with two hundred and fifty new cells of 23 M accumulators, rewind one motor, supply two new armatures, supply all necessary switches and wiring and ten incandescent lamps and sockets for the sum of four thousand and ten dollars, payable two thousand dollars cash on delivery of the material at Newark, N. J., ready to go on the boat, and one thousand dollars in a 60 days' note and one thousand and ten dollars in a 90 days' note, interest added, drawn to your order and indorsed by you. * * * Yours, truly, W. W. Griscom, President."

Mr. Bigler replied by letter dated February 21st, as follows:

"Newburgh, Feb. 21, 1891.

"W. W. Griscom, Esq., Prest. 224 Carter St., Phila.—Dear Sir: Your favor of the 20th inst. is at hand and I notice what you say confirming our verbal understanding of the power which you propose for the motor to be used in the electrical boat Electron. This is entirely satisfactory. All the other specifications are as we talked except you had 12 lamps instead of ten, the payments were $2,000 cash on delivery of the boat completely fitted with the electrical works, balance 2 and 3 months as you state, but the price complete you have $4,000 and them $4,010. We won't let the 10 dollars spoil the trade as I am sure you will consider that small amount. You can therefore go on with the work, as I propose to have the boat at the Newark factory about the first of April. Yours, truly, J. Bigler."

The terms of this reply not being wholly satisfactory to Mr. Griscom, the latter, by letter of February 26th, wrote to Mr. Bigler as follows:

"Dear Sir: Your favor of Feb. 21st at hand. I have entered your order for the equipment of the electrical boat Electron and will commence work on the motor promptly. Will you please send a formal acceptance of my letter of Feb. 17th which has been approved by the committee and which I am not authorized to charge in any part? Will you oblige me by performing this formality promptly, in order that we may lose no time?

"W. W. Griscom, President."

In reply to this, Mr. Bigler wrote to Mr. Griscom under date of February 28th as follows:

"Dear Sir: Your favor of the 26th inst. is at hand in which you say 'I have entered your order for the equipment of the electrical boat Electron and will commence work on the motor promptly.' You ask for a formal acceptance of your offer of the 17th of this month. I certainly intended by my letter of the 21st to fully accept your proposition. If you do not consider it so I will repeat I agree to pay you $4,010 for the work complete; $2,000 cash when the boat is equipped complete as per your letter of the 17th inst., $1.000 in my note of 2 months, $1,010 at 3 months, both notes made to my order, and

by me indorsed. Boat to be ready for delivery early in May. Interest to be added to the notes. I trust this covers your proposition.

"Yours, &c., J. Bigler."

1. The first point taken in defense is that the articles were not furnished on the credit of the yacht, and that there is no lien. They were delivered, however, to the vessel at Newark, N. J., where the contract provided that they should be delivered, and the law of that state expressly gives a lien for such work and material. This objection must, therefore, be overruled.

2. The burden of the defense on the merits, as well as of the claim in the cross libel, is, that the new batteries and rewinding of the motor did not produce the expected speed of the boat in actual service, nor the number of revolutions of the wheel referred to in certain conversations, nor 10 horse power in ordinary service, nor 25 horse power at a spurt; and that the batteries and work were defective and inefficient, and the beneficial use prevented by the infringement of the Brush patents.

The rule of law is well settled, that contemporaneous or prior conversation between the parties cannot be resorted to in order to enlarge or vary the rights and obligations of parties to a written contract. It may be set aside for fraud, or reformed in equity to correct a mutual mistake. The recent decisions of the supreme court in no respect relax this ancient rule. De Witt v. Berry, 134 U. S. 306, 10 Sup. Ct. Rep. 536. The evidence offered by the claimant, therefore, for the purpose of proving a guaranty of a definite number of revolutions was rejected; but for the purpose of giving the defendant the benefit of any possible doubt about what had been intended by the "horse power," the conversations on that subject were admitted; and by that means considerable appears in the testimony with reference to revolutions also. From the contract made by the letters of February 17th and 28th, it is clear, however, that there was no guaranty of any kind, save the production of horse power; and the result of all the evidence on this point seems to me to show clearly that the batteries did produce or "develop" in the language of the claimant's letter of February 19th, the amount of horse power therein agreed. It is plain from the testimony not only that the agreement itself contains no warranty as to the number of revolutions that the wheel should make, or as to the speed which the boat should attain, but that the libelant was in no condition to determine either of these things accurately, and did not undertake anything in regard to them. There is no allegation in the pleadings and no evidence of any fraud. Mr. Griscom's letter of February 26th, moreover, was explicit notice to the claimant that he was "not authorized to change in any part" the proposition previously submitted; and with this notice the proposition was accepted by the claimant. The responsibilities of the libelant under it cannot, therefore, be enlarged or varied by parol evidence of prior conversations.

A few weeks afterwards it was ascertained that at Atlantic City, where the yacht was intended to run in the carriage of passengers, the voltage of the electric current from which she must draw her