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SUMMONS.

State of New Jersey to Agricultural Insurance Company of Watertown, (L. S.) New York, a corporation:

YOU ARE SUMMONED to answer the annexed complaint of the Public National Bank of New York, a National Banking Corporation, and the Specialty Handle Manufacturing Co., Inc., a corporation organized under and by virtue of the laws of the State of New Jersey, in an action at law in the New Jersey Supreme Court, Essex County.

AND TAKE NOTICE that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, HONORABLE WILLIAM S. GUMMERE, Chief Justice of our said New Jersey Supreme Court, at Trenton, this twenty-ninth day of December, Nineteen Hundred and Twenty-five.

EDWARD J. KELLEHER,
Clerk.

JACOB L. NEWMAN,
Attorney.

COMPLAINT.

New Jersey Supreme Court

ESSEX COUNTY.

THE PUBLIC NATIONAL BANK OF NEW YORK, a National Banking Corporation, and THE SPECIALTY HANDLE MANUFACTURING CO., INC., a corporation organized under and by virtue of the laws of the State of New Jersey,

Plaintiffs,

vs.

AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, NEW YORK, a corporation,

Defendant.

Action at Law.

Complaint.

The plaintiffs, The Public National Bank of New York, a National Banking Corporation, having its principal place of business in the City, County and State of New York, and The Specialty Handle Manufacturing Co., a corporation organized under and by virtue of the laws of the State of New Jersey, having its principal office in the City of Newark, complaining of the defendant, say:

1. That at the times hereinafter mentioned the defendant was a corporation engaged in the business of insuring owners of property against loss and damage thereto by fire.

2. That at the times hereinafter mentioned the plaintiff, The Specialty Handle Manufacturing Co., Inc., was the owner of and had an insurable interest in certain property, consisting of merchandise, fixtures and machinery, all contained in the building and premises known and designated as 113-135, and rear, New Jersey Railroad avenue, in the City of Newark, County of Essex and State of New Jersey, and in or attached to the building, and on or under the sidewalk of said premises.

3. That heretofore and on the 27th day of January, 1925, the defendant made, issued and delivered to the plaintiff, The Specialty Handle Manufacturing Co., Inc., its certain policy or contract of insurance, in writing, wherein and whereby and under the terms therein stated, in consideration of Eighty-eight Dollars and Eighty-eight Cents ($88.88) as premium paid to it by the said The Specialty Handle Manufacturing Co., Inc., the said defendant undertook and promised and agreed to and with The Specialty Handle Manufacturing Co., Inc., that it, the said defendant, would insure, and defendant thereby did insure, the said The Specialty Handle Manufacturing Co., Inc., against loss or damage by fire to said property while so situated, to an amount not exceeding Seven Thousand Five Hundred Dollars ($7,500.00), and that it would make good to the said The Specialty Handle Manufacturing Co., Inc., any such loss or damage by fire not exceeding such sum of Seven Thousand Five Hundred Dollars ($7,500.00); that the term of such insurance was for the term of one year from the 6th day of February, 1925, at noon, to the 6th day of February, 1926, at noon; the said loss or damage to be estimated according to the actual

cash value of said property at the time the said loss shall happen, and to be paid by the said defendant sixty days after due notice and sworn proof of such loss or damage were rendered to said defendant by the said The Specialty Handle Manufacturing Co., Inc., containing all and singular the matters as set forth in said policy, reference being thereto had and as therein will more fully appear.

4. That the said goods and chattels set out in said policy being stock consisting principally of stock and materials as dealer in the manufacture of leather handles and trunk and suitcase specialties and other merchandise, furniture and fixtures, and all while contained in or attached to the building, extensions and additions thereto adjoining and communicating, or on or under the sidewalks situate at 113-135, and rear, New Jersey Railroad avenue, Newark, New Jersey, in the said policy mentioned and thereby intended to be insured, after the making of the said policy and within the one year aforesaid, to wit: on or about the 1st day of March, 1925, were burned, damaged, consumed and destroyed by fire, whereby the said plaintiff, The Specialty Handle Manufacturing Co., Inc., then sustained damage and loss to a large extent, and that the actual cash value of the property so damaged and destroyed is the sum of One Hundred Forty-seven Thousand One Hundred and Seven Dollars and Thirty-eight Cents ($147,107.38).

5. That by reason of the further terms of said policy the plaintiff, The Specialty Handle Manufacturing Co., Inc., because a co-insurer of said property; so that the total amount of such damage or loss for which this defendant and other

insurers as hereinafter set forth became liable to the plaintiffs, is the sum of One Hundred Forty-four Thousand Four Hundred and Seventy Dollars and Nine Cents ($144,470.09).

6. That by the further terms of said policy it was agreed between the parties thereto that the defendant should not be liable for any damage to said property that may thereafter arise by reason of fire to a greater amount of such damage than the amount of this policy should bear to the total amount of insurance carried on such property.

7. That the said goods and chattels in the said policy mentioned and intended to be thereby insured, at the time of making the said policy, were insured also in each of the following companies in the amounts respectively set opposite their names, to wit:

No.	5218	Equitable F. & M.	$13,500.00
"	950665	California	12,500.00
"	467956	State Asso.	10,000.00
"	171302	Patriotic	15,000.00
"	1164854	Stuyvesant	8,000.00
"	6520	Prov. Washington	20,000.00
"	960113	Royal	10,000.00
"	7822022	Scottish Union	5,000.00
"	194549	New Brunswick	4,000.00
"	2250662	Pacific	4,000.00
"	481384	General Fire	7,500.00
"	723082	Netherlands	5,000.00
"	02343	Importers & Exporters	1,500.00
"	217081	North British & Merc.	8,500.00
"	74745	Concordia	5,000.00
"	02342	Importers & Exporters	1,500.00
"	217079	North British & Merc.	8,500.00
"	2250594	Pacific	21,000.00

the total insurance amounting in all to the sum of One Hundred and Sixty-eight Thousand Dollars ($168,000.00). The apportioned amount of said loss to be borne by and for which this company is liable is the sum of Six Thousand Four Hundred and Forty-nine Dollars and Fifty-six Cents ($6,449.56).

8. That the plaintiff, The Specialty Handle Manufacturing Co., Inc., did forthwith after the said loss and damage, to wit: on the 3rd day of March, 1925, give due notice, in writing to Lippman & Lowy, at 44 Clinton street, Newark, New Jersey, the authorized agent of the defendant company, of the occurrence of the aforesaid fire, which took place on the 1st day of March, 1925.

9. That subsequently and on the 18th day of June, 1925, and in accordance with the provisions of the policy aforesaid, the plaintiff, The Specialty Handle Manufacturing Co., Inc., did make and render due sworn proof of the loss and damage sustained by reason of the aforesaid fire, to the above named defendant at its head office, 215 Washington street, Watertown, New York, containing all and singular the matters as required by, and being in accordance with, said policy, and the plaintiff, The Specialty Handle Manufacturing Co., Inc., the said insured, did duly perform all the conditions on its part to be performed as required by said policy or contract.

10. That after the said fire and on or about the 9th day of April, 1925, the insured, The Specialty Handle Manufacturing Co., Inc., and the defendant above named, by its duly authorized agents, by mutual agreement and consent and in consideration thereof, agreed and settled each with the other that the sound value of that part

of the said merchandise insured as aforesaid which remained in sight immediately after said fire, was the sum of Fifty Thousand Five Hundred Thirty-nine Dollars and Four Cents ($50,539.04), and that the actual loss thereto and thereon was the sum of Twenty-two Thousand Five Hundred Twenty-three Dollars and Eighty-three Cents ($22,523.83), and that the sound value of the machinery and fixtures, part of said property so insured, was the sum of Thirty-six Thousand Ninety-four Dollars and Seventy-five Cents ($36,094.75), and the loss thereon and thereto was the sum of Twenty-one Thousand One Hundred Forty-three Dollars and Eleven Cents ($21,143.11), and the said parties further then and there mutually agreed that in the final determination and estimate of the entire loss to all the property, such settled and agreed values and loss as aforesaid should be deemed by both parties for all parties to be the actual settled value of and damage to said goods in sight and of and to said machinery, subject, however, to the further terms and conditions of the said policy; and said agreed amounts of sound value and of damage and loss are hereby adopted and claimed in addition to the further loss and damage of and to the goods burned out of sight.

11. That although more than sixty days have elapsed since due notice and proof aforesaid was given and made to the said defendant company aforesaid, the said defendant company has not paid or made good to the said plaintiffs the said loss and damage of Six Thousand Four Hundred Forty-nine Dollars and Fifty-six Cents ($6,449.56), nor any part thereof, and the same and every part is wholly unpaid and unsatisfied, contrary to the force and effect of the said policy.

Complaint.

12. That the plaintiff, The Specialty Handle Manufacturing Co., Inc., has in all things performed each and every the covenants, conditions and agreements in the said policy contained, on its part to be performed, but that the defendant has failed, neglected and refused and still fails, neglects and refuses to perform the terms, conditions, covenants and agreements in the said policy contained on its part to be performed, to the damage of the said plaintiffs.

13. That thereafter and on the 18th day of May, 1925, The Specialty Handle Manufacturing Co., Inc., duly assigned to The Public National Bank of New York all its right, title and interest in and to the policy of insurance hereinbefore mentioned and all sum or sums of any interest, benefit and advantage whatsoever then due or hereafter to arise or to be had or made by virtue of said policy, including all its right, title and interest in and to the amount in which said loss shall be adjusted, as by the said assignment, reference being thereunto had, will more fully appear as if the same were herein set forth fully and at length, of all of which the defendant had notice.

WHEREFORE, the plaintiffs will claim damages in the sum of Six Thousand Four Hundred Forty-nine Dollars and Fifty-six Cents ($6,449.-56).

Dated, December 29, 1925.

JACOB L. NEWMAN,
Attorney of Plaintiffs.

Answer.

ANSWER.

NEW JERSEY SUPREME COURT.

THE PUBLIC NATIONAL BANK OF NEW YORK, a National Banking Corporation, and THE SPECIALTY HANDLE MANUFACTURING CO., INC., a corporation organized under and by virtue of the laws of the State of New Jersey, *Plaintiffs,*	*Action at Law.* *Answer.*
vs.	
AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, NEW YORK, a corporation, *Defendant.*	

Defendant says that:

1. It admits the allegations of paragraph 1 of the complaint.

2. It has no information or knowledge sufficient to enable it to form a belief as to the allegations of paragraph 2 of the complaint, and it therefore denies the same.

3. It admits the delivery to the Specialty Handle Manufacturing Co., Inc., of the policy of insurance mentioned in paragraph 3 of the complaint, and as to the terms thereof refers to said policy and its records thereof.

4. It denies the allegations of paragraphs 4 and 5 of the complaint.

Answer.

5. It admits the allegations of paragraph 6 of the complaint and as to the terms of said policy refers to said policy and its records thereof.

6. It has no knowledge or information sufficient to enable it to form a belief as to the allegations of paragraph 7 of the complaint, and it therefore denies the same.

7. It denies the allegations of paragraphs 8, 9, 10, 11 and 12 of the complaint.

8. It has no knowledge or information sufficient to enable it to form a belief as to the allegations of paragraph 13 of the complaint, and it therefore denies the same.

9. FIRST SEPARATE DEFENSE.

Said policy contained, among others, the following terms, conditions and stipulations:

> "This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

In violation of such terms, stipulations and conditions, with intent to cheat and defraud this defendant and gain an advantage over it and secure a sum of money not otherwise justly due said plaintiff knowingly and wilfully, falsely and fraudulently misrepresented in writing and otherwise the amount and value of the property claimed by it to be involved in the fire, the cost

Answer.

of said property, the amount of damage caused by said fire, the origin and cause of said fire, and the ownership of said property, well knowing that in truth and in fact the amount of property claimed to belong to it and involved in said fire and its value, the cost of said property and the amount of damage caused by said fire was much less than the amount represented and stated by it; and well knowing that the origin and cause of the fire and the ownership of said property was otherwise than as represented and stated by it; and further produced and exhibited to this defendant false and fraudulent books and records; all of which was done by said plaintiff with intent, as aforesaid, to secure the payment of a sum of money from this defendant not otherwise justly due.

By reason whereof the said policy became void and of no effect and this defendant relieved of liability thereunder.

ARTHUR T. VANDERBILT,
Attorney of Defendant.

REPLY.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

THE PUBLIC NATIONAL BANK OF NEW YORK, a National Banking Corporation, and THE SPECIALTY HANDLE MANUFACTURING CO., INC., a corporation organized under and by virtue of the laws of the State of New Jersey, *Plaintiffs,*	*Action at Law.*
vs.	*Reply.*
AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, NEW YORK, a corporation, *Defendant.*	

The plaintiffs replying to the first separate defense set out in the answer of the defendant herein, say:

1. They deny that they have violated any of the terms, stipulations and conditions of the policy of insurance mentioned and set out in the complaint or alleged in said answer and, therefore, deny each and every allegation in said first separate defense, but admit that the said policy of insurance aforesaid contained certain terms, conditions and stipulations substantially set forth in the said first separate defense, but as to the exact terms of said conditions, stipulations and their force and effect these plaintiffs

refer to said policy itself, when produced before this Court.

JACOB L. NEWMAN,
Attorney of Plaintiffs.

Dated January 25, 1926.

It is stipulated and agreed that the pleadings in all of the above-entitled causes of actions are the same in all respects and that but one be printed.

ORDER OF CONSOLIDATION.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y., Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation, Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, a corporation, Defendant.	*Action at Law.*
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. PACIFIC FIRE INSURANCE COMPANY, a corporation, Defendant.	*Order of Consolidation.*
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. IMPORTERS AND EXPORTERS INSURANCE COMPANY OF NEW YORK, a corporation, Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. STUYVESANT INSURANCE COMPANY OF CITY OF NEW YORK, a corporation, Defendant.	

Application having been made by the defendants in the above-entitled cause upon notice to the attorney of the plaintiffs, and the Court having heard the argument of counsel, does

ORDER, that the several actions entitled as above be consolidated into one action, and tried together as one cause.

Let the foregoing rule be entered on the minutes, *nunc pro tunc,* as of the eleventh day of March, Nineteen Hundred and Twenty-seven.

WM. A. SMITH,
Circuit Court Judge.

Rule actually entered March 21, 1927.
On motion of

ARTHUR T. VANDERBILT,
Attorney of Defendants.

I hereby consent to the making and entry of the foregoing order.

JACOB L. NEWMAN,
Attorney of Plaintiffs.

POSTEA.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

THE PUBLIC NATIONAL BANK OF NEW YORK, a National Banking Corporation, and THE SPECIALTY HANDLE MANUFACTURING CO., INC., a corporation organized under and by virtue of the laws of the State of New Jersey, *Plaintiffs,* *vs.* THE PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation, *Defendant.*	*Action at Law.* *Postea.*

This case was tried before Judge William A. Smith (to whom the case was referred for trial) with a jury at the Essex Circuit on March 7, 8, 9 and 10, 1927.

The jury rendered a general verdict against the plaintiffs and in favor of the defendant.

WILLIAM A. SMITH,
Circuit Court Judge.

Dated March 16, 1927.

JUDGMENT.

NEW JERSEY SUPREME COURT.

THE PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation, *Defendant.* *ads.* THE PUBLIC NATIONAL BANK OF NEW YORK, a National Banking Corporation, and THE SPECIALTY HANDLE MANUFACTURING CO., INC., a corporation organized under and by virtue of the laws of the State of New Jersey, *Plaintiffs,*	*Action at Law.* *On Postea.*

It is ordered that judgment be and hereby is entered in favor of defendant and against the plaintiffs with costs to be taxed *nisi.*

On motion of

ARTHUR T. VANDERBILT,
Attorney.

Costs
$39.10
R. to S. C.

Entered March 17, 1927.

RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y., Defendant.	*Action at Law.*
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation, Defendant.	*Rule to Show Cause.*
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, a corporation, Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. PACIFIC FIRE INSURANCE COMPANY, a corporation, Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. IMPORTERS AND EXPORTERS INSURANCE COMPANY OF NEW YORK, a corporation, Defendant.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., Plaintiffs, vs. STUYVESANT INSURANCE COMPANY OF CITY OF NEW YORK, a corporation, Defendant.	

A verdict having been entered in the above-entitled cases, in favor of the defendants, and against the plaintiffs, on the tenth day of March, Nineteen Hundred and Twenty-seven, and application having been made within six days from that date by the above-named plaintiffs, for a rule to show cause why the verdict rendered by the jury in the above-entitled causes should not be set aside, because the verdict of the jury was against the clear weight of the evidence, it is on this fifteenth day of March, Nineteen Hundred and Twenty-seven, on motion of Jacob L. Newman, attorney for the plaintiffs,

ORDERED, that the defendants, Patriotic Insurance Company of America, New Brunswick Fire Insurance Company of New Brunswick, Agricultural Insurance Company of Watertown, N. Y., Pacific Fire Insurance Company, Importers & Exporters Insurance Company of New York, and Stuyvesant Insurance Company of City of New York, show cause before the Supreme Court, at the next term thereof, to be held at the State House, in the City of Trenton, why the verdicts heretofore rendered by the jury in the above-entitled causes on the tenth day of March, 1927, should not be set aside, and a new trial granted, because the said verdicts were against the clear weight of the evidence; and it is further

ORDERED, that all exceptions taken in the above-entitled cases be expressly reserved.

WM. A. SMITH,
Circuit Court Judge.

Entered March 21, 1927.

On motion of

JACOB L. NEWMAN,
Attorney.

Reasons.

REASONS.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*, *Plaintiffs*, *vs.* AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, NEW YORK, *et al.*, *Defendants.*	*Action at Law.* *Reasons.*

The following is the reason which the plaintiffs, Public National Bank of New York, *et al.*, assign on their motion for a new trial in the above-entitled cause:

1. The verdict was against the clear weight of the evidence.

Dated June 24, 1927.

JACOB L. NEWMAN,
Attorney for Plaintiffs.

Testimony.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Monday, March 7, 1927.

PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. PATRIOTIC INSURANCE COMPANY OF AMERICA.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK.	*Action at Law.*
PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. PACIFIC FIRE INSURANCE COMPANY.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. IMPORTERS AND EXPORTERS INSURANCE COMPANY OF NEW YORK.	
PUBLIC NATIONAL BANK OF NEW YORK, et al., vs. STUYVESANT INSURANCE COMPANY OF THE CITY OF NEW YORK.	

Before Hon. William A. Smith, *J.*, and a jury.

For the plaintiffs appear Jacob L. Newman, and Merritt Lane (of counsel).

For the defendants appears Arthur T. Vanderbilt. (Associate: Leo Levy, a member of the Bar of New York.)

The Court: Cases 21 to 27 will be tried together by consent.

Joseph J. Bach, direct.

(A jury is called and sworn.)

Mr. Newman opens for the plaintiffs.

Mr. Vanderbilt opens for the defendants.

JOSEPH J. BACH, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Bach, where do you live? A 50 West 7th street, in the City of New York.

Q Are you connected with the Public National Bank of New York? A I am.

Q In what capacity? A As vice-president.

Q Were you the vice-president of the Public National Bank in the month of May, 1925? A Yes, sir.

Q Did your bank lend to the Specialty Handle Manufacturing Company any money at that time? A Yes, sir.

Q How much? A At a particular time in the month of May, 1925, we made them a special loan of $60,000 secured by insurance policies.

Q At the time you made them the loan did you take an assignment of the policies? A We did.

Q Were the policies delivered to you at that time? A They were.

Q Will you produce the assignments that you have? A (Witness produces papers requested.)

Q The date of those assignments is May 18, 1925? A Yes, sir.

Q Is that correct? A Yes, sir.

Q I show you a policy of insurance of the Patriotic Insurance Company of America No. 171302; also policy of the New Brunswick Fire Insurance Company of New Brunswick, No. 194,-

Joseph J. Bach, direct.

549; policy of the Agricultural Insurance Company of Watertown, New York, No. 6315; policy of the Pacific Fire Insurance Company, No. 2250062; an additional policy of the Pacific Fire Insurance Company, No. 2205594; policy of the Importers and Exporters Insurance Company of New York, No. 02343; an additional policy of the same company, No. 02342; and a policy of the Stuyvesant Insurance Company of the City of New York, No. 1164854. Are those the policies that were delivered to you at the same time that these assignments were made up? A Yes, sir.

Q I show you various assignments covering the policies that you have just testified to. Is that the collateral? Did you advance other moneys to the Specialty Handle Manufacturing Company? A Yes, sir—

Objected to as immaterial.

Q Were they on these policies? A These and other policies.

Objected to as immaterial.

Objection overruled.

Defendants' counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q How much? A A total of—

Objected to.

The Court: I suppose the proof of the advance would be the best evidence.

The Witness: There were no checks issued—

Mr. Vanderbilt: An assignment does not require consideration and has no bearing on this issue.

Mr. Lane: It only shows valid, bona fide consideration for the assignment.

The Court: I don't see the importance of it.

Mr. Newman: I offer in evidence these fire insurance policies.

Mr. Vanderbilt: No objection.

(Policy No. 6315 of the Agricultural Insurance Company of Watertown, New York, is received in evidence and marked Exhibit P. 1.)

(Policy No. 171302 of the Patriotic Insurance Company of America is received in evidence and marked Exhibit P. 2.)

(Policy No. 1164854 of the Stuyvesant Insurance Company of the City of New York is received in evidence and marked Exhibit P. 3.)

(Policy No. 194549 of the New Brunswick Fire Insurance Company of New Brunswick is received in evidence and marked Exhibit P. 4.)

(Policy No. 2250594 of the Pacific Fire Insurance Company is received in evidence and marked Exhibit P. 5.)

(Policy No. 2250662 of the Pacific Fire Insurance Company is received in evidence and marked Exhibit P. 6.)

(Policy No. 02343 of the Importers and Exporters Insurance Company of New York is received in evidence and marked Exhibit P. 7.)

(Policy No. 02342 of the Importers and Exporters Insurance Company of New York is received in evidence and marked Exhibit P. 8.)

(Assignment of policy No. 6315 of the Agricultural Insurance Company of Watertown, New York, is received in evidence and marked Exhibit P. 9.)

(Assignment of policy No. 02343 of the Importers and Exporters Insurance Company of New York is received in evidence and marked Exhibit P. 10.)

(Assignment of policy No. 171302 of the Patriotic Insurance Company of America is received in evidence and marked Exhibit P. 11.)

(Assignment of policy No. 114854 of the Stuyvesant Insurance Company of the City of New York is received in evidence and marked Exhibit P. 12.)

(Assignment of policy No. 194549 of the New Brunswick Fire Insurance Company of New Brunswick is received in evidence and marked Exhibit P. 13.)

(Assignment of policy No. 2250594 of the Pacific Fire Insurance Company is received in evidence and marked Exhibit P. 14.)

(Assignment of policy No. 2250662 of the Pacific Fire Insurance Company is received in evidence and marked Exhibit P. 15.)

(Assignment of policy No. 02342 of the Importers and Exporters Insurance Company of New York is received in evidence and marked Exhibit P. 16.)

Cross examination waived.

Abe Dolid, direct.

ABE DOLID, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Where do you live? A 52 Sunnyside Terrace, East Orange.

Q Are you employed by the Specialty Handle Manufacturing Company? A I am.

Q Were you employed by them in the year 1924? A I was.

Q And 1925? A I was.

Q And are you still employed there? A I am.

Q What department are you connected with? A Leather department.

Q What is the business of the Specialty Handle Manufacturing Company? A Making leather handles, straps, and corners, and various articles made of leather.

Q For what purposes are these used? A For all kinds of uses in the suit case trade.

Q In 1925 where was your place of business? A Greene street and Railroad avenue.

Q You were in what department? A In the leather department.

Q At the end of the year 1924 did you make a physical inventory of the leather on hand? A I did.

Q I show you an inventory dated January, 1925, and ask you if the "Abe" marked there refers to your name? A Yes, sir.

Q Did you make an examination of the leather there? A Yes, sir.

Q Did you make a complete inventory of it? A Yes, sir.

Q Is that in your handwriting? A This is not (indicating).

Abe Dolid, direct.

Q Take the first item: two thousand pounds Armour shanks— A (Witness interrupting.) Twenty thousand pounds.

Q Did you count them? A We weighed them.

Q And that is what that item weighed? A Yes, sir.

Q Who fixed the price of thirteen cents? A I did.

Q Was that the market price at that time? A Yes, sir.

Q And that made $2,717? A $2,717, yes, sir.

Q Will you show us from this bundle what an Armour shank is? A This (indicating) is not an Armour shank, but this is the nearest we could get to an Armour shank.

Q The next item is Hans Rees shanks. How many did you then have on hand? A 1,524 pounds.

Q What was the market price at that time per pound? A Anywhere between fifteen to seventeen cents.

Mr. Vanderbilt: The witness seems to be reading. Maybe we can save time if that is the original.

Mr. Newman: That is not in his handwriting.

The Court: Is there any objection to its going in evidence?

Mr. Vanderbilt: It is not in his handwriting.

The Court: But he checked it, as I understand it.

Mr. Vanderbilt: May I cross examine?

The Court: If there is no objection.

Mr. Newman: I don't think so.

Cross examination by Mr. Vanderbilt.

Q In whose handwriting are those sheets? A Mr. Harry Kasnowitz'.

Q Were those sheets which you dictated to him? A Yes, sir.

Q Did you have any memoranda from which you dictated those sheets? A From the original tags of the leather that we checked.

Q The original tags would tell you how many pounds there were. A Yes, they would.

Q You took the tags and did not weigh them yourself? A When we took the inventory I weighed and tagged them myself. Afterward we went through and I took the tag out from the particular pile of leather and read it off to him and that he should mark it down on this inventory sheet what I told him to do.

Mr. Vanderbilt: I think we ought to have the testimony of Mr. Kasnowitz.

Mr. Newman: I think it is amply proved.

The Court: Counsel may consent to this going in evidence instead of having the witness testify.

HARRY KASNOWITZ, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Kasnowitz, you are connected with the Specialty Handle Manufacturing Company? A Yes.

Q And you were connected with them in January, 1925? A Yes.

Q And you are still connected with the firm? A Yes.

Q I ask you to examine a paper lying in front of you and ask you if that inventory marked "Abe" as of January, 1925, is in your handwriting? A Yes.

Cross examination by Mr. Vanderbilt.

Q What was your position in the Specialty Handle Manufacturing Company in the early part of 1925? A Salesman.

Q How long had you been employed prior to that in that capacity? A I have been employed since October, 1923.

Q Are you related to any of the men in the concern? A Mr. Garfinkel.

Q What is the relationship? A Brother-in-law.

Q When was it that the paper that you have in your hand was written by you? A The latter part of 1924.

Q When was it written? A The latter part of 1924.

Q Where? A At New Jersey Railroad avenue.

Q Can you tell us about when in 1924 it was written by you? A I can't exactly tell you the exact date, but it was the last week in December.

Q The last week in December, 1924? A Yes, sir.

Q Can you tell us how long before New Year's it was? A Just about a week.

Q About a week before New Year's? A Yes, sir.

Q Are you sure that it was written in 1924? A Yes.

Q Are you willing to swear that you did not write it some time in the year 1925? A Yes.

Q Do you recall being examined under oath in this matter some time ago? A Yes.

Q With respect to these papers which are now before you, were you asked these questions and did you give these answers: "Question: You won't say you did not do that after the fire, will you? Answer: No." Were you asked that question and did you give that answer? A Yes, sir.

Q Then further: "Question: You understand the question? Answer: Yes, sir. Question: I have asked you will you say you did not write that after the fire. Answer: I couldn't say exactly. Question: Exactly. Now, I call your attention to these pencil sheets which have your written signature in ink on the bottom. Tell me if you did not write your signature in June in ink when you made the affidavit. Answer: That I can't remember." Do you recall giving those answers to those questions? A Yes.

Q Were those statements true at the time you made them in the examination under oath? A I don't remember what the answers were to that.

Q Did you put your initials in the first column "H. M. K." in pencil? A On this sheet here?

Q Yes. A Yes.

Q When did you put them there? A That is the time we completed this here inventory.

Q When was that? A Probably about the early part of January.

Q You are sure that was in the early part of January? A Quite sure.

Q Do you recall being asked this question and making this answer in the examination under oath: "Question: When did you put your initials 'H. M. K.' in the first column in pencil? Answer: I can't remember that." Do you remember that? A Yes, sir.

Q When was the first time you recalled putting your initials there in pencil that you could not recall at that time? A I noticed the testimony after my answering it—answering the questions you have there.

Q When was it you first recalled when the signature in pencil in the first column of the sheets you have before you was put there? You said you didn't recall when you put it in in the spring of 1925? A After I answered the question I recalled this was signed the early part of January.

Q After you had given this answer to the question I have read then you recalled what it was? A Yes.

Q Did you state initially in your examination when it was that you signed it? A What examination?

Q This examination under oath. A I don't think I did.

Q You did not state when this was signed? A No, I don't think so.

Q Did you ever make a statement, Mr. Kasnowitz, that you might have written the 1923 and 1924 inventories at the same time? A I don't remember ever saying that.

Q (Reading from the examination under oath at page 138): "Question: Will you say that these sheets of the 1923 inventory that bear your signature were not written at the same time as the other ink copy of the 1924 inventory with the same pen and the same ink? Answer: I

can't remember that. Question: You won't say that you did not do that? Answer: The same pen and ink? Question: The same pen and ink at the same time. Answer: couldn't say. Question: You won't say one way or the other? Answer: I can't remember. Question: You would not say it did not happen? Answer: Yes, sir, I would. Question: What is the fact about it? Answer: I didn't get your question right. Question: I thought I made it perfectly obvious. This 1923 inventory, these sheets you have identified, marked at the top 'Shipping and stockroom.' Answer: Yes, sir. Question: Ten sheets in number and they are all in ink and all written by you, are they not? Answer: Yes, sir. Question: Take the other inventory right in front of you, this one in the loose leaf binder. That is all written by you with the exception of the last few sheets in the book? Answer: Yes, sir. Question: I ask you if you did not write those two things at the same time? Answer: I don't remember. Question: Will you say you did not write them at the same time? Answer: I couldn't answer that. Question: Of course, you do not want to say anything that would hurt your brother-in-law Mr. Garfinkel, do you? Answer: I will tell nothing but the truth. Question: I say that you would not want to say anything that would hurt your brother-in-law Mr. Garfinkel. Answer: I don't want to see him hurt in any way." Were you asked those questions and did you give those answers? A Yes, sir.

Q And they were true at the time you gave them? A The best I knew how to answer them.

Q And they are true now? A I didn't follow. Will you ask some of those questions to me, please?

Q Are the answers true? A I did make that statement there.

Q And they were true at the time you made them? A Yes.

Q And they are true now? A Yes.

Q And you signed your name to every page of the examination, or your initials, rather? A Yes.

Q Those are your initials at the bottom of the various pages? A Yes.

Q And you took this affidavit on November 12, 1925, before Saul J. Zucker, attorney-at-law, Newark, New Jersey? A That's right.

Q He is one of the attorneys in Mr. Newman's office, isn't he? A That's right.

Mr. Vanderbilt: I object to any proof based on this paper because by his own admission he cannot tell when he made that up.

The Court: You do not consent to its going in?

Mr. Vanderbilt: No, sir.

ABE DOLID, resumes the stand.

Re-direct examination by Mr. Newman.

Q I think you told us about the shanks? A Yes, sir.

Q Will you look at the third item on that paper—

Mr. Vanderbilt: I object to the witness using this paper. It is not in his handwriting and is not a memorandum made by him.

The Court: It is made under his supervision and I will allow it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What is the third item? A 493 pounds of Kisler-Leach russet bellies.

Q Have you one of those here? A Yes, sir.

Q Let us see it. A (The witness produces same.)

Q How much was that a pound at that time? A At that time it was forty cents a pound.

Q Was that the market value of it? A Yes, sir.

Q What is the next item? A 20,050 pounds U. S. bellies.

Q How much a pound? A Sixteen cents a pound.

Q What was the total? A $3,208.

Q Have you one of those bellies here? A Yes, sir (producing same).

Q What is the next item? A 6,700 pounds of corrugated—

Mr. Vanderbilt: I object to the use of this paper.

The Court: Very well, you may have a general exception to the use of this paper.

Q How much per pound?

Mr. Vanderbilt: I object unless he is qualified as a market price expert.

Q Do you know what the market price was? A Six cents.

Mr. Vanderbilt: I still object.

Mr. Newman: I am going to qualify him.

Mr. Vanderbilt: I move that his last answer be stricken out.

The Court: Strike it out.

Q Are you familiar with the market value of these things you have shown us? A Yes, sir.

Q What experience have you had? A I am in this line for the last nineteen years.

Q Do you buy and sell? A I don't, but everything the company buys I pass on it.

Q These articles in the inventories, were you familiar with the market values at the time you fixed them here? A Yes, sir.

Q When you placed these prices on them, were they the prices at the time? A Yes, sir.

The Court: I will allow it.

Q Splits. A 14,300 pounds of splits.

Q At what price? A Four cents.

Q How much did that make? A $572.

Q What is the next item? A 3,500 P. E. belly centers; thirty cents.

Q Have you a sample belly center there? A I believe I have. (The witness produces same.)

Q That is the tanned belly center, is it? A Yes, sir.

Q What is the difference between U. S. bellies and tanned belly centers? A The difference is that this has been retanned and cut off part at both ends and the U. S. is not. This is another and this is not being retanned.

Q Those were 3,500 at 80 cents a pound? A Eighty cents apiece.

Q That was $2,800? A Yes, sir.

Q What is next? A 4,514 mahogany belly centers.

Q And the total is what? A $2,934.10.

Q And the next? A 2,527 P. E. tanned belly centers.

Q And the market price? A Sixty cents apiece.

Q A total of how much? A $1,642.55.

Q And the next? A 308 mahogany brief case belly centers, also at forty-five cents apiece.

Q Have you one of those there? A Yes, sir. (The witness produces same.)

Q What is next? A 95 russet brief case bellyy centers, also at forty-five cents apiece.

Q Making a total of what? A $42.75.

Q And the next item? A 212 russet belly centers at sixty-five cents.

Q How much does that make? A $137.80.

Q And the next? A 717 brown belly centers at sixty-five cents, making a total of $66.05.

Q And the next? A 424 russet heavy belly centers at ninety-five cents; a total of $402.80.

Q And the next? A 420 P. E. belly centers at sixty-five cents, total $273.

Q Go ahead. A 1,900 pounds horsehide, thirty cents a pound, $537. 52 black brief case belly centers at forty-five cents, making $23.40. 1,228 black bellies, half finished, at eighty cents apiece, total of $10,043.80.

Mr. Vanderbilt: May we have the paper that the witness is reading from marked for identification?

Mr. Lane: Isn't this paper evidential? This witness has testified it was made at a certain time; that he dictated it; that after it was dictated he checked it; and that it represents the inventory he made at the time. I submit that makes it evidential.

The Court: You want to introduce it as an inventory.

Mr. Lane: And as testimony. All the witness is doing is reading the items. We will be here until next week reading those items.

The Court: Why wouldn't the inventory be evidential, Mr. Vanderbilt?

Mr. Vanderbilt: If the man who made the inventory were produced it would be evidential. Mr. Kasnowitz testified in the examination under oath that he does not know when he made it. It might have been made when the 1920 inventory was made.

The Court: He said it was in the last week in December. There was some question as to whether he put one signature on it at that time or at a later time.

Mr. Vanderbilt: Then I asked him when he did it. He said, "I don't remember," and he said that testimony is true.

Mr. Lane: That only goes to the weight of the testimony—

The Court: I will allow it in evidence.

Defendant's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Dolid's inventory is received in evidence and marked Exhibit P. 17.)

The Court: Is that the inventory of all the stock on which suit is brought?

Mr. Newman: Only the leather in his department.

Abe Dolid, re-cross.

By Mr. Newman.

Q You have shown us various samples here of tanned belly centers. Have you a russet belly center there—No. 12? A (The witness produces same.)

Mr. Newman: I offer in evidence those samples that have been identified.

The Court: The jury have seen them and they know what they are.

Mr. Newman: Very well, sir; we won't press it.

Re-cross examination by Mr. Vanderbilt.

Q Are you familiar with the prices at which these articles were bought? A Yes, sir.

Q Will you go over the items one by one that you referred to and tell us whether or not the prices at which they were bought by the Specialty Handle Manufacturing Company were higher or lower than the prices at which you have included them in this inventory? A I don't understand.

Q You are familiar with the price at which each of these articles were bought? A Yes, sir.

Q You haven't put them in at the prices at which they were bought? A Some of them.

Q You have based this inventory on what you call market value? A Yes, sir.

Q Where the market value and the cost happened to be the same, that price appears here, doesn't it? A The merchandise that were bought and not touched, that is, there was no labor, were put at the price they were bought, and the merchandise that was in the process of manufacture were figured plus labor and

Max Mans, direct.

deduct certain pieces that were cut away, until I arrived at this price.

Q As a matter of fact, did you fix these prices or did Mr. Garfinkel fix the prices? A I fixed these prices, most of them. Only the merchandise that wasn't touched, and after, then we looked up the bills and after I fixed the prices I went over them with Mr. Garfinkel.

Q Did he change any of them? A No, sir, he didn't.

Q He had nothing to do with fixing the prices on the inventory, Exhibit P. 17? A No, sir, they were all right.

Q He didn't change any of them after you fixed them? A No, sir, he didn't.

MAX MANS, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Mans, where do you live? A 725 Prospect street, Maplewood, New Jersey.

Q Were you formerly connected with the Specialty Handle Manufacturing Company? A Yes, sir.

Q Were you with them in December, 1924, and January, 1925? A Yes, sir.

Q And you are still employed there? A Yes, sir.

Q I show you an inventory sheet marked "Mans" and ask you whether that inventory was made under your supervision? A Yes, sir.

Q What department is that? A Spilts department.

Q Looking at that inventory, did you yourself make the count of those goods? A Yes, sir.

Max Mans, direct.

Q Did you put the prices on them? A Some of them, yes.

Q In whose handwriting is this? A Mr. Kasnowitz'.

Q Was this made under your supervision? A Yes, sir.

Q Does this represent the exact inventory of the goods taken in your department in January, 1925? A Yes, sir.

Q And the total here is $9,387.06. That is correct? A Yes, sir.

Q What are splits? A That is the under leather from the grain; the bottom of the grain.

Q What is the difference between trimmed splits and the untrimmed splits? A A hide has to be trimmed. There is a difference; the whole hide or trimmed. That is the trimmed (indicating), but a hide is big; it has got to be trimmed.

Q In fixing these prices did you fix the market value of the splits? A Yes, sir.

Q Is there any difference in value between the trimmed and the untrimmed splits? A A big difference.

Q Which is worth more? A The trimmed.

Q That has more labor on it? A More labor.

Q And ready to be used, is it? A Yes, sir, ready to be used.

Q And the other is more in the raw state? A In the raw state.

Mr. Newman: I offer in evidence inventory of Mr. Mans.

Mr. Vanderbilt: May I cross examine?

The Court: Yes.

Max Mans, cross.

Cross examination by Mr. Vanderbilt.

Q When was this inventory made, Mr. Mans? A Before January—in December.

Q Before January, 1925? A Yes, sir, in December.

Q How long before? A I always started about two weeks ahead.

Q Who wrote that paper? A Mr. Kasnowitz.

Q That is the Mr. Harry Kasnowitz who was on the stand a short time ago? A Yes, sir.

Q You say it was written a couple of weeks before January? A Yes, sir.

Q You say that some of the values you fixed. Who fixed the values you did not fix? A What I didn't know I went to the office and asked them how much they paid for it.

Q Whom did you ask in the office? A Mr. Garfinkel.

Q Mr. Garfinkel, the treasurer of the company? A Yes.

Q Can you tell me, Mr. Mans, who put this rubber stamp at the top, "January, 1925" on this paper? A I don't know.

Q But your recollection is that this paper was made out a couple of weeks before the 1st of January? A Yes, sir.

Q And this is supposed to be an inventory of your department as of what date? A The date I couldn't tell you; only in the month.

Q What date did you make the inventory? A I didn't work on the date; I always started about two weeks before January 1st; sometimes three weeks, sometimes two weeks, according to the stock I have.

Q Then you can't tell us approximately on what date you made the inventory? A No, sir.

Max Mans, cross.

Q Were you using splits between the time you made the inventory and the first of the year? A I did.

Q Every day? A Every day.

Q Are they reflected in the paper you have before you? A No, sir, I always have splits reserved for work.

By the Court.

Q What was that? A When I take inventory I got to supply my work for people. I always have a side reserved for work; that has nothing to do with the stock taking.

Q You mean you reserve enough for the work and leave enough for stock? A Yes, sir.

By Mr. Vanderbilt.

Q But you were using splits from the time you took the inventory to the first of the year? A Yes, sir.

Q Is the quantity of goods you used during that period shown on that inventory? A Yes, sir.

Q Where? A What I used?

Q Yes. A No, sir, what I used I cannot put in the inventory.

Q Let us say you took this exactly two weeks before the 1st of January. From then on, day by day, you used splits. Is that right? A Yes, sir.

Q I understood you to say you were using these every day? A I always have a reserve on the side.

Q You mean besides the inventory you have other goods not included in the inventory? A That is in a different sheet. In addition to this

Max Mans, cross.

merchandise it went right into the straps that was finished.

Q You told us, as I understood it, that this is the inventory you took a couple of weeks before January, 1925? A Yes, sir.

Q And that you were using goods at that time of that inventory from then on to the first of the year? A Not from this inventory.

Q None of the goods in that inventory was used from the middle of December to the 1st of January? A No, sir.

Q How did you conduct the business? A Because I had plenty of material ahead to finish. We took out any cut straps and finished straps. I had plenty of stock besides this put away for work.

Q Didn't you include in the inventory all the stock you had? A I couldn't include this.

Q Can you tell me what this item is, "Last bill from A. C. Lawrence, $1,275"? A Leather splits; horse splits.

Q What number of pounds were there? A I will tell you.

Q It reads: "Last bill from A. C. Lawrence, $1,275." What does that mean? A You will have to take up the bill because I took it from the way it came in; I didn't count it or weigh it—the way it came in I took the bill from the office.

Q What does this next item mean: "Labor extra, $145"? A Preparing splits for the next year.

Q As splits that are set out on this inventory? A Yes, sir. That is preparing the sizes for the orders the way the orders is coming.

Q Isn't the amount of labor involved divided into different items on this inventory? A No, sir.

Max Mans, cross.

Q Isn't it unusual to inventory labor? A No, sir.

Q That is your common practice, to put in labor or extra labor, so many hundreds of dollars? A I have to figure the time we should know how much the value is of that leather, therefore, I had to put it in.

Q Can you tell us what there was in that bill from Lawrence, either as to quantity or weight? A I couldn't tell you that. You will have to get a bill from the office.

Q What kind of leather is it? A Buck splits.

Q Who told you to write in the inventory, "Billed from Lawrence"? A No, one.

Q Did you write it in? A No, Mr. Kasnowitz did.

Q Did you dictate it to him? A Yes, sir.

Q How did you come to do that? A If merchandise comes in I don't have to touch it. I find out from whom it came in and then put it on the inventory.

Q That wouldn't tell you how many splits— A (Witness interrupting.) That was bought by the pound.

Q There is nothing to tell you how many pounds there were in the lot? A No, sir, that is on the bill.

Q Where did you go for the extra labor? A I didn't touch it.

Q There is an item "Extra labor, $145." A I had plenty of splits without this.

Q Where did you get the $145 for labor? A I had different splits from other concerns.

Q Who gave you the item of $145? A I put it in because I figured the time I would spend on them when I prepared it.

Max Mans, cross.

Q Didn't you include labor in the price you put down for every one of these articles? A No, sir.

Q Didn't you tell Mr. Newman on direct examination that some were finished and represented one price and some were untrimmed and represented another price? A I didn't put labor in; it comes out in the value when it is finished.

Q Do these various prices that you put down in this inner column of that paper represent the market prices of these goods including labor? A Yes, sir.

Q Then why did you put down the extra labor charge of $145? A Because I had so many splits and I worked so many and so many days on it to figure.

Q Had you done any labor at all on Lawrence's bill of goods? A No, sir.

Q Why did you put in the extra labor of $145 on Lawrence's splits? A Not on Lawrence's splits, only on different kinds.

Mr. Newman: I offer Max Mans' inventory.

Mr. Vanderbilt: I object to it on the ground that it is incompetent because here is Lawrence's last bill of $1,275 that would tell us what it is; extra labor item of $145. He testified the inner column prices include market prices with the labor.

The Court: There is proof or testimony that it was the inventory they had. Under that condition I will allow it.

Defendants' counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Max Mans' inventory is received in evidence and marked Exhibit P. 18.)

Re-direct examination by Mr. Newman.

Q I show you these splits. Is that the kind of splits you trimmed in your department? A Yes, sir.

Q Are these the trimmed splits? A Yes, sir.

Q And those are the untrimmed ones? A The untrimmed ones.

MARTIN C. LEINBACH, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Leinbach, where do you live? A 221 Florence avenue, Newark, New Jersey.

Q Are you connected with the Specialty Handle Manufacturing Company? A I am.

Q Were you connected with that concern in December, 1924? A Yes, sir.

Q Did you take any inventory of the goods on hand in the latter part of December, 1924? A I did.

Q What department have you charge of? A Leather department.

Q Did you count the quantity of goods you had on hand? A I did.

Q I show you an inventory of three sheets marked "First floor—Marty's." Does that refer to your department? A Yes, sir.

Q Was that inventory made under your supervision and direction? A Yes, sir.

Q Did you count the quantity of goods? A Counted and weighed it.

Q Did you fix the prices on it? A No, sir.

Q Who did that? A It was done in the office.

Q So all you had to do with it was counting and weighing the articles? A Yes, sir.

Q In whose handwriting is it? A Mr. Kasnowitz'.

Q Was that done under your supervision? A Yes, sir.

Q And are the amounts correct as to quantity; as to how many there are? A Yes, sir.

Q What kind of material did you have in your department? A Leather bags and brief case partitions.

By the Court.

Q Finished? A What we call a knock-down bag—parts.

By Mr. Newman.

Q Parts? A Yes.

By the Court.

Q That is, they were finished as far as the work was concerned, but not assembled? A Yes, sir.

By Mr. Newman.

Q What are those (indicating)? A This is the side of a three-piece bag, drawn up only.

Q What is that (indicating)? A This is a side of a three-piece bag, doped, but not pressed.

Q You mean enameled? A Painted, as we call it.

Q What is that (indicating)? A This is a three-piece side pressed—this is finished, ready to be shipped.

Q What is that (indicating)? A This is a side of a five-piece bag, pressed, ready to ship.

Q Go ahead. A This is five-piece side doped complete, cut only. This is a five-piece side, pressed, ready to ship. This is a five-piece bag complete, cut only. This is a five-pieve side, pressed ready for shipment. This is one doped, not pressed. This is a three-piece bag, cut only, as we call it. This is a three-piece felt paper—three-piece bag—for this bag (indicating). This is a side for a five-piece bag, chip-board. This is the bottom for a five-piece bag, chip-board, and this is russet gray felt paper. This is a 16-inch partition, pressed, but not finished. This is a 16-inch partition, cut only, not painted. This is a 15-inch partition finished. That is a 16-inch partition finished. This one is painted but not finished. This is a complete five-piece bag, pasted only, not doped. This was a regular 18-inch bottom, as we call it, which is built to an 18-inch bag. This is kraft paper used for packing bundles. This is bogus paper used for inner lining. This is two-ply rope used for packing bundles.

Cross examination by Mr. Vanderbilt.

Q Did you write those sheets that you referred to yourself? A No, sir.

Q Did you make out any memoranda yourself from which these sheets were written up? A I counted the partitions and bags and put tags on them.

Q How were the sheets made up? A Mr. Kasnowitz came from the office and I called them off to him and he called them back to me.

Q Who is that? Mr. Harry Kasnowitz? A Yes, sir.

Q What is his position? A Salesman.

Q Was that part of his regular work? A As far as I know.

Q Had he made any previous inventories? A I couldn't say.

Q How long had you been connected with this company? A Four years.

Q When did you start working for them? A 1922.

Q Were you in charge of this particular department all that length of time? A Yes, sir.

Q Was an inventory like that made every year? A Yes, sir.

Q Had Mr. Harry Kasnowitz had anything to do with the inventory before? A Not in my department.

Q Who had written it up previous to 1924? A Somebody came from the office; I don't know who it was.

Q But it was not Mr. Kasnowitz? A No.

Q Who did it the year previous? A That is the one I don't remember who it was; somebody from the office.

Q This was the first time that Mr. Kasnowitz came there to make up the inventory? A As far as I was concerned.

Q Did you check up with him what he wrote down on the three-page inventory? A I watched him write it and he called it back to me after he was through.

Q Did you examine the sheets so as to check and make sure what he put down? A I watched him write each item as I called them off.

Q Who fixed the prices? A I don't know.

Q You didn't give him any prices on these items? A No, sir.

The Court: Any objection to their admission?

Mr. Vanderbilt: Absolutely. There is no testimony on the prices.

Mr. Newman: I ask that it marked for identification.

(Marty's inventory is marked Exhibit P. 19 for identification.)

SAMUEL SKURATOVSKY, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Were you formerly in the employ of the Specialty Handle Manufacturing Company? A Yes, sir.

Q Are you still in their employ? A Yes, sir.

Q What was your department? A Corners department.

Q Were you with them in December, 1924? A Yes, sir.

Q Did you make an inventory on or about the latter part of December, 1924? A Yes, sir.

Q I show you a sheet entitled "Corners, not selected," an inventory consisting of eleven sheets, and ask you if that was your department? A Yes, sir.

Q Did you make that inventory? A Yes, sir.

Q Who helped you with it? Did anybody help you with it? A I had labor.

Q Did you count the stuff? A I counted and I weighed.

Q To whom did you give it? A Mr. Kasnowitz.

Q Harry Kasnowitz? A Yes.

Q Did he put it down in his handwriting? A Yes, sir.

Q Did you supervise it to see that he put down exactly what you called out? A Yes, sir.

Q Did he put it down exactly as you called it out to him? A Yes, sir.

Q Do these sheets represent the merchandise on hand in your department in December, 1924, or early in January, 1925? A Yes, sir.

Q Who put the prices on those goods? A The office.

Mr. Newman: I ask that it be marked for identification.

(The inventory of the corners department is marked P. 20 for identification.)

Q Show us what you mean by this corner, Mr. Skuratovsky. A (The witness produces same.) This is split corners, only pressed, not finished.

Q What are they used for? A For suit cases.

Q They are put at the corners? A On the top and on the bottom.

Q What other kind of corners do you have? A This is also split corners, but this is painted; they are not finished yet; just painted.

Q The first ones are in the raw state, are they? A This is not painted; this is finished corners, painted, pressed and trimmed and everything; that is finished corners, just ready for the suit cases. (The witness indicates each item.)

Q Do you have any other kind? A This is also finished. This is in cowhide. This is a split finished five-inch corner; this is a four and a half; that is a four; that is a four; that is a four in different shape. This is also four. That's three and a half; three and a half; three and a quarter, also different size; that is three and a half; three inch; two and seven-eighths; two and a half. Also finished cowhide corners. This is four and a half inch, No. 102, we call this. The same in different color, we call this three and a half, No. 105. This is a four-inch straight, four-inch cowhide. This is flat corners. And we call this Harrison genuine cowhide.

Q Henry Harrison? A Harrison, yes, sir. Harrison genuine russet. This is the same thing, but that is a heavy leather single. This is the cowhide of sizes from five to two and a half flat corner, just chopped out from cowhide to be pressed and finished. This is also the same—a different shape. This is flat splits, the same thing as this, they are not pressed, they have to be pasted and pressed, which will be like this (the witness indicates each item).

Cross examination by Mr. Vanderbilt.

Q When was it that these sheets marked Exhibit P. 20 for identification were made up? A It was in December, 1924, made up.

Q When in December? A The last week in December. We are always take the stock.

Q It is all in the handwriting of Harry Kasnowitz? A It is all in the handwriting of Harry Kasnowitz.

Q What did you do with the sheets after he wrote them? A I called out where I got it and

then he writes it and then he called back if he put right on the sheet.

Q How do you know whether he put down what you called? A I was standing near him watching him.

Q Watching him? A Most of the time.

Q You didn't put in any of the prices? A Yes.

Q That was all done by him in the office? A I don't know by who in the office, but it was done in the office.

Q But it is all in his handwriting? A In his handwriting, yes.

Q Are you familiar with this first item on the second page? A "7,000 4-inch black cowhide corners, finished, painted;" sure.

Q Is that 7,000 or is it 47,000? A 47,000.

Q You said 7,000 a minute ago. Is it 7,000 or 47,000? A It is 47,000.

Q When that was first written was it 7,000 or 47,000? A I can't remember.

Q There has been some change made there, hasn't there? You can see that, can't you? A I can see it has something like a change.

Q You can see something has been changed here in the extension in the price? A Yes, sir.

Q Was that done before you saw it or afterward? A It must have been done before.

Q Are these figures 7,000 or 47,000? A 47,000.

Q How do you account for the change? A A When I called it, instead of putting 47,000 he put 7,000 and that's where it comes out the mistake.

Q That first figure at the top of the page numbered 4 has been changed, hasn't it? A It shows something.

Q That 82 in the first column has been changed? A 82, yes.

Q When were they changed, do you know? A I don't know.

Q You were not there when the prices were put in? A No.

Q So you don't know anything about that change? A No.

Q Were you there when these amounts were put in? A No.

Q Do you know whether the amounts read 7,000 or 47,000? A I can't remember.

Q Can you remember back what quantity of that article there was—7,000 or 47,000? A I can't remember.

Q You can't remember whether you had 7,000 or 47,000? A I can't remember.

Q You were in charge of this department? A Yes, sir.

Q That is an item you used quite a bit? A Yes, sir.

Q You certainly can recall whether you had 7,000 or 47,000. That is six or seven times that amount. A I can't remember now; it is over three years ago.

PETER KISCO, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Peter, where do you live? A I live 492 South street.

Q Were you employed by the Specialty Handle Manufacturing Company in December, 1924? A Yes, sir.

Q What department did you have? A I had the handle department.

Q Where is that located? In what part of the factory and on what floor? A The fourth floor now.

Q What floor was it on then? A Then I got the third floor.

Q I show you an inventory marked "Handle department, third floor, Peter's room," consisting of four sheets, and ask you if you made the inventory of the goods on hand at that time? A Yes.

Q Did you count them? A Yes.

Q And you weighed them? A Yes, I weighed them and counted them.

Q Who wrote it down? A Mr. Garfinkel, Sam—Sam Garfinkel.

Q Who wrote it down? A I wrote it on a piece of paper; I come in to Mr. Sam Garfinkel and he put it down for the records.

Q Did you see him put it down? A Yes, sir.

Q Did you see him do it? A Yes, sir.

Q Did you put the prices on? A No, sir.

Q Who did that? A In the office.

Mr. Newman: I ask that it be marked for identification.

(The inventory of the handle department is marked Exhibit P. 21 for identification.

Q Are these the kind of handles you had in your department (indicating)? A Yes, sir.

Q Leather handles? A Yes, sir.

Q And these also (indicating)? A Yes, sir.

Q Different kinds? A Yes, sir.

Q And these (indicating)? A Yes, sir.

Cross examination by Mr. Vanderbilt.

Q Is Mr. Sam Garfinkel one of the officers of the company? A Yes, sir.

Peter Kisco, re-direct—re-cross.

Q What office does he hold? A I don't know.

Q All of this is in his handwriting, these pages of Exhibit P. 21 for identification? A Yes.

Q Did you check back from this after he wrote it out? A Yes.

Q You compared each item with him? A Yes.

Q You read, do you? A Yes, sir, I got a boy help me out; I got a boy for my books. After, I go to Mr. Garfinkel, Sam, and put so much.

Q What did you do in your book? A I didn't keep it; my book worth nothing.

Q You wrote it out for Mr. Sam Garfinkel? A Yes, sir.

Q And he wrote it and you checked it back with him? A Yes, sir.

Re-direct examination by Mr. Newman.

Q These are the different kinds of handles that you had? A Yes, sir.

Re-cross examination by Mr. Vanderbilt.

Q Will you read off the first two or three lines of this to me? A (Witness reading.) 50,000—157—7/16 copper rivets.

Q Next line. A 1,800 No. 15.

Q Read this line (indicating). A 606-608-splits—four solid blocks.

Q What is this? A Blocks.

Samuel I. Garfinkel, direct.

SAMUEL I. GARFINKEL, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Garfinkel, you are conected with the Specialty Manufacturing Company? A Yes, sir.

Q And you were connected with them in December, 1924, were you? A Yes.

Q Is this in your handwriting (referring to Exhibit P. 21 for identification)? A Yes, sir.

Q And did you fix the prices there? A Most of them I did.

Q Were you familiar with the market values of those things? A Yes, sir.

Q Did Kisco call off numbers and amounts to you and you put them down for him? A Yes.

Q Do the prices that appear there represent the true market value of the merchandise in December, 1924? A Yes, sir, they do.

Q You say you fixed most of the prices? A Yes.

Q How were the others fixed? A At the office, comparing bills and invoices; that I don't remember exactly at the time.

Q Then you went out to the office— A Those prices I knew I put on the list; those I had to get from the invoices.

Q Did you put them down yourself afterward? A No, sir.

Q It was put down in the office? A Yes.

Q Who did it? A Probably the bookkeeper or stenographer.

Q Do you know? A No, whoever has time does those things.

Q What department did you have in addition to making the inventory? A I was in charge of the full supervision of the handle department.

Q I show you inventory sheets marked "Third floor handle department," consisting of two sheets; "Third floor piece work shipping room," one sheet; cutting room, two sheets; fourth floor, bridge and stock room, consisting of two sheets; second floor, Zinn's department, two sheets; and fourth floor spraying room, one sheet; and dope house. I ask you whether those sheets are in your handwriting? A Yes, sir, they are.

Q Were they all made by you? A Yes, sir.

Q Were the prices therein fixed by you? A Most of them are.

Q Who did the counting and the weighing? A Well, I had the various help in the departments count and weigh.

Q And you checked it? A Went over each item and checked them up to see whether they were right, and then put them on my sheet.

Q What did you have in your department? A Leather, hardware, paper, different metals—

Q Materials that went into the manufacture— A (Witness interrupting.) Of handles.

Q What is this dope house? A A place where we get chemicals, called dope—

Q For coloring purposes? A Yes.

Q What is the spraying room? A A department to spray color, paint, on the handles and everything. That is what we call spraying.

Q What is "Zinn's"? A That is the chemist and the department went under his name.

Q What was in the stockroom? A Finished material that came down to the stockroom from every department in the building; everything that was manufactured and was not shipped went to that stockroom.

Q And the cutting room? A We kept different grades of leathers that we used in the manufacture of handles.

Q And in the piece work room, what was there? A We also had different materials, supplies that was needed for the piece workers.

Q And the handle room? A In the handle room.

Q Is that the kind of handles you had? A Yes, sir, various kinds.

Q Some of the items in the inventory there are partly finished, are they? A Some of them are finished; some of them are part finished.

Q Was that taken into consideration when you made the prices? A Yes, sir.

Q According to the amount of labor? A Yes, sir, according to the amount of labor and the state; the way it was finished.

Q Just take the first item, 450 No. 405 inlays, ready for use. A Before the handle is finished it is an inlay.

Q It is the interior of the handle? A It is the interior of the handle.

Q Before the outside covering is put on? A Before the outside covering is put on. This (indicating) is an inlay for the No. 405 handle. This is the next size to it—the smaller size. These are various inlays for handles.

Q How did you fix the price of ten cents? A It costs six cents labor, and about four cents material.

Q Show us what inlays are. A (Witness indicates.)

Q Trimmed inlays. A No. 452 I think it is.

Q What does it mean? A The edges are trimmed.

Cross examination by Mr. Vanderbilt.

Q I understood you did not fix all the prices on these inventories that Mr. Newman had asked you about, but only on some of them? A Yes.

Q With respect to the group of inventories he last referred to, did I understand you to say you did not go through them and make the physical check and count and weigh them? A No.

Q Who did that? A I had various help in the different departments.

Q You didn't do it yourself? A No.

Q You don't know yourself the number of any of these items on the inventory that has been referred to from your own signing or counting? A Some of the items I counted and checked and weighed myself, but I don't know which they are.

Q Do you know which ones you did? A I couldn't remember now.

Q Or which were weighed by the various foremen of these departments? A I couldn't say that.

Q You were not there when they did it? A Sometimes I was and sometimes I wasn't—to see whether it was right.

Q You didn't do it yourself? A No.

By Mr. Newman.

Q But you did check each item? A And verified it.

By Mr. Vanderbilt.

Q What do you mean by verifying when you didn't weigh it yourself? A When the item was put in there and the article was put there I could tell it.

Q If there was a gross mistake you could tell by looking at it? A Yes.

Q You didn't check up on the foreman under your supervision? A They do many things that I rely on them, such as counting and checking and in that particular thing I didn't check them up.

Q You relied on their counts and weights? A Yes, sir.

Q You checked up on mistakes that are so obvious— A An item of 50 gross they can easily count them because they are in boxes.

Q But the foremen did the counting? A Some I did and some I didn't.

Re-direct examination by Mr. Newman.

Q Can you tell us which ones you fixed the prices on in this inventory? A Yes. There is page No. 1: The first item, second, third, fourth, fifth, sixth, seventh, eighth, ninth, not the tenth.

Q What item is that? A Ninety pounds chip-board. The next one I did and the one after.

Q Will you please mark those that you did not fix? That would be simpler and easier. You didn't fix the ninety pounds of chip-board, you say.

By the Court.

Q You are putting an "X" on the left-hand side. A Yes, sir. The next I fixed.

By Mr. Newman.

Q Just mark off those that you fixed and tell us which ones you did not fix when you come to them? A The item 800 pounds bogus paper I

didn't fix, and the one next to it, 400 pounds of bogus paper; and there is one item, 10 gross trimmings for No. 44 handles, that I didn't fix; and all the lines after that to the bottom; those are not my prices.

Q The ones under it? A Yes.

Q Those are your prices under it? A Those are not.

Q What are those items? A Ten gross trimmings for No. 44 handles; 8 gross No. 445, 7/8 by 1, $1.91 a gross; 10 gross No. 445, ¾ by 7/8, $1.68; 1½ gross No. 452, 7/8, $1.66; 2 gross No. 454, ¾, $1.44.

Q The supplies are what you did not fix? A Yes. I don't remember correctly the exact price; I couldn't tell on a ten or fifteen cent difference.

Q Take the next page, just the ones you didn't fix. A The top item, 1 gross No. 4300; and the next to it; and the one after that, 2 gross, No. 454; 2 gross No. 4—¾ snaps; 18 gross No. 0569 brass plated earrings; 7 gross No. 450—1 by 1⅛; these I didn't fix. And there is more: 100 gross squares, 45 cents a gross; 200 gross squares, 45 cents a gross; 150 gross ¾ squares, 35 cents a gross, 150 gross squares, 31 cents a gross; 50 pounds brass pins, 17 cents a pound; 200 gross 1⅛ nickel squares, 45 cents a gross; 50 gross 1 inch nickel squares, 42½ cents a gross; one case cut toilet paper, $12.25; 50,000 assorted rivets, 50 cents a thousand; 2 gross No. 3212 shell handles, $2.50. one gross No. 2186 handle pins and knobs, $7.50 a gross; three gross No. 3737 shell handles, $6.50 a gross; two boxes toilet paper in rolls, $13; ten gross No. 82 Goertz rings, $9 a gross; 200 pounds shoe tacks, $16.50 a hundred weight. These are all the items I didn't mark down at the time.

Q Look at the next page and tell us whether there are any items you didn't fix the price on. A Yes.

Q What are those you did not fix the price on? A 200 gross 8½ wire twisted, 50 cents a gross; 300 gross 6 inch wire, 25 cents a gross; 100 gross 6½ inch wire, 25 cents a gross; 350 7 inch wire, 25 cents a gross; 200 gross 7 inch 9/32 wire—

Q You didn't fix any of them? A No.

Q Did you fix any on the next page? A On that page: The 1,500 inlays for No. 452 not trimmed, 1 cent each; 1,095 pounds of black auto leather, 2 cents a pound; 800 pounds pasted split for No. 405, 10 cents.

Q So you fixed the last three items? A Yes.

Q On the next page did you fix any of them? A The upper two I didn't fix.

Q The rest of them you did fix? A Yes, except 15 gross No. 3625 loops, is the only item I didn't fix.

Q Now, as to the next page? A The next page I fixed all the items starting from 2,200 No. 405 black cobra covers.

Q All the way down to the bottom of the page? A Yes.

Q You didn't fix those at the top? A No.

Q Now, the next page. A The next page, up to the item of 1,412 half-foot cow cobra grain Steinhart—up to that item I fixed them all.

Q Now, the next page? A The next page are all mine.

Q And the next page? A Also all mine.

Q The next page? A These are not all mine.

Q Which are yours? A None of them on this page; the second floor, Zinn's department, are not mine.

Q None in Zinn's department are yours? A None of Zinn's department.

Q How about the spraying department? A Also not mine.

Q And in the dope house? A Also not mine.

Q Where you fixed the price did you fix it according to its market value at that time? A Yes.

Q Did you also consider in that whether the article was in the finished or unfinished state? A Yes, I had to arrive at the price for it.

Mr. Newman: I ask that this inventory be marked for identification.

(The inventory referred to of the third floor handle department, and so forth, consisting of twelve sheets, is marked Exhibit P. 22 for identification.)

Cross examination waived.

ALBERT COHEN, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Cohen, you were formerly connected with the Specialty Handle Manufacturing Company? A Yes, sir.

Q And you are now? A Yes, sir.

Q What department did you have? A I had the first floor.

Q And what kind of goods did you have? A Finishing straps.

Q What is called the strap department? A Yes, sir.

Q I show you an inventory marked "Al Cohen—entered by Al Cohen, strap department, second floor" consisting of five sheets, and ask you whether that inventory was made under your supervision? A Yes, sir.

Q Did you count the articles there? A Everything is counted and weighed.

Q Who wrote it A Well, Harry J. Mans.

Q How about the prices? A I don't know anything about the prices.

Q You merely put down the quantity? A The amount that I had.

Q Have you any of those straps here? A These (indicating) are cowhide inside straps—chopped only, not finished. That is a harness for baby safety straps; that is a baby safety strap finished. This is sample case straps. These are trunk straps; that is a suit case strap, russet cowhide suit case strap, all finished; that is a sample case strap, cowhide; this is inch and one-eighth suit case straps; that is a five-eighths split strap used for shoulder or school books; that is inch and a quarter split straps; inch and one-eighth cowhide straps with the flaps; here is black cowhide inside straps finished with buckle already; split trunk straps; this is saxophone straps; three-eighths wide saxophone straps; one inch suit case straps, black; that is inch and one-eighth cowhide straps, cut only; nothing has been made on that. That is seven-eighths brief case straps, cut only, cowhide; that is seven-eighths split straps, cut only; that is one inch split straps, cut only, one inch cowhide.

Q What is the difference between the split strap and the other kind? A The cowhide has the grain on it, the split has the grain on it. That is, cowhide; it comes from the bottom and

there is no grain in it at all. Inch and a quarter cowhide straps, suit case straps; that is inside straps for suit case with tongue. Seven-eighths split straps ready to buckle; one inch mahogany cowhide suit case straps; that is seven-eighths suit case split straps; that is one inch already finished with buckle.

Q Only those samples you have shown us are in your department and what you took in your department? A Yes, sir.

Q What are those samples on the cardboard (indicating)? A That is the trimming for the suit case. I count them and check them in my department.

Q How are they packed? A The handle loops, 500 in a bag and the little ones, a thousand in a paper bag wrapped up and marked what is in it.

Cross examination by Mr. Vanderbilt.

Q Did you make the count on the inventory you have been referring to? A Sir?

Q Did you count it? A I had to help; I was ready when everything was being weighed. They put it on the scale and I marked it down.

Q Where did you put the results of the weighing and the counting? By tagging them? A I tagged it and I had it in my own books, too.

Q Where is the book? A I threw it away.

Q Why? A Because this is already done. The man held my book and I look at this here; it was everything correct and nobody could read it.

Q Who made this list up from your book? A No one.

Q How did the man make it up? A We went to every shelf; I called it out and he put it down.

Q And then you checked back and got it right? A Yes. Maybe we missed something, but I had everything prepared.

Q You didn't have anything to do with the prices? A No.

Q What position did Harry Mans have? Is he in your department? A No, he is in the shipping room.

Mr. Newman: I ask that these be marked for identification.

(The Al Cohen inventory is marked Exhibit P. 23 for identification.)

J. HARRY MANS, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Mans, where do you live? A 725 Prospect street, Maplewood.

Q Were you formerly connected with the Specialty Handle Manufacturing Company? A Yes, sir.

Q Were you connected with them in January, 1925? A Yes, sir.

Q And in December, 1924? A Yes, sir.

Q And you are still employed by them? A Yes, sir.

Q I show you inventory marked "Stockroom, second floor, entered by J. H. M.," consisting of ten sheets, and ask you whether those were taken under your supervision? A They were.

Q Is it in your handwriting? A Yes, sir.

Q Did you do the counting and the weighing? A I did.

Q Who fixed the prices in that inventory? A I don't know.

Q But the entire schedules there are in your handwriting? A The schedules up to the price extension.

Q You didn't fix that? A No, sir.

Q Everything on those sheets you did? A Yes, sir.

Q What did you have in your department? A I had the finished straps and corners; that is, merchandise ready for shipping.

Q Anything else? A I also was in charge of the shipping department and receiving department.

At 1 o'clock P. M. the Court takes a recess for one hour.

After Recess

HARRY MANS, resumes the stand.

Direct examination (continued) by Mr. Newman.

Q Mr. Mans, I show you Exhibit P. 23 for identification and ask you whether that is in your handwriting? A It is, up to the extensions.

Q Did you fix the prices? A I didn't.

Q Not the multiplication here? A No, none of it.

Q Did you go over the other part of this paper with Mr. Al Cohen? A What do you call the other part?

Q The quantities that are there stated? A Yes.

Q And checked it up with him? A Yes.

Q I show you a book and ask you what it is? A This is a receiving book which represents the entries which were made in the shipping department when merchandise comes in.

Q Does that show the merchandise received from January 1, 1925, up to March 1, 1925, the date of the fire? A Oh, yes.

Q Are some of the entries in your handwriting? A Yes, some of them are.

Q Are most of them in your handwriting? A No.

Q Who else's handwriting? A I notice the initials "J. E." He is a receiving clerk, Julius Eschner.

Q Except the entires marked "J. E." are the others in your handwriting? A I see a few marked "Joe." That is still another assistant.

Q Outside of the "Joe" and the "J. E." the rest are in your handwriting? A Yes.

Q As far as your record is concerned and your entires, it shows exactly what was received at the factory in the way of merchandise. A Yes, sir.

(Inventory of stockroom, second floor, is marked Exhibit P. 24 for identification.)

Cross examination by Mr. Vanderbilt.

Q Are you related to the man with the same family name who was on the stand this morning? A Yes, sir, he is my father.

Q How long have you been connected with the Specialty Handle Manufacturing Company? A Six years, I guess.

Q All that time have you been shipping clerk and stock clerk? A Yes, sir.

J. Harry Mans, cross.

Q You had charge of the filling of orders to customers and shipping out of manufactured stock, had you not? A Yes, sir.

Q On any occasion, was leather ever shipped out in bales or cases? A No, sir, not raw leather, if that is what you are referring to.

Q Raw leather or manufactured? A After it was made up in straps and corners, yes.

Q I mean other than in the manufactured state of straps or corners? A No, sir.

Q You are sure it was never shipped out except in the manufactured state shown this morning? A Yes, sir.

Q Will you look at the last invoice and tell me when the last shipment referred to this morning was received? I mean the Lawrence shipment. A I doubt whether I could remember.

Q Look at the book and tell us. A I don't see an entry here for it.

Q If goods were received like that, you would have a record of it, wouldn't you? A Not necessarily in this book.

Q What is that book supposed to contain? A It is sort of a memorandum of the shipping department of goods received, but I can't say it represents everything that was received for the simple reason we got a lot of items checked up through the office, like a large amount of leather, after the clerk would weigh it, he would take it to the bookkeeper for the check with the bill. We would forget entering it in the book.

Q So the book does not contain a record of all goods received? A No, sir, not all.

Q Does it contain a record of all shipments? A No, sir.

Q That is merely the receiving book? A Yes, sir.

J. Harry Mans, cross.

Q But it does not contain a record of what goods were received even? A No, sir.

By the Court.

Q Were all the goods represented in there received? A Yes, sir, absolutely.

By Mr. Vanderbilt.

Q Will you look through the books for an entry of goods received from England & Walton on January 1, 1925?

Mr. Lane: I object on the ground that it is not proper cross examination. This witness has only been asked as to January 1, 1925, to March 1, 1925. The book has not even been offered.

The Court: I suppose it is going to be offered.

Mr. Lane: No, the entries from January 1, 1925, will be offered in evidence. They are trying to examine—

By Mr. Vanderbilt.

Q Will you look in the book from January 1, 1925, to March 1, 1925, first? A Are you referring to any specific one? There may have been more than one.

Q Any one you find under the name of England & Walton. A I see an entry: 83 bags scrap leather, 2,170 pounds.

Q Under what date? A The 12th of February.

Q In whose handwriting is it? A It is not initialed, but I recognize the handwriting of

J. E.—Julius Eschner. That is the only entry I find.

Q What was J. E.'s position with the company? A He was the receiving clerk. If any one delivered merchandise, he would take care of the weighing and unloading and so on.

Q I understand the book before you does not contain a complete record of all goods received? A No, sir.

Q Is there any book that contained a record of all goods received? A No, sir.

Q Is there any book that contained a record of all goods received that you know of? A I assume that the purchase books would give all the goods purchased.

Q You know that of your own knowledge? A Yes, sure.

Q You understand no goods were shipped while you were there except the finished goods of the type which was shown in the court room here this morning? A Yes, sir.

Q Have you any records there of an invoice of E. Kasnowitz & Brothers in that period from January 1, 1925, to March 1, 1925; or the Keegan Leather Company? A I see an entry on February 14th of the Keegan Leather Company.

Q What is the item? A Three bundles bellies, 120 pounds; one roll leather, 172 pounds —also Broadhaupt.

Q What does that Broadhaupt notation mean? A I don't remember just how it worked, but I believe that was written there—there was some question written by the bookkeeper; I don't remember just why, but I suppose there was some question and he put it in. I think we asked him to check up the bill and that is how he came to mark it there.

Q Who made the original entry? A J. E.

Q What is the name of the bookkeeper that made the entry and notation about Broadhaupt? A I wouldn't say sure it is his writing, but I think it is, anyway—Schlosser.

Q Did you find any other entries for E. Kasnowitz & Brothers? A That is all I find in that period.

Q That is all you find? A Yes, sir.

Re-direct examination by Mr. Newman.

Q You had charge of the stockroom down there, did you? A Yes, sir.

Q Did you, in the latter part of December make an inventory of what the stockroom contained? A I did.

Q I show you an inventory marked "Stockroom, second floor, entered by J. H. M.," consisting of ten sheets, and ask you if that is the inventory that you refer to? A It is.

Q Is that in your handwriting? A Yes, sir.

Q Did you weigh and measure the goods there represented? A Counted them.

Q How about the prices fixed thereon? A I didn't put any prices on.

Q You simply counted them and put down the number and the character of the goods? A Yes, sir.

Mr. Newman: I ask that it be marked for identification.

(The inventory of the stockroom, second floor, is marked Exhibit P. 25 for identification.)

Re-cross examination by Mr. Vanderbilt.

Q Are all these sheets in your handwriting? A Yes, sir.

Mr. Newman: If your Honor please, with the consent of the other side, I offer in evidence the proofs of loss.

Mr. Vanderbilt: I don't object to the proofs of loss as evidence in compliance with the terms of the policy, but I do object to them as proof of the matters therein contained.

(Proof of loss on Pacific Fire Insurance Company policy No. 2250594 is received in evidence and marked Exhibit P. 26.)

(Proof of loss on Pacific Fire Insurance Company policy No. 2250662 is received in evidence and marked Exhibit P. 27.)

(Proof of loss on Patriotic Insurance Company policy No. 171302 is received in evidence and marked Exhibit P. 28.)

(Proof of loss on New Brunswick Fire Insurance Company policy No. 194549 is received in evidence and marked Exhibit P. 29.)

(Proof of loss on Importers and Exporters Insurance Company policy No. 02343 is received in evidence and marked Exhibit P. 30.)

(Proof of loss on Importers and Exporters Insurance Company policy No. 02342 is received in evidence and marked Exhibit P. 31.)

(Proof of loss on Agricultural Insurance Company policy No. 6315 is received in evidence and marked Exhibit P. 32.)

(Proof of loss on Stuyvesant Insurance Company policy No. 1164854 is received in evidence and marked Exhibit P. 33.)

EMIL GARFINKEL, sworn in behalf of the plaintiffs.

Direct examination by Mr. Lane.

Q Mr. Garfinkel, where do you live? A 105 Johnson avenue, Newark.

Q What is your connection, and what was your connection in December, 1924, and January, 1925, with the Specialty Handle Manufacturing Company? A Secretary and treasurer.

Q How long have you been in that business? A Twenty years.

Q Were you, in December, 1924, and January, 1925, familiar with the reasonable value of the leather goods finished and unfinished and partly finished which were in the possession of the Specialty Handle Manufacturing Company? A Yes, sir.

Q Were you familiar at that time with the fact that an inventory had been taken in December, 1924, as of January 1, 1925? A Yes, sir.

Q I show you exhibits for identification P. 19, P. 20, P. 21, P. 22, P. 23 and P. 25, and ask you whether you had anything to do with fixing the prices which appear on those inventory sheets in the extensions? A A good many of these prices are priced by me personally.

Q Are you familiar, and have you gone over the prices which appear upon those sheets? A I priced them according to the production list at that time.

Q Are you familiar with the prices which are given, irrespective of whether you priced them yourself? Are you familiar with them? Have you gone over them? A Yes, sir.

Q Do the prices which appear on the inventory sheets represent the value of the products as of December 31, 1924, or January 1, 1925?

Objected to as leading.

Q What do the figures represent? A The prices prevailing at that time or a trifle lower.

Q And are you familiar with all of those which appear there, and are you familiar with the values of all of those things as of that time? A Yes, sir.

Cross examination by Mr. Vanderbilt.

Q Did you fix all the prices that are in all of the inventories that have been offered in evidence or marked for identification, Mr. Garfinkel? A Some of them I priced personally and some of them I was only consulted.

Q By whom? A With the man in charge of the department.

Q With respect to the items on the Exhibits P. 19 for identification to P. 25 for identification, did you price them all personally or did you price them after consultation with any one else? A Exhibit 19 was priced under my supervision.

Q By whom? A By the party who took that inventory.

Q Who was that? A Harry Kasnowitz.

Q When you say it was priced under your supervision, what do you mean by that? A I looked up my cost sheet and told him to put the prices on.

Q What about P. 20 for identification? A Most of these sheets are priced by me personally.

Q Written out by whom? A By Harry Kasnowitz.

Q And those that were not priced by you personally were priced by whom on Exhibit P. 20 for identification? A By Harry Kasnowitz.

Q So that Harry Kasnowitz and you together put in all the prices that are on Exhibit P. 20 for identification? A Yes, sir.

Q How about Exhibit P. 21 for identification? A Part of these are priced by me; a few, I see, are priced by Samuel Garfinkel.

Q What relation to you is Samuel Garfinkel? A A nephew of mine.

Q What relation is Kasnowitz? A A brother-in-law of mine.

Q Who put the prices in on Exhibit P. 22 for identification? A On P. 22, practically all was put on by me with the exception of a few by Samuel Garfinkel.

Q How about P. 23 for identification? A Three sheets of that, if I can identify them right, is by a bookkeeper, Schlosser, and the last two are mostly mine.

Q What aren't yours on the last two, or Schlosser's? A If I can identify his handwriting, it must be his.

Q And the last two sheets are yours? A Yes, probably two or three not mine.

Q By whom are the two or three not in your handwriting? A It looks to me like Schlosser's; I couldn't be postive of that.

Q How about P. 25 for identification? A With the exception of two sheets, which I presume are also from Mr. Schlosser, the rest of them are all my prices.

Q And P. 17? A Harry Kasnowitz.

Q And P. 18? A Harry Kasnowitz.

Q Mr. Garfinkel, do you recall being examined under oath under the policies? A Yes, sir.

Q Have you seen this transcript of the examination under oath? A Yes, sir.

Q You initialed all the pages of your testimony? A Yes, sir.

Q Is this your signature on the page following 164, sworn before Mr. Zucker? A Yes, sir.

Mr. Vanderbilt: I ask that it be marked for identification.

(The transcript of the testimony in the examination under oath is marked Exhibit D. 1 for identification.)

Q Do you recall testifying in the examination under oath, Mr. Garfinkel, that you fixed all the prices on these inventories? A As I said before, I fixed them all, not in my handwriting—I fixed them all as to the value of the merchandise, but not in my own handwriting.

Q In other words, they were fixed by you, but not all in your own handwriting, is that it? A Yes.

Q Isn't it true that Mr. Kasnowitz didn't know anything about the prices at all—Mr. Harry Kasnowitz? A No, sir. He knew, but he don't put the prices on. He may know about it—

Q As a matter of fact, he didn't know, did he? He was a salesman, wasn't he? A I don't get you.

Mr. Vanderbilt: Will you please read the last question?

(The stenographer reads the last preceding question.)

The Witness: Yes, he was a salesman.

Q He didn't know what these things cost you, did he? A No, sir, not the cost.

Q And he couldn't put down the prices of his own knowledge, could he? A No, sir.

Q And all these prices on all these inventories, are the prices you fixed? A Or it was told by me; maybe he was acquainted with the price.

Q Didn't I understand you to say a minute ago that you fixed all the prices on all these inventories and some of them you wrote in your own handwriting and some of them you told various prices and they wrote them down? A To be exact, they put the prices not altogether familiar to me and consulted with me how they arrived at it.

Q I want to find out whether you fixed all these prices on these inventories or whether you didn't. A The one which I wrote it down myself, I arrived personally to the cost of it; the one which I didn't put myself on, they were given to me by some foreman with my consultation, then we put the prices on or they put the prices on the inventory and then consulted me if it would be O. K.

Q It is important. Did you take the prices from these inventories—what was given to you by your foreman—or did you say yourself what prices were to be put down? A As I said before partly was given to me the figures, and part the prices was on and I O. K.'d them.

Q Then you didn't put down all the prices but some were put down by foreman testified to this morning? A Yes.

Q And some of these foremen fixed the prices personally? A Yes, sir.

Q Do you recall being asked these questions in an examination under oath (page 41) and making these answers: "Question: Then they brought you the sheets and you fixed the prices? Answer: A good many of them we had to adjust on the spot and a good many I had to take off the books. Question: Are these the original sheets or were there other books in which these entries were made, or tickets? Answer: These are the general sheets. Question: There were no tickets? Answer: No, they put tickets on before they come to the sheets. Question: The tickets you put on contained no price at all? Answer: No. Question: Just the quantity? And then these sheets were written as you went along and took off the tickets? Answer: Yes, sir. Question: Then you sat down and fixed the prices? Answer: Yes, sir. Question: Who made the extensions? Answer: The girls or anyone in the office." Did you make those answers to those questions? Is that correct? A Yes, sir.

Q Did you keep an inventory book? A Just as you see them here.

Q Did you have another book that was called an inventory book? A That is what they call the inventory book.

Q What is an inventory book? A (The witness indicates.)

Q Those loose sheets you have there are an inventory book? A We put them in a folder and they make a book.

Q Was that inventory ever entered in any of the books of the company? A No, just made a copy of it and put it in a folder.

Q Did that inventory ever appear in the ledger or in any other book of account of the company? A No, sir.

Q Do you recall testifying that this inventory had been entered in the inventory book? A I call that an inventory book which we have just spoken about.

Q Do you recall being asked these questions and giving these answers: "Question: Those sheets and each and every one of them, were actually in existence on December 31, 1924? Answer: Yes, sir. Question: And constitutes your account of actual stock? Answer: Yes, sir. Question: They have never been recorded in any books, have they? Answer: No. Question: You say they have never been recorded in any books? Answer: They have, in the inventory books, been recorded. Question: Where is the inventory book? Answer: I think I have it here. Question: This inventory book you have laid before me, where did this come from? Answer: It is a copy of the other one. Question: Made by whom? Answer: It was kept by one of the clerks here." Where is that inventory book referred to? A I believe Mr. Daly has got it, or it is down between the books down there (indicating).

Q Is this the book, the inventory book that you referred to in the examination under oath, (handing book to witness)? A Yes, sir.

Q By whom is that written? A It was copied over by Harry Kasnowitz.

Q When was it copied? A Very shortly after the first of the year.

Q What does it constitute? A copy of these sheets we have been dealing with? A Yes, sir.

Q And this is the only place where the inventory has been carried in the books of account? A As far as I know.

Q It hasn't been put in the ledger? A I don't know.

Q In the journal? A I don't know.

Q Aren't you familiar with the books of the company? A No, sir.

Q Who kept the books of the company? A The bookkeeper.

Q Who is he? A Schlosser.

Q How long has he been with the company? A About five years.

Q Did you have an accountant? A Yes, Sidney Kasnowitz.

Q Is he a certified public accountant? A No.

Q A public accountant? A No.

Q What is his usiness? A Taking care of books.

Q How long has he been with the company? A Several years.

Q How often would he go over the books? A Probably once a month or two months.

Q Did he go over the books in March, 1925? A Yes.

Q Is Sidney Kasnowitz related to Harry Kasnowitz? A I believe he is.

Q What relation? A Probably a cousin of some kind—second cousin.

Q The family name is spelled the same way? A Yes, sir.

Q Is Sidney Kasnowitz in court? A I don't know.

Q Where does he live? A Brooklyn.

Q What street address? A I don't know.

Q Where is his place of business? A I don't know.

Q He was your accountant during all these years? A Yes, sir.

Q And this inventory was not recorded anywhere except in that loose-leaf book that you know of? A Not as I know of.

Q Do you know now whether it has been recorded in any book of account? A No, I don't know, even now.

Mr. Lane: I ask that the book referred to by counsel be marked for identification.

(The inventory book referred to is marked Exhibit P. 34 for identification.)

Q Referring to these proofs of loss, is that your signature on the first page of each one? A This is mine (indicating).

Q Did you execute all these on behalf of the company? Did you sign these for the Specialty Handle Manufacturing Company? A Yes, sir.

Q You are the largest stockholder, are you not? A Yes, sir.

Q You are practically the sole owner.

Objected to as immaterial.

The Witness: Majority, yes.

Q How many shares of stock do you own of the total issue? A About 1,070.

Q Out of how many? A Out of 1,500; of 1,500 I own 800—I own about 1,100 shares of 1,900.

Q Does Harry Kasnowitz own any shares? A No, sir.

Q Or Sam Garfinkel? A Yes, sir.

Q How many does he own? A I believe 60.

Q Does your wife own any? A No, sir.

Mr. Lane: I offer in evidence Exhibit P. 19 for identification, Exhibit P. 20 for identification, Exhibit P. 21 for identification, Exhibit P. 22 for identification, Exhibit P. 23 for identification, and Exhibit P. 25 for identification.

Mr. Vanderbilt: There is still no proof before us of the extensions.

The Court: I will allow them in evidence subject to the extensions being proved. They will be open for your inspection and you can satisfy yourself as to them.

(The exhibits for identification referred to are received in evidence and marked Exhibits P. 19, P. 20, P. 21, P. 22, P. 23 and P. 25, respectively.)

JULIUS ESCHNER, sworn in behalf of the plaintiffs.

Direct examination by Mr. Lane.

Q Where do you live? A 67 New York avenue.

Q Were you connected with the Specialty Handle Manufacturing Company? A Yes, sir.

Q In December, 1924, and January 1, 1925, and March 1, 1925? A Yes, sir.

Q Are you still connected with that company? A No, sir.

Q What was your position? A At that time I was receiving clerk.

Q I show you a book which has been marked for identification as Exhibit P. 24, and direct your attention to that book, commencing January

1, 1925, and running to February 28, 1925, and ask you whether there are any entries in that book in your handwriting? A Yes, sir, practically all these signatures are mine, with the exception of a few.

Q And those few that are not in your handwriting are in whose? A Some are J. H. M.—Harry Mans—and some have "Joe."

Q Who was Joe? A At that time he was assistant receiving clerk.

Q Are the entries that are in your handwriting indicated by any initials? A Most of them are indicated by J. E. or J. E. R.

Q Both of them are yours? A "J. E." are mine; "J. E. R." are Joe Rose's handwriting, using my initials and showed I checked them.

Q Was that kept by you from January 1, 1925 to March 1, 1925? A Yes, sir.

Q What do these entries represent? A The merchandise that enters the plant; some of the merchandise that was received at the plant.

Q Do you know that of your own knowledge? A Yes, sir.

Q Between January 1, 1925, and March 1, 1925, was that book kept in the ordinary course of business? A It certainly was.

Cross examination by Mr. Vanderbilt.

Q That book does not contain a record of all the goods that were received, however, does it? A No, sir.

Q And you didn't count the merchandise as it was received, did you? A Not in this book; not all the merchandise.

Q I am referring now to the period between January 1 and March 1, 1925. A Yes, sir.

Re-direct examination by Mr. Lane.

Q When the goods came in, did you check the weights and quantities? A Yes, sir, and checked them with the bookkeeper.

Q While all that came in is not in the books, all that is in the books did come in? A All that is in the books came in, yes, sir.

Q What else came in you don't know? A No, sir.

ARTHUR H. SCHLOSSER, sworn in behalf of the plaintiffs.

Direct examination by Mr. Lane.

Q Mr. Schlosser, where do you live? A 75 Carolina avenue, Newark.

Q Were you connected with the Specialty Handle Manufacturing Company in December, 1924, and January and February and March, 1925? A Yes, sir.

Q In what capacity? A Bookkeeper and office man.

Q And did you have charge, in January, and February, and March of 1925, of the payment of invoices by the Specialty Handle Manufacturing Company for the goods purchased? A Yes, sir.

Q I show you three packages and ask you what they are? A The first one represents a copy, evidently, of the purchase journal, together with invoices—

Q I am not referring to the yellow sheets? A (Witness continuing.) Invoices which were received and entered in the purchase journal dur-

ing the month of January, together with the checks for these invoices.

Q And the next package? A Invoices for merchandise received and entered—well, I won't say received—but entered in the month of February, together with the checks in payment of them.

Q And the next one? A Additional February invoices which were entered in the month of March, the merchandise, however, having been received in February. The checks are tied up with the invoices.

Q Do you recognize those checks in those three packages as checks of the company which have been paid in the ordinary course of business? A Yes, sir.

Q Do you recognize the invoices in those three packages as invoices received by the company for shipments during those two months of January and February, which I have referred to, which the checks went to pay? A Yes, sir.

Mr. Lane: I offer in evidence the packages of invoices and checks.

Mr. Vanderbilt: May I cross examine?

The Court: Yes.

Cross examination by Mr. Vanderbilt.

Q Did you keep the purchase journal of the company? A Yes, sir.

Q Does the purchase journal of January and February correspond with the dockets you have before you? A The yellow sheets do you mean?

Q Yes. A I can't say exactly, unless I see the purchase journal and go over the figures.

Q You have not been asked to make that comparison? A No, sir.

Q Then you don't know whether they tie up to the purchase journal made by you? A These sheets I know nothing about.

Q You kept your purchase journal in the regular course of your business? A Yes, sir.

Mr. Vanderbilt: Then I object to this, your Honor. It seems to me the proper way to prove this would be to prove it through the books.

The Court: He is not offering to prove it that way. He is offering to prove it by the bills and the checks.

Mr. Vanderbilt: I object to it on the ground that that does not establish that proof, because it does not prove that the goods were ever received in that plant.

Re-direct examination by Mr. Lane.

Q Prior to the checks being drawn for these invoices, were the invoices checked up to determine whether the goods were actually purchased or not? A Yes, sir.

Mr. Vanderbilt: I object unless he knows at first hand.

Q Do you know? A Yes, sir.

Q Would you pay for goods you did not receive? A Absolutely no.

Q And in the ordinary course of business, before the invoices came to your attention for the drawing of checks, were they checked to see whether the goods were in the plant? A Absolutely.

The Court: I suppose these invoices bear date subsequent to January 1st. Doesn't that cover it, then? He says the checks have been paid and they are all dated subsequent to January 1st. That is, he checked them before he paid them to see whether they were there and I suppose the checks bear their own dates. The January and February checks are dated in those months. Then, as I understand it, there is a January item that came in afterward and was paid in February.

Re-cross examination by Mr. Vanderbilt.

Q Mr. Schlosser, do you say that you never drew a check for merchandise without actually having the merchandise in the plant? A I never drew a check for any bill unless it was duly entered and recorded on my books, or having the proper O. K. by one of the officers of the firm.

Q That is very different from what you said before, isn't it? A In what way?

Q You said you never drew a check for merchandise unless you actually had the merchandise in the factory. You are qualifying that, aren't you? A No, I don't think so.

Q How long were you with this concern, Mr. Schlosser? A Since 1920 or 1921.

Q Will you produce check No. 5060 on the Washington Trust Company payable to bearer, November 10, 1922?

Mr. Lane: We do not produce it.

Mr. Vanderbilt: It is demanded in the—

Mr. Lane: We do not produce it.

Mr. Vanderbilt: I ask the Court to tell the plaintiff to produce it.

The Court: Subpoena it.

Mr. Vanderbilt: They have been noticed to produce it.

By Mr. Vanderbilt.

Q Do you recall a check dated November 10, 1922, your number 5060, drawn on the Washington Trust to the order of bearer and entered in the cash books as Ben Newman & Company for $500? A I wish I had a memory like that.

Q Do you recall that check (handing paper to witness)? A No, sir.

Q Did you ever see or hear of it before?

Mr. Lane: I object to that.

The Court: I think you ought to ask the two questions separately.

Q Did you ever see the original check of which this is a photostatic copy? A I presume so.

Q Have you got the cash book? A Not on me.

Q Have you got it with you? A No, sir.

Q Do you know where it is? A I don't recall now.

Q Do you know whether it is in the court room? A I doubt it.

Mr. Vanderbilt: I ask that the photostatic copy be marked for identification.

(Photostatic copy of check No. 5060, dated November 10, 1922, is marked Exhibit D. 2 for identification.)

Q I show you photostatic copy of No. 5380 dated February 14, 1923, to the order of bearer—

Mr. Lane: I object to the reading of these checks to the jury.

Q Did you ever see the original check of which this is a photostatic copy? A I may have seen it, but I don't recall at this time.

Mr. Vanderbilt: I ask that it be marked for identification.

(Check No. 5380, dated February 14, 1924, is marked Exhibit D. 3 for identification.)

Q I show you check No. 5901. Have you ever seen that? A I presume I have seen all these checks and have entered them on my books.

Mr. Vanderbilt: I ask that it be marked for identification.

(Check No. 5901 is marked Exhibit D. 4 for identification.)

Q You recognize on all of these checks the signature of Mr. Garfinkel? A Yes.

Q You recognize it is on your form of check? A Yes, sir.

Q I show you check No. 6288 and ask you if you have ever seen the original of which this is a photostatic copy? A I think I have seen the original. I wrote it.

Mr. Vanderbilt: I ask that it be marked for identification.

(Check No. 6288, photostatic copy, is marked Exhibit D. 5 for identification.)

Q I show you copy of check No. 6481, and ask you whether you have ever seen the original of that? A I presume I have seen them all.

Mr. Vanderbilt: I ask that it be marked for identification.

(Copy of check No. 6481 is marked Exhibit D. 6 for identification.)

Q I show you photostatic copy of check No. 1075 and ask you whether you have ever seen the original of that? A I believe I have. I am positive I have seen them because I checked them over each month with the bank statement.

Mr. Vanderbilt: I ask that it be marked for identification.

(Photostatic copy of check No. 1075 is marked Exhibit D. 7 for identification.)

Q I show you photostatic copies of checks Nos. 1184, 6722 and 7070, and ask you if you have ever seen the originals? A I presume that I have seen them.

Q You are not sure? A Yes.

(Checks No. 1184, 6722 and 7070 are marked Exhibits D. 8 for identification, D. 9 for identification and D. 10 for identification, respectively.)

Q I show you photostatic copy of check No. 1231888 from the Specialty Handle Manufacturing Company to the order of Max Winn and ask you whether you have ever seen the original of that before? A I believe I have.

Mr. Vanderbilt: I ask that it be marked for identification.

(Check No. 1231888 is marked Exhibit D. 11 for identification.)

Q All of these negotiable instruments, photostatic copies of which I have shown you, went through the books of the Specialty Handle Manufacturing Company? A I presume so.

Q You know so, don't you? You were the bookkeeper? A Yes.

Q Do you know whether or not any of them were issued for merchandise which had not been received or which was never received?

Mr. Lane: I object to it as immaterial and not proper cross examination. These papers are back in 1922 and 1923 and have nothing to do with this subject at all.

Objection sustained.

Mr. Vanderbilt: He testified in every case he received the merchandise. I am asking about specific instances.

Mr. Lane: The witness testified that with respect to the payment by check of invoices from January 1, 1925, until the time of the fire in March, 1925, no checks were paid upon invoices without the invoices being checked up. There is no evidence here and no suggestion of evidence that the checks in 1922 and 1923—

Q Did your practice differ after January 1, 1925, from what it had been prior to that date? A None whatever.

Q The same practice continued before as after? A Yes, sir.

Q I now ask you if these negotiable instruments, photostatic copies of which I have shown you, represent goods that were received.

Mr. Lane: My objection is the same.

Objection sustained.

Defendants' counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q You say you kept the books, Mr. Schlosser. What books of this company did you keep? A The daily entry books.

Q Did you ever keep the general ledger? A No, sir.

Q How far behind was the general ledger, and not written up at the time of the fire?

Mr. Lane: I object to that as not proper cross examination.

Objection sustained.

Defendants' counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt: I am asking that question, among other things, for testing the credibility of the witness.

The Court: He has not testified from books. He is testifying that he checked back to see whether they were received and said they were.

Q Did you actually make the check yourself to see whether those goods were received? A I checked back to see with the receiving books.

Q But you don't know of a check against the goods themselves to see whether they were received? A It would be impossible for an office man to stand on the platform and wait for the merchandise to come in and see whether it comes in.

Q You only know as it goes through your books in regular course of business? A Absolutely.

Q And as you put it through your purchase journal? A Yes, sir.

Q And if these are not in the purchase journal, they were not received? A They are in the purchase journal.

Q How do you know? A I entered them.

Q Have you checked these all up with the purchase journal? A I can't give you the exact date.

Q Give me the approximate date? A You mean these invoices that are bound together?

Q Yes. When? A When the accountants went over the books.

Q When was that? A It may have been several months ago and it may have been a year ago; I don't recall exactly.

Q Were these yellow sheets which have been attached to the beginning of the folders, on there at the time? A No.

Q You had nothing to do with these yellow sheets? A No.

The Court: I don't suppose the yellow sheets are offered.

Mr. Lane: No, sir; just the invoices and checks.

Q You say you checked all of these with your purchase journal? A Yes.

Q Have you your purchase journal here? A No, sir.

Q Where is it; do you know? A I presume somewhere at the factory or in the accountant's hands; it is over two years ago.

Q When did you see your purchase journal? A I finished it two years ago.

Q That was the last you saw of it? A I may have seen it at intervals.

Q When was the last you saw the purchase journal? A I don't recall; maybe a month or two months ago when I made out this list; when I got out the invoices and checks.

Q Did you get them out from the purchase journal or the yellow sheets? A From the purchase journal.

Q Where was the purchase journal then? A At the factory.

Q None of the books of the concern were destroyed in the fire? A Not that I have recollection of.

Q You never lost any after the fire? A None of the books that I worked on.

Q Are there any recorded purchases in the purchase journal which are not included in these three sets of invoices and cancelled checks? A I don't know. I would have to check them over with my purchase journal to tell that.

Q Didn't you check it over before? A There may be a few expense items and such things as that.

Q I am dealing with merchandise items? A I believe they are all there.

Q Did you make a check to find out? A Yes.

Q You compared these with your purchase journal from January 1st to March 1st, and you mean to say every item of merchandise recorded in your purchase journal is included in these invoices and cancelled checks? A I can't say every item is there.

Q I said every item of merchandise? A There may be an item or two for merchandise that are not there.

Mr. Lane: We are going to the original source of information. We are talking of checks actually paid out.

Mr. Vanderbilt: An assured cannot prepare a proof of loss, basing it on the books, and deny the books afterwards.

Mr. Lane: There is no proof that the proof of loss was based on the books.

Q I show you a bill of J. Lichtman & Sons, dated December 18, 1924, and marked in red pencil "Received 12/19" and paid by check apparently of January 15, 1925. This is included in the purchases of what month? A The month of December.

Q Are these purchases of December? A Well, I can easily explain that. It is possible that this particular invoice was never touched until after the 1st of January. In other words, it was not entered until after the 1st of January, and was not entered on the inventory either.

Q When was it received? A December 19th.

Q Then you mean to say the inventory is not correct? A No, not necessarily.

Q Were these floating around your factory from December 19th to January 21st? A No, they were steadfast.

Q Were they part of the inventory or not? A If they were not included in the inventory, they were not entered in the month of December.

Q Don't you know? A I don't know.

Q Who would? A The parties who took it.

Q Why did you enter them in the month of January? A I was told so.

Q By whom? A I don't recall after two years.

Q What department was that in? A What does it call for?

Q (Counsel hands paper to witness.) A One of the leather departments; which one, I don't know.

Q You can't tell who told you it was not included in the inventory? A Either the foreman who had charge of that particular department or Mr. Garfinkel.

Q You can't tell? A No, sir, it is impossible.

Q Are there any other items like that included in the January and February invoices, as you call them? A It is possible.

Mr. Vanderbilt: I submit that these should not be allowed to go in evidence unless it appears there is no duplication from the inventory of December 31, 1924, and the goods purchased subsequent to that.

The Court: If he is depending on the purchase ledger for the purpose of checking whether or not those goods were received, how are they admissible finally now without that proof? Of course, some of them may show it on their face; I don't know but I am speaking generally.

Re-direct examination by Mr. Lane.

Q Your purchase ledger is a book in which you entered the items received and paid for? A Yes, sir.

Q And the information which you used for the purpose of making your entries in your purchase ledger, was the information which appears

on these invoices, was it not? A Yes, they were entered from those invoices to the purchase journal.

Q The purchase journal is nothing but a record of these invoices? A Yes, sir.

Q And a record of the checks made out in payment? A Yes, sir.

Q And your original source of information was from the things which I hold in my hand? A Yes, sir.

The Court: There must be some check on those showing whether they were received.

Q All of these invoices are marked, are they not, in red or blue pencil as to when the goods were received? A Yes, sir.

Q And that appears upon the face of the invoices? A Yes, sir.

Q And the checks, of course, show for themselves when they were paid? A Yes, sir.

Mr. Lane: With respect to duplications, that is a matter that goes to the weight of the proof. If it appears from the invoices that the goods were received prior to the 1st of January, 1925, the burden may be on us. Whether we can add these to show affirmatively whether the goods were included in the inventory, we haven't asked. All that we are now doing is offering them as proof of the goods and the receipt of the goods.

The Court: I suppose the best thing to do is to let counsel for the defendants examine them over night. I can't pass on them all at the same time.

Arthur H. Schlosser, re-cross.

Re-cross examination by Mr. Vanderbilt.

Q In whose writing are the red and blue pencil marks? A All mine.

Q Where did you get the data for the red pencil marks? A From the receiving book.

Q And the data in blue pencil? A This one (indicating)?

Q For example. A This was simply my tying up of the check with the invoice.

Q When were these red and blue pencil notations made on the invoices? A These red ones marked "Received" with the date, are when I checked up the invoices with the receiving book.

Q When was that? A A day or so after I received the invoice. There are times when the merchandise comes in and we don't see an invoice for a week; sometimes we see an invoice a week before the merchandise comes in. It is just a question of striking a happy medium.

The Court: I think counsel for the defendants should have an opportunity to go over them.

Mr. Lane: In connection with that offer, I also offer the receiving book from January 1, 1925, to March 1, 1925.

Mr. Vanderbilt: I object to that, your Honor, because by the admission of the witnesses themselves it is not a correct record.

The Court: It is correct so far as it goes, if they got more goods than the book shows. If that is the only objection, I will allow it in evidence. I will allow you to examine the receipts over night.

(The receiving book is received in evidence and marked Exhibit P. 24.)

Fred A. Schadt, direct—cross.

FRED A. SCHADT, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Schadt, where do you live? A 701 Prospect street, Maplewood.

Q What is your business? A Leather business; salesman.

Q How long have you been in the leather business? A Fourteen years.

Q With what concern are you engaged? A United States Leather Company.

Q Prior to the time that you went with the United States Leather Company, with whom were you? A I was in the banking business; the Empire Trust Company and Garfield National Bank.

Q For the last fourteen years you have been engaged in the leather business? A All but one year.

Q Were you engaged in the leather business in 1924? A Yes, sir.

Q In 1925? A Yes, ever since 1913.

The Court: Are you offering this witness to prove the value of leather?

Mr. Newman: Yes, sir.

The Court: I will allow counsel to cross examine.

Cross examination by Mr. Vanderbilt.

Q Have you been buying and selling the kind of leather exhibited before the jury? A Not buying; just selling.

Q For the United States Leather Company? A Yes, sir.

Fred A. Schadt, re-direct.

Q Do you know the firm of H. C. Lawrence & Company and the kind of leather they deal in? A I know of them.

Q What kind of leather do they deal in? A Upper leather mostly.

Q Did you ever hear of their dealing in splits? A Yes.

Q Is that their regular line? A Yes.

Re-direct examination by Mr. Newman.

Q Are you familiar with what are known as U. S. bellies? A Yes.

Q I show you a piece of leather and ask you whether that is a U. S. belly? A It looks like it.

Q Were you familiar with that type of leather in December, 1924? A Yes.

Q What was the value of that kind of leather, known as U. S. bellies? A Oh, about twenty or twenty-one cents.

Q Per what? A Per pound.

Q And are you familiar with, or were you familiar with what is known as shanks? A Yes.

Q I show you a piece of leather marked No. 1 and ask you if that is what you call a shank? A That is a shank.

Q What was the market price? A That price is usually predicated on the belly price and would be four or five cents less.

Q That is per pound? A Per pound less than the belly.

Adjourned until Tuesday, March 8, 1927, at 10 o'clock A. M.

Rudolph Gross, direct.

SECOND DAY.

Tuesday, March 8, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

RUDOLPH GROSS, sworn in behalf of plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Gross, where do you live? A 34 Leslie street, Newark, New Jersey.

Q How long have you lived in Newark? A Twenty years.

Q Are you familiar with leather? A Yes, sir.

Q How long have you been in that line of business? A About thirty years.

Q What concern are you connected with? A At present with J. Lichtman & Sons.

Q How long have you been connected with that concern? A Twenty years.

Q Prior to that time where were you? A I was two and a half years in New York as a buyer for European concerns, and prior to that time eleven years in business in Newark.

Q Does J. Lichtman & Sons handle splits? A We manufacture and handle splits.

Q And horsehides? A Yes, sir.

Q And trimmed splits? A Yes, sir.

Q Will you tell us what was the market value of trimmed splits in the last week of December, 1924? A You mean trimmed butt splits?

Q Yes. What is that number 6? A About twenty-eight or thirty cents a pound.

Q What do you call that? A This is a butt split.

Q What number is that? A No. 66.

By the Court.

Q What is that? A The belly and the shoulders are trimmed off and that is called a butt split.

Q What is sample No. 16? A This is the grain split of a horse butt.

Q What do you say it was worth at that time? A From thirty to thirty-five cents per pound.

Mr. Lane: We charged them thirty.

Q What is sample No. 6? A That is the shoulder trimmed off from a whole hide split; it is a shoulder split.

Q What was the value of that in December, 1924? A Eight to ten cents a pound.

Mr. Lane: We have charged four cents a pound.

Mr. Vanderbilt: I object to counsel's testifying.

Mr. Lane: The record will show it.

The Court: Argue that before the jury afterward.

Q What is No. 68? A This is the center part evidently of the butt split, that is, a strip cut off the center of the butt split.

Q What was the market value of that in December, 1924? A I have to establish that. Comparing with the price of the butt splits, considering the waste that they have in cutting this, I would judge this to be between forty and forty-two or forty-three cents a pound. I would judge that this piece will weigh around a pound and a

quarter or a pound and a half—about a pound and a half.

Q What are Nos. 69 and 70? Are they of the same kind of material? A Not exactly the same kind. This appears to be the adjoining part of the butt split. After this center piece is cut off, and out of the butt splits, I should judge you would gain at least two cuts of this here (indicating), one center piece and two of this.

Q What was the market value of that? A Less than the other. I would consider it from around thirty-five to thirty-seven cents a pound, and this piece would weigh about a pound and a half or a pound and three-quarters.

Q What is No. 76? A This is a side split.

Q What was the market value of that in December, 1924? A Sixteen to eighteen cents a pound.

Q What are sample Nos. 75 and 80? A I was going to say it is a very light butt split.

Q What was the market value of those in December, 1924? A They are about the same as the other—about eighteen to twenty cents a pound.

Q What is No. 59? A That is a piece of horse butt grain split, the same as before, and only tanned in a different way.

Q Horsehide? A Yes, a horse butt.

Q What was the market value in December, 1924? A I should judge fifteen or sixteen cents.

Cross examination by Mr. Vanderbilt.

Q Were you in the Specialty Handle Manufacturing plant in December, 1924? A Personally?

Q Were you in the Specialty Handle Manufacturing plant in December, 1924? A I don't remember.

Q Did you go through and look at their goods at that time? A I probably was there, because I paid several calls to them from time to time.

Q Did you go through and look at goods at that time? A I couldn't say exactly.

MAX W. LAUCH, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Lauch, where do you live? A 1159 Broad street, Newark, New Jersey.

Q How long have you lived in Newark? A My whole life; about forty years.

Q With what firm are you connected? A John Nieder & Company.

Q A leather concern? A Yes, sir.

Q How long have you been with them? A About twenty years.

Q Do you handle walrus splits in your business? A Yes, sir.

Q Are you familiar with them? A We handle them entirely.

Q Are you familiar with the market value of walrus splits in the month of December, 1924? A Yes, sir.

Q Is that a sample of a walrus split? A Yes, sir.

Q Will you tell us what the market value of that sort of walrus split was in the month of December, 1924? A That is a colored one; there was little manufacturing done of that. The

russet splits is about five cents and the work on there is about two cents. It would make it between six and seven cents.

Q And without the work on it? A Between four and five cents; not less than four and usually five cents.

Q And the work on it brings it to seven cents? A Seven cents.

Q That piece (indicating) is the one that has the work on it? A There is more work on that than on the first sample you showed me.

Q Would you consider walrus priced at five cents a fair price in December, 1924? A Yes, sir .

Q Here is a sample that is not quite finished. A I would say that is a finished split; it is called a dope finish.

Q What was the value of that? A At least ten cents.

Cross examination by Mr. Vanderbilt.

Q Did your concern sell goods in 1922, 1923 and 1924 to the Specialty Handle Manufacturing Company? A Yes, sir.

Q In large quantities? A Quite large amounts, yes, sir.

SAMUEL KNEE, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Knee, where do you live? A New York.

Q Where in New York? A 262 West 167th street.

Q What is your business? A Manufacturer of bags.

Q Are you familiar with cut bags? A Yes, sir.

Q How long have you been engaged in that business? A Seventeen years.

Q In buying and selling and handling? A Buying, selling, manufacturing and handling it.

Q Look at sample No. 341 and tell me what it is? A That is a three-piece split bag, not finished, cut and rolled up.

Q What was that worth in December, 1924? A Between $4.50 and $5 a dozen.

Q Would you say then that a price of $3.25 was reasonable.

Objected to.

Objection sustained.

Q Take the next sample, No. 340. What is that? A A three-piece bag split, cut only.

Q What was the market value of that in December, 1924? A $3.50.

Q What is sample No. 331? A It is cut—a piece of red felt paper, not leather.

Q What was that worth? A About $1 a dozen cut, I should judge.

Q How much was it worth a pound in December, 1924? A About nine cents a pound.

Q Take sample 299 and tell me what it is? A This is a five-piece bag drawn up and finished, but not embossed.

Q What was that worth in December, 1924? A About $6 a dozen.

Q What is sample No. 330? A This is a five-piece split, the same as the bag just previous,

but this is completely finished and embossed already.

Q What is the price of that? A $6.50 a dozen.

Q What is sample No. 339? A This is a five-piece split bag, cut only.

Q What was the market value of that in December, 1924? A $2.50 a dozen.

Q What is No. 298? A This is a three-piece split bag, finished and doped, but not embossed.

Q What was the market value of that in December, 1924? A $6.50 to $7 a dozen.

Q What is No. 304? A This is a three-piece bag completely finished and embossed.

Q You call that cobra grain? A Yes, sir.

Q What was the market value of it in December, 1924? A $7.50 to $8 per dozen.

Q What is No. 302? A Five-piece bag finished and cobra grain.

Q What was the market value of that in December, 1924? A $6.50 to $7 per dozen.

Q What size was that? A 18 inch.

Q What is the price of a 20 inch? A Same price; no difference.

Q What is No. 332? A Just a piece of felt paper, no leather at all.

Q What was that worth in December, 1924? A Seven to eight cents a pound.

Q What would be the value of the hundredweight? A $7 to $8 a hundred.

Q What is No. 334? A That is chip cardboard—called chipboard. That sells by the ton. That was worth about $45 a ton.

Q What is No. 335? A The same thing.

Q Worth about the same? A The same thing; it is exactly the same, in fact.

David Lerner, direct.

Q What is No. 295? A This is also a chipboard, but very light.

Q Do you call it bogus paper? A Yes, sir, very light.

Q About how much was that worth? A About two and a half cents a pound.

Q What is No. 294? A That is Kraft paper.

Q What was that worth a pound? A Eight cents a pound.

Q What is No. 311? A I don't handle this.

Cross examination by Mr. Vanderbilt.

Q Were you in the plant of the Specialty Handle Manufacturing Company before the fire? A No, sir.

Q Were you there in December, 1924? A I don't think so.

Q You personally don't know what goods they had in stock, do you? A No, sir.

DAVID LERNER, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Lerner, where do you live? A 537 South 16th street, Newark.

Q How long have you lived there? A About three years.

Q What is your business? A Leather handles.

Q How long have you been in that business? A Eight years.

Q Are you familiar with the value of leather handles? A I suppose so.

David Lerner, direct.

Q Were you familiar with the value in December, 1924? A Yes, sir.

Q What is sample No. 747? A It is worth about thirteen cents.

Q What is it called? A Black hide.

Q No. 737? A That is a Philadelphia handle.

Q What was the market value of that in December, 1924? A Eleven cents.

Q No. 731. What is that? A Five cents.

Q That is the value of it. What do you call it? A A handle.

Q What is the condition of that handle? What do you have to do to complete it? A Buffing, and paper and wire inside.

Q No. 730? A Eight cents.

Q 729? A Cowhide handles.

Q How much? A Seven cents.

Q 732? A Nine cents.

Q 755? A Five cents.

Q 756? A Nine cents.

Q 742? A Ten cents.

Q 744? A Twelve cents.

Q 676? A About thirteen cents.

Q 701? A $1.10.

Q 670? A Twenty-eight cents a yard; it is Keratol sheeting.

Q 634? A Three cents apiece.

Q 636? A Two pieces to one handle; three cents apiece.

Q 635? A This is four cents.

Q 632? A Four and a half cents.

Q 633? A Five cents.

Q 631? A Five and a half.

Q 623? A Six cents.

Q 622? A Five cents.

Q 624? A Three cents.

Q 619? A Six cents.
Q 620? A Five cents.
Q 639? A $1.50 a hundred; a cent and a half apiece.
Q 630? A Two cents apiece.
Q 627 and 628? A $1.50 a hundred—a cent and a half apiece.
Q 629? A A cent and a half apiece.
Q 626? A A cent apiece.
Q 625? A Three-quarters of a cent.
Q 548 and 660? A Bogus paper, four cents a pound.
Q 610? A Twenty-five cents a pound; buffing.
Q 611? A Cowhide, forty cents a pound.
Q 612? A Russet; about sixty cents; it depends on the colors.
Q 613? A About forty-five cents a pound.
Q 614? A This we don't handle.
Q 617? A About fifty cents a pound.
Q 735? A Ten cents.
Q 733? A Ten cents.
Q 737? A Eight cents.
Q 740? A Eleven cents.
Q 749 and 756? A Eight cents.
Q No. 700? A I had that before; $1.10.

Mr. Vanderbilt: May I ask if these numbers appear anywhere on the schedules so that we can identify all these items?

Mr. Newman: Not on the inventory. We will furnish it to you.

The Court: They are not described in the proofs of loss?

Mr. Newman: No, sir.

Mr. Vanderbilt: If we may have the inventory with those numbers—

Mr. Newman: This is a separate inventory made for our own use, but you may have the use of it.

Mr. Vanderbilt: These numbers that the witnesses are identifying were not put on the inventory when the copies were furnished the company.

Mr. Newman: No, they are for our own benefit.

Mr. Lane: As the samples were identified, numbers were given. Those numbers are on our copies, together with the testimony of the witnesses identifying them.

The Court: You will let counsel have a copy of them?

Mr. Newman: Certainly.

By Mr. Newman.

Q What is sample No. 799? A Paint; about $2 a gallon; blacking.
Q 801? A Also $2 a gallon.
Q What is that? A Blacking—mahogany paint.
Q 800? A Also $2 a gallon.
Q 799? A Blacking—$2 a gallon.

Cross examination by Mr. Vanderbilt.

Q Were you in the plant of the Specialty Handle Manufacturing Company in December, 1924? A Yes, sir.
Q What were you doing down there? A Just coming in; sometimes I am short in paper or leather or cotton and I come up to get some.
Q Did you buy goods from them? A No, just a borrow sometime if I am short a spool of cotton.

Q To borrow from them? A Yes.

Q Did you ever buy from them or sell to the Specialty Manufacturing Company? A No, never.

Q Are you familiar with the goods they had there in December, 1924? A No, sir.

JACOB SCHOTTENFELD, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Schottenfeld, where do you live? A 1945 Prospect avenue, Bronx.

Q New York? A Yes, sir.

Q What is your business? A Straps, corners, handles, inside straps.

Q Are you familiar with the value of handles, straps and corners? A Yes, sir.

Q How long have you been in that business? A In the business eight years, but I am familiar with it eighteen years.

Q What is sample No. 189? Tell us what was the value of it in December, 1924? A That is an inch and a quarter strap; $31 a gross.

Q Inch and a quarter in width? A Yes.

Q Sample 157? A $18 a gross.

Q What is that? A Russet cowhide strap; it is called unfinished goods.

Q 187? A $26 per gross; inch and an eighth mahogany.

Q What is No. 188? A This is seven-eighths cowhide, black; market value was on that $19.

Q What do you call sample No. 211? A That is an inch and a quarter split strap.

Q What was the market value in 1924? A $14.

Q A gross? A Yes.

Q No. 209? A That is a one-inch split strap, $10.50 a gross.

Q What is No. 173? A An unfinished seven-eighths strap.

Q What was the market value in December, 1924? A $7.50 a gross.

Q No. 213? A Seven-eighths split strap.

Q Market value? A $9 a gross.

Q 210? A One-inch black split strap with a wire buckle; $10.25 a gross.

Q 190? A One-inch cowhide strap; $21 a gross.

Q With the buckle? A Yes.

Q 192? A Seven-eighths by thirty-four brief case straps; $14 a gross.

Q 325? A A four-inch corner, pressed, ready to be colored; $2 per hundred.

Q 470? A It is a four-inch corner, finished.

Q Market value? A $3.25 a hundred.

Q 467? A It is a three-inch black cowhide corner.

Q It is finished? A Yes; $2 a hundred.

Q 466? A Two and seven-eighths in the same color at $1.75 a hundred.

Q 440? A Five-inch finished corner, $4.50 a hundred.

Q 420? A That is a four-inch corner, chopped only, flat; $1.65 a hundred.

Q 410? A Three and a half inch, same grade.

Q Price? A $1.50.

Q 437? A Two and a half inch; 45 cents a hundred.

Q 456? A A four-inch split, finished; $2.25 per hundred.

Q 464? A It is a three and a half split; $2 a hundred.

Q 448? A Three and three-quarters inch; $2.10 a hundred.

Q What is it called? A Three and three-quarters split.

Q No. 22? A It is a half-finished shank.

Q What was that worth per pound in December, 1924? A About twenty-five cents a pound.

Q No. 46? A It is a finished cowhide belly.

Q What was that worth per pound in December, 1924? A $1.50, that is, with everything on it.

Q Each one like that is a dollar and a half? A If everything is on it and nothing is cut off it.

Q What do you mean if nothing is cut off? A Some of them are called centers; they are shorter.

Q What do they cut off? A The shank.

Q No. 7? A That is a center; a belly center.

Q A tanned belly center? A Yes.

Q What was the price of that in December, 1924? A $1, as it is an extra large belly.

Q No. 14? A The same thing.

Q A russet belly center? A Yes.

Q What was that worth in December, 1924? A $1.

Q Is No. 12 a russet belly center? A Yes, sir.

Q What was the value of that in December, 1924? A Eighty-five cents.

Q Each? A Yes.

Cross examination by Mr. Vanderbilt.

Q Were you in the plant of Specialty Handle Manufacturing Company in December, 1924? A No.

Q Or in January or February, 1925? A No.

Q These prices that you have been giving us are the cost or the price you would sell at in 1924? A The price itself.

Q The prices you were selling at? A The finished article is the price as it sold; the price we got.

Q The prices you were selling for? A No, we got that.

Q That includes your profit? A Yes; and the center pieces, that is the value of the leather only; the other material whatever is unfinished.

Mr. Lane: There is an offer before the Court of these invoices and checks, and in connection with them, the book referred to, from January 1, 1925, to March 1, 1925.

Mr. Vanderbilt: I object to the offer because there are items aggregating $3,310.47 on which checks appear without invoices; and there are items aggregating $6,576.90 on which there are neither invoices nor checks. In other words, the checks, invoices, and receiving books do not check up. We don't know what is in and what is out.

The Court: What about the remainder of them.

Mr. Lane: I don't understand the diction.

Mr. Vanderbilt: There are checks here without invoices.

Mr. Lane: I am not offering those. I am offering only invoices and checks.

Mr. Vanderbilt: They have submitted proofs of loss based on certain figures which have been supplied to us by the Specialty Handle Manufacturing Company, and as to these items in January and February, there have been withheld from the offer here invoices and checks amounting to $6,576.90, which were offered to us under the proofs of loss and documents submitted. In other words, this is not a complete statement of what was received in January or February.

The Court: As to the other item where there is no invoice attached, you object to that because the checks do not show that they are payments for goods purchased for that period?

Mr. Vanderbilt: Yes, sir.

The Court: I will sustain the objection as to those items, if they can be separated.

Mr. Vanderbilt: As to the $6,576.90, those items were offered insofar as the proofs of loss—

Mr. Lane: I object to those statements as to what was offered in the proofs of loss. It does not show it upon its face.

The Court: I will deny your motion on the second ground; I will sustain the objection as to the $3,310.47. I suppose counsel can leave those out.

Mr. Vanderbilt: In addition to that, on the sixth sheet, there is an item, total $316.07, on which only checks appear.

Mr. Lane: The sheets are not offered in evidence.

Mr. Vanderbilt: I was going over these bills last night. The sixth sheet refers to the third sheet and bill of invoices of goods paid for in March, but received in February.

Mr. Lane: You are referring to an item of $316.07—

Mr. Vanderbilt: For which there is a check only, but no invoice.

Mr. Lane: No invoice or check; and it isn't offered; it isn't in the papers.

Mr. Vanderbilt: There is a check only for $316.07.

Mr. Lane: If there is a check only, that check is not offered at this time.

The Court: Then the item of $316.07 is withdrawn?

Mr. Vanderbilt: I understand further that the offer does not include the yellow sheets bound up with them.

Mr. Lane: No.

Mr. Vanderbilt: I further object unless the offer is accompanied by an offer to prove the amount of sales subsequent to January 1st.

Mr. Lane: Of course, we have to do that.

The Court: On the objection stated I will rule as I have stated.

Defendants' counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: They will be considered, but before they go to the jury those checks will have to be weeded out and the yellow sheets as well.

Mr. Vanderbilt: I have no objection to the packages being marked.

Mr. Newman: The first package contains the statement of purchase of the Specialty Handle Manufacturing Company for January, 1925.

(Folder of checks and invoices for January, 1925, are received in evidence and marked Exhibit P. 35.)

Mr. Newman: We offer in evidence the bills and vouchers covering February, 1925, purchases.

(Folder of checks and invoices for February, 1925, are received in evidence and marked Exhibit P. 36.)

Mr. Newman: We offer in evidence the checks and vouchers covering March, 1925, purchases.

(Folder of checks and invoices for March, 1925, are received in evidence and marked Exhibit P. 37.)

ARTHUR H. SCHLOSSER, recalled.

Re-direct examination by Mr. Lane.

Q There seems to be a bill of $4,851.89 of Keegan for which there does not appear to be in our possession at this time either a check or an invoice. Do you know whether there was in fact, such an invoice and such a check? A Yes, sir.

Q Do you know to whom that check and invoice were delivered? A Yes, sir.

Q To whom? A To the accountants for the insurance company; that gentleman over there (indicating); I don't know his name.

Q When was it delivered to the accountant? A After Mr. Wood came down to make an examination of the books; he sent down two or three accountants from his office to go over our books in their entirety. They demanded all books, checks, invoices, and so forth from the beginning to the end. They used everything and they held me up in my work.

Mr. Lane: I call for the production of the invoices and checks.

Mr. Vanderbilt: I haven't the originals, but I supply counsel with a photostatic copy. In reference to what the witness said, the photostatic copies were made for the insurance companies by the Specialty Handle Manufacturing Company.

By Mr. Lane.

Q I show you a photostatic copy of the invoice and ask you whether that is a photostatic copy of it? A No, sir.

Q It is not? A No, sir.

Q It is not? A No, sir.

Q What is that a photostatic copy of? A It is simply a duplicate of the invoice.

Q So that this is not a photostatic copy of the original invoice at all, is it? A No, sir.

Q Is it a photostatic copy of a duplicate of the invoice? A I believe it is, sir.

Q Do you know where the insurance company got the photostatic copy of the invoice? A No, sir.

Q Were the goods which are represented by that invoice, or duplicate or photostatic copy of a duplicate invoice, received, and in fact, was the amount of the bill paid? A Yes, sir.

By the Court.

Q What is the amount— A I will qualify my answer by saying that the amount of the checks may not be the amount of the invoices because there are always deductions for discounts and freight, and so forth.

Mr. Lane: The amount is $4,155.48.

The Court: Do you want to offer the photostatic copy?

Mr. Lane: Yes, sir, I offer it.

Mr. Vanderbilt: No objection.

(Photostatic copy of invoice in the amount of $4,155.48 is received in evidence and marked Exhibit P. 38.)

By Mr. Lane.

Q It appears, Mr. Schlosser, that there are included in these bundles of papers, including invoices, checks aggregating $3,310.47 for which there are, in fact, no invoices in the papers. Do you know where the originals of the invoices for which those checks went in payment, are? A I don't know exactly, but I know when the fire occurred, and I went into the office of our old plant, it seems that the firemen had knocked down the files of the bills and it was therefore a necessity to get together all that I could. I thought that I had done so.

Q Those checks aggregating a sum of $3,000 which we have here, but for which we have no invoices, do you know as a fact that they were in payment of goods purchased? A Well, if I can see the checks or know to whom they go to, I can tell you whether they are for merchandise or for other items.

By the Court.

Q Did you make up that bundle of invoices and checks? A Yes, sir.

Q You saw them then? A Yes, sir, but I don't know what the checks are or for whom they are.

By Mr. Lane.

Q When you made up the bundles you made them up of invoices and checks for goods purchased, that was the purpose in making up the bundles? A Yes.

Q Did you include anything except invoices for the purchase of goods? A It might have been, such items as Kuna & Smith for chemicals. I don't know whether you call that merchandise.

The Court: Yes.

Q Wasn't it the purpose to pick out the invoices and checks for goods purchased? A Yes.

Q Did you include in that bundle invoices or checks except for goods purchased? A I doubt it very much.

Q I show you check No. 1703 which bears a number 103, to Berkowitz, Goldberg & Spiegel, for $17.39 and ask you whether that was a check in payment of goods purchased? A Yes, sir.

Mr. Lane: I offer that especially.

Mr. Vanderbilt: I object. I don't think that is proper proof. If they haven't the original invoices they certainly can get duplicate invoices. By that method they can prove any amount.

Objection sustained.

Arthur H. Schlosser, re-direct.

Q Do you know what merchandise that bill was in payment of? A I know it was for leather, but the quality I don't know.

Q You know it was for leather to be used in this plant? A Yes, sir.

Mr. Lane: I renew the offer.

The Court: I will sustain the objection.

Q Does it appear upon the purchase journal as having been paid? A Yes, sir.

Mr. Vanderbilt: I object to that. The purchase journal speaks for itself.

Q Produce the purchase journal and pick out that particular item. A I have it.

Q Does it appear to have been paid?

Mr. Vanderbilt: I object to that. The book shows it. The item should be offered in evidence.

Q Who made the entries? A I made the entries.

Mr. Lane: I offer it.

(The 9th item on page 1 of the purchase journal is received in evidence and marked Exhibit P. 39.)

Mr. Lane: In connection with that I renew the offer of the checks showing actual payment.

Mr. Vanderbilt: No objection.

(Check No. 7013 is received in evidence and marked Exhibit P. 40.)

Arthur H. Schlosser, re-direct.

Q I show you a check dated February 10, 1925, for $1,370.48 to the order of the Superior Envelope Manufacturing Company, and ask you whether you can tell me whether that check went in payment of merchandise purchased.

Mr. Vanderbilt: I object to it.

The Court: Can't these all be offered at one time? It can be proved by the purchase journal.

Mr. Lane: I will ask that by the next question.

The Court: Ask the question.

The Witness: I know that the check went for merchandise purchased.

By Mr. Lane.

Q Will you refer to the item in the purchase journal? A There are several items shown on that check—a number of bills.

Q Will you show the particular items in the purchase journal which made that aggregate? A Here is $39.12; $213; $209.25; another one $215.50; another $107.50; another $43.60; and one for $38; one for $44.40; another $45.44; and one for $19.20; another $262.50; $293.75. Those are the invoices that this check paid.

Q Do you know that of your own knowledge? A Yes, sir.

Mr. Lane: I offer the check and the specific items in the purchase journal referred to by the witness.

(Check for $1,370.48 is received in evidence and marked Exhibit P. 41.)

Q I show you a check dated February 10, 1925, to the order of the Newark Boxboard Company for $84.60, and ask you whether you know that that check was in payment of goods purchased? A Yes, sir.

Q And is the entry on the purchase journal? A I have it here on page 2, $76.50, and an item of $9.

Q Do you know of your own knowledge whether that check went in payment of your invoices which were in your possession at the time the checks were drawn? A Yes, sir.

Mr. Lane: I offer the checks and the item in the purchase journal.

(Check for $84.60 is received in evidence and marked Exhibit P. 42.)

The Witness: I have one of the invoices here covered by this check; here is the $9 bill.

Q So that there is an invoice there for part of that check? A Yes.

The Court: Do you object to their offering the books in support of the items where the invoices are missing. You can find out yourself whether they are missing.

Mr. Vanderbilt: We have no objection.

Mr. Lane: The specific items in that book in support of the witness' testimony are offered. The book is not offered.

The Court: The specific items to support the checks which are unaccompanied by invoices are now offered in evidence.

Mr. Lane: Yes, sir.

The Court: The book is already marked Exhibit P. 39. And it will be considered in evidence as to those items.

Mr. Vanderbilt: The defendants reserving the right to cross examine Mr. Schlosser after examining the books.

Re-cross examination by Mr. Vanderbilt.

Q You spoke of this Keegan bill of $4,155.78 and checks having last been in the possession of the accountants for the insurance company. As a matter of fact, wasn't there a representative of the accountants for the Specialty Handle Manufacturing Company there all the time while the accountants for the insurance company were working on these books? A That I don't know.

Q Do you know whether or not there was anybody there from Puder & Puder while Mr. Wood and his associates were working on these books? A No, I don't know.

Q Do you know whether or not the photostatic copies of these bills which we have produced and checked, were supplied by the Specialty Handle Manufacturing Company or not? A No, I don't know.

Q Do you know whether or not this Keegan bill was actually delivered? A I know that it was.

Q How do you know that? A Because I personally checked in each invoice; each shipment of merchandise.

Q I ask you how you know that the Keegan bill and check were delivered to the accountants for the insurance company? A The bill and the check? I recall distinctly that that was one of the things they asked me particularly for.

Q Who was there at the time that they asked you? Wasn't a representative from Puder & Puder there? A I don't know.

Q You don't recall? A No, I don't recall; I don't know.

Q Do you know whether at any time after this fire Mr. Puder and his associates have been there? A They have.

Q Do you know whether they were present at the time Mr. Wood and his associates were there? A I don't know.

Q Did you give Mr. Wood or his associates these checks without consulting your accountants? A Yes, I was told that the insurance company accountants were to go over the books; there was to be nothing held back. I was to give them everything and I gave them everything.

Q And they did go over the books? A Yes, sir.

Q You have never missed any other items, have you? A I don't know; I have never gone over the records since they got through with them.

Q You went over the records of January and February? A Yes, I did go over those.

Q Have you got the freight bill on the Keegan shipment? A Not with me, no.

Q Do you know where it is? A It must be in our files, I presume, or it may have been attached to the invoice. It happens in many invoices that we attach the freight bill to the invoice. There are times we send it back to the shipper because we deduct the freight on that particular invoice.

Q When did you last see the Keegan freight bill? A I don't recall.

Q As a matter of fact, you haven't seen any of these checks for a considerable length of time, have you? A No, sir.

Q They have been in the possession of Mr. Puder? A They have been at times in Puder's possession, and in the possession of the accountants for the insurance company, and in the Puder possession again; and they have laid in our office at times.

Q The accountants for the insurance company never took any papers out of your place of business, did they? A I don't know.

Q All the examinations were made at your plant? A I didn't search them as they left each evening.

Q But as far as you observed, they did not carry any bundles or books or cancelled checks away? A They carried brief cases each evening. What they had in them I don't know.

Q You don't know whether Mr. Puder was there or not, at the time? A I don't know.

Q Although you are head bookkeeper? A So-called.

Q Did you get any duplicate invoices in this instance we have been referring to where the original invoices are missing? A It wasn't necessary in the case of the Superior Novelty, they have gone out of business subsequently and I think the same happened with Berkowitz, Goldberg & Spiegel.

Q How about Keegan? A That I don't know. It was handled directly either by Mr. Puder or your own accountants.

Q Do you know Mr. Bradley? He was Mr. Puder's assistant working down there? A I know him offhand. Not personally.

Q Did you go over your books with him? A No, sir.

Arthur H. Schlosser, re-direct.

Q Never consulted with him with reference to any entries in the books of accounts? A No more than he asked where is this and where is that.

Q Wasn't Mr. Bradley there when Mr. Wood was examining the books? A I don't think so.

Re-direct examination by Mr. Lane.

Q The Keegan concern is in Boston? A Yes, sir.

Mr. Lane: I offer in evidence agreement made April 29, 1925, between the representatives of the insurance companies and the representatives of the Specialty Handle Manufacturing Company, fixing the loss so far as the stock in sight was concerned, and the machinery and fixtures.

Mr. Vanderbilt: No objection.

The Court: Are those the items stated in the complaint?

Mr. Newman: That covers all, and this is only part of the insurance. It mentions that in the complaint.

The Court: The stock in sight and machinery, and fixtures, and valuations.

Mr. Newman: Yes, sir.

(The agreement of April 29, 1925, is received in evidence and marked Exhibit P. 43.)

Abraham H. Puder, direct.

ABRAHAM H. PUDER, sworn in behalf of the plaintiffs.

Direct examination by Mr. Lane.

Q Where do you live? A 30 Shanley avenue, Newark, New Jersey.

Q What is your business or profession? A Certified Public Accountant.

Q How long have you been practicing your profession? A Since 1909.

Q Did you do some accounting work for the Specialty Handle Manufacturing Company? A I did.

Q After this fire we have been talking about? A Yes, sir.

Q Did you compute the loss due to the fire? A I computed the loss of merchandise due to the fire.

Q What data did you use in that computation? A I started with the physical inventory as of January 1, 1925, after including purchases for the months of January and February, 1925, and after deducting allowances, returns, and discounts; the labor for the months of January and February, 1925, and the sales, loss, returns, allowances, and discounts for the months of January and February, 1925, reduced to a cost basis.

Q Where did you get the information with respect to the labor during the months of January and February, 1925? A From the cash disbursements books.

Q Where did you get your information with respect to the sales during the months of January and February, 1925? A From the sales books.

Q Have you the two books here? A I believe they are here.

Q Will you have them produced? A Here they are.

Q Are those two books the ones that you referred to? A Yes, sir.

Q The information you got from those two books and the physical inventory is all the information that you had? A The labor for the months of January and February, 1925, procured from the cash disbursements books.

Q Is that here? A Yes, sir. From this cash disbursements book, the labor items for January and February, 1925, were procured.

Q Are there any other books you have not yet produced from which you got these results? A The return book of sales. I am informed that the sales return book is not here.

Q Are there any other books except the sales return book? A The purchase returns for January and February, 1925.

Q You have that? A Yes, sir.

Q Have you any other books? A I don't think so.

Mr. Lane: Mr. Vanderbilt, may we use the information Mr. Puder got without the books?

Mr. Vanderbilt: Subject to its being offered.

Q Now, Mr. Puder, with those sources of information, will you tell us what you did? A Starting with the physical inventory at January 1, 1925, amounting to $150,093.58, I added thereto—

Q That figure which you have just given us is the physical inventory of what? A Merchandise on hand January 1, 1925.

Q Does it include anything else? A No, sir.

Q It does not include machinery or fixtures? A No, sir.

Q It does include goods in sight? A It includes all merchandise.

Q Everything? A Yes, sir.

Q What next? A I added to this inventory the purchases for the months of January and February, 1925, in the amount of $43,237.33.

Q Are those the purchases as appeared from these invoices and checks which have been offered here in evidence? A These are the purchases appearing in the purchase journal for the months of January and February, 1925, less two invoices, aggregating $2,034 that I eliminated from the purchase journal due to inability to completely verify that these items represented purchases or were the receipt of goods.

Q Those two items were eliminated? A Yes, sir.

Q And those two items were how much in amount—each of them? A One invoice of $462 dated January 2, 1925, and another invoice of $1,572 dated February 6, 1925.

Q That gave you an aggregate of how much? A Net purchases $43,237.33 added to the inventory of January 1st, of $150,093.58, making $193,330.91.

Q And then what did you next do? A I added thereto the labor for the months of January and February, 1925, in the amount of $39,-813.37.

Q That gave you an aggregate of how much? A $233,144.28.

Q Then what did you next do? A Deducted from this amount the cost of goods sold during the months of January and February, 1925.

Q And that amount was how much? A $79,164.80.

Q And that gave you a figure of how much? A $153,979.48.

Q What did you next do? A This total of $153,979.48 represents the merchandise inventory of March 1, 1925, the date of the fire.

Q In those figures, which you have already given us, have you taken into consideration what you called a few moments ago "returns of goods purchased," and are those figures all taken into consideration in these totals you have given us? A Yes, sir.

Q So that the last figure you have given us of $153,979.48 is a net figure representing actual inventory as of March 1, 1925? A Yes, sir.

Q What did you next do? Or did you do anything further? A Then I presented a statement of the calculation of inventory as of March 1, 1925, to the Specialty Handle Manufacturing Company.

Q How did you figure that? A That was the reduction in writing of the figures I just gave you.

Q You had nothing to do with the apportionment of the claim? A No, sir.

Cross examination by Mr. Vanderbilt.

Mr. Vanderbilt: I would like to ask whether the books on which Mr. Puder has offered his evidence are offered.

Mr. Lane: Yes. We limit it to the period from January 1, 1925, to March 1, 1925. I

offer the items in the two sales books from January 1, 1925, to March 1, 1925, which have been taken out by the witness.

(The two sales books are received in evidence and marked Exhibit P. 44 and P. 45.)

Mr. Lane: The purchase book has already been marked as Exhibit P. 39. I offer in evidence the items in the cash disbursements book from January 1, 1925, to March 1, 1925, which have been used by the witness.

(The cash disbursements book as to these items is received in evidence and marked Exhibit P. 46.)

Mr. Lane: I offer in evidence the items in the purchase returns book from January 1, 1925, to March 1, 1925.

(The items in the purchase returns book referred to are received in evidence and marked Exhibit P. 47.)

The Court: Suppose you assign No. P. 48 to the book of sales returns and you will produce that this afternoon.

(The sales returns book is assigned Exhibit P. 48, to be marked when produced.)

By Mr. Vanderbilt.

Q Did you or your firm ever examine the books of the Specialty Handle Manufacturing Company prior to March 1, 1925? A No, sir.

Q With reference to these computations which you have made, were they all made by yourself, or is the testimony you have given the result of what your associates and yourself have collaborated on this matter? A They were all made under my supervision.

Q When did you first start on the matter? A About April 29th, or April 30, 1925.

Q Were all the books of the Specialty Handle Manufacturing Company turned over to you for the purpose of making the statements and figures which you have given us here? A Yes, sir.

Q Did you use all the books of the company in making this statement and figures that you have given us here? A Yes, sir.

Q You could not have made up these statements and these figures without using the books prior to January 1, 1925, could you? A Only insofar as the year 1924 is concerned, related to the percentage of gross profits applied to sales for the months of January and February, 1925.

Q In other words, you had to go back to the experience of previous years to get the sales costs so as to give us the figures you have given us here? A I went back to the year 1924, to arrive at the gross profits.

Q And that is the only method by which an accountant, or any one else could determine that figure for the purpose of giving us these statements? A Yes, sir.

Q It was absolutely essential to use the experience prior to January 21, 1925, to arrive at this figure of the cost of sales? A Yes, sir.

Q Did you limit yourself to the use of the books of 1924 for that purpose or did you go back to 1923 and 1922 to establish the percentage of the cost of sales? A For that purpose I limited myself to the year 1924.

Q Why did you limit yourself to that year? A Because that was the only year that the physical inventories were available from the start to the close of the year.

Q Did you learn from your examination whether the other inventories had been taken? A The examination of the books would disclose that.

Q Do you know it, aside from your examination of the books? A My inquiry disclosed the fact that physical inventories had been taken each year.

Q 1924, 1923, 1922, and prior to that? A Yes, sir.

Q Did you find the inventories of prior years written up in the books of the company for 1924, 1923, and 1922, and so forth? Did the schedule of these inventories appear in the books of the company? A Just what might be termed an inventory book, a recap of the inventory.

Q Had the inventory been embodied and written into the books at all? A That was a customary procedure; not detailed to reflect each item of the inventories.

Q Did you find any one of them prior to this inventory of January, 1925? A The two I looked at were December 31, 1923, and December 31, 1924.

Q Where did you locate those? A Mr. Emil Garfinkel furnished them to me.

Q Were they in an inventory book? A They were in a canvas-bound loose-leaf book.

Q That is what they called an inventory book, I believe? A Yes, sir.

Q Did you ask him where the previous inventories of December 31, 1921, and December 31, 1922, were? A Yes, sir.

Q Do you know where they were? A They couldn't be located.

Q Do you know what happened to them? A No, sir.

Q So you were limited in establishing the cost ratio, or percentage, to the year 1924, by reason of the fact that the prior inventories were not available, is that right? A The physical inventories were only available for the year 1924 and for that reason I limited myself to that year.

Q You could not have gone back of that if you had wanted to, without having a prior inventory, is that right? A Yes, sir.

Q What books did you use, Mr. Puder, of the year 1924, in arriving at the sales percentage or the cost of sales? A I made a complete examination of all the books and records for that year.

Q And all of those books were necessarily used by you in getting the data which you gave on Mr. Lane's direct examination? A Yes, sir.

Mr. Vanderbilt: I would like to ask, your Honor, if these books which were necessarily used by the witness will not be marked in evidence the same as the books which have previously been offered, because without them his evidence is mere hearsay.

The Court: Isn't that necessary, Mr. Lane.

Mr. Lane: Whatever items he has referred to.

Q What were the books? A The sales book or books; the sales returns book; the purchase journal; return purchase journal; cash received and disbursed book; and general ledger; I believe that's all.

Mr. Vanderbilt: May we have those books marked in evidence?

The Court: As I understand it, the plaintiff will produce them.

Mr. Newman: They are all here.

Q Were you down at the plant, Mr. Puder, when Mr. Wood and his associates were going over these books for the insurance companies? A I don't think I was down during the time they were actually working on the books, but I have met Mr. Wood and his associates at the plant.

Q So far as you know, they made their examinations down there and did not take the books away from the place? A Not to my knowledge.

Q Your man Mr. Bradley was there working along with them around there? A I don't know whether Mr. Bradley was there all the time Mr. Wood was there.

Q Do you know whether or not all of the books of the Specialty Handle Manufacturing Company were turned over to Mr. Wood and his associates for examination? A I don't know.

Q But you had all the books turned over to you of the Specialty Handle Manufacturing Company? A Yes, when we went to the Specialty Handle Manufacturing Company to make our examination they turned over to us all of the books and records they had.

Q Did you make any check-up or audit of the inventory of January, 1925? A A verification of the mathematical computation.

Q Did you go through the books of 1924 to make a check-up of the reliability of the inventory of January, 1925? A No, sir.

Q You assumed that the inventory of 1925, then, was correct, without making a check-up of it except the matter of verifying the computa-

tions? A For the quantities we believed the inventory to be correct and so accepted it.

The Court: The same as prices, I suppose.

The Witness: Of the prices we made a test check as against the invoices.

Q In making an audit, is that a safe mode of procedure to assume that the physical inventory is correct? A Yes, sir.

Q In all cases? A It is impracticable for an accountant making an examination to take a physical inventory of the particular company.

Q Does he make a check of it by going over the books prior to the inventory? A Only so far as prices and extensions are concerned.

Q In any examination of books of a concern, prior to going into court, wouldn't you, as a careful accountant, endeavor to check the inventory and verify it? A I don't see how that would be practically possible without involving a considerable detail without possibly practical results, to verify the physical presence of the quantities.

Q Haven't you yourself prepared to do that to testify in bankruptcy cases? A Not so far as determining quantities, except where you deal in bulk—with bulk items, items that are not recut or manufactured and converted into different products.

Q With respect to the books that you worked on prior to January 1, 1925, did you find those books in regular shape? A The books for the year 1924, I believe, were completely maintained, except that at the end of the year, I believe, the general ledger was entered to include December, but was not closed at December 31st.

Q Do you know whether or not the general ledger for 1923 and 1924 was written up prior to the fire of March 1, 1925? A I do not.

Q Did you know that they were not written up? A No, sir.

Q You have no knowledge of that? A That they were not written up prior to the fire?

Q Yes. A I don't know when they were entered.

Q When you got there had the general ledger been written up for 1923 and 1924? A All the books that were turned over to us were entered as presented to us and no entries were made subsequent to the date we took possession of the books.

Q The point I am trying to get at is not whether you completed the books. I want to know whether or not the books at the time they were turned over to you in the spring of 1925, the general ledger, had been written up for 1923 and 1924? A I couldn't reply to that without referring to the books.

Q Will you please look and tell us? Have you the general ledger here? A I believe so.

Mr. Vanderbilt: May we have that produced?

(Mr. Newman produces the books requested.)

Mr. Newman: Here is the book you referred to in your early testimony.

Mr. Vanderbilt: I will leave that off until we get the general ledger.

Q You said that the general method by which to start was with the physical inventory of January 1, 1925, add purchases of January and Feb-

ruary, less returns and discounts, and the labor of January and February. You got your labor figures from what book? A Cash disbursements book.

Q Did you carry into your figures all the labor items which appeared in the cash disbursements books of January and February, 1925? A Yes, sir, including an item of labor paid either March 2nd or 3d, 1925.

Q Will you turn to Exhibit P. 48, the cash disbursements book, and look at an item under the date of January 2d, "Payroll $1,000" and tell us whether or not that is included in your labor item? A I omitted that from my labor figure that I submitted.

Q Turn to the cash disbursements book and tell us what it says under that date. A "Payroll $1,000."

Q Does it give any identifying check number? A 1536.

Q On what bank? A Public National Bank.

Q I show you a photostatic copy of check No. 1536 and ask you if that is the check which is referred to in the item in the cash disbursements book from which you have just read? A Yes, sir.

Q That item is marked in the cash disbursements book as payroll. Why didn't you include it in making up the figures? A The check was made payable to bearer and indorsed by H. Garfinkel, and in securing an explanation, the explanation was that this check represented New Year's presents, or additional compensation given the first of each year to various employees.

Q Wouldn't that properly be included as part of the payroll? A It is part of the payroll, but has nothing to do with the production during the months of January and February, 1925.

Q You are familiar, are you not, with the schedule of property made up by Miller & Maltbie, the adjusters for the assured, which was furnished to the insurance companies shortly after the fire? A No, sir.

Q You have never seen that or a copy of it? A No, sir.

Q Or the figures stated on the first page of that schedule? A No, sir.

Q In this schedule—

Mr. Lane: I object to any reference to some schedule that has not been identified by what counsel says about it.

Mr. Vanderbilt: I will ask the witness to withdraw until we prove this.

Mr. Lane: I object. This is my case.

The Court: Why are you entitled to do that? You may recall this witness afterward if it becomes material.

Q Did you exclude any other items marked "Payroll" in January or February, 1925? A No, sir.

Q In January and February there were many other items in the cash disbursements book marked "Payroll" and "Labor." Did you exclude any of them? A That was the only item I excluded.

Q And the reason that you excluded it was that it was cashed by Mr. Garfinkel? A Because of the explanation furnished to me regarding the checks.

Q Why didn't you include that $1,000 in the 1924 addition of labor? A The $1,000 item disbursed for Christmas gifts or gratitudes at the end of the year, is not applicable to the cost of

production. It may be administrative expense, but in my opinion it has nothing to do with the cost of production.

Q In listing the purchases of January and February, 1925, did you take everything which you found in the purchase book? A I included the purchases as listed for the months of January and February, 1925, with the exception of the two items I previously enumerated.

Q What were these two items? And where do they appear, if you can tell us, in the purchase book? A The first item appears on page 1 of the purchase book, dated January 2, 1925.

Q How does it read? A E. Kasnowitz & Brother.

Q And the amount is what? A $462.

Q What is the other item? A The second item is an invoice of February 6, 1925, appearing on page 10 of the purchase journal.

Q Reading— A E. Kasnowitz & Brother, $1,572.

Q Why did you exclude those two items which appear on the purchase books, E. Kasnowitz & Brother, in making up your figures? A Because I had no invoices supporting those two items and no substantiation for those two items to show that they had been received.

Q Did you discuss these items with the officers of the companies? A No, sir.

Q Did you advise them you were excluding these two items? A No, sir.

Q Did you know at the time of your audit that Kasnowitz was a brother-in-law of the president, the majority stockholder of the company? A No, sir.

Q Didn't you try to get an explanation? A I communicated with E. Kasnowitz & Brother that I wanted the sale upon their books for the

purchases by the Specialty Handle Manufacturing Company for the months of January and February, 1925. These two items did not appear on their statement.

Q When that situation developed, Kasnowitz & Brother sent you a statement that they did not sell them these two items, did you take up these items with the officers of the Specialty Handle Manufacturing Company? A No, sir.

Q Why not? A I didn't think it necessary.

Q Didn't it show you conclusively that as to those two items the purchase book was fraudulent? A No, sir.

Q What did it show? A That there were two items that were entered in the purchase book that I could not substantiate, and in view of the fact, I was requested to prepare a complete statement of the purchases, and not being able to verify some of them I had no course open other than to eliminate them.

Q Didn't you attempt to get an explanation? A Not at the time of the preparation of my statement.

Q Have you ever gotten an explanation of those two bills which appear in the purchases of January and February.

Mr. Lane: I object to that as not proper cross examination.

Objection overruled.

The Witness: Yes, sir.

Q What is the explanation?

Mr. Lane: I object to that as not binding upon us. It may be given by some man in the street.

Objection sustained.

Q Who made the explanation? A Mr. E. Garfinkel.

Q What is the explanation? A I wanted to correct that; Mr. Garfinkel didn't. Mr. Kasnowitz, the accountant for Mr. Garfinkel, said that these two items—

Mr. Lane: I object to that.

Mr. Vanderbilt: He is admittedly their public accountant.

The Court: Objection sustained.

Q Are those two items in the purchase book in the handwriting of Mr. Schlosser? A I don't know.

Q Will you look and see? A I don't know Mr. Schlosser's handwriting.

Q Tell me whether they are in the same handwriting as the rest of the book. A The first item appears to be the same as the others.

Q Tell me about the second item. A So does the second.

Q You personally never attempted to get any explanation from Mr. Garfinkel of those two items? A No, sir.

Q Did you know at the time you were making the examination that Mr. Garfinkel and Kasnowitz were related? A Kasnowitz & Brother?

Q That Kasnowitz and Garfinkel were brothers-in-law? A During the examination I knew that.

Q In going over the books of 1924, in the interval of the inventory of December 31, 1923, and this inventory, the one we have here of December 31, 1924, did you rely on the books as you found them, or did you have to make changes? A I made changes with respect to some of the items appearing in the books.

Q What was the nature of the changes that you made? A The first item was a difference in inventory.

Q What was the inventory as it appeared on the books December 31, 1923? A $126,402.20.

Q What was the inventory as it appeared in the detail submitted to you and which you used? A The inventory submitted as representing the physical inventory of December 31, 1923, was $146,838.48.

Q What is the difference between the inventory as it appeared in the books as of December 31, 1923, and the detailed inventory as given to you and used by you? A $20,436.28.

Q Was any explanation ever given to you for that difference of $20,436.28? A Yes, sir.

Q By whom? A Mr. Kasnowitz.

Q The accountant? A Yes, sir.

Q What was the explanation? A That the inventory as finally reflected upon the general books was reduced so as to show minimum taxable profit for the year 1923.

Q In other words, the inventory on the books was arbitrarily reduced so that the concern would have the minimum taxes for the previous year? A Yes, sir.

By the Court.

Q I understand that was for 1923? A Yes, sir, for 1923.

By Mr. Vanderbilt.

Q So that the inventory statement in the books of December 31, 1923, at the sum of $126,402.20, is false?

Mr. Lane: I object to that as argumentative.

Objection sustained.

Q Which figure is right? A The physical inventory of $146,838.48.

Q How do you know that is the physical inventory? A Because I was advised that that represented the complete inventory of merchandise on hand on that day, priced at either cost or market price, whichever was lower.

Q Who told you that? A Mr. Kasnowitz and Mr. Garfinkel.

Q Mr. Kasnowitz' first name is Sidney? A I don't know.

Q He is here in court? A I don't know; I only met him twice.

Q But you, of your own knowledge, have no way of telling us whether $146,838.48 is correct or $126,402.20 is correct? A No, sir.

Q Which one did you accept as correct? A The physical inventory of $146,838.48.

Q If you had accepted the other figure of $126,402.20 you would have obtained a different result? A I would have obtained a result far more advantageous to the Specialty Handle Manufacturing Company.

Q If the inventory at the end of 1924 was correct? A Accepting the physical inventory of December 31, 1924.

Q Now, what other adjustments did you make in making your calculations on these books of 1924? A I reduced the purchases by $8,089.70.

Q Will you tell us what items of purchases you eliminated referring us to the proper places in the purchase journal? A The first item appears on the purchase journal, page 17, for the

month of April, 1924, dated April 10, Charles F. Walton, $4,332.94.

Q I show you Exhibit D. 9 for identification and ask you if that is a photostatic copy of the checks of the Specialty Handle Manufacturing Company relating to the item you have just read? A I don't know. I would have to refer to the cash disbursements book and the ledger account to see whether this particular check pays this bill, this is $4,289.61 and the bill is $4,332.94.

Q Will you please make the check-up on that? A I think I would have to have the purchase account and creditors' ledger for that. I don't think that is here.

Mr. Lane: I object to it as not cross examination; it has nothing to do with the direct examination.

The Court: He has based his testimony on the books of this company for the year 1924. This item is an item on the books.

Mr. Lane: Which he has excluded.

The Court: That is true, but I think counsel is entitled to know the circumstances. Just because it has been excluded does not mean that he cannot be cross examined on it.

Mr. Lane: He is entitled to the testimony as far as the witness' knowledge is concerned. He produces a check and asks the witness to tie it up.

Mr. Vanderbilt: This witness, your Honor, is a certified public accountant produced for the purpose of making a correct audit and he has done it, I believe, and I understand he has excluded certain items in the year 1924 which, by his own admission, were not

correct. We question, among other things, this check, and we want his explanation of it. We want to know whether this check ties up with the item.

The Court: I say you are entitled to have him do it, but if the book is not here I don't see how you can do it.

Q Will you go on to the next item, Mr. Puder? A The second item is an invoice appearing on the purchase journal, page 17, dated April 10, 1924, I. Friedman Leather Company, $2,973.26.

Q I show Exhibit D. 7 for identification and Exhibit D. 8 for identification and ask you if the checks of which these are the photostatic copies, were given in payment of that item that you have just read from the purchase book? A I wouldn't know without checking it against the account as with the other.

Q What about the next item? A The third item is an invoice appearing on the purchase journal, page 17, dated April 4, 1924, Dunn-Green Company, $963.50.

Q I show you Exhibit D. 6 for identification and ask you whether the check of which this is a photostatic copy was given in payment of that item which you have just read from the purchase book? A I would have to check that against the account.

Q Why did you exclude these three items when you were going over the books of 1924? A For those invoices not in the files, and practically all for the purchases of the year 1924, I communicated with all creditors, requesting a verification of the purchases apparently made by the Specialty Handle Manufacturing Company, and in these three instances, I received replies showing

that these particular purchases had not been made.

Q Have you those replies? A Yes, sir.

Q Will you produce them? A (The witness produces the papers requested.) This is the verification of the Charles S. Walton & Company account.

Q And it does not contain the item that you excluded when you made your calculations? A No, sir.

Mr. Vanderbilt: I ask that it be marked for identification.

(The verification of purchases of Charles S. Walton & Company is marked Exhibit D. 13 for identification.

The Witness: Here is the I. Friedman Company verification. The ink figures being as verified with the account.

Q This statement does not include the item which you excluded in making your calculations? A No, sir.

Mr. Vanderbilt: I ask that it be marked for identification.

(The verification of purchases of I. Friedman Leather Company is marked Exhibit D. 14 for identification.)

The Witness: Here is the Dunn-Green Corporation reply with respect to the item of $963.50 that it does not appear that the $963.50 was purchased from them. "Several concerns had our goods for sale and may have sold our leather to your client. If you would like to know the names of these concerns, please communicate with the writer below."

Q And that item in the ledger is not in the statement? A No, sir.

Mr. Vanderbilt: I ask that it be marked for identification.

(The letter from Dunn-Green Corporation is marked Exhibit D. 15 for identification.)

Q Did you check up further with the Dunn-Green matter after you got this note from the company? A No, sir.

Q Did you discuss these three items with Mr. Garfinkel? A Yes, sir.

Q What was his explanation, if any? A That he could not quite understand these items, except that it was a method by which moneys could be withdrawn from the business.

Q Did he tell you whether or not checks of which I have shown you photostatic copies were actually received by the payees named therein or not? A No, sir.

Q Did you discuss with him at all the endorsements on these checks? A Yes, sir.

Q Did he tell you whether or not he had cashed them? A I believe some of them were deposited to his account.

Q Will you look at the photostatic copies and tell us which ones were deposited to his account?

Mr. Lane: I object to that as not evidence.

Objection sustained.

Q Did you discuss the matter with Mr. Kasnowitz, the accountant? A No, sir.

Q Do you know who had signed those checks? A No, sir, not other than by looking at the signatures.

Q I mean the checks, not the indorsements? A Not by looking at the signature.

Q Do you know Mr. Garfinkel's signature? A No, sir.

Q You have never seen it? A I may have, but never paid attention to it.

Q You could not tell us whether that is his signature on the checks or not? A No, sir.

Q What other changes did you make in making your calculations on the 1924 books in addition to those you have told us about? A I reduced direct labor by $6,714.38.

Q Will you read from the cash disbursements book the items which you excluded in 1924? A Do you want them from the cash disbursements book, or do you want the items?

Q If you can, from the cash disbursements book. A The first item is check 5236 on the Washington Trust Company marked "Labor $1,000"; the second item, check No. 775, appearing upon cash book, page 111, marked "Labor $2,550—"

Q January 2d? A Yes, sir.

By the Court.

Q 1924? A 1924. (Continuing.) The third item is February 8, 1924, check No. 6325, drawn on the Washington Trust Company, marked "Mans, Labor, $1,000." Item, March 10, 1924, marked "Labor, D. Kugel" drawn on the Washington Trust Company, $500. The next item appears upon the cash book April 8, 1924, marked "Labor, Kugel," Washington Trust Company,

$500. The last two items represent notes paid by the Washington Trust Company. The next items appear upon the cash book, page 39, May 8, 1924, D. Kugel, pay to the Washington Trust Company, $500.

By Mr. Vanderbilt.

Q Who is "D. Kugel"? A The carpenter.

Q Go ahead. A The next item, cash book page 151, October 18, 1924, represented by check No. 1348, drawn on the Public National Bank, $464.38, marked "Labor, D. Kugel."

Q Are there any others? A There is one further item appearing on cash book page 5, March 8, 1924, check No. 7753, to B. R. Grossman, $200, drawn on the National Newark & Essex Bank.

Q Do you know who Grossman was? A He is an employee.

Q Why did you exclude these eight labor checks? A Because there was no substantiation through the payroll records indicating that these items represented disbursements for labor.

At 1 o'clock P. M., the Court takes a recess of one hour.

After Recess.

ABRAHAM PUDER, resumes the stand.

Cross examination (*continued*) by Mr. Vanderbilt.

(The stenographer reads the last preceding question and answer.)

Q Did you discuss these items at all, either with respect to the alleged purchase invoices you excluded, or the alleged wage or payroll items with Mr. Schlosser, the bookkeeper? A No, sir.

Q These items were all in his handwriting, were they not? A Yes, sir.

Q You went back, did you not, Mr. Puder, or your associates went back over the books for the years 1920, 1921, 1922 and 1923? A Yes, sir.

Q And you found similar items, did you not, of fictitious purchase entries and fictitious payroll entries?

Mr. Lane: I object to that as not cross examination, and as incompetent, irrelevant and immaterial. The testimony is that this witness did not use those.

The Court: Whether he went over the books is not necessarily material. He won't offer them for the purpose of giving evidence here.

Q Did you use the books for the preceding years, 1920, 1921, 1922 and 1923, in any respect in making up the figures you gave us before the recess? A No, sir.

Q What did you make an examination of the books for those four years for? A To determine the profit or loss for each respective year.

Q Why was it material to determine the profit or loss for those four years?

Objected to as immaterial.

Objection sustained.

Q Why did you want to obtain the profit and loss for those four years? A For the purpose of showing the business was a profitable one in each of those years, or not.

Q Did you reconcile the figures of profit and loss which you found with those that the accountants for the insurance companies found? A For what period?

Q 1920 to 1923 inclusive, or any part of that period.

Mr. Lane: I object to that on the ground that there is no evidence at all that the insurance companies made such a statement.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt: I neglected to take the exception to the other questions. By the accountant's own statement, it is shown for the calendar year 1924 there were fictitious entries. If we are permitted to show that that was done in previous years, not only for the profit and loss, but also on the whole general question of the reliability of these records; if we can show that in previous years they had been fraudulently kept, it is as important as this one year. The previous inventories which were admittedly made have disappeared. I think it is vital to our case.

The Court: I don't think it is cross examination of this witness.

Mr. Vanderbilt: He is testifying that he examined them for those years.

The Court: But it has not appeared that that was material to his findings, insofar as this particular testimony that he has given is concerned.

Mr. Vanderbilt: I ask that my exception be noted.

The Court: You may have your exception.

Q Did you send out any letters of inquiry to the customers to whom the sales were made in the months of January and February, 1925? A No, sir.

Q Why not? A The sales were checked completely and the customers' accounts as well, and an examination of the customers' accounts indicated that all charges to customers' accounts were entered upon the sales book and payments by customers for those accounts were checked to the cash book, and the deposit of the moneys to the bank, indicating that all sales were charged and paid for.

Q Did you find any instance where there was a record of a sale where it had not been charged or paid for? A There naturally would be sales of March 1, 1925, unpaid.

Q Are you prepared to say from your examination of the books that there are no suppressed sales in the period of 1924 or for February or January, 1925? A By that you mean no sales made that are not recorded on the books?

Q Yes. A To my knowledge and belief all sales that were made are recorded in the books.

Q Are no sales recorded upon the books that were not in fact made? A To my information all the sales recorded in the books were made.

Q Where did you get that information? A From my examination of the books.

Q Which books? A Sales books, accounts receivable, ledger, and cash receivable.

Q On sales not recorded, where would you have information on that? A There was nothing to indicate that there were sales not recorded; so far as I know, all sales were recorded.

Q I show you photostatic copy of a check No. 7497, on the National Newark and Essex Banking Company, and ask you if that appears in the books; dated November 5, 1923.

Mr. Lane: I object to that as outside the scope of the direct examination.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Will you trace through on the books those four fictitious invoices with respect to purchases of merchandise in the year 1924, and tell me whether or not the checks, photostatic copies of which I showed you before recess, relate to the items that you have referred to in the books this morning?

Mr. Lane: You term them fictitious invoices.

Mr. Vanderbilt: Fictitious entries in the purchase book. I am referring to the Friedman, Walton and Dunn-Green items.

The Witness: With respect to the Charles S. Walton Company, there is an entry in the cash disbursements book, page 101, check

6722, dated August 11, 1924, C. S. Walton & Company, $4,289.61, discount $42.33, and charged to accounts payable, meaning the account of C. S. Walton & Company, $4,332.94.

Q Does this item in the purchase book then tie up with this check marked Exhibit D. 9 for identification? A Yes, sir.

Q It does tie up, you say? A Yes, sir.

Q Does that transaction appear on the general ledger, Mr. Puder? A The check?

Q The transaction. A The invoice appears in the total of purchases in the month of April, 1924.

Q Does that appear also in the account of Charles S. Walton in the creditors' ledger? A It appears in the account of Charles S. Walton in the creditors' ledger.

Q How does it appear? Tell us on both sides of that account how it is entered. A The purchase of the invoice is represented by an entry April 10, 1924, folio 17, with an indication of letter T, referring to the payment $4,322.94. The offsetting entry, representing the check, August 11, 1924, one per cent., C. 101, representing the cash book folio, and the offsetting letter T, referring to the invoice $4,322.94.

Q And all of those entries are fictitious? A I don't know.

Q They all relate to this transaction which you threw out when you made up your figures? A They relate to the invoice which I eliminated from the total of purchases.

Q All the invoices which you eliminated and threw out are carried through all the proper books of this company? A It is carried from the purchase book in the month of April through

all the purchases and through the month of August for the payment thereof.

Q And it is carried in the creditors' ledger? A Yes, sir.

Q There is no other book it can be put in? A No, sir.

Q So they carried it in all the books they could? A Yes, sir.

Q And you eliminated it entirely from your figures, is that right? A Yes, sir.

Q Who wrote the entries in the creditors' ledger? A I don't know.

Q Are they in the same handwriting as the bookkeeper's who made up the cash disbursements book and the purchase book? A I don't know.

Q Will you carry through the I. Friedman Leather Company transaction we referred to this morning and tell us whether or not they tie up the checks 1075 and 1184 on the Public National Bank that I showed you photostatic copies of this morning?

Mr. Lane: If it will save any time, I will concede that they do, although it is entirely immaterial.

The Court: Is that satisfactory?

Mr. Vanderbilt: No, sir.

The Witness: Yes, sir. The two checks represent the one invoice that was eliminated.

Q And in which books is this transaction carried? A The invoice in the purchase journal, the check in the cash disbursements book, and in the accounts payable ledger.

Q Is it in the creditors' ledger? A Yes, the accounts payable ledger.

Q Will you refer to it there and read the items? A The invoice is dated April 10, 1924, folio page 17, $2,793.26 with the letter D indicating the payment of two checks June 18, 1924, cash book 67, $1,500, July 24, 1924, cash book 95, $1,293.26, making $2,793.26.

Q And the two checks you have been referring to are Exhibits D. 6 and D. 7 for identification? A Yes, sir.

Q This alleged purchase has been carried through all the books it could be carried through, as in the Walton transaction? A Yes, sir.

Q Will you trace the Dunn-Green transaction? A I don't seem to be able to locate the account in the creditors' ledger.

Q Is it on the purchase journal page 17? A The invoice?

Q Yes. A Yes, sir.

Q Will you look and see whether there isn't an account with the Dunn-Green Corporation in the creditors' ledger? A I have looked under the letters D. and G. and I can't locate it. It may be in the transcript binder.

Q I show you photostatic copy of check 984 on the Public National Bank and ask you whether by reference to the books you can tell me what that check was for? A The entry in the cash book on page 35 represented by check 984, drawn on the Public National Bank, is indicated in the cash book, April 29th, E. Kasnowitz & Brother, $1,000, charged to accounts payable.

Q But the check is drawn to whom? A Check No. 984 is drawn to Benjamin Newman.

Q And they are both for the same amount? Both $1,000? A Yes.

Q And you left this $1,000 item in, did you not, in giving us the figures you gave us this morning on direct examination? A That item in itself would have no bearing upon my figures.

Q Why not? A This check in itself is merely a payment on account of accounts payable.

Q Is it in payment of a merchandise account? A It is charged to E. Kasnowitz & Brother, and it may have been a payment for their account to Benjamin Newman.

Q Do you know who Benjamin Newman is? A Not from this check; I know Benjamin Newman, the lawyer.

Q Was he at one time the attorney for the Specialty Handle Manufacturing Company? A I don't know.

Q Can you tell what bill that check is intended to be in payment of? Will you look at the ledger account of E. Kasnowitz & Brother and see whether the B. Newman check is posted there? A Yes, sir.

Q Will you look at the payment of the Newman account to see whether it is posted there also? A Where would Benjamin Newman's account be?

Q You have me at a disadvantage there, Mr. Puder. A I don't think there is a Benjamin Newman account in the ledger.

Q Will you look and see whether there is a Benjamin Newman account? A There is no account for Benjamin Newman in this ledger.

Q That Kasnowitz & Brother account is a merchandise purchase account, isn't it? A Yes, sir.

Q Did you check up from Benjamin Newman to see whether he had received this money? A No, sir.

Q Or from E. Kasnowitz to see whether they had received this money? A No, sir.

Q Wouldn't that have been a part of the regular audit of this period? A No, sir.

Q Are you familiar with the account of the Keegan Leather Company in these books and on the inventory? A Not specifically.

Q Referring to Exhibit P. 17, the inventory of the leather department, I show you the seventh item down, reading, "Tanned leather belly centers—Keegan." Did you check that to any invoice? A No, sir.

Q Can you tell me whether or not, by reference to this invoice of December 18, 1924, to Keegan Leather Company? Were there any return items on that invoice? A As against this invoice?

Q On that invoice that I have just shown you. A The account does not seem to indicate so.

Q Don't you find an item of returned merchandise amounting to $1,503.14? A As to what date?

Q Shown on the stub of check 1516 of February 11, 1925. A There is an entry in the account of February 11, 1925, four per cent., cash book 219, $4,155.48.

Q Will you look that up in the cash book, please? A The check is $2,261.72, and a deduction for return $1,503.14, discount $106.90, freight, $159.53, Cr., I believe, meaning credit, $125, making a total in this invoice of $4,155.48.

Q What page and what book? A Cash disbursements book page 219.

Q Isn't this goods represented by the invoice I have just referred you to, included in the inventory of January, 1925? A Not that I know of.

Q Doesn't it show on this item that I have just referred to here No. 7, $2,800—

Mr. Lane: I object to that. If it appears it does not show by the papers themselves, then we know as much about it as the witness does.

The Court: I will allow it.

The Witness: There is nothing to indicate that the item upon the inventory sheet is this item. The two amounts are different.

Q When was the last purchase made prior to this one of December 18, 1924, from the Keegan Leather Company? You might read the purchases backward until you come to another big one. A November 4, 1924, $22.61—

Mr. Lane: I object. There is nothing in evidence that those bellies referred to come from Keegan.

The Court: I wish you would show me how it is material on cross examination.

Mr. Vanderbilt: The word "Keegan" is on it.

Mr. Lane: There is no evidence that those bellies came from Keegan.

The Court: What do you want to prove, Mr. Vanderbilt?

Mr. Vanderbilt: My purpose is to prove that the $2,100 item in the inventory includes, or is, this Exhibit P. 38, the invoice of December 18, 1924; and also that it was later included in the January and February items as a duplicate of the amount of that invoice.

The Court: What is your question?

Mr. Vanderbilt: I asked Mr. Puder to trace back the purchases through 1924, going backward through the Keegan Leather Company account, my purpose being to show that this is the only item of purchase this item of $2,800 could relate to.

Mr. Lane: That must suppose it was bought from Keegan.

Mr. Vanderbilt: I submit it is a reasonable inference.

The Court: I will allow you to infer that; it may be disproved by the other side.

The Witness: November 4, 1924, $22.61; October 28, 1924, $15.47; May 1, 1924; $18.04; April 15, 1924, $169.44; April 1, 1924, $14.94; April 2, 1924, $434.78; March 28, 1924, $11.25; March 19, 1924, as of April 5, 1924, $5,962.50.

Q So, the first item of purchase from Keegan Leather Company of any size at all prior to this invoice of December 18, 1924, is a purchase of March 19th, as of April 5th, in the sum of $5,962.50? A Yes, sir.

Q Is this Keegan Leather Company item included in the bills of February and January, 1925? A The one of December 18th?

Q Yes. A Yes, sir.

Q In connection with the invoices which are included in the two batches of invoices and checks of January and February, 1925, did you check through in every instance to see the date of delivery and to find out whether or not they had been delivered prior to January 1, 1925? A I did inquire as to whether any of these invoices represented any items included in the inventory of December 21, 1924.

Q From whom did you make that inquiry? A Mr. Garfinkel.

Q Did you inquire about Keegan? A Not specifically, not about any particular invoice.

Q Then you did not check them yourself, but simply took Mr. Garfinkel's word as to whether the goods were delivered? A That is the only way. Not as to delivery. I inquired whether any items in January and February, 1925, had been included in the inventory figure of December 31, 1924.

Q They could have used them up, could they not, during that intervening period? A Of course, applying the thought that they were on hand January, 1925, and carried over into 1925.

Q What makes you believe they were on hand and were not used up? A My question toward determining the fact that it was not included in the inventory of December 21, 1924, was not overlooking the fact that it was carried over into 1925 and was part of the purchases or materials during January and February, 1925.

Q These photostatic copies of checks and notes, and so forth, which I have identified, were made for the accountants of the insurance companies all through your office, were they not? A Yes, sir.

Q And paid for by the insurance companies to you? A Yes, sir.

Q And so far as you know, the books were always used so far as they were used, down at the plant of the company by the insurance companies. They were not taken out? A Not that I know of.

Re-direct examination by Mr. Lane.

Q In making up your figures, which you have given us, have you excluded consideration of any items referred to by counsel as questionable items? A Yes, sir.

Q And do you know what accountant represented the insurance companies? A Yes, sir.

Q Who? A Mr. Wood.

Q In the course of your examination did you meet Mr. Wood? A Yes, sir.

Q And at the time you met him had the insurance companies made their detailed examination of the books? A No, sir.

Q When you saw Mr. Wood did you have a conversation with him as to these questionable items and tell him about them? A Yes, sir.

Q And did you tell him about every one of these items which have been referred to by counsel here? A Yes, sir.

Q So the insurance companies had that information before they made that examination? A Yes, sir.

Q Did you include, in making up your figures, the item of $316.07 in the March purchases that appear in those invoices? A The page of invoices representing February purchases in March, referring to the item of the checks we had and invoice?

Q Yes. A No, sir.

Q Did you consider an item of $1,725.01? Can you identify it by those figures? A What does that item represent?

Q I understand there are two items making up $1,725.01 of Kasnowitz. A I eliminated two items of Kasnowitz.

Q That is $1,725.01. I thought I understood your testimony that the explanation you gave to Mr. Wood you gave to him the first time you met him. A I don't know whether it was the first time I met him, but immediately upon completion of my work I had a conference with Mr. Wood, and before Mr. Wood started his detailed examination, and I went over all these findings with him and explained them all to him.

Q In response to his request you also got these photostatic copies? A No, I got these photostatic copies at the request of Mr. Levy, during Mr. Levy's examination.

Q Mr. Levy, representing the insurance companies? A Yes, sir.

Q How long have you been examining inventories? A During the entire course of my experience as an accountant, dating back to 1909; in connection with all examinations and audits we have occasion to use inventory sheets.

Q Is there anything at all on the inventory sheets in evidence here which would indicate anything suspicious at all?

Objected to.

Objection sustained.

Q Did you conceal, or were you told to conceal any of the books here, or any information from the representatives of the insurance companies? A Not the—

Mr. Vanderbilt: I object to that.

The Court: I will allow it.

The Witness: Nothing of any nature was concealed or hidden from any one representing the insurance companies. All information at my disposal was furnished to the representatives of the insurance companies.

Re-cross examination by Mr. Vanderbilt.

Q When did you have your first conversation with Mr. Wood about this matter? A I couldn't just place the time.

Q Was it before or after you started your work on the books? A I am inclined to believe that just about the time we did start with our examination I called Mr. Wood and arranged to meet with him for the purpose of discussing the scope of our examination.

Q In other words, about the time you started the work for this company you arranged a conference with Mr. Wood? A I believe so.

Q And you told him at this conference, before you made the detailed examination, what the fictitious items were in the books? A No, sir.

Q What did you tell him? I understood you to say in answer to counsel's question that the first time you met Mr. Wood you came forward and told him what was wrong with the books, and that you told him what the items were. A That would have been impossible, because I didn't have that information at my hands. What I did say—

Q Maybe Mr. Garfinkel gave you that? A I think what I did say was that immediately upon my completion of the examination I took up with Mr. Wood the information I had and that was before he started.

Q As a matter of fact, hadn't Mr. Wood started before you were called in by Mr. Gar-

finkel? A I was told before I was called in Mr. Wood had been down and made the cursory examination.

Q Wasn't it because Mr. Wood called to Mr. Garfinkel's attention certain items— A Mr. Garfinkel told me of Mr. Wood's visit, and also that he had called Mr. Wood's attention to these items, and that Mr. Wood ignored these items in his preliminary report and for me to determine the accurate situation.

Q In other words, Mr. Garfinkel told you that he had advised Mr. Wood of the fictitious items that appeared in the books although Mr. Wood had ignored them in his examination? A A more complete way of replying to that is this: At my first conference with Mr. Wood, Mr. Kasnowitz was present. He furnished me with that information. He advised there were certain entries in the books to which he had directed Mr. Wood's attention and that Mr. Wood had ignored them in his preliminary report.

Q Then, do I understand Mr. Kasnowitz and Mr. Garfinkel were at your first conference and told you what these fictitious items were? A Not specifically.

Q But they told you they had given him specific fictitious entries, but didn't tell you what they were? A No, they told me there were certain entries in the books and they had called Mr. Wood's attention to them, and these entries had appeared upon the profits for the year 1924, and that Mr. Wood had ignored the entries and his report indicated the fact that the company was not making profits for the year 1925, and it was their desire to have an accurate showing of their situation.

Q And they had told Mr. Wood what the specific fictitious entries were? A They told me that they had pointed several of the items out to him.

Q But they didn't tell you about them? A No.

Q They left you to grope in the dark for them? A We were to make an independent examination.

Q Did you go over the 1921, 1922 and 1923 records of the company with Mr. Wood as shown on the books? A Yes, sir.

Q And did you tell Mr. Wood that you found a like condition as to fictitious merchandise and fictitious payroll entries in the preceding years? A I directed Mr. Wood's particular attention to the particular items I eliminated for those previous years.

Q And they were items of fictitious merchandise entries and payroll entries for 1920, 1921, 1922 and 1923? A I can't say as to all the years, but there were some.

Q Can you recall any years in which there were not such fictitious entries? A I couldn't tell you specifically in which year there was and which there wasn't.

Q In your many years as an accountant, especially in connection with court work, you have made numerous examinations, have you not, where you were not justified in relying upon an inventory shown you and gone back and reconstructed an inventory? A I must confess that as yet I have not had such a situation.

Re-direct examination by Mr. Lane.

Q As a matter of fact, if these fictitious items, so called, for 1924, are taken into consideration, it would mean that the profits of the Specialty Handle Manufacturing Company for the year 1924 would be considerably reduced; that is so, isn't it? A Reduced by the amount of these items.

Q And from that aspect, that would be favorable to the insurance companies, wouldn't it? A By reducing the profit?

Q Yes. A No, sir.

Q Why not? A If the profits for the year 1924, the gross profits for the year 1924, were reduced, then the percentage of gross profits to sales would also be reduced and the cost would be that much more, tending to show a decreased inventory as of March 1, 1925.

Q It would tend to show a decrease in inventory of March 1, 1925, or less goods? A That's right.

Q Or less loss? A That's right.

Q You say the complaint of Mr. Garfinkel and Mr. Kasnowitz was that although they had shown that this profit which was arrived at by considering this so-called fictitious item, was not correct, nevertheless, Mr. Wood, representing the insurance companies, refused to consider it? A In his first report, yes, sir.

Re-cross examination by Mr. Vanderbilt.

Q What is the result on the claim, of putting in these fictitious merchandise and payroll entries? Would it increase it or decrease it? A If these items were included in the year 1924?

Q Yes. A If they were included in the year 1924, it would tend to reduce the inventory of March 1, 1925.

WALTER A. ENGLAND, sworn in behalf of the plaintiffs.

Direct examination by Mr. Lane.

Q Mr. England, where do you live? A Hempstead, Long Island.

Q What is your business? A Fire insurance adjusting.

Q Did you have anything to do with the loss of the Specialty Handle Manufacturing Company on March 1, 1925? A I did.

Q Did you prepare proofs of loss? A They were prepared under my supervision.

Q In the preparation of the proofs of loss, did you use the figures which have been testified to here this morning by Mr. Puder? A I believe so; I wasn't here during all of his testimony.

Q Did you use his figures? A Yes, sir.

Q Whether you heard his testimony or not, did you use the figures which were supplied by him with respect to inventory stock in sight, and the loss? A Yes, sir.

Q Did you make an apportionment of the loss between the various companies? A Yes, sir.

Q And in making those apportionments of loss, did you take into consideration the amount of the insurance and the terms of the policy with respect to the apportionment and also whatever co-insurance clause there was on the face of the policies? A Yes, sir.

Q Where are your figures making up that apportionment? A I would have to see a memorandum of them.

Q Using those figures, can you tell me what is the amount of loss properly apportionable to the Patriotic Insurance Company upon its policy for $15,000, No. 171302? A $12,899.12.

Q New Brunswick, upon its policy for $4,000, No. 194549? A $3,439.76.

Q And the Agricultural Insurance Company of Watertown, New York, upon its policy for $7,500, No. 6315? A $6,449.56.

Q And the Pacific Insurance Company policy for $4,000, No. 2250662? A $3,439.76.

Q Policy of the same company for $24,000, No. 2250594? A $18,058.77.

Q And the Importers and Exporters Insurance Company of New York, policy for $1,500, No. 02343? A $1,289.91.

Q And upon its policy for $1,500, No. 02342? A $1,289.91.

Q And the Stuyvesant Insurance Company of the City of New York, policy for $8,000, No. 1164854? A $6,879.53.

Q Does that make a total with respect to these particular insurance companies of $53,746.42? A It does.

By the Court.

Q That is allowing for the co-insurance clause? A Yes, sir.

Q Then, as I understand it, that was the amount of loss as you give it in the Puder figures; that is the amount these respective companies ought to pay on their policies? A Yes, sir.

Cross examination by Mr. Vanderbilt.

Q You are associated with Miller & Maltbie, insurance adjusters? A Yes, sir.

Q When were they called into the matter? A Two or three days after the fire.

Q I show you a schedule and ask you if that was prepared by you or under your direction? A This statement was—

Q Yes or no. Was it prepared by you or under your direction? A Not in our organization.

Q Where did you get the information set forth in that paper? A This entire document—the original of it—was given to us by Mr. Garfinkel and Mr. Kasnowitz.

Q And you had it typed? A Yes, sir.

Q And furnished copies to the insurance companies? A Yes, sir.

Q This was the first paper that you gave to the insurance companies after the fire, is that right? A It may have been given at the same time as the inventory of stock in sight, and the machinery schedule. I believe they were all delivered at one time.

Q At any rate, it was furnished by you to the insurance companies very soon after the fire? A As soon as the papers could be prepared.

Q And it was made up and copied from information given you by Mr. Garfinkel and Mr. Kasnowitz? A Yes, sir.

Mr. Vanderbilt: I ask that it be marked for identification.

(The schedule of property is marked Exhibit D. 16 for identification.)

Q And that, and the other schedules which were supplied by your firm to the companies after the fire, were in compliance with the policy provisions as to making an inventory or schedule to be delivered to the company? A Yes, sir.

Q And the figures in this schedule are not the figures which were used when the proofs of loss were made up, are they? A No, sir.

Q This schedule and the others which were furnished at the same time are the schedules and figures that Mr. Wood and his associates started to work on, are they not? A Yes, sir.

Q And at the time that you delivered them to the insurance companies you believed they were correct? A Yes, sir.

Q And you so represented to the insurance companies? A Yes, sir.

Q And you advised the insurance companies that the figures contained in that schedule were given to you by Mr. Garfinkel and Mr. Kasnowitz for the assured, is that right? A Yes, sir.

Re-direct examination by Mr. Lane.

Q Whom did you see of the insurance companies at the time you delivered to them the schedule that has been referred to by counsel? A I believe they were sent by messenger; I saw no one.

Q I am wondering where all these representations were made that counsel has been referring to? Whom did you see of the insurance companies? A We delivered them to the office of the two adjusters, Mr. Williams and Mr. Russell of the General Adjustment Bureau.

Q Did you have any talk with Mr. Williams and Mr. Russell? A At the preliminary meeting that was called.

Q When was that? A At a time appointed by Mr. Williams and Mr. Russell after the delivery of these papers.

Q How long afterwards? A In accordance with the usual custom I would say three or four days, or a week.

Q Who were present at that conference? A To the best of my recollection it was held at Mr. Garfinkel's office. Mr. Williams was there, Mr. Russell, Mr. William H. Miller, of our firm, Mr. Vredenberg of our office, Mr. Sam Garfinkel—I am not sure whether Mr. Kasnowitz was there or not—and I was there. There were others there, but they were not active at the meeting.

Q Counsel has said that this statement was rendered in compliance with some provision of the policy. Will you point to any provision of the policy which requires any such statement as this? A The provision of the policy that might relate to that is one where it is incumbent upon the assured to endeavor to prove his loss.

Q That is a proof of loss. This is not a proof of loss? A No, sir.

Q What provision of the policy requires a statement, which you indicated in response to counsel's question, was required by the policy? A If I may have a copy of the policy I may possibly find that for you. (Examining policy) line 67, "If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon"—

Q Is that what has just been referred to by counsel? A It is the custom of the business.

Q I am not asking about the custom of the business. You said it is required by the policy. Where is it? A That is the only clause.

Q That refers to an inventory. There was, in fact, an inventory filed at the time? A Yes, sir.

Q What is that? A It is a merchandise statement.

Q Is there anything in the policy that requires anything like that? A I would say that it was necessary to indicate the amount of the loss which could not be inventoried.

Q That is required and provided for in your next line of proof of loss under oath, isn't it? A No, sir.

Q Then I can't read the English language, "and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon." That is proof of loss, isn't it? A Yes, sir.

Q What I am trying to get at is what provision of the policy requires this piece of paper that you have? I thought you said it was required by the policy when responding to counsel's question on cross examination. A We had to put our memoranda—

Q Is it a working memorandum or a document? A It is a working memoranda.

Q Why do you say it was something required by the policy? Or weren't you listening to counsel's questions?

Objected to.

Objection sustained.

Q Is there anything in the policy you can now find which requires any such document as this? A No, sir.

Q Was it signed by anybody for the company? A No, sir.

Q Or by you? A No, sir.

Re-cross examination by Mr. Vanderbilt.

Q As a matter of fact, in every case in which a public adjuster is retained, the first thing that is done by him is the preparation of an inventory and schedule? A Yes, sir.

Q That is the basis from which any adjustment would start? A Yes, sir.

Q It is also a fact that proofs of loss are not always required? A Unless it was demanded by the company; that is, in New Jersey.

Q This loss was entirely in New Jersey? A Yes, sir.

Q This paper I have referred to and marked Exhibit D. 16 for identification, was given by you to the company for the purpose of starting an adjustment? A Yes, sir.

Q And you believed that the figures there were true? A Yes, sir.

Q And you so represented when you handed it to Mr. Williams and Mr. Russell?

Mr. Lane: He said he did not hand it to them.

Q When you first discussed the paper with Mr. Williams and Mr. Russell? A Subject to their check, yes, sir.

Q And all the losses which you took, representing the assured, or handled, were on that basis? A That is the custom of the business, yes, sir.

Q And that is understood by the adjusters who took them as representing your understanding of the loss and the extent of the damage? A Yes, sir.

Q Line 699 does state "Inventory and cost of each article"? A Yes, sir.

Q When there are goods burned out of sight, can that be done? A No, sir.

Q When that cannot be done, what do you do? A We make a merchandise statement.

Q That was this paper? A Yes, sir.

Q You say you made that up from material given you by Mr. Kasnowitz and Mr. Garfinkel? Yes, sir.

Q Have you their original data? A I have given what papers I had to Mr. Newman and they may be in my files or Mr. Newman's.

Re-direct examination by Mr. Lane.

Q Is this the inventory which was made (handing paper to witness)? A This is the inventory of the stock in sight.

Q And that was filed or given to the insurance companies? A A typewritten copy of it.

Q Was that made by you? A This is in my handwriting entirely as to the recapitulation, but as to the detail, it is in my handwriting as to lot numbers and description only; the pricing is not.

Q Was that checked by the insurance companies? A Yes, sir.

Q What did you mean when you said in response to counsel's question that this statement—this merchandise statement—was subject to check? A I meant that any statement—merchandise statement—made up in that way is given to them so that they can guide themselves in an examination of the books and see if our merchandise statement is in accordance with the books.

Q Do you expect the insurance companies at any time to take this merchandise statement without checking? A No, sir.

Mr. Vanderbilt: I object to that as immaterial.

Q What is your custom with respect to the checking of the merchandise? A For the insurance companies' adjusters themselves to check the books, or have them examined by competent accountants to do it for them.

By the Court.

Q I understood you to say that you gave this to them subject to check? A Yes, sir.

Q Was that understood by them? A The attitude that they might take about it would be within their jurisdiction.

Q I know; but did you inform them anything with regard to this being subject to their check? A I think I had no discussion as to that.

Re-direct examination by Mr. Lane.

Q In the ordinary practice of the business, are these figures ever taken by the insurance companies at face value? A No, sir—

Walter A. England, re-cross.

Mr. Vanderbilt: I object to that.

Objection sustained.

Q Do you know of any case where they have been taken at face value and not checked?

Mr. Vanderbilt: I object to that.

Objection sustained.

Q What is the practice with respect to checking figures?

Mr. Vanderbilt: I object to that.

The Court: I will allow it.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: The insurance companies call for the data from which the merchandise statement is prepared and required for their examination and the policy calls for that.

Q Can you tell me how long after the fire this merchandise statement was delivered to the insurance companies? A I would have to hazard a guess almost as to that. My best recollection is possibly three weeks—two or three weeks after the fire.

Re-cross examination by Mr. Vanderbilt.

Q You had no difficulty in adjusting with Mr. Williams and Mr. Russell representing the companies, the amount of damage on the goods in sight. That was agreed upon? A Yes, sir.

Q The disagreement is with respect to the goods alleged to be burned out of sight? A Yes, sir.

Percy O. Valentine, direct.

PERCY O. VALENTINE, sworn in behalf of the plaintiffs.

Direct examination by Mr. Newman.

Q Mr. Valentine, what is your business? A Photographer.

Q How long have you been in that business? A About eighteen years.

Q Did you have occasion in the month of March to make certain photographs of the burned building located on New Jersey Railroad avenue, belonging to the Specialty Handle Manufacturing Company? A Yes, sir.

Q I show you a photograph marked "First floor" and ask you if you took that photograph and when you took it? A That is my photograph, I think. I don't exactly remember the exact date.

Q About when? A I think in December, 1925.

Q Before the fire occurred? A After the fire.

Q Do you know how long after the fire? A No, I don't.

Q Have you any way in which you can find out? A The only way I can find out is by the date I billed this out.

Q Did you look that up? A No, I didn't.

Q We will ask you to look that up first. Can you look it up now or do you have to go back to your studio? A I think I have to go back.

Q We want to know when these photographs were taken. A These were billed through the Hess Agency. One was December 9, 1925, and I made other photographs January 7, 1926.

Q You had better look it up first.

(Witness withdrawn.)

(Various books of accounts for the year 1924 referred to by the witness Puder in his testimony are offered in evidence.)

(The sales book for January 1, 1924, to February 26, 1924, is received in evidence and marked Exhibit P. 52.)

(The sales book for February 27, 1924, to May 24, 1924, is received in evidence and marked Exhibit P. 53.)

(The sales book May 26, 1924, to August 28, 1924, is received in evidence and marked Exhibit P. 54.)

(The sales book August 29, 1924, to November 17, 1924, is received in evidence and marked Exhibit P. 55.)

(The accounts payable ledger is received in evidence and marked Exhibit P. 56.)

(The cash book to February 28, 1924, is received in evidence and marked Exhibit P. 57.)

(The purchase book January 1, 1924, to December 31, 1924, is received in evidence and marked Exhibit P. 58.)

PLAINTIFFS REST.

The Court: Do I understand there is anything here to prove what the settlement was on the damage?

Mr. Newman: The agreement that has been offered.

Mr. Lane: That stipulation is as to each of these insurance companies, taking into consideration that stipulation—

Mr. Vanderbilt: That is not my understanding. The stipulation covers merely the admitted loss on the goods in sight, subject to the terms of the policy, and the machinery.

The Court: But in making up this claim, the amount put in as part of it was agreed upon as to the value of goods not burned out of sight, and the machinery and fixtures.

Mr. Vanderbilt: That's right. In addition to that there is an item which is in dispute. That is put in.

The Court: And the stipulation will show what part of these items are the agreed items so that the jury can tell what part of the claim is in dispute?

Mr. Vanderbilt: Yes, sir.

FRED W. WILLIAMS, sworn in behalf of defendants.

Mr. Lane: There isn't anything before the Court from which the Court and jury could determine which proportion of this $50,000 is admitted and which is not.

The Court: If we take this schedule and add to it a schedule of the admitted apportionment, then the jury can say what is in dispute between you. Wouldn't that be proper?

Mr. Vanderbilt: Do you mean to apportion it between the several companies?

The Court: Yes.

Mr. Vanderbilt: Yes. If the charge and our proof of fraudulent entries go, so it is not regarded as any admission by us. We will have such an apportionment made. Mr. England can make it as part of the plaintiffs' case.

The Court: I think it ought to go in as part of the plaintiffs' case. The jury cannot be expected to bear all these figures in mind.

Mr. Vanderbilt: Yes, sir.

The Court: Then you reserve that right.

Mr. Vanderbilt: Yes, sir.

Direct examination by Mr. Vanderbilt.

Q Mr. Williams, what is your business? A Independent adjuster.

Q How long have you been in that business? A Twenty-five or thirty years.

Q Did you represent some of the companies on the loss of the Specialty Handle Manufacturing Company? A Yes.

Q When did you first visit the plant? A A few days after the fire.

Q Whom did you see? A Nobody at the time.

Q Did you at any later time meet anybody there? A At the premises where the fire was?

Q Yes. A No, sir.

Q I show you a map or a sketch and ask you if you can tell me what that is? A That is a plan of the Specialty Handle Manufacturing Company plant on Railroad avenue at Greene street.

Mr. Vanderbilt: I desire to offer it in evidence.

(The sketch of the Specialty Handle Manufacturing Company plant is received in evidence and marked Exhibit D. 17.)

Q Referring to this sketch, Exhibit D. 17, can you tell us where the fire was located? A According to my best recollection it was toward the center of the building here (indicating).

Q The building is located on New Jersey Railroad avenue? A On the east side.

Q Between what streets? A I know Greene street but I don't know that street (indicating).

Q Does it run to the street on the south? A I don't know whether there is a street or not, but it was to a driveway, I think.

Q What part of the building was burned? A This was intact, practically—the north side.

Q And the scene of the fire was the central part of the building? A Yes, sir.

Q Was there any fire at all in this building that faces on Greene street (indicating)? A Very small amount of fire.

Q Where was the office located? A At the second floor here (indicating).

Q Was there any fire in the office? A I should say not; there might have been a smoke loss, but no fire that I saw.

Q Could you mark on this map the part where the fire took place? A No, sir, I couldn't; it was too long ago.

Q Did you at any time meet with the adjusters for the assured? A Yes, sir.

Q When was that? A It was some time after that; just the exact date, I don't know. It was some time afterward.

Q With whom did you meet? A Mr. Miller of Miller & Maltbie.

Q He is one of the associates of Mr. England, who was on the stand a short time ago? A He is one of the firm.

Q Did you come to an agreement with respect to the loss on machinery and the goods in sight? A Yes, sir.

Q Did you come to an agreement with Mr. Miller with respect to the goods burned out of sight? A No, sir.

Q Did you examine the premises yourself? A I went over the fire in a general way.

Q Could you find any evidence of goods burned out of sight?

Mr. Lane: I object to that as immaterial whether he could find evidence of goods burned out of sight.

The Court: I suppose there might be evidence of indistinguishable goods; the goods that could not be distinguished.

Q Were there any goods there after the fire that you saw that were not capable of being distinguished or identified? A There were scraps here and there, but not to amount to anything.

Q What do you mean by the phrase "not to amount to anything"? A There was considerable debris from the burned buildings, and here and there you would see a scrap that was not part of the building. It must have been stock merchandise. What it was I don't know.

Q Have you had any previous experience, Mr. Williams, with respect to leather fires? A Yes, sir.

Q Can you tell us from your experience whether leather is easily combustible or whether it is slow burning? A Slow burning.

Q In experience you have had with other fires, has leather burned entirely out of sight or are there remnants from which the leather can be identified?

Mr. Lane: I object to that on the ground that it is not the subject of expert testimony, and if it is, this witness has not qualified as an expert. It depends on the type of building and the heat of the fire.

Q How many leather fires have you had experience with? A I wouldn't attempt to say.

Q One, ten, fifty, or a hundred? A Probably fifty.

Q You have represented the companies in adjustment of those fires? A Yes, sir.

Q From your experience in adjusting these fires can you tell whether or not the amount of goods burned out of sight was large or small?

Mr. Lane: I object to that as immaterial and also on the ground that the witness has not been properly qualified.

The Court: On the qualification I will allow the question; on the other ground it does not seem to be proper. I will sustain the objection.

Q Was there anything about this fire which had a tendency, or which would have resulted in goods being burned out of sight?

Mr. Lane: I object to that as immaterial and not the subject of expert testimony.

Q What kind of a building was it that the fire was in? A Four-story brick building.

Q Can you answer that question now?

Mr. Lane: I object to that question.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Did you have any conference with Mr. Garfinkel with respect to this matter? A The only conference I had with Mr. Garfinkel, I don't know as I spoke personally about it, but it was at the meeting at which the agreements were arrived; it was with respect to the goods in sight and the machinery.

Cross examination by Mr. Lane.

Q You said you had, as I recall it, a conference with Mr. Garfinkel at the time the machinery— A No, sir, I said I didn't remember having any direct conversation with Mr. Garfinkel.

WILLIAM F. RUSSELL, sworn in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Russell, what is your business? A I am a fire insurance adjuster.

Q How long have you been in that business? A I have been an adjuster for nine years;

previous to that I had considerable experience adjusting losses as an insurance company representative.

Q Did you visit the premises of the Specialty Handle Manufacturing Company at 113 to 135 New Jersey Railroad avenue? A I did.

Q Can you tell us about when? A Two or three days after the fire.

Q Did you examine the premises? A I did.

Q Can you tell us by reference to this sketch what portion of the premises were burned? A The central part of the plant; central part of about 123 to 125, indicated by this red line on this side, over to about here (indicating).

Q Can you mark approximately the outline of the fire region? A Approximately, yes.

Q Will you do that, please? Just block it off, if you will. A I should say it came about here to about here (indicating), and New Jersey Railroad avenue on the west. That is, the main fire was, but some little fire extended into this section here (indicating).

Q To the north? A Yes, sir.

Q Was there any fire on Greene street? A Not in the rear building, and I don't think there was any actual fire on this end, but there was considerable smoke and water in there.

Q Were all of the goods of the Specialty Handle Manufacturing Company kept in this portion of the buildings that were burned, or were there goods in the Greene street building, the rear building on Greene street, and the part of the Railroad avenue building? A There was merchandise in here (indicating), of course.

Q "In here" means where? A The north end of the building.

Q On Greene street? A On Greene street. I should say the visible merchandise was in about 115 to 121, or somewhere along there, and also in the rear building on Greene street.

Q Did you examine the premises to see what had been injured by fire? A I did.

Q Did you find any evidence of goods or personal property which had been rendered indistinguishable by reason of the fire?

Mr. Lane: I object to that as not the subject of expert testimony.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: Not to any extent.

Q By that you mean what? A I mean there might have been some debris lying about which would indicate merchandise, but a small value.

Q But was there anything from which you could find any evidence of indistinguishable merchandise running up into thousands of dollars? A No, indeed.

Q Did you ever have any meetings with Mr. England of Miller & Maltbie with respect to the loss? A Yes.

Q At those meetings was an agreement reached as to the loss of the goods in sight and the machinery, under the terms and conditions of the policy? A There was. It was reached in my office.

Q Were you given this document known as schedule of merchandise, marked Exhibit D. 16 for identification? A I believe I was.

Q Along with other inventories and machinery and goods in sight? A No, with the schedule of merchandise in sight and the machinery.

Q By whom was that furnished to you? A It was furnished by Miller & Maltbie, public adjusters, representing the assured. Whether it was delivered by them personally or by messenger, I can't say, but it came to us.

Q Was it discussed at any time in conference with Mr. England? A I presume that it was.

Mr. Vanderbilt: I offer it in evidence.

Mr. Lane: I object. It is not required by the policy and it is wholly immaterial, irrelevant, and incompetent so far as the case at this time is concerned.

The Court: It is not disputed that this was the document that was given. As I understand it, it is a copy.

Mr. Vanderbilt: It is backed up by the firm of Miller & Maltbie, the adjusters for the assured.

The Court: I will allow it in evidence.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The schedule of merchandise previously marked D. 16 for identification is received in evidence and marked Exhibit D. 16.)

Cross examination by Mr. Lane.

Q Mr. Russell, this debris that you did find which indicated some goods had been burned out of sight, why do you say that the goods were of no value or of little value? A I didn't say that, sir.

Q I got that impression. A I meant to convey the idea that there was only a small amount of debris representing a small amount of merchandise.

Q How do you know how much merchandise the small amount of debris represented? A I don't think in a fire involving a great deal of leather it can be completely destroyed.

Q How much debris did you find that indicated that some parts of it had been leather? A A very small amount, I don't know how to describe it.

Q That does not mean anything? A There might have been a few bag sides lying around there.

Q Over this whole area? A That's all I saw.

Q Did you examine and look for it? A I didn't go down into the debris.

Q The roof fell in and covered it. You would have to go underneath to find it? A I didn't go underneath.

Q How do you know how much was underneath the roof? A I am telling you what I saw.

Q The impression you made or that I think counsel intended you should make, would indicate there wasn't any destruction of goods out of sight. Do you mean to say that? A I mean to say that in my opinion there was very little burned out of sight.

Q How can you say that when the roof fell in and you didn't get underneath to find out? How can you say that? A Just what I saw.

Q Do you recognize this photograph which I show you and which is now being marked as Exhibit P. 49 for identification?

(A photograph is marked Exhibit P. 49 for identification.)

Q (Continuing.) Do you recognize that as the photograph showing the stockroom? A I can't say I recognize it.

Q You were there. See if you can't take your mind's eye back. A I have seen a good many fires which look exactly the same as that.

Q You are trying to tell us what you saw there so as to indicate that there was little goods burned out of sight. I am trying to represent it pictorially. Look at it and see whether it does not represent part of the premises. A It looks like a fire.

Q Does it look like the fire? A I can't say that it does.

Q Then you can't tell us how the fire looked? A Not from that photograph.

Q Can you tell us whether the fire showed bricks and everything else piled down on the ground? A I can't tell you that.

Q If you can't tell us that how can you tell us so we can understand whether there was any debris indicating goods out of sight? A Because I was through from the first to the fourth floor on the north end of the building.

Q Did you find any such places as in that photograph? A. I looked into the abyss.

Q Did the abyss show bricks and roofing as in that photograph? A It showed some debris.

(Another photograph is marked Exhibit P. 50 for identification.)

Q I show you another photograph, Exhibit P. 50 for identification, and ask you whether you can tell me whether the middle of the building looked like that? A That looks a little more like it.

Q Did you look underneath that debris of the roof to find out whether or not there were any leather remnants? A No, sir.

Q Then how can you tell us there were not, if you didn't look? A I am telling you what I saw.

Q Then there may have been remnants of leather under that debris? A There may have been some.

Q There may have been quite a little, depending on what amount was there at the time the fire happened? A There may have been something.

(Another photograph is marked Exhibit P. 51 for identification.)

Q I show you another photograph, Exhibit P. 51 for identification, and ask you whether that is a representation of the middle of the building as it appeared after the fire? A I don't recognize that quite as well as I did the second one.

Q Do you recognize it at all? A I don't think I do.

Q Do you recollect going through the middle of the building to see places where the floors had all fallen? A I didn't go through the middle of the building.

Q Did you see any part where the floors, including the roof, had fallen in? A I recognize that, yes.

Q You don't know what leather remnants are underneath that, do you? A No.

Q Yet, without any knowledge as to what debris there may have been underneath that refuse you are willing to say that there wasn't

any debris there, or that the conditions would indicate that there was not any stock? A I told you what I saw.

Q Do you want to tell the Court and jury that the debris indicates very little stock was destroyed? A To the eye.

Q Irrespective of whether to the eye or not. Or, don't you want to give that impression? A I saw very little debris.

Q You wouldn't expect to see it if the roof and the floors had fallen on top of it? A Not unless I got down.

Mr. Vanderbilt: There is no proof that the roof had fallen.

Mr. Lane: Didn't you say the roof had fallen?

A A considerable part of the building had fallen, Mr. Lane.

Q And the floors, too? A Yes, sir.

(At four o'clock P. M., the jury is excused until ten o'clock the following morning.)

Defendants' counsel moves that plaintiffs be non-suited on the ground that the policy provisions provide if there is any fraud or false swearing, either before or after the loss, or any concealment or misrepresentation, that it shall void the policy.

(Argument.)

The Court: It seems to me that it has not been established as a matter of law that these were fraudulent representations. There are a lot of things that enter into false representations. I don't think that

is sufficient. It is a question of fact at least. I will deny the motion.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Lane: I don't know of any law that requires them to keep books for insurance companies.

(Adjourned to Wednesday, March 9, 1927, at ten o'clock A. M.)

THIRD DAY.

Wednesday, March 9, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

BENJAMIN NEWMAN, sworn in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Newman, you are a member of the Bar of this State? A I am.

Q And you have been for how many years? A Over seventeen.

Mr. Vanderbilt: I call for check No. 984 of the Specialty Handle Manufacturing Company on the Public National Bank.

(The check is produced by plaintiffs' counsel.)

Q I show you check No. 984 of the Specialty Handle Manufacturing Company, drawn on the

Public National Bank of New York, and I ask you if you are the payee named on that check?

Mr. Lane: I object to the question and any questions asked with respect to that check on the ground that there is no proof in this case or suggestion in the proof that that item had anything to do with the making up of the claim of the plaintiffs or that that check was anywhere used for the purpose of defrauding any insurance company, and that therefore the evidence is immaterial, irrelevant and incompetent.

The Court: This is a 1924 check.

Mr. Vanderbilt: April 28, 1924.

(Argument.)

The Court: Was this used to determine the percentage of profits of the plaintiff for the year 1924?

Mr. Vanderbilt: Yes, it is included, as I understand it in the merchandise inventoried in 1924, and therefore one of the elements to make the percentage of sales costs for 1924.

Mr. Lane: There is no evidence that it was included in the inventory of 1924 in any way, shape, or form.

(Argument.)

Mr. Lane: It is an item which was expressly excluded.

Mr. Vanderbilt: It was not expressly excluded.

The Court: Whether he excluded it or not, as it is an item which would go into that percentage of profit, I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt: Will you please read the question?

(The stenographer reads the pending question as follows: "Question: I show you check No. 984 of the Specialty Handle Manufacturing Company drawn on the Public National Bank of New York and I ask if you are the payee named on that check.")

The Witness: I am.

Q Was this check deposited in your bank account? A I think so.

Q What was the check given to you for?

Mr. Lane: I object to the entire line of this examination upon the same grounds urged before.

The Court: On the ground that he cannot go into this entire transaction. I will allow you an exception.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: To my recollection it was a cash loan or an exchange of checks.

Q It was not for any merchandise which you sold the Specialty Handle Manufacturing Company? A No.

Q You did not represent E. Kasnowitz & Brother at that time, did you? A I may have.

Q This transaction has nothing to do with E. Kasnowitz & Brother, has it? A I can't say now, Mr. Vanderbilt.

Q So far as your recollection goes now? A I can't answer that.

Q Your best recollection is that it represents a loan? A Either a loan or an exchange of checks.

Mr. Lane: Counsel has stated that his recollection of the testimony is that it was included. I think Mr. Puder should be recalled to give his recollection as to whether this was included. Mr. Puder testified it was excluded.

The Court: After all, we may as well get down to the question on which we will finally meet, that is, the question as to whether these books were improperly kept.

Mr. Lane: They cannot show generally that the books were improperly kept. That is nobody's business but ours and that of the Government of the United States.

The Court: But the books were offered to the insurance companies.

Mr. Lane: There is no evidence to that effect. The evidence is that the insurance companies were told at the time that the books would have to be checked and did not accurately represent these transactions.

Mr. Vanderbilt: The testimony, as I recall it, is that Mr. Puder said Mr. Garfinkel told him all the books were to be given to the insurance companies. The statement counsel has made that the errors merely concern the company and the United States Government would come under the case of Claflin *v.* Continental Insurance Company, 110 U. S. 81. That is the leading case on this subject.

Cross examination waived.

Mr. Vanderbilt: I desire to offer the check in evidence.

Mr. Lane: I make the same objection.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

EMIL GARFINKEL, recalled in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Garfinkel, I show you Exhibit D. 17, a plan of the factory, and ask you if you will tell us what was done in the different parts of the factory. You will identify them by street number. I am referring now to the situation as it existed just before the fire. This (indicating) is Greene street on your left and at the right and in front of you is New Jersey Railroad avenue and this (indicating) is Elm street on this end. Start at the rear of Greene street farthest from Railroad avenue and tell us what was done—what part of the business was carried on in each part of the plant? A In the rear of Greene street was a store house, a two-story building. Downstairs was a raw material—some parts—used for the building No. 1 on Greene street and Railroad avenue.

Q Which is building No. 1? A That is 113 and 115.

Q That is referring to the numbers on Railroad avenue? A Yes, sir. There was raw

material kept downstairs on the first floor, in the extension of the two-story building.

Q Where is that? A On the extreme end of the plot.

Q You are still referring to the building in the rear of Greene street? A Yes, sir. The second floor was kept finished merchandise which are supposed to be out daily for the shipping room on this corner building.

Q Corner of Greene street and New Jersey Railroad avenue? A No. 113 to 115 Railroad avenue. Downstairs was the engine and heavy machinery for different work. On the second floor was the office and part of the shipping room. The third floor was working space for the handle department, and part of the working space of corners department. That finishes building No. 1, 113 and 115 New Jersey Railroad avenue. The next building, which is 117-119 New Jersey Railroad avenue, on the first floor was the stock room for the split strap department where they cut goods finished and prepared for the floors above. The second floor was consisting of machinery and working space of the strap department. On the third floor was the handle department, that was an additional to the third floor of 113—all over handle department. The fourth floor of this building was working space for dieing out—chopping out—corners, pressing and preparing. That finishes building No. 2, 117-119. The next is No. 121-123 on New Jersey Railroad avenue.

Q This third building is No. 121-123 New Jersey Railroad avenue? A Correct.

Q What was in that building? A The first floor was the tanning department where we do the tanning for the different departments, also finishing of leather for the departments above. The second floor was the cutting room, which were cut by hand, the most expensive or better

grade work, are supposed to be cut by hand. That was done on the second floor of 121-123 Railroad avenue. The third floor in this particular building was occupied by a stock room which was kept stock from both sides of these buildings—half way finished goods, and other articles which are supposed to go for the manufacturing of these items. The fourth floor was a finishing department for leather, drying room, and finishing for the different leather which goes to the different departments. That finishes building No. 3. This is now 125-135 on Railroad avenue.

Q You call that building what? A Building No. 4. The first one of this building had an embossing department in which we had our embossing machines which do the embossing for the different departments. That was the back. The front was a stock of leather coming out from the tannery on the finishing of good bags which consisted on the first floor. The second floor in this department consisted of the leather department for whole hides or sides, walrus splits on different grades of leather which we used for that particular building, or I mean it was finished in that particular building. The third floor of that building was a subsidiary of the handle department which took the entire frontage of that building of those ten numbers, which consisted of piece workers only which had nothing to do with the time workers for work on that floor completely. The fourth floor was the tacking department which took all the leathers and were tacked on forms and when they are through they are taken to the different departments. In building No. 2 and 3 was all the material consisting of this unit and that unit (indicating).

Q Between building No. 2 and building No. 3, or between building No. 3 and building No. 4? A Between 3 and 4.

Q That was an open space, or was it covered? A Covered.

Q How long had the company occupied these premises you have just described? A The first building, this company occupied since 1913.

Q That is referring to building No. 1? A Yes, sir.

Q Corner of Greene street and Railroad avenue? A Yes, sir. A year later, or 1914, they occupied this building No. 2. In 1915, or a year or two later, they occupied building No. 3. In 1922—the end of 1922—we acquired building No. 4. That was about the end of the year 1922.

Q So, that from 1922 on you have occupied the entire premises as they were occupied at the time of the fire? A Yes, sir.

Q How long prior to the fire were the departments arranged in the way that you have just described in building by building and floor by floor? For how long had that arrangement by departments existed prior to March 1, 1925? A About two years; right after we acquired the building.

Q In other words, after you got this building in 1922 you laid out your departments in the way which they were laid out at the time of the fire? A Yes, sir.

Q And there haven't been any substantial changes, I take it, in the layout of the departments from 1922 on? A No, sir.

Q Was there any particular place where the goods would come in and go through the factory and come out at a particular place? Did you

have a particular place where the goods were received and went through their progress and came out at a particular place? A Yes, we had two entrances. The merchandise, mostly, used in building No. 1 and No. 2, the entrance was on Greene street right on the corner. If the merchandise is used in building No. 3 or building No. 4 it came in from building No. 4. The merchandise, most of it, came out at Greene street and Railroad avenue, with the exception of goods manufactured in building No. 4, which went out in the same direction.

Q So that most of the finished goods worked its way over to Greene street and came out on that corner of Greene street and Railroad avenue? A Yes, sir.

Q The severest fire was in building No. 3, wasn't it, designated as 121-123 New Jersey Railroad avenue? That was where the severest fire was, wasn't it? A The severest fire was in building No. 2, building No. 3 and part of building No. 4.

Q Building No. 2 is what street number? A On Railroad avenue, No. 117-119. We didn't have any in No. 113-115; it wasn't burned to the ground, but we couldn't rebuild it; it was so badly damaged.

Q I am asking just where the severest part of the fire was? A 117-119, 121-123, and part of 125-135.

Q Generally speaking, it was the center of New Jersey Railroad avenue that was most affected? A The one it didn't affect much was the rear of 125-135.

Q Was this building on the rear of Greene street affected at all? A No.

Q Was the building on the corner of Greene street and Railroad avenue affected? A Just the front corner was not affected much.

Q The offices were there, weren't they? A Yes, the office and the shipping room.

Q None of the books or records were destroyed by fire? A We kept a lot of the old records inside in the building.

Q I show you a paper dated August 20, 1924, and ask you if that is your signature? A Yes, sir.

Q Do you know what that paper is? A Schedule Rating Bureau.

Q What did you do with that paper after it was signed? A I presume that my broker took it away; that is the broker requesting me to sign it.

Q You gave it to your broker? A I think so.

Q Aren't you sure? A I am not sure.

Q I show you another paper dated August 23, 1924, and ask you if that is your signature? A Of course, I don't know when that came on, I probably didn't see it posted.

Q Is that your signature? A Yes, sir.

Q What did you do with that paper? A I signed it.

Q And after you signed it, what did you do with it? A This paper usually the broker brings it over and signs it.

Q Did he tell you what he wanted it for? A I never inquired the details.

Q Who is the broker? A Probably Feist & Feist or the Hess Agency or Lippman & Lowy.

Q Who made out the figures on these two statements that I have just referred you to on machinery and stock? A It is usually done by the brokers.

Q Were they filled in at the time you signed these? A I couldn't say whether they were or not.

Q You wouldn't sign a paper like that in blank? A Yes, I would.

Q You trusted your brokers to that extent? A Yes.

Q You relied on them to get all the insurance for the Specialty Handle Manufacturing Company? A Yes, sir.

Q You left all the details of it to them? A Yes, sir.

Q You instructed them to get the lowest rate of insurance possible? A Yes, sir.

Q These papers were made out by your brokers for the purpose of getting the lowest possible rate? A Exactly.

Q You knew your brokers were using them for that purpose? A I don't know.

Q What do you think they were using them for?

Mr. Lane: I object unless counsel states on what part of the answer he is relying.

The Court: I don't know what is in the paper.

Mr. Vanderbilt: The answer sets up fraud and false swearing and misrepresentations of a material nature, and by reason of the alleged burning of goods out of sight, the books of 1924, and everything relating to the affairs of this concern giving a check of the goods of this concern, is material. These two statements are representations made by him to the Schedule Rating Bureau of the State of New Jersey as to the various stocks

and machinery which he had in each of these buildings in August, 1924, for the purpose of obtaining insurance rates on insurance, and it seems to me they are very material.

The Court: I assume the insurance companies act on the information from the Schedule Rating Bureau in fixing the rate.

Mr. Vanderbilt: As I understand it, the Schedule Rating Bureau is a public affair and if insurance companies wish to do business in New Jersey, they must do it on the basis of this Schedule Rating Bureau.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt: Will you please read the last question.

(The stenographer reads the pending question as follows: "Question: What do you think they were using them for?")

The Witness: I didn't have the least idea.

Q You were trying to have your insurance rate cut down to the minimum? A That is the brokers, not me. I don't know anything about insurance.

Q You instructed your brokers to get the lowest possible rate, didn't you? A Usually you ask them to get as low as possible.

Q You asked them to get such a statement as this? A I don't know.

Q You did sign this? A Yes.

Q It was filled in before you signed it? A I don't know.

Q Where did these figures come from? A I couldn't say.

Q Do you mean to suggest that your broker made up these figures? A Probably he told me to make it—or told me to make it the way he wanted it.

Q How did he know how much machinery to put in? A He probably asked me approximately.

Q You told him? A Either I did or one of my men went over it.

Q Did you tell him how much machinery and stock you had in the building? A I think so.

Q That is where these figures of August 20 and August 23, 1924, came from? A Possibly.

Q From statements you or your men gave to these brokers? A Possibly.

Q How is it you came to make two statements within three days of each other, one on August 20, 1924, and the other on August 23, 1924? A The chances are—

Q Why did you give him two statements? A One broker came over and I signed it, and the next broker came over and I signed it.

Q Tell me which broker is which? A Probably the Hess Agency or Feist & Feist.

Q For whom did you make the earlier one? A I couldn't tell that now; they asked me to sign and I signed and left it to them entirely.

Q Did you have two brokers cover all your insurance on these buildings? A I had three brokers.

Q And you gave statements to each of the three? A I don't know.

Mr. Vanderbilt: I offer these statements in evidence.

Mr. Lane: I object to these papers on the ground that they are incompetent, immaterial and irrelevant, and they don't tend to prove anything that is set up in any pleadings by the defendants, and they don't tend to prove anything anyhow.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Application for rating to Schedule Rating Bureau dated August 20, 1924, is received in evidence and marked Exhibit D. 19.)

(Application for rating to Schedule Rating Bureau of August 23, 1924, is received in evidence and marked Exhibit D. 20.)

(Mr. Vanderbilt reads Exhibits D. 19 and D. 20 to the jury.)

Q I show you a letter dated August 25, 1924, addressed to the Atlee Brown Rating Bureau, Essex Building, Newark, New Jersey, and ask you whether that is your signature. A Yes, sir.

Q Does that letter refer to Exhibit D. 19 and did this letter that I am showing you accompany the paper of August 23, marked Exhibit D. 20? A I couldn't tell that. The broker usually comes in and dictated that letter and I signed it, and I signed that paper and he takes it away. I never knew when they filled it in. I never saw when it is done, but they usually dictate the letter because that is the way they say they need it.

Q You gave it to them to obtain the lowest possible rate? A That is their business.

Mr. Lane: The same objection.

The Court: The same ruling.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The letter of August 25, 1924, addressed to the Atlee Brown Rating Bureau is received in evidence and marked Exhibit D. 21.)

Mr. Vanderbilt: May I suspend my examination of Mr. Garfinkel after he is cross examined on this point?

The Court: If there is no objection.

Cross examination by Mr. Lane.

Q Mr. Garfinkel, you didn't keep in your establishment books to which you can at any time point and tell exactly what the amount of your inventory or stock on hand was? A No, sir.

Q Is there any way between the taking of your physical inventory at the end of one year and the taking of the physical inventory at the end of the next year that you can tell, except by approximate figures, what your stock actually on hand is without taking a physical inventory or without going through and auditing the books? A Even our books wouldn't show. We can only tell that once a year when we take the physical inventory.

Q Is that the way in which your business has always been conducted? A Always that way.

Q Do you know whether or not that is the way leather businesses are usually conducted?

Objected to as immaterial.

Objection sustained.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q I suppose that the amount of stock that you have on hand varies from day to day? A Absolutely.

Q And from hour to hour. A Yes, sir.

Q I suppose that you may have $160,000 in stock one day and the very next day you may only have $120,000 of stock depending on two things: first, on whether you have sold stock in the meantime; and, secondly, whether there has been a drop in the market.

Mr. Vanderbilt: I object to that. This statement did not pretend to be what was in on August 20, but the annual average.

Q Do you know how you can get at the annual average of the stock in your establishment except by the best guess you can make? A Only guess work.

Q Is there any other way in which it can be done except by using your judgment? A Only a physical inventory.

Q And the physical inventory to determine the average would mean 365 inventories a year? A Yes.

Q Taking the physical inventory every day, you could arrive at an accurate general average? A Yes, sir.

Q Is there any other way by which you can arrive at an accurate average? A No, sir.

Q Do you know of any business that keeps an annual physical inventory every day of the year?

Objected to as immaterial.

Objection sustained.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Did those figures which appear upon those statements represent, to the best of your knowledge, information and belief at the time, the correct inventory? A I believe they were probably, that time and that day.

Q My question is whether you believed to the best of your knowledge—was that the best of your knowledge as to the accuracy of this statement? A Yes, sir.

Re-direct examination by Mr. Vanderbilt.

Q Can you explain how you changed in a period of three days from stock of $167,400 to stock of $128,400? That is a difference of about $38,000. A I may sign one to one broker a month before and another two months later.

Q They couldn't both be true? A At the time, yes.

Q Do you mean to say that your stock changed by $38,000 in three days? A Well, I wouldn't say that much, but it is very close as could be.

Q This form calls for the average annual value, does it not? Could your average annual value of stock change $38,000 in three days? A I really couldn't say what it is now.

Q Is it possible for your annual average stock to change $38,000 in three days? Is it physically possible? A I didn't get the question.

Q Is it physically possible for your annual average of stock to change $38,000 in three days? A No, I wouldn't say that is possible; it is unusual.

Q Then one or the other of these two papers is incorrect, is it not? A The calculation, probably something would be wrong there.

Q You don't mean to suggest that these few figures are not added up correctly? A It may be possible; I don't know.

Q Do you want to take a moment to check it up or shall we have Mr. Puder do it? A I have no recollection of making out the amounts on this kind of paper; the usual procedure is this broker makes it out on his own paper.

Q You are referring to Exhibit D. 19? A Both of them. We talk it over and I sign that and he takes it back.

Q You don't mean to say that the broker made up the figures of these two papers? A I don't say that.

Q You gave him the data? A We go around the plant and he takes the figures and the signature and he makes it out himself.

Q In other words, you go around the plant and you say, "I have about $10,000 of machinery, and about $30,000 of stock," and he puts it down. And that same thing is carried on through each building? A Each building.

Q And you gave him these figures going through the plant with the broker? A Yes, sir.

Q How did you happen to give him a difference of $38,000 in stock between August 20 and 23, 1924? A Perhaps it was his mistake, just as well as mine.

Q This was all filled in before you signed it, wasn't it? A No, sir.

Q You are sure of that? A Yes, sir.

Q But you gave him the figures on which it was filled in? A Yes, sir.

Q If you will refer to the letter which you wrote, it was the valuation filed on August 23, 1924, Exhibit D. 20, which you asked to have cancelled, was it not? A Yes, sir.

Q And it is the one with the larger amount of stock, $167,400, of August 20, 1924, Exhibit D. 19, that you asked to have retained, wasn't it? A Yes.

Q How did it happen that on August 20th you said there was a stock valuation of this amount, $167,400, and then on August 23rd you reduced it to $128,400, and then two days later you withdrew the last one and asked to have it stand at $167,400? Can you explain that? A It is just the way I was instructed by the broker.

Q The broker didn't give you these figures, did he? A No.

Q You went through the plant with the broker and gave him these figures and he wrote them down as you gave them? A Yes, sir.

Q I want to know how you explain the first statement of August 20th at one figure, the statement of August 23rd at another figure, and then the reinstatement of the earlier figure on August 25th? A I couldn't recollect that now.

Q You knew at what your inventory stood on December 31, 1923, didn't you? A Yes, sir.

Q You knew from your close contact with your business whether you had more stock in August than the previous December? A I could say approximately.

Q You know from month to month whether you are losing money? A From time to time.

Q From month to month? A I wouldn't say that.

Q Two months to two months? A From year to year.

Q But you have a general idea whether you are going ahead or not from month to month? A Yes, sir.

Q And that naturally reflects itself on the amount of inventory? A Yes, sir.

Q So that you can tell at any time the amount of inventory? A No, sir.

Q Within $5,000? A Not within even $20,000. It is humanly impossible.

Q Do you know at what time of the year you have your highest amount of stock and the lowest amount of stock? A No, sir.

Re-cross examination by Mr. Lane.

Q Can you recollect what basis you used in the preparation of those figures as to what value you used? A I couldn't really recall that.

Q What figures could you use to arrive at an annual average? A Just guess work, that's all; just approximately.

DAVID HINCKLEY, sworn in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Hinckley, what is your business? A My official title is deputy expert of the Schedule Rating office; that means actually assistant manager.

Q That is the Schedule Rating office provided for under Chapter 85 of the Laws of 1913 of this State? A It is.

Q Your office is down in the Essex Building? A Yes, sir.

Q And Mr. Atla Brown, up to the time of his death, was the expert in charge? A Yes.

Q And Mr. Leon Watson is now and you are his assistant. It that it? A Correct.

Q I show you papers which have been marked Exhibits D. 19 and D. 20 and ask you whether they are from the files of your office? A They are.

Q Can you tell us when these papers came into your possession, or the possession of your office? A Yes; they don't bear our office date. I may, from our correspondence files, find—

Q Does this notation at the bottom of Exhibit D. 20 have any significance in that respect? This notation in lead pencil, referring also to Exhibit D. 21? A This notation here (indicating) is to the effect that 8-23-24, F. & F.—

Q What does that mean? A That probably refers to the agency of Feist & Feist.

Q And is that the statement which is referred to in Exhibit D. 21, the letter addressed to the Atla Brown Rating Bureau? A Yes.

Q Is that Exhibit D. 21 from the files of your office also, Mr. Hinckley? A It is.

Q What are those statements, Exhibits D. 19 and D. 20, used for? A They are used for the calculation of what we call an average, or blank rate. In the making of rates for a plant, we first rate the various separate buildings which are separated, one from the other, as to be entitled to separate rates, and then, to get the average rate for the whole plant we require the average of the values of the machinery and stock in each.

Q When you fix a rate on this stock and machinery is that rate obligatory on the insurance companies and the assured? A It is obligatory on the insurance companies to have appointed Mr. Leon A. Watson as their expert for making rates under the law referred to.

Q And all policies which are issued subsequent to the filing of those statements with you and the fixing of a rate by you on the basis of those statements will have their premiums fixed according to the rate prescribed by you if they are issued by such companies as come in under this law? A Yes.

Q I show you Exhibits P. 1 to P. 8, inclusive, and ask you whether you will tell me whether or not the companies who have issued those policies are operating under Chapter 85 of the Laws of 1913? A I haven't the list with me, but I recognize all but the Patriotic Insurance Company as surely subscribing to the Leon A. Watson Bureau and I think that the Patriotic is also among the members.

Cross examination by Mr. Lane.

Q Do you make a rate upon every separate establishment? A No.

Q What is the information contained in such statements as are here in evidence used for? Give me the technique of the use of that information. A In practically all of the manufacturing buildings and many others, we make first, what we call specific rates, that is, rates for separate buildings, and for fire insurance views, it is a building cut off so that the fire should be confined to that building under certain conditions, that rate applies only to that building and its contents. It frequently happens that the plant

owner wishes a blanket policy to cover the contents in a group of buildings and he wants a rate that he can use for such a policy; in order to do that we have the owner file such a statement as these two exhibits, giving the best of their knowledge and belief as to the average merchandise and machinery. We take the total premium, using those values and the rates that apply to the different buildings; the total premium is divided by the total value, which produces the average rate.

Q What part did these figures of $167,400 play in the fixing of this rate? A The individual items that go to make up this $167,400 or the premium for those individual items, are worked out from the amount filed and the rates we have for the individual portions of the plant.

Q Of course, you know as well as we all do, that the amount of stock in a factory may vary from day to day? A We realize that and that is why we ask for the average value.

Q And you know when you get the average amount of stock carried in one year, it may vary from year to year? A We also realize that.

Q You also consider in these reports filed with you and know that the getting at of an average amount of stock in any factory during the year is more or less a matter of guess work? A I would say it is a matter of the owner's knowledge and judgment, rather than guessing.

Q It is the best guess that the man has with the experience that he has in his business. You do not assume that a man sits down, in giving those figures, and takes an inventory every single day of the year and then proceeds to average those up? A We do not.

Q That is the only way you can get a general average accurately. A An accurate one, yes.

Q So, when that came in, you knew it was a matter of judgment? A Yes, sir.

Q So, when these figures came in and you had before you a statement from this company dated August 20, 1924, showing stock at $167,400, and also a statement before you of August 23, 1924, which showed $128,400, and you had a letter before you of August 25, 1924, by which the company asked you to ignore the statement of August 23rd, and to consider the statement of August 20th, didn't you consider all those things? A That is correct.

Q Did you make any investigation to find out why those discrepancies were? A Yes.

Q What investigations did you make? A I called on Mr. Garfinkel with the two statements.

Q How long after you received the letter of August 25th did you call on him? A I think it was before the 25th, between the 23rd and the 25th.

Q That is, after you received the statement of $128,400 you called on Mr. Garfinkel? A After the second statement was received.

Q Where did you call on Mr. Garfinkel? A At his office.

Q You had a conversation with him there? A I did.

Q What was the conversation? A I called his attention to the discrepancy between the two statements and asked him which was right and what the situation was? A As I remember, his reply was to the effect that these statements had been prepared for him by his brokers who had requested him to sign them and that he had signed them.

Q What else happened then? A As far as I remember, that was all that occurred at that time.

Q What advice did you give him, or what statement was made with respect to ignoring the second statement and going back to the first? A If I recollect correctly, we wrote from our office to both brokers calling attention to the discrepancy of the statements and immediately received this reply from Mr. Garfinkel, requesting that we ignore one and use the other.

Q When you were talking with Mr. Garfinkel between the 23rd and 25th and when you had those two statements, did you go into the question as to which one of them was more nearly accurate? A I don't remember that I did.

Q Did you go through the building at the time? A No, sir.

Q And after you made this investigation with the knowledge of the two statements, and after you received the letter of August 25th requesting the statement which showed $167,400, then you struck the rate, is that right? A Yes, sir.

Q You had full and complete knowledge of both the statements before you did strike the rate? A Yes.

Q And you had a talk with Mr. Garfinkel first? A Yes, sir.

Q And with knowledge of the two statements you struck the rate and this rate was written? A Yes, sir.

Re-direct examination by Mr. Vanderbilt.

Q Apparently I have been under a misapprehension, and your testimony, I think, has cleared it up. I notice that the Exhibit D. 19, the statement of August 20, 1924, contains certain statements—figures—which are underneath this rider and there is a notation, "Void—see schedule attached." When was that rider put on? Was it after you received the letter of August 25th telling you to disregard this statement of August 23rd? A You asked me relative to this rider?

Q I notice the original on Exhibit D. 19, on part of the sheet are certain figures which have had a blue line drawn through them and the "Void—see schedule attached." Was it after the letter of August 25, 1924, when you were asked to disregard this statement of August 23rd? A I had no knowledge as to whether this rider was on the original document or not, other than a memorandum on it with me on the 23rd or immediately after the 23rd when I visited Mr. Garfinkel. These figures purport to be a copy of what we had in our office at that time. They show on the original sheet and not on the rider, so the inference is that the rider was received later.

Q Would your correspondence tell you from whom it was received? A It is possible that it may.

Q Would it take long to get that? A There is no letter in our files around that date indicating that there was any letter of transmittal with that. The assumption is that they were either brought in by the broker or sent in without comment.

Q Very often they are brought in by local brokers? A Yes, sir, or sent in without comment.

Q At any rate, this rider was not prepared in your office? A No, sir.

Q On which set of figures, the original figures of August 20th, or the figures of August 23rd, or the rider attached to the statement of August

20th, was the insurance rate based? A The detailed figures are not here in this file, but it is our practice to file with the computation a copy of the values used and the copy that we have filed here corresponds with the rider, indicating that we have used the figures on the rider and not those marked "void."

Q And these were the figures presented to you? A These are the figures that apply under the date of August 20th.

Q That is underneath? A I am not sure about that rider. I have no personal knowledge of it, but the memorandum I had when I went to Mr. Garfinkel corresponded with the figures on the original and not the rider.

Q But the insurance rate is based on the figures set forth in the rider on the application of August 20th? A Yes.

Q The figures on the stock and machinery usually come from the owner? A Either from the owner or from some insurance company that has tried to sell insurance there.

Q But you don't go out yourself? A Sometimes, if we find that conditions have changed we go out to make a new rate.

Q Would the rate upon merchandise depend upon the character of the building it was in? A It would.

Q Were all these buildings of the same character so far as their insurance rating was concerned? A I am not so sure about that.

Q Could you tell from your records? A In a general way, they appear to be of the same general type of construction.

Q Would it make any difference in the rates whether the quantity of stock in these buildings varied, whether it was, for example, in one building or spread out in several buildings? A Under these conditions, no.

Q In this case was the fixing of the rate upon the application of the owner or on the application of a company, or on your own initiative? A I couldn't answer that without going through our files, and I am not sure whether I could give it then. Such statements as we have received here are accepted as an appliation for an average rate.

Re-cross examination by Mr. Lane.

Q You had had rates struck on this building before? A Yes.

Q You have made inspections at the request of the owner from time to time, or your department has? A Yes.

Q The increase in the amount of stock on hand, does that have a tendency to increase or decrease the rate? A Other things being equal, it would have a tendency to increase the average rate, but no effect upon the specific rate of any one portion of the plant.

Q The larger the amount of stock carried, the greater the rate? A The greater the average rate, that is, under the normal distribution of values. If it happened that there was, for example, a portion of the plant that rated very low, lower than the average, even for the contents, that would have a tendency to reduce the average rate.

Q What was the average insurance in this case? Did the $167,400 or the $128,400 have a tendency to increase or decrease the rate? A That is a matter that would take me some little

time to figure up. We made no figures, as far as I can see, on the basis of the other statement of values.

Q With your knowledge of the general condition of these buildings, and as I understood your statement under normal conditions that higher figures would increase the rate, is there anything in this case that would take it out of the usual rule? A Not that I know of.

Q I think you stated, or those statements showed, or it has been suggested, that these applications, or these figures, are required by Chapter 85 of the Laws of 1913; there is nothing in the statute that requires this, is there? A No specific statement calling for that particular information. It is implied by the general spirit of the law.

Q It is required by you to help you in your work. There is nothing in the statute requiring that? A Nothing specifically.

Q In any way? A The feature is that the rates shall not be discriminatory, and in order to see that they are not, we must have the facts so as not to be discriminatory.

WALTER A. ENGLAND, recalled in behalf of the defendants.

Mr. Vanderbilt: I call for the sheets from which Exhibit D. 16 is made up.

The Witness: I searched for them in our files and did not find them.

Direct examination by Mr. Vanderbilt.

Q Do you recall whether you turned them over to any one or not? A I don't recall. It might have happened that it was returned to the assured after being copied, or given to some one.

Q At any rate, Exhibit D. 16 was prepared by you from figures given you by Mr. Garfinkel and Mr. Kasnowitz, his accountant.

Mr. Lane: I object to that as having been gone into.

Q At the time that you submitted Exhibit D. 16, that I have referred to, did you also submit this schedule of property to the insurance companies? A Yes, sir.

Q A copy of it to each company? A To Mr. Williams and Mr. Russell.

Q As adjusters for these companies? A Yes, sir.

Q What does this schedule refer to or relate to? A It relates to the stock in sight.

Q And how is this schedule made up?

The Court: You mean from what?

Mr. Vanderbilt: Yes, or by whom?

The Witness: This was typewritten from an original which I wrote.

By Mr. Newman.

Q The original is in evidence here, isn't it? A Yes, sir.

By Mr. Vanderbilt.

Q In other words, the papers you now have were made up as an accurate transcript of this inventory I have? A In substance.

Mr. Vanderbilt: I offer it in evidence.

Mr. Newman: No objection.

(The inventory of stock in sight is received in evidence and marked Exhibit D. 22.)

By the Court.

Q What is that? A This is merely an inventory of the stock in sight.

Q That is the one written out by you? A Yes, sir.

By Mr. Vanderbilt.

Q How did you prepare this inventory Exhibit D. 22? A By going through each department with one of Mr. Garfinkel's men who had charge of that specific department, and in most cases, accompanied by Mr. Sam Garfinkel, I believe. The men were told to count the quantities in the lots as near as it was physically possible to do, and to put a tag or paper on the lot with the quantity so indicated. It was then my procedure to go through those departments with Mr. Sam Garfinkel and the men who had charge of that department, and place lot numbers upon the tickets already there, and subscribe from those tickets. Where we felt the quantity was properly indicated—the quantity of the lot—we did that. That inventory, after being taken as to quantities and descriptions, and lot numbers, was given to the Specialty Handle Manufacturing Company to price.

Q Did you have anything to do with the actual counting of these lots? A Where there seemed to me to be any question as to the quantity being too high or too low, we discussed the matter, and in some cases, where there were large quantities,

there seemed to be a difficulty in counting them, and as to method, they inquired of me what was the best way as to making such a count, and I advised them as to the usual practice.

Q And on the basis of that inventory, as made up by you, and a copy submitted to the adjusters, and an agreement was reached as to the loss of goods in sight subject to the terms of the policy? A Yes, sir.

Cross examination by Mr. Lane.

Q Mr. England, have you prepared a schedule which shows the proportion of the claim made against the different insurance companies and the amount as divided between the items which have been agreed upon as to amount and the items which represent stock not in sight? A Yes, sir.

Q Is this schedule such? A Yes, sir.

Mr. Lane: I offer it as an illustration of the witness' testimony.

The Court: Suppose we admit it subject to check if it is not right.

Mr. Vanderbilt: Very well.

(Schedule of apportionment of claim is received in evidence and marked Exhibit P. 59.)

JOHN F. E. WOOD, sworn in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Wood, what is your occupation? A Certified public accountant.

Q Where do you live? A Glen Ridge, New Jersey.

Q Did you make an examination of the books of the Specialty Handle Manufacturing Company? A I did.

Q Following the fire of March 1, 1925? A I did.

Q When did you start, about? A I think about March 10th.

Q Where did you make your examination? A In Newark. They had a temporary office opposite the office of the Central Railroad of New Jersey.

Q That was the office of the company? A Yes, sir.

Q Will you tell us what you did in making your examination? A I called at the office and met Mr. Garfinkel and their accountant, Mr. Kasnowitz.

Q At that time had you received from the adjusters of the insurance company Exhibit D. 16? A I received a statement just like this.

Q From whom? A Mr. Russell.

Q. What did you do? A After I met Mr. Garfinkel and Mr. Kasnowitz I called for their books and the books were given to me by their accountant, Mr. Kasnowitz, and I received their books. I started to analyze their profit and loss accounts covering the years 1920 to 1924.

Q What was the purpose of that? A To see just how the business was running, what profits they were making, and furthermore, to attempt to verify an inventory which they had taken on December 21, 1924.

Q And what did you learn with respect to the profit and loss? A For the year 1920 they sustained a small loss; for the year 1921 they

sustained a small loss; for the year 1922 they had a small profit, for the year 1923 they had a small loss, for the year 1924, based upon the inventory of December 21, 1924, they showed a profit of $50,000.

Q That is based upon the books as they were presented to you? A Yes, sir.

Q Why were you concerned with what the profit and loss had been for the preceding years with respect to the claim under the insurance policies? A I have to determine a profit ratio in order to reduce the sales to cost in order to arrive at a value for a particular date.

Q That is the method which you have to pursue in order to determine by analogy what the profit would be for months of January and February, 1925? A Exactly.

Q What did you do next? A Then I prepared a statement, starting with January 21, 1924, to determine just what the book value would show as of December 31, 1924; in order to do that I determined what the profit ratio was covering the years 1920 to 1923, inclusive. I prepared such a statement and it showed a book value of about $81,000.

By the Court.

Q Book value of the inventory? A Book value of their stock as of December 31, 1924.

Mr. Lane: I don't what he means by book value.

By Mr. Vanderbilt.

Q Do you mean inventory as shown on the books? A The book value would be the value arrived at by starting inventory at a certain

date, add purchases and labor, and deduct cost of sales, that is, sales less profits, then—

Q From what date did you start in arriving at this figure of $81,000? A From January 1, 1924.

Q After you had arrived at that figure, did you have any conference with Mr. Garfinkel? A I did.

Q Or even prior to that, did you have any conferences with him? A No; after I arrived at those figures I had a conference with Mr. Garfinkel and Mr. Kasnowitz, the accountant.

Q Will you tell us what was said at this conference? A I showed him my figures and said it looked to me like a very unusual situation, and explain to me why he earned such a large profit in 1924 and showed a loss in other years. Mr. Kasnowitz—

Q Which Mr. Kasnowitz? A The accountant.

Q Sidney Kasnowitz? A I believe that is the name. He stated that they had come to an agreement with two or three of their competitors adjusting prices and during that year they had selected their customers and sold only certain merchandise and resulted in their making a good deal more money. I then asked Mr. Kasnowitz if he would not put that in writing, and he did. He gave me a typewritten statement—

Q Have you that statement? A Yes, sir (handing paper to counsel.)

Q Was Mr. Garfinkel present at this conference that you speak of where this writing was given you? A He was always present.

Q And this was the paper typewritten and handed you by Mr. Kasnowitz in Mr. Garfinkel's presence? A It was.

Mr. Vanderbilt: I offer it in evidence.

Mr. Lane: I object to that as immaterial and incompetent.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The statement by the accountant Kasnowitz is received in evidence and marked Exhibit D. 23.)

(Mr. Vanderbilt reads Exhibits D. 23 to the jury.)

Q Was Mr. Garfinkel there? Was that read to him at the time it was delivered to you, or was he acquainted with its contents? A He was there when Mr. Kasnowitz handed it to me.

Q Did you have any discussion on this paper? A No, I read it and the next day Mr. Garfinkel told me that that wasn't really the real cause of the condition shown by the books; that it was an income tax proposition.

Q Did he explain what he meant by the income tax proposition? A I didn't ask him for an explanation.

Q You understood what he meant? A I thought I did.

Q What did you do next? A I then made a report to Mr. Russell as a result of my findings.

Q Can you tell us what your examination showed as to the merchandise on hand March 1, 1925? A It showed a value of about $81,000.

Q In going over the books of the company, Mr. Wood, were those books written up to date at the time of the fire? A The general ledger

had not been written up for the years 1923 and 1924.

Q Did Mr. Garfinkel or Mr. Kasnowitz explain that to you? A Mr. Kasnowitz did.

Q What explanation did he give of that? A He said that they did not write up their general ledger until their income tax had been audited by the income tax bureau.

Q Was that regular bookkeeping practice? A That was news to me; I had not seen it done before.

Q What is the function of a general ledger in a bookkeeping system? A It is used for the purpose of summarizing all transactions and enabling you to determine what the financial condition of the business is at any particular date.

Q Without the general ledger's being written up can it be determined from the books? A You can build up your own general ledger.

Q Without building it up, can you determine it? A You would have to build up a summary of your own.

Q What did you find with respect to the entry of the inventories in the books of the company? A The general ledger had not been written up for the years 1923 and 1924, so the inventories for these two years were not recorded.

Q In the ordinary course of bookkeeping practice they would be written up in the general ledger? A They would.

Mr. Lane: I object to that as leading.

The Court: The witness is testifying as an expert.

Q After you made your reports to Mr. Russell, what happened next? A A meeting was held later on in Mr. Russell's office at which

time was present a representative from the adjusting firm of Miller & Maltbie. At that meeting I don't know whether my report was shown, but they were told of the condition I had found in the books of this assured.

Q And then what took place? A Later I learned that the adjusters were going to have the books of the company audited by accountants, and I learned that the firm of Messrs. Puder & Puder were to make that audit.

Q Then what happened next? A I met Mr. Puder, I think, during the course of that examination, and learned from him that he was examining the records from the year 1920 to the date of the fire.

Q You did not meet Mr. Puder until after this conference at Mr. Russell's office with the adjusters representing the Specialty Handle Manufacturing Company? A I did not.

Q And you met Mr. Puder while you and your associates were examining the books? A No, I met him while he was making the examination.

Q What did he tell you? A He told me that he was making this examination; that they had found many matters in connection with the records which affected their income tax returns and that he intended to make a very exhaustive and full examination.

Q Then what happened? A After they got through, my office made a similar examination.

Q And what did you find on your examination? A Well, we found all of the entries, the fraudulent entries that had been developed by Messrs. Puder & Puder; during our examination one of our men, Mr. Bradley was in attendance all the time.

Q He was from Puder & Puder's office? A Yes.

Q He was there while you were working on the books? A Mr. Puder asked permission for him to be there and we saw no objection, because he materially assisted us in our examination.

Q Did Mr. Garfinkel or any representative of his ever tell you of any fraudulent items in the books, or any fictitious items? A During our examination Mr. Bradley pointed out many of the items; for instance, we would call for one of the invoices and he would say, "That was one we threw out."

Q Did he tell you why? A He told us it was not a purchase.

Q In other words, it was a fictitious transaction on the books? A Exactly.

Q Did Mr. Bradley tell you of all these fictitious transactions? A Of course, we would run across these entries during our examination, and rather than delay in looking for the bill, he would point it out as an item in question, and we took his word for it that it was a false entry.

Q In other words, when the voucher was missing—

Objected to as leading.

(Question withdrawn.)

Q Tell us what else happened. A We found from the year 1920, which was the start of our examination, we found fraudulent purchases recorded; we found that the payroll had been padded; we found that the purchase journal had forged additions; and that was true in every year from 1920 up to the fire.

Q Did you find anything in sales? A There were some checks which we could not trace at all. There was one check which had been issued for a certain amount that had been recorded on the books. We found the deposit for a like amount, the receipt of which had not been entered. Just the source of that receipt, I do not know.

Q Can you give us the details of that transaction by reference to the books? A Here is a photostatic copy of a check, check No. 7497—

Q On the Public National Bank? A On the National Newark & Essex Banking Company.

Q Did Mr. Garfinkel or any of the other officers ever tell you about these fictitious entries? A Mr. Garfinkel told me in a general way that the books were incorrect for income tax purposes.

Q Did Mr. Kasnowitz, the accountant, ever point out the fictitious entries? A No, sir.

Q Did Mr. Schlosser ever tell you about the fictitious entries?

By Mr. Newman.

Q What is the date of the check? A November 5, 1923.

By Mr. Vanderbilt.

Q Will you enumerate all the ways in which any one ever gave you any information as to the items? A We were assisted in many ways by Mr. Bradley of the office of Puder & Puder. The help he gave us saved a lot of time.

Q This help was rendered beginning when? What date? A You mean the date we started our examination?

Q Yes, the date you started this examination after conference at Mr. Russell's office, and after Messrs. Puder & Puder had finished their ex-

amination. A My recollection is that we started this examination in the latter part of June or July.

Q And at that time had the general ledger for 1922 and 1923 been written up? A I don't know whether I saw that general ledger during that second examination.

Q I show you check No. 7497, and ask you if you will tell us what that item represents.

Mr. Lane: I object to that on the ground that it is immaterial and incompetent.

The Court: I will hear you, Mr. Vanderbilt. You may as well consider whether we are to go back of January, 1924. There is nothing in evidence back of that.

Mr. Vanderbilt: Mr. Wood testified it was necessary for him to fix the value of goods on hand in 1925, to establish the profit and loss of preceding years, and also to establish the percentage of sales costs. Mr. Puder in his testimony confined his calculations to what was revealed to him between December 31, 1923, and December 31, 1924, a period of one year preceding the fire, but he also, according to the testimony we have just had, examined the books from 1920 on, as did Mr. Wood.

The Court: The only purpose of such examination is to get a longer period so as to find the amount of sales in order to deduct that amount of profit from each sale.

Mr. Vanderbilt: That is one purpose, to take a broader experience than the one preceding year. It would also have another purpose—of determining what the sales ratio was—the sales percentage. It also has an

additional purpose, your Honor, of being a means of verifying from the books of the company what the veracity of these inventories of December 31, 1923, and December 31, 1924, would be. Up to the present time there has not been a bit of proof before the Court as to the inventory of December 31, 1923, except the bare total of it, but it is not supported by any documentary evidence. If that is fictitious, and it admittedly is fictitious, because there are two inventory figures of December 31, 1923, one as used in the physical inventory, and the other as entered in the books for minimizing income tax. So it becomes very vital to go back to determine from all those figures which is right.

The Court: Now, insofar as the question of the veracity of the books is concerned, I think you are entitled to show inaccuracy, I mean anything which would discredit these books as a set of books, because they are offered here practically in effect as a witness. In other words, instead of his telling every transaction, the plaintiff offers his books in evidence, and they have been received. You may discredit that, but I think I will have to limit you to that, insofar as that phase of the case is concerned with the books which have been offered. I do not think you can go to previous years for that purpose.

Mr. Vanderbilt: The offer of the books to us for the purpose of this examination, and every one knew the result of Mr. Wood's examination would decide whether or not the

claim would be paid, was not restricted to the year 1924. They said, "Go back over the whole set of books."

Mr. Lane: There is no such proof.

Mr. Vanderbilt: The proof is that Mr. Puder said, "Mr. Garfinkel said, 'give him everything.'"

The Court: I am only addressing myself to the testing of the credibility of the books; that they show the amount of loss that was sustained during these two years. He has to prove his loss and he intends to prove it by offering these books in evidence. You are entitled to show whether or not there is a proper basis on which this jury should go. You may discredit them if you can. It seems to me you are limited in testing the credit of these books, and the books which were used by the accountant as the basis of his testimony, so far as that feature of the case is concerned. Now, you come to the other feature. When you say they committed a fraud upon you or a misrepresentation which voids their policies and the right to recover, that is a different proposition. In order to use the books back of January 1, 1924, you have got to show some materiality, that is, that it makes a representation which is material and which will come under the clause of your policies. I would like to know before I take a lot of this testimony how it is going to be material. He says in 1924 he found a profit of $50,000 and in 1923 a loss; you have to prove in these previous years that he made more profit in order to affect you materially, because they have taken the 1924 profit. If the profits in 1923 and before were less, then they have taken off a larger ratio of profits from their sales than they would if they had made so much money.

Mr. Vanderbilt: The difficulty, as I see it, is that the profits as given in Mr. Puder's statement, are predicated upon two physical inventories: December 31, 1923, and December 31, 1924. Mr. Puder says, "I accepted the earlier inventory as correct, not the one in the books, because that is admittedly false, but I took the physical inventory." I take it we are not bound by that; that we are entitled to prove whether or not that physical inventory of December 31, 1923, is incorrect, and it becomes very material because by the plaintiffs' own statement—

The Court: Then you have to prove that the inventory was less than at that time.

Mr. Vanderbilt: I understand that they have admitted that.

The Court: You have to prove that the inventory of December 31, 1923, was less than Mr. Puder was assuming, because if it was more, then they would not have made as much profit; if your profit of December 31, 1923, was less than Mr. Puder took it, then the profits of 1924 would have been more; the ratio of profit would have been more; and then you would have deducted more from the sales of January and February, 1925, and therefore reduced the value of the goods out of sight or the value of all the stock.

Mr. Levy: It would increase it.

The Court: I would like to ask the witness what would be the effect of that. I think we ought to establish those facts.

By Mr. Vanderbilt.

Q Mr. Wood, you have been following what the Court has been telling me? What is the answer to that? A You have been talking about an inventory of 1923. Do you mean 1923 or 1924?

Q 1923. A He started it in 1923 to get the profit ratio; in order to get that he uses the physical inventory of December 31, 1924. If that is wrong, the profit ratio is wrong.

By the Court.

Q Assuming that the inventory of December 31, 1923, was wrong, which way did it have to be wrong in order to adversely affect the insurance companies by increasing the amount of goods on hand March 1, 1925? A If the inventory at the beginning of 1924, that is, December 31, 1923, is too low, it has the effect of increasing the goods on hand at the time of the fire.

Q Why? A Because the lower the inventory is at the beginning the lower your cost of sales would be. You start with an amount; to that you add purchases and labor; those three items give total costs. If the inventory in the beginning was inflated by $50,000, your costs would be inflated by $50,000. The higher the costs, the less the profits. On the other hand, if the inventory at the end is too high, you inflate your profits and the tendency would be to increase the loss at the time of the fire.

Q Just explain to us the treatment that you give to your sales by this ratio of profits? A For illustration, if your sales were 100 and the ratio of profit were 20 per cent. you would deduct 20 per cent. from the 100, or $20, and the cost of sales would be $80, and that you would deduct

from the total costs, and the balance would indicate stock on hand.

Q In other words, if you do business so as to keep your cost down, you increase your ratio of profit? A Exactly.

Q Therefore, if you increase your costs you, of course, decrease your ratio of profits? A Exactly.

The Court: He might tell us the effect of his examination on the December 31, 1923, inventory.

Mr. Vanderbilt: You mean as to what he found in the books?

The Court: I mean which way it would change it.

By Mr. Vanderbilt.

Q Will you answer that question of the Court's please? A In connection with my examination?

Q Yes. A The profit ratio I arrived at covered the years 1920 to 1923. If the inventory as of December 31, 1923, was $146,000 instead of $126,000, my profit ratio would be increased.

Q Which is the correct inventory figure to take as of that date? A I don't know which one is correct.

Q Why don't you know? A The inventory entered in the records is $126,000. I would assume that to be the correct inventory.

By Mr. Lane.

Q The face of the inventory sheets shows another figure? A Yes.

would have upon the books. The question is what effect would it have upon this insurance claim.

The Court: Its effect in drawing $2,000 in cash—you can make allowance for that $2,000 in cash.

Q Was there an allowance made in the books on the other side? A Yes, there was a deposit made in the same amount and not shown in the cash book.

Q And that deposit does appear where? A In their bank account on a deposit slip.

Q But not in the books of the company? A Not in the cash book, no, sir.

The Court: I don't yet see the materialty of it.

Q What effect would this have upon the inventory of December 31, 1923, or December 31, 1924? A It would have this effect, that this deposit of $2,060 were the proceeds of a sale of goods; it would affect the inventory as to the end of the year.

Q Are there any items like this in 1924?

The Court: Let us dispose of this question first.

Mr. Vanderbilt: I think that answer does.

The Court: You will have to prove it was a sale and affects his inventory, because I don't think you are entitled to prove false entries in these books back of the period for which the plaintiff submitted them as proof of his loss.

Mr. Vanderbilt: The point I make is that he submitted all his books to us. When these books were turned over to—

The Court: That goes back to the question of fraud on you, not fraud on the books, and that you have to prove the materiality of. In other words, it doesn't make any difference whether it affects this balance of 1924. These books are submitted and you may show with regard to other transactions fraudulent entries and false entries so that the jury may determine whether or not they will consider the books as evidential. I say you can't go back of January 1, 1924, for that purpose because they were not offered in evidence. In other words, it is within my discretion to limit you on that. If you come to the question that they attempted to defraud the insurance companies on the policies, you can go back, if it is material to the insurance companies; that it affected what they would have to pay because a fraud upon you that did not hurt you, is one on which you could not use that provision in the policies. He has not shown that it would affect the inventories of December 31, 1923, and if it does not affect that, it is not material. If it is to conceal a receipt of money which should go into the company, and did not, then you have to prove it, because the burden on the question of fraud is on you. If you want to ask this witness anything more with reference to this 1923 item, ask him, and I will rule on it. I think I have explained what my ruling will be, but I want it in shape.

By Mr. Vanderbilt.

Q Does this check have any effect upon the inventory of December 31, 1923, or December 31, 1924? A I don't know; I don't know the source of the receipt.

By the Court.

Q You did not ascertain it? A I couldn't ascertain it.

By Mr. Vanderbilt.

Q Did you ask for the document supporting it? A I believe my associate took this check up with Mr. Bradley of the office of Puder & Puder, and they apparently did not get anywhere with it.

Q In 1924—

The Court: Is there anything more you want to ask?

Mr. Vanderbilt: No.

Mr. Lane: I object to it.

The Court: I will strike out the testimony in regard to check No. 7497 for $2,060 on the one question as to its admissibility to show the books which were presented by the plaintiffs in support of their proof of loss of goods on hand on March 1, 1925. I will limit counsel to the books which are in evidence, and I might, for the use of counsel and the Court, refer to the case of Funk *v.* Ely, 45 Pa. St. Rep. 444, at p. 448, where it is stated, "It is to be submitted to the jury to judge of (that is, the book), and then it is competent for the adverse party to show its general character by pointing to charges and

entries affecting other parties, and by calling witnesses to prove such entries false and fraudulent. That this investigation may not run into excessive departure from the issue on trial, the Court should limit it to the time, or near the time, covered by the account in suit, and should suffer no more examination of collateral cases than would bear directly on the general character of the book." And I think it is also supported in Wigmore on Evidence, Section 1557. On the other question, if this evidence is presented to sustain the affirmative defense of a breach of a provision of the policy with regard to submitting of a fraudulent statement, it has not been proved that this item materially affected it.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt: May I have checks Nos. 5060, 5880, 5901 and 6288?

(Checks are produced by plaintiffs' counsel.)

By Mr. Vanderbilt.

Q I show you check No. 5060, dated November 10, 1922, and ask you if that appears in the books of the company?

Mr. Lane: I object to that as immaterial and incompetent. That is 1922.

Mr. Vanderbilt: I am not pursuing this on the same theory. This is a check, which we will show you related to a merchandise account which would necessarily be reflected in the inventory.

The Court: I think you ought to ask the preliminary question as to whether this item you are going to ask about is going to affect these inventories in such a way as to increase the claim of the plaintiffs.

Q Mr. Wood, would this check No. 5060, as it appears in the books of the company, affect the inventory of either 1923 or 1924? A Not if the inventories were physical inventories.

Q Would they affect a check-up and verification of those inventories? A They would affect the profit ratio developed in those years, yes.

Q And that would in turn be reflected upon those two inventories? A Well, I would like to distinguish between a physical inventory and an inventory you would determine from the books. It would affect an inventory you would determine yourself from the records; it would not affect a physical inventory that was a true inventory.

By the Court.

Q The point is, would it affect the insurance companies adversely? A Not if the inventory of December 31, 1924, was true.

Q If you are going to take the inventory developed from the books and not from the physical inventory, would it affect the insurance companies adversely? A No, sir, it would not.

The Court: Then I will sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

By Mr. Vanderbilt.

Q I show you check No. 6288, dated January 21, 1924, and ask you how that appears in the books of the company? A This check No. 6288 is entered in the cash book on page 121 as charged to the account of England, Walton & Company. This check is issued in payment of a purchase which is entered in the purchase journal on page 72. That entry is a fraudulent entry.

Q To whom is this check made payable and by whom was it endorsed and cashed? A This check is payable to bearer and it is endorsed by Emil Garfinkel.

Mr. Vanderbilt: I offer the check in evidence.

(Check No. 6288, photostatic copy of which had previously been marked for identification as Exhibit D. 5 for identification, is received in evidence and marked Exhibit D. 5.)

By Mr. Lane.

Q That check paid an invoice that was entered in the books in 1923, or was supposed to pay such an invoice? A May I see the invoice book?

Q (Handing book to witness.) December 1, 1923, referring to the account of England & Walton, isn't it? A May I see the purchase journal?

Q (Counsel hands book to witness.) A That invoice is entered in 1923.

Q So that it did not affect the inventory of 1924? A No, sir.

Q And did not affect the insurance companies adversely? A No, sir.

John F. E. Wood, direct.

The Court: I will allow it. It affects the credibility of the books.

By Mr. Vanderbilt.

Q I show you check No. 6481, dated April 12, 1924, and ask if that appears on the books of the company? A Yes, sir, it does.

Q What are the entries on the books? A It is entered in the cash book on page 23. It is in payment of a purchase entered in the purchase journal on page 17 from Dunn-Green Corporation.

Q To whom is the check drawn? A To cash.

Q By whom was it endorsed and cashed? A Emil Garfinkel.

Q What does that show with reference to the transaction and the entries on the books? A Why, that is a fraudulent entry.

By the Court.

Q What do you mean by a fraudulent entry? A There was no such purchase from Dunn-Green Corporation. This check was supposed to be given to Dunn-Green & Company.

By the Court.

Q What is the effect? A It does not affect the company, but affects the ratio.

Q What effect has it on the company? A No effect at all. You mean the assured?

Q The Specialty Handle Manufacturing Company. A No, they took the money out and kept it, so it did not affect them at all.

Mr. Vanderbilt: I offer the check.

John F. E. Wood, direct.

(Check No. 6481, photostatic copy of which had previously been marked for identification as D. 6, is received in evidence and marked Exhibit D. 6.)

By Mr. Vanderbilt.

Q In other words, the books show a purchase and a payment of that purchase? A Exactly.

Q Whereas, in fact, there was no such purchase or payment of purchase, but a sum of money withdrawn by a bearer check? A It helped them in one respect; it reduces their income taxes.

By Mr. Lane.

Q That is the only thing it does? A As far as I know, yes.

By the Court.

Q Wouldn't the effect be that they would be poorer by $963.50? A No. The company, perhaps, as a corporation, came out—

Q That is what we want to know. A The company's bank account was charged with $963.50, so their assets were reduced by that amount.

By Mr. Lane.

Q You have been referring to a memorandum, have you not? A That is my report.

Mr. Lane: I ask that it be marked for identification.

(The report of the accountant Wood is marked Exhibit P. 60 for identification.)

At 1 o'clock P. M., the Court takes a recess of one hour.

AFTER RECESS.

The Court: Did Mr. Puder take $146,000 or $126,000 as his basis for the inventory?

Mr. Puder: $146,000.

ROBERT T. BOYD, JR., sworn in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q With what concern are you connected? A Charles S. Walton & Company.

Q Has that company had dealings with the Specialty Handle Manufacturing Company? A We have, sir.

Q Over how long a period? A From about 1920 to 1924.

Q I show you a check, No. 6722, of the Specialty Handle Manufacturing Company on the Washington Trust Company, signed Emil Garfinkel, treasurer, drawn to the order of Charles S. Walton Company. Are you familiar with Mr. Charles S. Walton's signature? A I am.

Q I show you the endorsement on the check and ask you if that is the signature of Charles S. Walton? A It is not.

Mr. Lane: I object to that as immaterial and irrelevant.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Did your concern ever have any dealings with the Specialty Handle Manufacturing Company that ran into figures like $4,289.61? A No, sir.

Q Have you the ledger books of your company showing the transactions with the Specialty Handle Manufacturing Company? A Yes, sir.

Mr. Vanderbilt: I offer the check in evidence.

Mr. Lane: I object to that as immaterial and irrelevant.

The Court: I will allow it.

(Check No. 6722, previously marked Exhibit D. 9 for identification, is received in evidence and marked Exhibit D. 9.)

Q Is this the record of sales and payments of the Specialty Handle Manufacturing Company with your concern? A It is, sir.

Q Since what date? A From the first to the last, July, 1920, to March, 1924.

Q What was the largest sale you ever had? A $1,470.72.

Q What is the total amount of your dealings from 1920 to date? A $3,489.23.

Mr. Vanderbilt: I offer the ledger sheet in evidence.

Mr. Lane: I object to that on the same grounds as to the check.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The ledger sheet of the Charles S. Walton Company is received in evidence and marked Exhibit D. 24.)

Cross examination waived.

JOHN F. E. WOOD, resumes the stand.

Direct examination (continued) by Mr. Vanderbilt.

Q Did you trace that check No. 6481 through the books, Exhibit D. 6? A Yes, sir.

Q Was there a transaction with the Dunn-Green Corporation in that amount shown on the books?

Mr. Lane: I object to this. This witness is only repeating what is already in the case. Mr. Puder testified to that.

Q Have I covered that with you? A You have.

Mr. Vanderbilt: May I have check No. 1075?

(Plaintiffs' counsel produces check requested.)

Q I show you check No. 1075 dated June 18, 1924, on the Public National Bank, to the order of I. Friedman in the sum of $1,500. Does that

appear on the books of the Specialty Handle Manufacturing Company? A Yes, sir.

Q Where is that entered? A It is entered in the cash book.

Q Does it appear anywhere else? A There is an entry in the purchase journal showing an invoice from I. Friedman Leather Company, $2,793.26, and this check of $1,500 was given on account of that invoice.

Q Do this invoice and check run through the books of the company? A They do.

Q I show you check No. 1184 drawn to the order of I. Friedman Leather Company dated July 24, 1924, and ask you whether that is in connection with the check to which I have just referred you? A Yes, sir, that is, two checks were given in payment of this invoice for $2,793.26.

Q Have you seen the invoice? A There is no such invoice.

Q Can you tell us from the records whether or not there was such a purchase? A There was no such purchase.

Q By whom are those checks endorsed? A Check No. 1075, $1,500, is made to the I. Friedman Leather Company, endorsed "I. Friedman, Emil Garfinkel." Check No. 1184, paid to the order of I. Friedman Leather Company, $1,293.26, is endorsed "I. Friedman, Emil Garfinkel."

Q From your examination of these checks and of the entries in the books, can you tell us whether or not the entries in the books represent an actual transaction, or a fictitious transaction? A A fictitious transaction.

(Check No. 1075, previously marked Exhibit D. 7 for identification, is received in evidence and marked D. 7.)

(Check No. 1184, previously marked Exhibit D. 8 for identification, is received in evidence and marked Exhibit D. 8.)

Q Referring to Exhibit D. 9, that is a check to Charles S. Walton, will you tell us whether or not that appears on the books, August 12, 1924? A Yes, sir, that check appears in the cash book.

Q Anywhere else? A The check is issued in payment of an invoice for Charles S. Walton for $4,332.94.

Q Have you seen that invoice? A There is no such invoice.

Q Is this an actual transaction or a fictitious transaction? A A fictitious transaction.

Q By whom was this check endorsed? A This check is payable to Charles S. Walton; it is endorsed to Charles S. Walton for deposit, Francis Realty Company.

Q Do you know what the Francis Realty Company is? A I do not.

Q All of these checks which are drawn in payment of fictitious invoices, have what effect on the corporation? A They withdraw funds from the company.

Q Have you made a record of the personal drawings of Mr. Garfinkel charged to labor?

Mr. Lane: I object to that as immaterial.

The Court: How is that material?

Mr. Vanderbilt: It is in 1924.

The Court: Do you contend there was a fictitious or fraudulent entry?

Mr. Vanderbilt: Yes, sir, it all has its effect on the sales costs ratio.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Confining yourself to 1924, will you tell us what there is? A There is a check dated January 5, 1924, on the Washington Trust Company, No. 6236 for $1,000; January 2nd, check No. 775 on the Public National Bank, $2,550; February 8th, check 6325, Washington Trust Company, $1,000; March 8th, check No. 7553, National Newark & Essex Banking Company, $200; October 18th, check No. 1348 on the Public National Bank, $464.38. Then there are three notes, one dated March 10, 1924, $500; April 8th, $500; and May 8th, $500, which have been charged to labor.

Q All these five checks and three notes are charged to labor during the year 1924? A Yes, sir.

The Court: Will the other side admit them?

Mr. Lane: We haven't denied it from the beginning.

Mr. Vanderbilt: I have no recollection of their being testified to.

The Court: Even if they were not, is there any dispute about that?

Mr. Lane: No, sir.

Q By whom were these checks drawn and cashed? A I would have to see the checks.

Mr. Lane: I don't know, and it is immaterial. I will concede that they were not labor.

The Court: They were testified to as being excluded.

Mr. Vanderbilt: By Mr. Puder, but not in the books.

The Court: Yes.

Q Were those several items we have been referring to of five checks and three notes, included in the statement submitted to you before you started your examination?

Mr. Lane: I object to that. The statement will show that.

Q Can you tell whether or not these eight instruments are included in the figures given in the instrument D. 16, which was the schedule furnished by Miller & Maltbie to the insurance companies and on which you started to work? A I cannot tell that.

Q Have you examined the Kasnowitz & Brother account as it appears on the books of the Specialty Handle Manufacturing Company? A I examined a copy of the account.

Q I show you checks 1039, 1211 and 1291, and ask if they appear on the books of the company? A Check No. 1039 for $911.29, drawn to the order of E. Kasnowitz, is charged against the account of E. Kasnowitz & Brother.

Q Is it carried through the books of the company? A Yes, sir.

Q Did you attempt to verify that item in the account? A Yes, sir, I did.

Q Could you verify it? A I couldn't find any invoice represented in payment by this check.

Q What did that indicate? A Well, I examined the endorsement of this check and it had been endorsed by Emil Garfinkel so it cast some doubt in my mind as to whether it represented a purchase.

Q Tell us about check No. 1211. A Check No. 1211, $1,894.05, is drawn to the order of E. Kasnowitz and is charged against the account of E. Kasnowitz & Brother in the creditors' ledger. That check is also endorsed by Emil Garfinkel and I questioned whether it represented payment of a purchase.

Q Tell us about check 1291. A I don't think I have examined this check, Mr. Vanderbilt.

Q Did you attempt to check up these items with E. Kasnowitz & Brother? A No. My associate examined a statement which Messrs. Puder & Puder had received from E. Kasnowitz & Brother with the Kasnowitz account.

Q Do these items appear in that statement of E. Kasnowitz & Brother? A Yes, they are charged to his account.

Q Do you know whether E. Kasnowitz & Brother have been in business for the past two years? A My understanding is that they have not.

Mr. Lane: I move to strike out his understanding, if the Court please.

Q Did Mr. Garfinkel tell you anything about that? A No.

Q Are you familiar with the account of the Keegan Leather Company in the books of the Specialty Handle Manufacturing Company? A Yes, I have seen that account.

Q I show you invoice Exhibit P. 38, and ask you whether or not that appears in the physical inventory of December 31, 1924? A It is my opinion that it does.

Mr. Lane: May I cross examine him as to how he knows?

The Court: Yes.

Cross examination by Mr. Lane.

Q How do you know? A There is an item in your inventory of 2,800 bellies; there is an invoice dated December 18th. The inference must be that it came in before the 1st of the year.

Q Why? A By the invoice.

Q Did you try to find out? A I looked in the receiving book and there was no entry.

Q Did you try to find out when they were in fact received? A Not from Keegan.

Q Did you make any inquiries from Keegan? A Not outside of what I did.

Q You know when a concern starts to prepare a physical inventory they have got to start some days before the first of the year? A Yes.

Q You know when they start to take an inventory they don't add goods received prior to the first of the year, but carry them over? A That applies only to concerns buying for the next year.

Q Do they keep the inventory open to the end of the year? A What do you mean?

Q Having completed an inventory before the close of the year, do they open it? A All goods received to the 31st of December is carried.

Q They do that in all concerns you know of? A That is my experience.

Q You know, as a matter of fact, that sometimes invoices are dated prior to receipt of goods? A Oh, yes.

Q Yet, you are going by the invoice? A The last invoice of Keegan dates March 20, 1924.

Q That was a large purchase? A Yes.

Q Some $5,000 worth of goods? A I believe it was.

Q Did you try to check up to find out whether those goods had been sold in 1924? A No.

Q You didn't do that? A I don't believe I could.

Q You didn't try it? A No, sir.

Q Would it change your mind if I showed you a check of December 26, 1924, showing payment of the freight on that? A That would still more convince me that the goods had been received.

Q Do you pay your freight before or after the goods have been received? A I don't know the exact custom. That check dates December 26th.

Q A fair inference would be that the goods would be received two or three days after the receipt of it? A That would be the 28th or 29th.

Q You have it pretty close to the 1st of January. A That is the date of the inventory.

Re-direct examination by Mr. Vanderbilt.

Q Were any of these goods mentioned in that invoice returned? A There is a reference on the check that there was some returned, yes.

Q Was there a discount allowed? A They took a discount.

Q And freight? A Yes.

Q And a credit? A Yes.

Mr. Vanderbilt: I offer in evidence check Nos. 1039, 1211 and 1291.

(Checks Nos. 1039, 1211 and 1291 are received in evidence and marked Exhibits D. 26, D. 27 and D. 28, respectively.)

Mr. Vanderbilt: I call for check No. 1615 of February 11, 1925, which cannot be found.

(Plaintiffs' counsel produces stub of check.)

Q I show you stub of check No. 1615 drawn to the order of Keegan Leather Company, and ask you whether it relates to the invoice of December 18, 1924, Exhibit P. 38? A Yes, it does.

Q And that check of $2,261.72 is in payment of this invoice with proper allowances for returned merchandise, discounts, freight and credits? A Yes, sir.

Mr. Vanderbilt: I desire to offer the stub in evidence.

(Stub of check No. 1615 is received in evidence and marked Exhibit D. 25.)

Q I show you the leather inventory, Exhibit P. 17, the seventh item— A (Witness interrupting). 3,500 P. E. tanned belly centers, Keegan, 80 cents, $2,800.

Q Can you tell me whether or not that item refers to goods covered by Exhibit P. 38? A That is my opinion.

Re-cross examination by Mr. Lane.

Q Do you notice the price at which it is carried in the inventory? A Yes, sir.

Q How much is the price? A Eighty cents a pound.

Q You notice the price it is charged at by Keegan? A Yes, sir, seventeen cents; a foot, I think.

Q What accounts for the difference between the seventeen cents and the eighty cents? A In the inventory it is listed at—

Q (Interrupting.) Per pound is what I am trying to get at. There is a difference, not of eighty cents a pound—it is eighty cents apiece, isn't it? A I guess that is eighty cents per piece, yes.

Q There is two pounds per piece, isn't there? Did you try to check up? A No, I didn't.

Q Didn't you find out and get the explanation that that eighty cents was the figure on a tanned article? A I didn't.

Q You didn't try to investigate whether labor was included in the eighty cents? A No.

Q If there was labor, it couldn't be the same Keegan bellies; one way would be to find out whether the inventory represented tanned articles or not, wouldn't it? A That would be a better check.

Q And that check you have not made? A No, sir.

Q Yet you are willing to say it was not included in the inventory? A That is my opinion, yes, sir.

Re-direct examination by Mr. Vanderbilt.

Q Did you make an examination of the books to ascertain the stock on hand March 1, 1925? A I did, yes.

Q Will you tell the Court and jury what your procedure was, or what method you used in doing that? A Yes. I determined the book inventory as of January 1, 1925, to be $81,968.74; to that

I added purchases of $49,988.59, labor $40,709.97, making a total of $172,667.30. From that I deducted the cost of goods sold, $90,824.39, leaving a book value as of March 1, 1925, of $81,842.91. Now, in arriving at the book inventory as of January 1, 1925, I prepared the following statement: "Inventory, January 1, 1924, $126,402.10; purchases $202,471.08; labor $236,307.58; total $565,180.76." From that I deducted the cost of sales of $483,212.02, leaving a book inventory December 31, 1924, of $81,968.74.

Q That was the inventory that you started with as of January 1, 1925, and applying that, that is the way in which you received the value of goods December 31, 1924 of $81,968.74? A Yes, sir.

Re-cross examination by Mr. Lane.

Q And that result was reached by you based on the books of the company, is that right? A Exactly.

Q It rather indicated that the books, if they were fraudulent, were fraudulent as against the assured, rather than the insurer, isn't it? A Well, either way.

Q I don't know how you could make it either way. According to the physical inventory the amount on hand would be much larger. A Either that the inventory of December 31, 1924, was fraudulent—

Q Assuming that the physical inventory of December 31, 1924, was a correct physical inventory, the books so far as the fraud was concerned, operated against the insured rather than against the insurance companies, isn't that so? A Yes, sir.

Q So, assuming this physical inventory to be correct, so far as the fraud was concerned, so far as the relation with the insurance companies was concerned, this company was injuring itself all the time, wasn't it? A Assuming that the inventory was correct.

Q Did you have any reason to suspect, so far as the inventory itself was concerned, that the inventory was fraudulent? A I suspect anything prepared by this company.

Q Why? A Because their books are so full of fraudulent statements that no reliance—

Q I don't suppose you have ever seen the books, or any statement prepared of books, prepared so as to keep down the income? A No, sir, not this way.

Q How did these show that? A I don't know whether the purpose was to get down the income tax—

Q What did you mean in this way? A I have never seen a set of books so honeycombed from 1920 to 1925.

Q Have you pointed out all the instances from January 1, 1924? A Yes, sir.

Q Do you call that honeycombed in a business of $600,000 a year? A That is pretty serious.

Q Do you call it honeycombed when you pointed out about eight of them? A I am not covering the entire period from 1920 on.

Q You have examined other companies, have you not? A I have.

Q And you have found entries made to keep down the income tax, haven't you? A So they stated.

Q Unfortunately, that is something that frequently occurs, isn't it? A Yes, sir.

Q And the way they keep down the income tax is to withdraw money and charge it against

labor? A Yes, sir; and sell merchandise and not record it.

Q You told Mr. Vanderbilt that you could tell from the books of the company that this Friedman entry was a fictitious entry. How can you tell that from the books of the company? A I found no such invoice, and I believe I was in agreement with Mr. Puder, as one of the items—

Q Confine yourself to the books of the company. A There was no invoice for that amount and it was recorded as a purchase.

Q Invoices have been lost? A Yes, but you can get a duplicate.

Q Did you attempt to get a duplicate invoice? A No, my understanding was that Mr. Bradley said there was no invoice.

Q You were told there was no invoice? A Yes.

Q By the representative of this company? A Yes, sir.

Q And you were told by the representative of the company that they were not purchases? A Yes, that is why we came to an agreement.

Q That is why you found it out? A I could have found it out myself.

Q That is why you found it out without any difficulty? A Oh, yes.

Q The first thing that you would ask for in checking the books of the company would have been to have asked for the invoices as against each of these bills? A Yes, sir.

Q And there were not any invoices there? A Not for those items.

Q If you had wanted really to cover up those figures, fraudulent invoices might have been prepared? A I have seen them, yes, sir; they couldn't cover up the checks, though.

Q Why? A Because it shows their endorsement.

Q So that anybody going into these books and examining them could not help finding them, could he? A Yes, he could find them.

Q How long have you been examining books for insurance companies? A About eighteen years.

Q Is that your sole business? A No, sir.

Q But you have been, for the past eighteen years, examining books for insurance companies? A Yes, sir.

Q In making up your account, or in using your figures, or the figures at which you arrived at an inventory, or stock in hand on March 1, 1925, of $81,000, you took the inventory of January 1, 1924, I understand, at $126,000? A Yes, sir.

Q Why did you use that figure? A From the books.

Q Didn't you know it was false? A No, they showed me some sheets marked $146,000, but I don't know which was false.

Q They told you that the one in the book was wrong? A I couldn't take their word.

Q They told you the one in the book was wrong? A They did.

Q Didn't they tell you when you first went there? A No, sir.

Q When did they tell you that? A When we made our second examination.

Q How much of an examination did you make the first time? A Three or four days.

Q What did you do? A I analyzed the profit and loss statement for five years.

Q Did you go over it figure by figure? A Yes, sir.

Q Have you your report here? A Yes, sir.

Q Let me see it. A Mr. Vanderbilt has it.

Q Do you want me to understand you were not informed by us the first time of these so-called fictitious entries? A I was not.

Q And you were not informed until you went there the second time? A I was told by Mr. Garfinkel, as I testified, that the books were fixed for income tax purposes.

Q When? A On my first visit.

Q Then you were told on your first visit? A Yes, sir.

Q Did you mean to insinuate a few moments ago you were not told anything about the condition of the books? A You meant fictitious entries.

Q They told you the very first time you could not depend upon the books. A Yes, sir, after I had called their attention to the condition of them.

Q How long did it take you to call their attention to the books? A I was there about two days.

Q In your report made to the insurance company on March 30, 1925, I find this statement: "During all these conferences Mr. Emil Garfinkel was present. He finally said, 'Mr. Wood, I will tell you just what happened. We have been reducing our inventories in the past years so as to reduce taxes. We have also increased the purchase accounts by drawing checks to the order of cash and charging the amount to "purchase accounts," we would then re-deposit the cash or checks and credit our capital stock account.'" A He told me the general scheme, yes, sir.

Q And he never said one word, and no one else ever said one word, when you were present at that plant, to lead you to believe that the statements in that book were to be examined at face value? A When I went there they handed me the books and I assume they certified to the records.

Q You went there and asked for all the records of the company? A I did.

Q And you got them? A I did.

Q And within a short space of time you were told you could not depend upon the correctness of those books, weren't you? A Yes, sir.

Q And though you were told you could not depend upon the correctness of the books, you went there and made up the figures of $81,000? A I just used the books.

Q I suppose that if the incorrectness of the books would have operated to the benefit of the insurance companies instead of the correctness of the books, you would have assumed the incorrectness of the books?

Mr. Vanderbilt: I object to that.

The Court: I will allow it.

The Witness: I would have reported conditions as I found them.

Q You know that a physical inventory, if one is available, is the best evidence of goods on hand, don't you? A It is.

Q And the only purpose of going into the books if you have a physical inventory, is to attempt to check, or see whether there is anything apparently wrong with the physical inventory? A Yes, sir.

Q You were told, or you were shown an actual physical inventory taken on December 31, 1923, which showed approximately $147,000, weren't you? A That is what they said it was.

Q Didn't you see the sheets? A Yes.

Q You saw the sheets? A Yes.

Q Did the sheets give any indication upon their face that they had been taken for the purpose of fraud? A You couldn't tell that.

Q Was there anything on them that indicated anything of that kind? A They were regular inventory sheets.

Q And the figure that you found in the books was $126,000? A As of January 1, 1924.

Q You knew by that time that the books could not be depended upon, didn't you? A On my first visit?

Q Yes. A I didn't know the inventory was wrong on my first visit.

Q You knew that something was wrong when you had a physical inventory showing $147,000 and books showing $126,000? A I knew one of the two was wrong.

Q You knew that the books could not be depended upon? A Not at that time.

Q You knew that the books could not be depended upon because Garfinkel told you they had been kept for income tax purposes? A Yes, sir.

Q You took the inventory figure in the book, although it was lower than shown upon the actual inventory sheets and although fraud would be accomplished by using the figure in the books? A I didn't know which was right.

Q If fraud were going to be perpetrated, they would use the lower figure, and the fraudulent figure would be in the books? A Yes, sir.

Q And yet you took the fraudulent figure? A I didn't know whether it was right or wrong.

Q You knew that these books were being kept for income tax purposes. You had been told that; but to use your own language, "That inventory had been reduced and that the purchase accounts had been increased by drawing checks to cash and charging them against purchases." You knew that? A That was Garfinkel's statement.

Q You knew that that statement was correct in part, at least, because you had found these checks? A I knew it later.

Q And you knew that in order to perpetrate that fraud so far as the government was concerned, it was necessary to carry into the books the lower figure? A Yes, sir.

Q And you had before you the low figure in the books, and the high figure shown upon the sheets, and yet you took the low figure? A Yes, sir.

Q Why did you do that? To show a smaller loss for the insurance companies? A No, sir, at that time I had no knowledge of fraud.

Q You had been told that the books were kept for tax purposes, and you had been told that the inventory had been reduced and that the purchase accounts had been increased by drawing checks to cash and charging them against purchases, and yet you had no knowledge of fraud? A That was his statement; I had no proof of it.

Q Having been told that, did you then go right into the books to find whether the statement was correct or not? A No, sir; I reported it to the insurance companies.

Q But you solemnly went on and computed the amount of stock on hand as of March 1, 1925, using the figures in these books which, at least,

you had been told could not be depended upon. A I had computed that statement before Mr. Garfinkel told me anything.

Q Where are your working sheets? A I have some here.

Q Produce them. A Here they are (handing papers to counsel). There are the working sheets with the trial balances; here are the profit and loss statements.

Q These are all your working sheets that you had the first time you went there? A Yes, sir, that is all of them.

Q That is all you did the first time you went there? A Yes, sir.

Mr. Lane: I ask that they be marked for identification.

(Three pages of working sheets of the accountant Wood are marked Exhibit P. 61 for identification.)

Q Are these your working sheets? A Yes, sir.

Q Are these the only working sheets you had during that time? A In my first examination, yes, sir.

Q You had no other paper that you used? A I had memorandum papers that I had made out and perhaps destroyed, yes.

Q These papers I hold in my hand are the complete result, are they not? A They are papers I prepared.

Q I asked for your working sheets. A Any sheets I made out I destroyed.

Q I want your working sheets. You know as an accountant what I want. A I have no other papers. I consider the papers you have as my working sheets.

Q The papers, Exhibit P. 61 for identification, are the result of your calculations and the result of your working sheets transcribed? A No, sir, that is a record of the accounts of the assured.

Q Did you sit down with the books in front of you and on these sheets of papers, as an initial entry, make the figures? A Yes, sir.

Q So that you did not take the entries of the books of the company upon any other pieces of paper before entering them on this? A I did not.

Q You understand what I mean? A I do.

Q With all these books and the different items you got from different places you had these sheets of paper and you made your entries direct from the books on these sheets of paper? A You are talking about my first examination?

Q Yes, sir. A Those are my original papers.

Q And you used no other papers to make entries from the books? A I did not.

Q The ledger of 1923 was not written up, was it? A No, sir.

Q Where did you take the figures from for 1923? A From the back of the ledger. If you will let me see the general ledger, I will show you.

Q (Counsel hands book to witness.) A There is 1923 (indicating).

Q What do these papers purport to be? A mere copy of the books? A Yes, sir.

Q No calculations at all? A Not at all.

Q Just a mere copy of our books? A Exactly.

Q Which you had been told were incorrect? A Not when I made these papers. After I made these papers.

Q Where are the figures you made after you were told they were incorrect? A I filed another report.

Q I am talking about the figures you made after you were told the figures were incorrect, prior to March 30, 1925? A You mean on my first examination?

Q Yes. A You have my report and here are my papers.

Q Didn't you make any figures after you were told that the books were incorrect? A No, I reported to the insurance companies the figures that I had prepared.

Q Where are the figures showing the loss and the net profit for different years? A It is in the report.

Q I am talking about the working sheets? A I gave it to you.

Q Where is the net profit for the year 1921? A There was a net loss in that year of $82.21.

Q Is that a copy of the books? A That is a copy of the books, yes, sir.

Q In this report of March 30, 1925, you stated: "The records, therefore, contain many fraudulent entries." A Yes, sir.

Q I thought you didn't know— A (Witness interrupting.) That is based on Mr. Garfinkel's statement.

Q Did you accept it, or didn't you? A I reported it; I accepted it, yes.

Q I thought you said you could not accept it? A I didn't know myself.

Q You say, "The records, therefore, contain many fraudulent entries." That is your statement. How did you know that? A Mr. Garfinkel told me.

Q Then you accepted his statement that they were fraudulent entries? A Finally I did.

Q Notwithstanding that you still took the fraudulent inventory as of December 31, 1923? A I told you I took the books as I found them.

Q Now, where are your working sheets when you went back in June, 1925? A I have them over there.

Q Where did you find the inventory figure of December 31, 1923? A Here it is (indicating the ledger).

Q Was that written in there in that way at the time you first saw this ledger? A I don't know whether that last figure was in.

Q You know that the last figure was not there? A I don't know.

Q The book was not written up for that year. It had not been written up for 1923 or started for 1924. A No, sir, it had not been written up for 1923 or 1924.

Q That figure was not there. A That balance figure may not have been there, but the inventory as of December 31, 1923, was there.

By Mr. Vanderbilt.

Q What page is that? A Page 1 of the general ledger.

By Mr. Lane.

Q Then some accounts were written up and some accounts were not written up? A I believe they were.

Q I thought you told us the general ledger was not written up at all for 1923 and 1924? A I mean completed for 1923.

Q When you got the sheets showing the actual physical inventory, did you make any investiga-

tion to find out how it had been taken ? A No, I did not.

Q You knew, as a matter of fact, that several people had to combine to take the physical inventory? A That is the way they take them.

Q To take a physical inventory of this kind, would mean the concerted efforts of anywhere from five to ten people? A I should say so, yes.

Q Did you inquire from any one in that plant to find out how the inventory had been taken—who would have to be in the conspiracy to take it fraudulently? A I did not.

Q Why not? You were concerned as to the truth, weren't you? A As far as the books were concerned.

Q You were only concerned with the books, although you had only been told that the books could not be relied upon. You were not concerned with the facts? A Yes, I did.

Q How did you find out? A I spent some time examining the records for five years.

Q Why didn't you do the obvious thing, or what I would consider the obvious thing—ask the people who took the inventory some questions as to whether the inventories were false or not? A I was there to examine the books.

Q Did you ever, in the course of your first or second examination, attempt to find out from the people who made up the physical inventories how they had been made up? A No, sir.

Q You ignored them? A Yes, sir.

Q If you had not ignored them your figures of loss are quite considerably lower than what they would be, isn't that so? A I can't answer that.

Q Don't you know if you take the physical inventory of December 31, 1924, and the physical inventory of December 31, 1923, your figures are not right at all? A That would be true, assuming they are truthful inventories.

Q Assuming those two inventories are correct physical inventories, your figures here are all wrong, aren't they? A Oh, yes.

Q It is better from the insurance companies' point of view to rely upon the fraudulent books, than it is to rely upon the physical inventories? A Oh, no.

Q Why not? A It isn't a question of money with them.

Q Then, we will say it is better from a financial standpoint for them. That is true, isn't it? A Oh, no.

Q You know if you take the physical inventory you increase the loss? A Yes.

Q Can't you answer me as an accountant whether it isn't better for the insurance companies to rely upon the fraudulent books than upon the physical inventory? A They don't want to rely upon the fraudulent books.

Q Then why did you rely upon them? A I don't.

Q Have you been asked to compute this loss or to compute the amount of stock on hand in accordance with the physical inventories, assuming the physical inventories to be correct? A No, I haven't.

Q Have you checked the figures of Mr. Puder? A Yes.

Q Are they correct? A You mean the computation?

Q Yes. A Yes.

Q And his calculations based upon the truthfulness of the physical inventories? A Yes.

Q They are correct, aren't they? A Yes, the mathematical end is all right.

Q So that the figure of Puder, upon which this loss has been based so far as the plaintiff is concerned, assuming the truthfulness of the physical inventories, accurately represents the loss, doesn't it? A Oh, yes.

Q Now, I asked you for your working papers and counsel has produced a great mass of stuff here, and he asked you to pick out of this mass of stuff your working papers. I don't mean photostats which have been given to you for your use. I am asking for your working papers, the papers upon which you have made your figures? A Excepting the photostats, they are all my figures. These are not in my handwriting, but they are my papers.

The Court: Mr. Lane, do you mean the ones used in arriving at a balance, or used to demonstrate the items disputed?

Mr. Lane: I am directing his attention to any papers which he used in making up a subsequent report to the insurance companies, which he said he made.

Q Where is your second report to the insurance companies? A (Witness produces reports.)

(The second report of the accountant Wood is marked Exhibit P. 60 for identification.)

Q In your second report of November 16, 1925, to the insurance companies you used ex-

actly the same figures as before? A I didn't change the statement at all.

Q You reported $81,842.91 as merchandise? A Yes, sir.

Q Although, in the meantime, you had gone through with Puder & Puder all these so-called fraudulent entries, you knew all about them, but paid no attention to them? A I stated that the books and records were so unreliable you could not make any statement from such a set of records.

Q You knew that Puder & Puder had checked up every single item for the years 1924 and 1925? A Yes.

Q And you knew that Puder & Puder in making up their figures had thrown out every item not verified? A Except the inventory.

Q You knew that, didn't you? A Yes, sir.

Q And you knew that these Kasnowitz bills that you have referred to had been checked up with Kasnowitz and had been verified, didn't you? A No.

Q The last item that you referred to, the invoice of April 1st, $1,066.98, and the invoice of April 1st of $844.31, and the July 1st invoice of $894.05— A The first two are on the statement, yes.

Q And the third one is on the statement, July 1, 1924? A Yes, that's on.

Q So those items had been checked, hadn't they? A Against those two invoices they issued a check for $1,000 on account, which check went to Mr. Garfinkel. I question whether that is a bona fide record.

Q Why not? A Kasnowitz didn't get the check.

Q No, but the Specialty Handle Manufacturing Company got the goods? A I don't know.

Q His statement says so? A Yes.

Q Did you try to check it up? A One of my men tried to locate Kasnowitz and had been unsuccessful.

Q When did you go to the banks with somebody from the Specialty Handle Manufacturing Company? A Some one from my office went to the banks.

Q That was for the purpose of finding out what statement had been made to the banks? A Yes, sir.

Q You found that statement had been made to the banks as of December 31, 1923, showing $146,000 inventory? A That was on the statement. I have other statements and not one agrees with the books.

Q You were told that the books were not accurate. A There isn't one bank statement that agrees with the books.

Q Although you saw one figure on the books and one figure on the sheets— A I don't know now which is correct.

Q And you want to tell us now that you don't know now which of these inventories is correct? A I don't.

Q Will you tell me why, for purposes of fraud, the Specialty Handle Manufacturing Company would put on its books of December 31, 1923, a lower figure in the inventory than the actual inventory? A That may be for tax purposes.

Q Will you tell me, then, what fraud would be accomplished if they put the higher figure on? A They would pay a larger tax; it would not be fraud.

Q So, for fraud, if fraud were going to be perpetrated, the lower figure had to be wrong,

hadn't it? And yet you tell us you can't say which is correct. You are charging us with fraud. A The books are fraudulently kept.

Q Yet you say the book figure may be the correct figure? A I don't know.

Q Which would be the correct figure? The smaller or the higher, for the purpose of fraud? A The lower, but for banks you would use the higher figure because you would be asking credit.

Q We haven't done that, have we? A You gave the banks the higher figure.

Q But we didn't put it in our books. A No, sir.

Q Did you make any inquiry of anybody in the company's employ what this 3,500 tanned belly centers—Keegan, included? A No, sir, I did not.

Q The only reason you say that you think that the bill of December 18, 1924, is included in the inventory and that this 3,500 tanned belly centers are those, is because the word "Keegan" is in there? A Yes, sir, that identifies it.

Q Do you know what the word "U. S." means on the next two items? A No, I don't.

Q Did you inquire? A No.

Q Did you find out whether the letters "U. S." referred to a type of belly or to a concern from which the bellies were purchased? A I did not.

Q How did you know that Keegan does not refer to a type of belly rather than the person from whom it was purchased? A I don't know.

Q Yet you are willing to swear that the bellies referred to in the inventory were purchased from Keegan? A That is my opinion; I have simply the date of the invoice and the date of this paper.

Q Do you know how many pounds 3,500 P. E. tanned belly centers would weigh? A I do not.

Q Did you try to find out? A I did not.

Q Do you know that the amount of the invoice of December 18, 1924, is 24,444 pounds? A Yes.

Q And you notice that the bill is $4,100 and some odd? A Yes, sir.

Q Do you think this inventory of 3,400 pounds at a valuation of $2,800 at eighty cents apiece was the same? A Yes, because they returned $1,500 of this purchase.

Q When? A The stub shows.

Q February 11, 1925? A That isn't the date returned, that is the date paid for.

Q When were they returned? A I don't know.

Q Did you try to find out? A No, sir.

Q Is there any way to find out? A By going to Keegan.

Q Will any of their books show? A Other books.

Q Will you find out? A Do you want me to find this out?

Q Yes. A They are in Boston.

Q No, I mean from our books? A The account on the books, of Keegan, does not show any return.

Q I am asking about our books? A I mean that the Keegan account on the Specialty Handle Manufacturing Company books would not show.

Q Does our return book show it? A They got a credit for the return through the cash books at the time they made this payment.

Q Can you tell from our books when the return was made? A I cannot.

Q The invoice, at any rate, was not paid until the 11th of February, was it? A That's right.

Q You included, in making up your figures, that you have given us here, this purchase in the purchases of 1925? A I did.

Q Why? A I took the face of the books and whatever was on the face of the books I included in my statement.

Q But they were not in the books for February? A It is included in the inventory of December 31st, and also as a purchase in February.

Q You thought at the time it was included in the inventory of 1924? A Not when I made this statement, no.

Q When did you make up your mind they were included in the inventory? A During our second examination.

Q Why didn't you include them in the figures? A Because, as I stated, the books are full of fraudulent entries; it is impossible to accept them.

Q Do you mean that? A I certainly do.

Q Yet you say Puder & Puder are correct. Checking the books of the company you have discovered the fraudulent entries? A I am not satisfied; the books are full of fraudulent statements.

Q You have checked up? A Yes, sir; but there are sales that do not occur on the books at all.

Q The truth is you don't want to make up a correct statement? A Not from those records; that's a fact.

Q Don't you remember that when you met Mr. Kasnowitz, the auditor for the company, at the office, that he informed you the books were not to be relied upon? A He did not.

Q Wasn't Mr. Garfinkel present? A At all times.

Q And there were several conferences at which Mr. Garfinkel made this statement? A Oh, yes.

Q And Kasnowitz was there? A Yes.

Q Didn't you turn around to Kasnowitz and say, "You are the auditor of this company. What about it"? A I may have; I don't remember what I said.

Q Don't you remember that? And if you may have, what did he reply? A My recollection is Mr. Kasnowitz faded out of the picture after Mr. Garfinkel told me about the books.

Q Didn't Kasnowitz come to your office in New York? A No, sir.

Q Sure? A I am not quite positive.

Q Didn't you tell him that the insurance companies were not concerned with the income tax feature at all? A No, sir.

Q You never made any statement to that effect to Kasnowitz? A No, sir.

Q Were the insurance companies concerned with the revenues of the United States? A No, sir; they were not.

Q Didn't you tell that to Kasnowitz? A No, sir.

Q Or to Garfinkel? A No, sir.

Q Before Mr. Kasnowitz faded out of the picture, and Garfinkel spoke about the improper entries, what did Kasnowitz say? A He gave me that statement; that is what he said.

Q What statement? A The statement put in evidence here.

Q Where did he give you that statement? A He went out with Mr. Garfinkel and came back with the typewritten statement.

Q So you are the one that got that statement? A Yes, sir.

Q What statement is that? A The statement there (indicating Exhibit D. 23).

Q Didn't he tell you at the same time with respect to these books being kept for income tax purposes? A No, sir.

Q When did Garfinkel tell you that? A I think it was the very next day after I received that statement.

Q Was Kasnowitz present? A I believe he was.

Q What did Kasnowitz say? A I don't believe he said anything.

Q What did you say to him? A I went out.

Q What did you say to him? A I don't think I said anything.

Q He was the auditor, wasn't he? A Yes, sir.

Q Wasn't it the natural thing for you to ask him what it was all about? A I may have.

Q Can't you recollect whether you did or not? A My recollection is that I did not.

Q You ignored him? A Yes, sir.

Q You were not looking for information? A I got it.

Q Did you ask Mr. Kasnowitz or Mr. Garfinkel or anybody to put anything in writing about this income tax? A No, sir.

Q Why not? A I didn't; that's all.

Q You asked him to put something else in writing? A I can't answer that.

Q Wasn't it because the one you got in writing would be favorable and the other would be unfavorable? A I had no such thought in my mind.

John F. E. Wood, re-cross.

By the Court.

Q When Mr. Puder got his percentage of profits—am I right in this—that he took the inventory of December 31, 1923, at $146,000 and he added the purchases and labor for 1924, deducted the inventory of December 31, 1924, which gave him his cost of goods sold; he deducted this from the sales and that gave him the gross profits and the proportion of this gross profit gave him the percentage on the sales of 1924? A Yes, sir.

Q That is the way he figured? A Yes, sir.

Q The effect of decreasing the percentage would increase the cost of goods sold January and February? A Yes, sir.

Q The reduction of the inventory of December, 1923, would tend to decrease the percentage of profit? A Yes, sir.

Q In other words, Mr. Puder took $140,000 odd and the books showed $126,000? A Yes, sir.

Q An increase of the percentage of December, 1924, would do what? A Increase the profits.

Q If there was an increase in the cost of manufacture, such as labor, during 1924, that would tend to decrease the percentage of profit? A Yes, sir.

Q When you gave us your book values of March 1, 1925, of $81,000 odd and your book value of December 31, 1924, $81,000 odd were those arrived at by taking all the items on the books? A Yes sir.

Q You assumed the books to be correct? A Yes, sir.

John F. E. Wood, re-cross.

By Mr. Lane.

Q You assumed the books to be correct and used those figures? A When I made that statement.

Mr. Vanderbilt: I desire to offer the first and second reports of Mr. Wood and the general ledger used.

Mr. Lane: I object to it.

The Court: You called for it.

Mr. Lane: Because he had been using it.

The Court: They were called for by the plaintiff and I think they are entitled to have them go in.

Mr. Lane: Exception, particularly and especially to the first report, the report used by the witness to read from. I had a right to look at it without offering it in evidence. He was reading from it.

Mr. Vanderbilt: I am anxious to avoid error and withdraw the offer of the first report and content myself with the second report and the ledger.

(The report of the Accountant Wood dated March 30, 1925, is received in evidence and marked Exhibit D. 29.)

(The ledger is received in evidence and marked Exhibit D. 30.)

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: That is the one you called for.

John F. E. Wood, re-direct.

Re-direct examination by Mr. Vanderbilt.

Q Have you any record of statements which were made by the Specialty Handle Manufacturing Company at any banks? A Yes, sir.

Q Will you produce them? A (Witness produces statement).

Q How were these obtained by you? A Why, they were sent to me through the mail.

Q With that letter? A With that letter attached.

Mr. Vanderbilt: I offer them in evidence.

Mr. Lane: I object to them as immaterial and irrelevant. They are statements of assets and liabilities of December 21, 1922; December 31, 1920; and December 31, 1921.

Q Did Mr. Garfinkel get these at your request? A He did.

Q Did he submit them to you as part of your examination of the books or did he have them furnished to you as part of the examination? A I asked him to get them for me and they were received by me through the mail.

The Court: I will sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Do you know whether or not there were any subsequent bank statements later than the ones mentioned there? A I don't recall.

Emil Garfinkel (for defendants), direct.

Mr. Vanderbilt: I desire to offer in evidence the examination under oath marked Exhibit D. 1 for identification.

Mr. Lane: I object to that omnibus offer.

The Court: You may offer parts which are material, but I imagine many immaterial statements are contained in it.

Mr. Vanderbilt: I withdraw the offer.

EMIL GARFINKEL, recalled in behalf of the defendants.

Direct examination by Mr. Vanderbilt.

Q Mr. Garfinkel, you knew, did you not, that in the period before the fire there were large amounts withdrawn from the deposits in the banks of your company by you, and those deposits charged to merchandise? A I didn't.

Q Or that there were items charged to payroll or labor which were withdrawn by you? A I didn't.

Q Were you asked these questions and did you make these answers in the examination under oath—

Mr. Lane: I object to this because it is not proved that this is the examination under the terms of the policy. Mr. Garfinkel is not the insured within the meaning of the policy, in the first place; in the second place it took place after the assignment for valid consideration to the plaintiffs in this suit, and any statements made by Mr. Garfinkel are not binding upon this plaintiff.

The Court: He has an interest in this claim.

Mr. Lane: Of course he has, but I am assuming that this testimony is being offered for the purpose of proving a false statement —a false oath under the terms and conditions of the policy.

The Court: I think it is admissible in its application. Its effect may be different.

Mr. Lane: My objection is deeper than that. There is no proof that Mr. Garfinkel is, within the meaning of the policy, the insured, the policy to be strictly construed; and it is fraud or false swearing by the assured.

The Court: He swore to the proof of loss?

Mr. Vanderbilt: He did.

Mr. Lane: Assuming that to be true—

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

By Mr. Vanderbilt.

Q (Reading.) "Question: What became of the money that was drawn out of the firm or out of the corporation in loading the figures of expense? Mr. Newman: What period are you speaking of? Question: Any period at all within two years of the fire. Answer: Well, there is a difference. Question: Did that go into your individual account? Answer: Not exactly. Question: When you say 'Not exactly,' tell me what you did with it. Answer: Well, how can

I account to you for money I withdrew two years ago? I don't know what I done with the money at the time. Question: Oh, yes, you do. You were shown by me a large number of checks which were checks of the Specialty Handle Manufacturing Company drawn on two different bank accounts, signed by you and endorsed by you to the aggregate of several thousands of dollars, which you know and I know were not business expenses or business charges of any kind. Now, where did you put that money? A I can't give you that offhand. I couldn't tell you what happened two years ago, what I done with the money. Question: Where is your personal check book? Answer: I needed it at the time and I used it. Question: Did you use it for yourself or use it for the company? Answer: I possibly bought some property on my own name. Question: Did you? Answer: I did. Question: Where? Answer: Right next to the buildings over there where I had been before. Question: You drew that money out in small sums without charging it to any real estate account? Answer: It all practically belonged to me, most of it, so I didn't think I had to account to anybody for it." Do you remember being asked those questions and giving those answers in the examination under oath? A Yes, sir.

Q They were true at that time? A Yes, sir.

Q And they are true now? A Yes, sir.

Mr. Lane: What is the purpose?

Mr. Vanderbilt: I asked him before if he did it and he said, "No." Now, I confronted him with the statement in the examination under oath.

Mr. Lane: I move to strike out the testimony on the ground that it is not contradictory to anything the witness has sworn to.

Mr. Vanderbilt: It is contradictory of the very first statement. My first question was whether he had withdrawn large sums of money and charged it to labor.

The Court: I will allow it. He asked him if he knew that large sums had been withdrawn by him and charged to merchandise or not.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q I show you Exhibit D. 8, check No. 1184, July 24, 1924, and ask you if you endorsed that check to I. Friedman? A No, sir.

Q Who wrote that? A I don't know.

Q Do you know whether or not it was written by I. Friedman? A I don't know.

Q I call your attention to the face of the check where it says, "I. Friedman Leather Company." Did you write the words "leather company"? A I made the whole check.

Q Did you write the words "leather company" after the check came back from the bank—after the check came back to you from the bank? Did you write in after "I. Friedman" the words "leather company"? A I don't know.

Q Do you recall being asked in the examination under oath (page 65) this question and giving this answer: "Question: I show you a check for $1,500 of June 18, 1924. That is one of the batch of thirty-five. Look at it, please, and do you say that represented an actual purchase of merchandise from Friedman, or did you

just use his name? Answer: I couldn't say what it was. Question: Here is another one made out to I. Friedman Leather Company. First you wrote it out 'Friedman' and after it came back from the bank you put 'I' and 'Company' after the name 'Friedman,' you changed that check after it came back from the bank and charged it to merchandise, didn't you? You wrote out 'Friedman.' Did you sign your name there? Answer: Yes, sir. Question: And that check came back from the bank endorsed 'I. Friedman' and after the money was drawn out you put 'Company,' there, didn't you? Answer: I couldn't tell you." Do you remember being asked those questions and giving those answers? A Yes, sir.

Q Were those answers true at the time? A The best I knew.

Q Are they true now? A The best I know.

Q You were asked: "Question: Look at it. It shows so plainly there that anybody who was half blind could see it. The bank is not going to pay on an endorsement made out to 'I. Friedman Leather Company' when the endorsement reads 'I. Friedman.' Now, what did you do with that money? Answer: I suppose I used it." Did you make that answer to that question? A If it is there I must have answered that.

Q Are you familiar with the account of Kasnowitz & Brother with the Specialty Handle Manufacturing Company? A Fairly.

Q Do you know of a group of some thirty-five checks which were all fictitiously charged to that account? A I don't know how many.

Q A considerable number of them? A I don't know how many.

Q Do you know there were more than fifteen or twenty? A I don't think so.

Q Can you tell us in round numbers how many there were that were fictitiously charged to Kasnowitz & Brother? A There were some, but I don't know how many.

Q In the examination under oath were you asked these questions and did you make these answers : (Page 67): "Question: Now, I find here, among these thirty-five checks the following: 'Kasnowitz & Brother, $2,000, January, 1925,' two months before the fire; 'Kasnowitz, May, 1924, $911.20; Kasnowitz, August, 1924, $1,894; January, 1925, Kasnowitz, $2,016.58; Kasnowitz, October 14, 1924, $1,500; Kasnowitz & Brother, note $3,550, charged to merchandise; Kasnowitz, $3,073.87; Kasnowitz, $1,000; Kasnowitz, $63.22; Kasnowitz, $2,505.30; Kasnowitz, $1,963.85; Kasnowitz, $5,033.88, through the Corn Exchange Bank, East Side Branch. Kasnowitz endorsement on a check made to bearer, $3,500.' Mr. Newman: I think it would be a good idea to put the dates in the record. Question: Kasnowitz, February, 1923, $3,428.70; Kasnowitz, $1,000, January 22, 1923. These checks, as I have aggregated as they went along, exceed $28,000. Do they represent merchandise purchased? Answer: I couldn't tell you that, Judge. Question: Have you included in your claim merchandise you claim you purchased from Kasnowitz? Answer: I included in my claim the exact inventory took at that time, from whom they came from I couldn't say. Question: What are you trying to do? Evade my question? I ask you again if you include in your claim any merchandise you say you got from Kasnowitz. Answer: I couldn't say that. I don't know what I put in

merchandise. Question: Will you say you did not? Answer: How can I say one way or another? Do you want me to tell the truth? Then I can't tell you that." How long ago did Kasnowitz & Brother go out of business? A He went out a short while and then he was back again.

Q When did he go out of business? A About four years ago.

Q How long did they stay out of business? A A very short while.

Q How long? A In fact, he wasn't out completely; he done business without any business place, but he done business.

Q Then he didn't go out of business? A They went out of business; I really didn't keep track, but he done some business anyhow.

Q Did they go out of business or not? A They give different places.

Q Then were they out of business? A Yes.

Q How did you have all these transactions with Kasnowitz & Brother if they were out of business? A They was buying and selling without having a permanent place.

Q They didn't have any place of business, but they were in business? A Yes, sir.

Mr. Lane: What was the purpose of reading all that testimony? You have just read to the witness this matter from the book without asking a question based on it.

Q Are the answers that you gave to the questions true? A The best I could.

Q Were they true at the time you gave them?

Mr. Lane: I object on the ground that it does not tend to contradict anything that the witness has said.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Lane: Counsel also implied in his question to this witness that there were some thirty-five Kasnowitz checks. There were thirty-five checks in his hand, from which he picked out some Kasnowitz checks; there weren't thirty-five Kasnowitz checks at all.

Q You know, do you not, Mr. Garfinkel, that there were approximately $20,000 of these Kasnowitz transactions charged up to merchandise improperly and incorrectly on the books? A I know there was some of them charged up; I don't know how many or how much.

Q Do you recall being asked this question in the examination under oath and making this answer (on the bottom of page 74): "Question: You did use his name to load your merchandise records. I show you about eighteen or twenty thousand dollars worth of checks covering a period of years which are not correctly charged to the accounts they appear in. Answer: Yes, sir. Question: Those checks were not right transactions, were they? Answer: Not at all. Question: You used his name for your purposes? Answer: Yes, sir. Question: He put his endorsement on for your purposes? Answer: I don't know how you would call that. Question: Did you put his endorsement on for your purposes or did you get him to endorse them and send the checks back? Answer: It was given to

me probably for some reason or other. Question: And he gave you the money back? Answer: Yes, sir. Question: Are you prepared to say this $1,000 was not in the same class? Answer: I couldn't tell you that." Were you asked those questions and did you give those answers?

Mr. Lane: I object to that on the ground that it does not contradict anything he has testified to.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Were they true at the time? A The best I knew.

Q Are they true now? A The best I know.

Q Were you asked to produce the income tax returns of the corporation in the examination under oath? A I don't recall it.

Q Did you refuse to produce them? A It was up to my counsel.

Q I ask you if this question was asked you in the examination under oath (page 76): "Question: Weren't you to get some income taxes for me or take that under advisement? Mr. Newman: No, but I am not prepared to say we will give you that. I wouldn't say you could use those. You do not represent the government." Did you produce your income tax returns?

Mr. Lane: I object to that as immaterial whether he produced it or not.

The Court: It shows the request to produce them.

Mr. Lane: No request upon him by the insurance companies. The question is whether he would or would not produce them. No request was made of a formal nature.

The Court: I will allow it.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: No, I did not.

Mr. Lane: I direct the Court's attention to the fact that the record says: "Weren't you to get some income tax returns for me, or take that under advisement"? Only that statement.

The Court: You might ask him whether he was requested to produce them.

Q Weren't you asked in the examination under oath to produce the income tax returns? A They were speaking about them; I don't know whether it was a request or not.

Q You heard them being discussed and you knew Mr. Levy wanted to use them in the examination under oath? A I think it was up to my counsel at that time.

Q You put it up to Mr. Newman? A Yes, sir.

Q And he declined to produce them, or have you produce them; is that a fact? A I didn't produce and I wasn't asked no more.

Q You didn't produce because Mr. Newman told you not to? A At that time, yes.

Q Do you recall two checks, one for $1,000, and the other for $1,500, of Kasnowitz? A Of what date?

Q No. 7125, March 5th; and No. 1674, February 26th, $1,000. Mr. Newman, have you those? Do you remember from those dates I have given you? A I may have in my recollection.

Q One of them was dated February 26th for $1,000; check No. 1674; another was $1,500 dated March 5th, check No. 7121? A It probably was a loan or an exchange, or something.

Q Do you know how it was recorded in your books? A I don't know.

Q Do you know whether or not it appears credited to merchandise in the books of the Specialty Handle Manufacturing Company? A I don't know.

Q Do you know that those two items were disregarded by Mr. Puder when he made up his statement? A I don't know.

Q Haven't you gone over the matter with Mr. Puder as to what he put in and left out in his statement? A No, I left that entirely to him.

Q I refer again in connection with one of my earlier questions, to the bottom of page 112. "Mr. Levy: We have asked for income tax returns which you were going to take under advisement. Mr. Newman: I will state for the purpose of the record that I declined to produce them. Question: Your company was required to make a capital stock tax return to the government? Answer: We certainly did. Question: You made those returns? Answer: Yes, sir. Mr. Levy: We ask for the production of those returns. Mr. Newman: We decline to produce them." Do you recall those questions being asked and the statements of your counsel? A Yes, sir.

Q And now you remember you refused to produce your income tax returns and Federal capital stock tax returns? A Yes, sir.

Mr. Lane: How could he produce them? They were filed in Washington.

Q Can you tell us when it was, Mr. Garfinkel, that Kasnowitz & Brother went out of business?

Mr. Lane: I object to that as already having been asked.

Q On page 22 there appears: "Question: Who is E. Kasnowitz & Brother? Answer: That is on the books we have that; that is my brother-in-law. Question: What is their business? Answer: It used to be leather business. Question: When did they get out of the leather business? Answer: A couple of years now. Question: How long ago? Answer: About two years ago. Question: What are they doing now? Answer: I don't know that they are doing anything just now. Buying and selling, something like that." Did you give those answers in the examination under oath? A Yes, sir.

Q Were they true? A Yes, sir.

Adjourned until Thursday, March 10, 1927, at 10 o'clock, A. M.

FOURTH DAY.

Thursday, March 10, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

EMIL GARFINKEL, resumes the stand.

Direct examination (continued) by Mr. Vanderbilt.

Q Mr. Garfinkel, were you at your place of business throughout the months of January and February, 1925? A Yes, sir.

Q You were there all the time in January and February? A Not all the time; in and out.

Q As a matter of fact, weren't you in Florida a good part of that time? A Yes, I was away for a couple of weeks.

Q When were you in Florida? A In January.

Q About how long in the month of January? A Between the 15th and the 30th.

Q In the month of February did you go away from the plant at all? A Probably a day or so.

Q Did you go away in March? A No, sir.

Q Didn't you go to Montreal? A In February.

Q When? A About the 26th or 27th of February.

Q When did you return? A After the fire.

Q When? A Sunday.

Q What date in March? A Sunday; that was the 1st of March.

Q Were you at home at the time of the fire? A No, sir.

Cross examination waived.

DEFENDANTS REST.

PERCY O. VALENTINE, recalled in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Newman.

Q You have been sworn and you have testified you are a photographer and you took these photographs (handing papers to witness). A These six.

Q You took these six pictures, did you? A Yes, sir.

Q Will you tell us when you took them? A My record shows April 18, 1925.

Q Looking at the first picture, will you tell us what that represents? A It represents the corner department.

Q What floor? A Fourth floor.

Q And it is so marked? A 113-115 Railroad avenue.

Q It is so marked? A It is so marked.

Mr. Newman: I offer it in evidence.

(Photograph of the corners department, fourth floor, 113-115 Railroad avenue is received in evidence and marked Exhibit P. 62.)

Q I show you this picture and ask you what that represents? A The second floor of 121-123.

Mr. Newman: I offer it in evidence.

(Photograph of second floor 121-123 Railroad avenue is received in evidence and marked Exhibit P. 63.)

Q I ask you what this third one represents? A Fourth floor from the bridge.

Q On what street? A On Railroad avenue.

Q What street number? A The same number, 113-115—the middle section.

Mr. Newman: I offer it in evidence.

(Photograph previously marked Exhibit P. 50 for identification is received in evidence and marked Exhibit P. 50.)

Mr. Newman: I ask you what this photograph represents?

The Witness: The first floor of 125-131 Railroad avenue.

Mr. Newman: I offer it in evidence.

(Photograph of the first floor of 125-131 Railroad avenue is received in evidence and marked Exhibit P. 65.)

Q What does this photograph represent? A Fourth floor of 117-119 Railroad avenue, that is the corner department.

(Photograph of fourth floor 117-119 Railroad avenue is received in evidence and marked Exhibit P. 66.)

Q What does this picture represent? A The stockroom in the rear of 125-131 New Jersey Railroad avenue; the fourth floor.

Mr. Newman: I offer it in evidence.

(Photograph previously marked Exhibit P. 49 for identification is received in evidence and marked Exhibit P. 49.)

Cross examination waived.

Mr. Newman: I offer in evidence Exhibit P. 51 for identification representing premises 129-135 New Jersey Railroad avenue.

(The same is received in evidence and marked Exhibit P. 51.)

Mr. Newman: I offer in evidence this photograph which represents the exterior of the building 113-127 New Jersey Railroad avenue.

(The same is received in evidence and marked Exhibit P. 67.)

Mr. Newman: I offer in evidence this photograph representing the condition of the premises 125-127 New Jersey Railroad avenue.

(The same is received in evidence and marked Exhibit P. 68.)

ABE DOLID, recalled in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Newman.

Q I call your attention to the original inventory offered in evidence in this cause marked Exhibit P. 17, which refers to 3,500 tanned belly centers, Keegan, and ask you what they are? A These were tanned belly centers. The word "Keegan" does not mean anything. It indicates

a certain tannage—a certain quality of leather. These bellies were tanned two or three months before we took stock.

Q They were tanned and in the finished condition? A Yes, sir.

Q Did that item represent anything of Keegan's material that was delivered about the latter part of December, 1924? A No, sir, that lot of Keegan bellies came in after we were through stocktaking about the 28th or 29th of December, and it takes about three weeks to bring raw leather into that state as these 3,500 belly centers were.

Q And the stuff that came in on the 28th was in the raw state and was not included in this inventory? A No, sir.

Cross examination by Mr. Vanderbilt.

Q You mean to say that the word "Keegan" is the name of a certain kind of leather or tannage? A Yes, sir.

Q And not the name of the dealer? A Yes, sir, but we call our tannage certain kinds: hard tannage and soft tannage. This kind we call "Keegan" and another "U. S. Leather."

Q In other words, you call your tannage after the concerns you buy it from? A Not necessarily.

Q I mean, you commemorate the names of the men you buy leather from— A These names are only for my own information.

Q They do not indicate the man that the leather came from? A No, sir.

Q U. S. tannings do not come from the U. S. Leather Company, or Keegan's from the Keegan Leather Company? A They may and they may not.

Q Is Keegan a jobber or a tanner? A He is, as far as I know—

Q Do you know? A I don't.

Q Don't you know he is a leather merchant in Boston—a jobber? A I know he is a leather merchant.

Q Do you know he is a jobber and not a manufacturer? A I don't.

Q Would you be surprised to learn that you have been naming your leather after a jobber? A That's possible.

Q These names: "Keegan" and "U. S." are generally used in the trade, or confined to you and your associates in the Specialty Handle Manufacturing Company? A I don't know whether others use it; we use it.

Q In other words, these are terms you have devised in the Specialty Handle Manufacturing Company and not terms used generally in the trade? A They are only for my own information.

Q Not used by your associates; just by you alone? A Exactly.

Q How did you come to designate leather as "Keegan" regardless of whether it came from Keegan or not? A We usually buy from him a certain grade of leather adapted for that tannage.

Q So if you bought the same kind of leather from John Smith and you tanned it, you would call it "Keegan?" A If it would be the same quality of leather as Keegan.

Q But that isn't generally used in the trade? Yes, sir.

Q Is that true of the term "U. S.?" A Exactly.

Q You term it "U. S." whether it comes from the U. S. Leather Company or not? A Exactly.

Q How long have you been following that practice of designating Keegan as Keegan leather whether it comes from Keegan or not? A We have always done it.

WALTER A. ENGLAND, recalled in behalf of the plaintiffs.

Mr. Lane: I am going to attempt, if the Court please, to qualify these figures, or, rather, to put these figures in.

Mr. Vanderbilt: Is this the sheet that was prepared by Mr. England over night?

Mr. Lane: Yes.

Mr. Vanderbilt: We admit it.

Mr. Lane: There are other things I want to prove.

The Court: Can we agree on the form?

Mr. Lane: I think so.

Mr. Vanderbilt: There is no use getting figures in that we don't want the jury to use.

The Court: I wrote out a suggestion on a memorandum. Is that agreeable to counsel.

Mr. Vanderbilt: The first and second items I think cover it, but I don't see that we need to go into the question of percentages.

The Court: If they fix the amount of loss by fire, that applies not only to these defendants, but other insurance companies. If you agree, they can render a verdict, and if

they fix the amount of damage by fire, you take the percentage of these policies sued on on the entire amount of the policies, and that would fix what is due from these defendants. Mr. Lane suggests that they are entitled to interest.

Mr. Lane: I shall move to amend the complaint by inserting interest, and I am going to suggest to the Court that the jury be instructed to disregard the question of interest, and the Court deal with it when the verdict comes in.

Mr. Vanderbilt: I understood our object was to try to simplify things. The Court can appreciate it would be to my advantage to complicate things, but I may want to come back and simplify. I don't want to burden the jury with percentages. I think the jury, when they get that far, would rather figure interest than percentage.

The Court: If you agree on it, if the jury finds for the plaintiff, they fix the amount of damage by fire and the Court shall fix the amount of verdict to be rendered against the respective defendants in this suit. If you want to do that, I am perfectly willing, provided it is agreeable to both sides.

Mr. Lane: The difficulty is that it changes the whole aspect of the trial. If it is to be done, further testimony has to be given the Court, because there is no testimony in concrete form as to the total loss by fire.

The Court: It has been testified that they have agreed to the amount of loss due to the fire. The companies said they know there was so much damage to machinery and fixtures, and there was so much damage to

goods in sight. That is in the record now. Then, I would instruct the jury if they bring in a verdict for the plaintiff that they start off with that figure.

Mr. Lane: There is no evidence before the jury as to the entire loss of goods out of sight. That is what I am trying to get out by this witness.

Mr. Vanderbilt: It has been testified to by Mr. Puder and the seven or eight proofs of loss.

The Court: It is set up in the schedule as $103,000.

Mr. Lane: It is in the schedule but not in the proofs. Your Honor is right as to the figures as to the goods lost out of sight, and the admitted amount of loss is $43,666.94, or a total loss of $147,107.38. That is the total fire loss. All of the insurance policies total $168,000; the policies in suit total $62,500, and assuming that the loss is as we claim, the verdict of the jury under your Honor's idea would be 125/336ths of $147,107.38; or the amount of our claim against these particular companies of $54,727.44. If the jury should find that the total loss of goods out of sight was less than $103,440.44, it would reduce the amount of the total loss, and in this case, we would be entitled to 125/336ths of the total loss. I have made that statement as to those figures, but I do not recollect whether there is any proof of the figure $103,440.44. I am talking about the proofs of loss.

The Court: I got that from Mr. England's original statement and from Mr. Puder's testimony where he fixed the amount

of stock on hand. I deducted the value of the stock in sight and it gave me that difference.

Mr. Lane: In the first place, I offer this schedule which is admitted.

(The schedule of loss is received in evidence and marked Exhibit P. 69.)

Mr. Vanderbilt: We have no objection except to the last column which would only be confusing and not helpful. We will let all to the left of the last column go in.

The Court: What is left after deducting the admitted loss from the claim loss?

Mr. Lane: It saves computation by a jury.

Mr. Vanderbilt: I suppose it is offered so that the jury do not have to figure anything—

The Court: I think that you agree if the jury should find the total loss we ought to cut off the last column because you have the total claim, the amount admitted. Anybody can take those figures and compute them. It has the disadvantage that it gives one side's figures and not the other side's figures.

Mr. Lane: They have no figures. If they have, I have no objection to their going in.

The Court: If it is objected to by Mr. Vanderbilt I will insist that it be taken off. You are entitled to show what your claim is and what they admit; the other is by way of argument.

Mr. Lane: Am I not entitled for the assistance of the jury to have an expert accountant compute it?

The Court: I don't think so. You are asking for the admission of this schedule.

Mr. Lane: I can ask the witness to figure it and put it in in that shape.

The Court: You can have him testify to it and get it on the record.

Mr. Vanderbilt: This is going in on the theory that we are not going to ask the jury to find according to the way your Honor suggested last night.

The Court: My suggestion is that they find the total amount of loss by fire and the Court fixes it.

Mr. Lane: That is a new suggestion. That means that the jury's verdict under no circumstances would be in accord with the pleadings.

The Court: It is in the form of a special verdict.

Mr. Lane: It would not be in accordance with the pleadings at all. According to that theory of the case, assuming our figures to be correct, we would be entitled to $147,107.38.

The Court: I wrote out "Stipulated and agreed between the parties that if the jury return a verdict in favor of the plaintiff they shall fix the amount of damage suffered by the Specialty Handle Manufacturing Company due to the fire, and there shall be assessed against the defendant in this suit 125/336ths per cent. of said amount with interest from December 29, 1925; that the

Court shall apportion that amount among the defendants in accordance with the terms of the policies sued on and apply the 90 per cent. co-insurance clause to said apportionment, if applicable." It is a matter of law how that should be figured out.

Mr. Lane: I agree to that.

Mr. Vanderbilt: We agreed to that from the beginning.

Mr. Lane: 125/336ths is my figure reached today. That is subject to your Honor's calculation.

The Court: Why not say the terms of the policy and what is the amount of the policies sued on?

The Witness: $62,500; those figures are right.

By Mr. Lane.

Q Is my figure 125/336ths right? A I think you figure your apportionment just vice versa to mine. On the relation of figures there it would be $62,500 to $168,000.

Q As 62.5 is to 16.8? A Yes.

Q That comes down to 125/336ths? A That is only applicable to the physical damage under a computation faced without co-insurance clauses.

By the Court.

Q Six hundred and twenty-five over 1,680? A That would be—but not the proper condition for applying a verdict.

By the Court.

Q But the damage by fire—

By Mr. Lane.

Q You mean if you go and apply the 90 per cent. co-insurance clause you have to add to the $168,000 the $3,000 which the companies carry as co-insurance. That is what you mean by not being the proper percentage? A Right.

Q For the purpose of the record, will you make for me the computation telling me the total loss claimed the amount agreed upon subject to the provisions of the policy, and the balance which is in dispute?

Mr. Vanderbilt: I don't think that is relevant, your Honor, to tell us what the balance in dispute is. I don't think that is part of the record.

The Court: Objection sustained. Your claim is—

Mr. Lane: Our claim and the difference between the amount which has been agreed upon subject to the terms and conditions of the policies and the amount of our claim.

The Witness: The amount of the total claim is $147,107.38, of which there has been agreed to as damaged on an item of stock in sight, $22,523.83, and an agreed amount of damage to machinery of $21,143.11, making a total agreed amount of $43,666.94, which, of course, is included in the total claim of $147,107.38. Of the insurance companies—

Q The difference between those two figures is what? A The difference between those two figures is the item in dispute of $103,440.44.

Walter A. England, cross.

Cross examination by Mr. Vanderbilt.

Q Will you refer to Exhibit D. 16 and tell us from that what was the original item in dispute based on those figures first submitted to the companies?

Mr. Lane: I object to that as not proper cross examination.

Mr. Vanderbilt: I think if counsel has a right to read into the record all his figures—

The Court: He has made a mathematical calculation for them; he is not called upon to do that for you.

Mr. Vanderbilt: I call him as my witness.

By Mr. Vanderbilt.

Q How much higher is the amount under Exhibit P. 16 than it is under the proofs of loss which you have just been testifying to?

Mr. Lane: That, I submit, appears by the document itself and it is not required in a mathematical calculation.

Mr. Lane: That is exactly the same process of subtraction he indulged in for Mr. Lane.

The Witness: I had to answer that question on a comparative basis; I would have to have the schedule of total stock in sight as computed at the time.

Q You have to have the proof of loss from which the figures were made up? A This paper

Walter A. England, cross.

has no bearing on the proofs of loss and is no part thereof.

Q It is the first paper you furnished the insurance companies? A Yes, sir.

Q And it shows a total stock at March 1, 1925, of $161,320.80? A Yes, sir.

Q On the proofs of loss as submitted, what is the total stock shown? A The total sound value of the stock on the date of the fire is shown in the proofs of loss as $153,979.48.

Q And it is the difference between those figures that I want, isn't it?

Mr. Lane: $8,000.

The Witness: The difference between the figure on this schedule and the figure on the proofs of loss?

Q Yes. A That is a matter of computation.

Q Like all the figures you gave Mr. Lane.

Mr. Lane: About five or six per cent.

Mr. Vanderbilt: I don't want counsel to testify.

Q And you are unwilling to compute that? A Yes, sir.

PLAINTIFFS REST.

DEFENDANTS REST.

The Court: It is stipulated and agreed between the parties that if the jury return a verdict in favor of the plaintiffs they shall fix the amount of damage suffered by the Specialty Handle Manufacturing Com-

pany due to the fire, and there shall be assessed against the defendants in this suit 625/160 per cent., of said amount with interest from December 29, 1925.

That the Court shall apportion that amount among the defendants in accordance with the terms of the policies sued on and apply the 90 per cent. co-insurance clause, if applicable to the amount of damage by fire.

Mr. Lane: I move, if the Court please, to amend the complaint by inserting a charge for interest and also ask the Court to reserve the question of interest until the verdict is rendered.

The Court: I have reserved that. The only question is as to the amendment. I think I will deny the motion at this time. Is the stipulation satisfactory to both sides?

Mr. Lane: In order to be sure, as your Honor has denied the motion to amend the complaint, I want to at least amend the complaint so as to permit me to recover interest from the date of bringing suit.

The Court: That is in the stipulation, as I understand it, with interest from December 29, 1925.

Mr. Lane: I move, if the Court please, as a matter of law, to strike out the affirmative defenses upon the ground that there is no evidence to go to the jury on the affirmative defenses set up in the answer.

The Court: I will deny the motion.

Plaintiffs' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Vanderbilt sums up for the defendants.

Mr. Lane sums up for the plaintiffs.

COURT'S CHARGE TO JURY.

The Court charges the jury as follows:

SMITH, *J.*

Members of the Jury: This action really consists of six suits against six different insurance companies. The cases are tried together for convenience because they all involve the same loss. They are brought to recover a loss which is claimed to be due to damage by fire to machinery, stock and merchandise. The fire occurred on March 1, 1925.

The property insured was owned and insured to the Specialty Handle Manufacturing Company, which had a plant located on New Jersey Railroad avenue. There is a diagram here in evidence that shows just how the property is divided.

The Specialty Handle Manufacturing Company on May 18, 1925, assigned its claim to the Public National Bank of New York to secure a loan. If the plaintiff is entitled to your verdict, it is entitled to be paid the loss which the Specialty Handle Manufacturing Company suffered by reason of this fire and the amount for which the defendants here are liable, subject to what I will have to say as to the form of your verdict.

The parties have agreed as to the sound value of the machinery and stock of merchandise which remained in sight after the fire. As to the stock

of merchandise, the sound value was placed at $50,539.04, and the actual loss thereon and thereto has been agreed upon as $22,523.83. The sound value of the machinery and fixtures covered by the insurance was $36,094.75, and the loss thereon and thereto has been agreed upon as $21,142.11. The defendant companies here therefore admit that the loss by fire was $43,666.94. They, however, do not admit that they are obligated to make payment of that loss.

Now, as to your duties, gentlemen. You are here to decide facts. You are the judges of the facts in this case. My duty is to charge you and tell you what the rules of law are which should govern you in determining the case and in arriving at a verdict. Therefore you, being charged with the determination of the facts, will rely upon your own recollection of the evidence and the facts as you find them and what you find from the exhibits in the case. The testimony as you have heard it on the stand here is what you will use in passing upon this case, and the exhibits will be given to you to take with you. You are the judges of the evidence and the weight of the evidence.

The burden of proof is upon the plaintiff. It must establish its case by a fair preponderance of the evidence, that is, the evidence must weigh in its favor in order for it to be entitled to your verdict.

The dispute as to the amount of loss is over the stock of merchandise destroyed out of sight. That is a phrase which you have heard used. It is distinguished from stock of merchandise where you can see a part of it, but where it is destroyed out of sight so you cannot tell what it is, you do not know from a physical examination what has been destroyed.

The plaintiff must prove what was destroyed by this fire in order to recover for such merchandise in this suit, that is, it must prove what was destroyed out of sight; it must prove the amount or the quantity, and the value.

The policy itself provides for fixing the assessment of the damage in this way, that is, the fixing of the value of the property damaged and destroyed. It is on the second page of the policy, double lines one and two: "This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality."

Cash value is often referred to as an amount which a buyer, willing to buy but not obliged to, will buy for in cash; and what a seller, willing to sell but not obliged to, will sell for. That is not a mathematical computation but a definition. It means that a person has goods for sale in the regular course of business that the buyer who does not have to buy at that moment wants to buy but is not obliged to, is willing to pay for them when he sees them.

The best evidence as to the quantity and value of merchandise would be a physical inventory taken just before the fire on March 1, 1925. Unfortunately, we haven't this. That was not done, nor would it be expected that it be done exactly at that time. The plaintiff, however, submits

testimony and documents here to prove an inventory taken December, 1924. Naturally, there were changes in this inventory between then and March 1, 1925. To determine this change the plaintiff submitted the books of the Specialty Handle Manufacturing Company and the testimony of its accountant, Mr. Puder.

The method he adopted was this: He took the inventory of merchandise as of January 1, 1925, this inventory of December, 1924, amounting to $150,093.50; he added the purchases of merchandise for January and February, amounting to $43,237.33; he added the labor of January and February, amounting to $39,813.37, and arrived at a total of $233,144.28. The accountant says that the cost of the goods sold from January 1, 1925, to March 1, 1925, which of course must be deducted because they were not there on March 1st, was $79,164.80 and that therefore there was left on hand March 1, 1925, a stock of merchandise valued at $153,979.48.

As I have said, the parties have agreed as to the sound value of this stock in sight at $50,-539.04. We therefore have on the plaintiff's claim, based on Mr. Puder's figures of the difference, stock on hand March 1, 1925, which was destroyed out of sight as $103,440.44. Mr. Puder took as the cost of goods sold and withdrawn from the plant between January 1, 1925, and March 1, 1925, the sum of $79,164.80.

As I have said, to arrive at this sum he had to first take the sales which he took from the books of the company, and deduct the profits, in order to ascertain the cost of the goods sold. He could not ascertain the profit on each item of the goods sold; it would be impossible to do that.

The sales did not each carry the amount of profit as distinguished from the cost. Mr. Puder therefore set about ascertaining the percentage of profit that the Specialty Handle Manufacturing Company made on its sales, that is, the percentage of profit in 1924 to be used as a basis to apply to this $79,000 odd in sales made in 1925.

He claims he ascertained it in this way: He took the inventory of December 31, 1923; he added purchases and labor for 1924; he deducted the inventory of December 31, 1924, which gave the cost of goods sold; he deducted that from the sales and that gave him the gross profit; the propriation of this gross profit to the sales gave him the percentage of profit on sales for 1924, which he applied to the sales for January and February, 1925, that is he deducted this percentage from the sales of January and February and arrived at the cost of goods sold in these months, which was, as I stated, $79,000 odd.

In order to obtain this ratio of profit on sales, Mr. Puder took as the inventory of December 31, 1923, the figure of $146,838.48. I am calling that figure to your attention because the inventory he says was arbitrarily reduced to $126,402.20, but he took the other figure because it represented the physical inventory taken December 31, 1923. You will recall there was evidence that differed as to those inventories.

Mr. Wood, an accountant who was produced by the defendants, testified that taking the inventory of December 31, 1923, at what it appeared on the books, not taken physically, but as shown on the books, $126,402.20, and auditing the books without questioning the propriety of any items, that is, taking them at their face value, that would show that there should be stock of mer-

chandise on hand at a book value of $81,842.91, as against Mr. Puder's figure of $153,979.48, a difference of approximately $72,000. That is, the books as audited by Mr. Wood, assuming them to be correct, that is, at their face value, and the books as audited by Mr. Puder correctly, and using the higher inventory, produces a difference of $72,000. Mr. Wood admits taking the smaller inventory reduces the book value of the stock on hand March 1, 1925. He also admits there are many false items in the books; Mr. Puder claims to have eliminated them.

You are not bound by the testimony of the experts. I am not casting reflections on them, but you have the duty of finding out the loss in this case, not they; they are giving you the benefit of their research, their opinions, their advice; but you are not bound by their testimony nor are you bound by the books. Your duty is to determine the amount of damage done by the fire and the value under the terms of the policy as I gave them to you. The books are here in evidence. You are the judges of the credibility and weight of the evidence, as I have said, and you may, if you find that the books are untrustworthy and lacking in credibility, deny them as proper proof of the facts.

The plaintiff admits improper entries and false entries, but claims that was done to reduce the income tax and that they do not in effect increase the book value of the stock of merchandise on hand March 1, 1925. The inventories of December 31, 1923 and December 31, 1924, and the accounts for the year 1924, are the determining factors in arriving at the percentage of profit to be deducted from the sales of January and February, 1925.

The decreasing of this percentage of profit tends to increase the cost of goods, and the smaller inventory used by Mr. Woods, tends to decrease the percentage of profit. If the inventory of December, 1924, were increased it would increase the profits, and the increased cost of manufacture for 1924, such as increasing the labor charge, would tend to decrease the percentage of profit.

The company contends that the false entries in the company's books were for the purpose of showing less profits for income tax purposes and by taking the item of $146,000 odd as the inventory of December 31, 1923, and not $126,000 odd, no increase in value of stock of merchandise in hand as of March 1, 1925, was shown by the books due to these improper or false entries.

The defendants deny that the plaintiff has proved any loss of goods burned out of sight. They say that the only evidence submitted by the plaintiff as to the amount and value of such goods on March 1, 1925, are the books of the company and the physical inventory, and both are needed; that they have been demonstrated as untrustworthy, having been falsely kept. They have introduced evidence of false entries for you to decide whether this evidence proves to you the amount and value of the stock of merchandise. Your province is to discard it if you see fit. If it is discarded by you it leaves the plaintiff without definite proof of the amount and value of the merchandise burned out of sight.

As I have said, the burden of proof is on the plaintiff. The defendants here present what we call an affirmative defense of fraud and false swearing as a breach of the terms of the policy. The burden of proving this defense is upon the

defendants. They must sustain it by a fair preponderance of the evidence. If this defense is sustained your verdict should be for the defendants and the plaintiff will not be entitled to payment for any of its losses.

The agreement between the parties as to the loss of machinery and fixtures, and the damage to goods in sight is expressly agreed upon subject to the terms of the policy and this provision which I am going to read to you.

As to this defense, I will charge you certain requests to charge which I have been presented with by the defendant which will void the policy.

"1. This is a suit against several fire insurance companies on policies issued by them to the Specialty Handle Manufacturing Company. The defendant insurance companies contend that the Specialty Handle Manufacturing Company violated the provision of the policy reading as follows: 'This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.' If you find as a fact that the Specialty Handle Manufacturing Company submitted to the defendant insurance companies or their representatives any statements, schedules, inventories, proofs of loss, books of account, checks, or other documents, or that the officers, and in particular the treasurer of said company, made any statements to the insurance companies or their representatives which were untrue and if

you find that these statements were made or these documents were submitted with intent to cheat and defraud the defendant insurance companies and to obtain from them the payment of a sum which the companies would not have been required to pay if truthful and correct statements and documents had been submitted, you will find that the Specialty Handle Manufacturing Company has violated the provision of the policies which I have just quoted and your verdict will necessarily be for the defendants, even though the Specialty Handle Manufacturing Company may have suffered a loss in a lesser amount than it represented to the insurance companies. Fraud and false swearing as to any part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties.

"2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers but merely to promote its own interest in evading Federal income taxes.

"3. Nor is it any defense to the charge of fraud and false swearing and misrepresentation of material facts under the clause of the policy I have just quoted for the assured to say that after the fraud and false swearing has been detected by the defendant insurance companies through an examination of the books and records of the assured made by the public accountants they have withdrawn the fraudulent items in their accounts and the fraudulent statements and representations made by the assured to the defendant insurance companies.

"4. In this connection, I desire to draw your attention to the fact that there is no evidence before us that the assured or his representatives ever withdrew the schedule submitted by Miller & Maltbie to the companies, marked Exhibit D. 16.

"5. The contract stated in the insurance policies is an indivisible one and, therefore, if you find any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the insurance companies, the entire policy is void and the plaintiff cannot recover thereon, even though there be an admitted loss of goods in sight.

"6. The policies of insurance in this suit are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used. The contract of insurance therefore being one prescribed by the Legislature is to be construed by you according to the true and natural meaning of the words of the policy as if it were a contract between two individuals or two ordinary corporations, and it is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the Court and not to modify them either in favor of the plaintiff or of the defendant insurance companies.

"7. The plaintiff Public National Bank brings its suit as assignee of the assured Specialty Handle Manufacturing Company and stands in no different relation to the matter before you than would the Specialty Handle Manufacturing Company if it were the plaintiff. The bank plaintiff has no greater or other rights than

what the assured Specialty Handle Manufacturing Company had and is subject to the same defenses."

I will add to that last provision, however, that the bank is not bound by any representation or false swearing or fraud which might have occurred after the assignment was made to them.

The mere proof of facts that the books were improperly or falsely kept is not sufficient to sustain this defense. We are not concerned with any question of the defrauding of the United States Government. That is beside the case; whether they defrauded the government or not is no concern of ours. We are dealing with the question whether this provision of the policy has been violated. Misstatement of the facts or overvaluation of goods on hand is not sufficient to sustain this defense. The fraud or false swearing must be as to a fact or circumstance and must be material as to the rights and liability of the defendant companies; they must be wilful and made with intent to misrepresent.

If you find that this clause of the policy has been breached your verdict should be for the defendants, notwithstanding the Specialty Handle Manufacturing Company has suffered a fire loss and that the defendants have admitted that they have agreed as to the amount. If on the other hand, you find in favor of the plaintiff, then you will consider the question of damages.

The parties have agreed, in order to simplify the matter, that if your verdict is for the plaintiff, it shall be in such sum as represents the damage the Specialty Handle Manufacturing Company suffered by reason of this fire. This, of course, would be another sum than you would render against these particular companies if you

were rendering a verdict specifically against each of them for their liability on each of the policies. But to make it simpler for you to determine, counsel have agreed, and we are submitting to you to find a specific amount if you find for the plaintiff, and that amount to represent the damage done by the fire, and the Court will then take that report of the amount and apportion it to the particular insurance companies that are here as defendants, the other insurance companies not being defendants, and divide it between them and add the proper interest and apply the co-insurance clause if it is applicable to that amount, and then render the judgment or verdict specifically against the particular companies in that manner.

The plaintiff claims that the entire stock on March 1, 1925, was worth $153,979.48; the sound value of the stock burned out of sight the plaintiff claims therefore to be $103,440.44. To that he adds the agreed value or agreed amount as to the machinery and fixtures and stock which was within sight of $43,666.94. That reaches a total of $147,107.38.

If you treat Mr. Wood's figures in the same way—in treating them I am not suggesting that as your figure; I don't think the insurance companies suggest that as your verdict; they merely say those figures offset Mr. Puder's computation—but if we treat Mr. Wood's figures in the same manner as Mr. Puder has treated them, we arrive at these figures: The book value of the stock March 1, 1925, $81,842.91; deducting the sound value as admitted of $50,539.04, we leave the book value of the stock burned out of sight at $31,303.87, the agreed loss to be added, of $43,666.94, leaving a loss by fire, if these figures are adopted, of $74,970.81. The defendant does

not admit this $31,000 odd, as I say, as being goods burned out of sight. They dispute the books as proof of the claim and claim that there has been no such loss.

Now, gentlemen, if your verdict is for the plaintiff, you are to fix the amount of loss suffered by the Specialty Handle Manufacturing Company due to the fire of March 1, 1925, and the Court will attend to the apportionment, as I have stated. I think the foreman might put down these figures as important to have before you. The agreed damage to the machinery is $21,143.11; the damage to the stock in sight is $22,523.83, making a total admitted loss of $43,666.94. If you find a verdict for the plaintiff you will add to that $43,000 odd the amount of goods burned out of sight that you find, if you find the plaintiff has suffered such a loss by reason of this fire.

One other item I wish to call to your attention: If you use the book value of the goods, the merchandise and the stock shown by the books as of March 1, 1925, you, of course, must deduct from that figure this amount which is the sound value of the stock in sight, $50,539.04. To again call it to your attention, Mr. Puder's figures were $153,000 odd according to the books. You, of course, deduct the sound value of $50,000 odd, leaving $103,000. Represented by Mr. Wood's figures, $81,000 odd is the book value; deducting $50,000 odd leaves $31,000. Whatever sum you find for the plaintiff, you find as the value of the goods destroyed out of sight, added to the admitted loss of $43,666.94.

In closing, I am asked to charge certain requests for the plaintiffs. I will deny the first, second, third, fourth and fifth requests; the sixth and seventh requests I have covered.

The ninth I will charge: "There was no obligation upon the part of the Specialty Handle Manufacturing Company to keep correct books of account so far as its relations with the insurance companies are concerned."

The tenth I think I have covered.

The eleventh I will charge: "No defense of fraud can be predicated upon the statements given in August, 1924, to the rating bureau for the purpose of obtaining a rate."

You may take the case, gentlemen.

Plaintiffs' counsel prays an exception to the Court's refusal to charge as requested by the plaintiff and to each refusal specifically.

Exception noted as ground of appeal.

Plaintiffs' counsel prays an exception to the Court's charging the various requests of the defendant and to each request specifically.

Exception noted as ground of appeal.

Plaintiffs' counsel prays an exception to that portion of the Court's charge wherein the Court permitted the jury to consider as evidence of the amount of loss the figures used by Mr. Wood, which were concededly based upon false books and were therefore completely incorrect.

Exception noted as ground of appeal.

PLAINTIFFS' REQUESTS TO CHARGE.

1. The jury are instructed to disregard the affirmative defense of fraud alleged to have been perpetrated by the insured as there is no evidence of such fraud as would prevent the plaintiff from recovering.

2. The jury are instructed to disregard the affirmative defense of false swearing as there is

no evidence before the Court of such false swearing as would prevent the plaintiff from recovering.

3. The plaintiff is entitled to a verdict for the amount of the loss actually sustained by it as a result of the fire, such loss to be determined in accordance with the provisions of the policies in suit.

4. Under the terms and conditions of the policy there has been an adjustment of the amount of loss on the machinery and goods in sight and the plaintiff is entitled to a judgment for that agreed amount and also in addition thereto such other amount, if any, as the jury may find represents the loss on the goods called in this suit "out of sight" for which the companies are responsible under the terms and conditions of the policies in suit.

5. The defenses of fraud and false swearing are affirmative defenses interposed by the defendant and the burden of proof is on the defendant to establish these defenses, or one of them, by a fair preponderance of the proof.

6. Unless the defendant has satisfied the jury by a fair preponderance of the proof, the burden of proof being upon it, that there was either fraud or false swearing within the terms and conditions of the policies applicable thereto, the plaintiff will not be prevented from recovering such loss as it has actually proven under the terms and conditions of the policies.

7. Under the clause of the policy which provides that "in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss," the policy shall become

void, in order to make out a defense of fraud, the defendant must satisfy the jury, by a fair preponderance of the proof that there was a fraud and if that fraud consists in alleged misstatements, the jury must be satisfied by a fair preponderance of proof that those misstatements were made wilfully and with intent to misrepresent.

8. There was no obligation on the part of the insured in its relations with the insurance companies to keep any books of account whatsoever.

9. There was no obligation upon the part of the Specialty Handle Manufacturing Company to keep correct books of account so far as its relations with the insurance companies are concerned.

10. Unless the books or false statements were, in fact, used with intent to prejudice the insurance companies (and the burden is on the defendant to prove that they were so used) the plaintiff cannot be prevented from recovering the actual loss which may have been proven notwithstanding the fact that entries in the books and statements taken therefrom may be fictitious.

11. No defense of fraud can be predicated upon the statements given in August, 1924, to the rating bureau for the purpose of obtaining a rate.

The information upon which the requests to charge with respect to fraud and false swearing are based is taken from *Mick* v. *Corporation of Royal Insurance of London, England,* 94 Atl. 808.

DEFENDANTS' REQUESTS TO CHARGE.

1. This is a suit against several fire insurance companies on policies issued by them to the Specialty Handle Manufacturing Company. The defendant insurance companies contend that the Specialty Handle Manufacturing Company violated the provision of the policy reading as follows:

> "This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance of the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

If you find as a fact that the Specialty Handle Manufacturing Company submitted to the defendant insurance companies or their representatives any statements, schedules, inventories, proofs of loss, books of account, checks, or other documents, or that the officers, and in particular the treasurer of said company, made any statements to the insurance companies or their representatives which were untrue and if you find that these statements were made or these documents were submitted with intent to cheat and defraud the defendant insurance companies and to obtain from them the payment of a sum which the companies would not have been required to pay if truthful and correct statements and documents had been submitted, you will find that the Spe-

cialty Handle Manufacturing Company has violated the provision of the policies which I have just quoted and your verdict will necessarily be for the defendants, even though the Specialty Handle Manufacturing Company may have suffered a loss in a lesser amount than it represented to the insurance companies. Fraud and false swearing as to any part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties.

2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers, but merely to promote its own interest in evading Federal income taxes.

3. Nor is it any defense to the charge of fraud and false swearing and misrepresentation of material facts under the clause of the policy I have just quoted for the assured to say that after the fraud and false swearing has been detected by the defendant insurance companies through an examination of the books and records of the assured made by the public accountants they have withdrawn the fraudulent items in their accounts and the fraudulent statements and representations made by the assured to the defendant insurance companies.

4. In this connection, I desire to draw your attention to the fact that there is no evidence before us that the assured or his representatives ever withdrew the schedule submitted by Miller & Maltbie to the companies, marked Exhibit D. 16.

5. The contract stated in the insurance policies is an indivisible one and, therefore, if you find any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the insurance companies, the entire policy is void and the plaintiff cannot recover thereon, even though there be an admitted loss of goods in sight.

6. The policies of insurance in this suit are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used. The contract of insurance therefore being one prescribed by the Legislature is to be construed by you according to the true and natural meaning of the words of the policy as if it were a contract between two individuals or two ordinary corporations, and it is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the Court and not to modify them either in favor of the plaintiff or of the defendant insurance companies.

7. The plaintiff Public National Bank brings its suit as assignee of the assured Specialty Handle Manufacturing Company and stands in no different relation to the matter before you than would the Specialty Handle Manufacturing Company if it were the plaintiff. The bank plaintiff has no greater or other rights than what the assured Specialty Handle Manufacturing Company had and is subject to the same defenses.

Stipulation re Exhibits.

STIPULATION.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*, *Plaintiffs,* *vs.* PATRIOTIC INSURANCE COMPANY OF AMERICA, *et al.*, *Defendants.*	*Action at Law.* *Stipulation.*

The attorneys for the respective parties to the above-entitled cause stipulate that in the state of the case to be printed upon the argument of the rule to show cause granted herein, the following stipulations are to be printed and the exhibits herein mentioned are to be printed in the form herein described:

(a) As to Exhibits P-1, P-2, P-3, P-4, P-5, P-6, P-7 and P-8, these exhibits are all printed insurance policies of a form known as "Standard Fire Insurance Policy of the State of New Jersey" and need not be printed except that portion of the insurance policy which is germane to the issue, which reads as follows:

> "This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

Stipulation re Exhibits.

The exhibits are:

P-1, No. 6315,	Agricultural Insurance Co. of Watertown, N. Y.	$7,500.00
P-2, No. 171302,	Patriotic Insurance Co. of America,	15,000.00
P-3, No. 1164854,	The Stuyvesant Insurance Company,	8,000.00
P-4, No. 194549,	The New Brunswick Fire Insurance Company,	4,000.00
P. 5, No. 2250594,	Pacific Fire Insurance Co., New York,	21,000.00
P-6, No. 2250662,	Pacific Fire Insurance Co., New York,	4,000.00
P-7, No. 02343,	The Importers and Exporters Insurance Co. of N. Y.	1,500.00
P-8, No. 02342,	The Importers and Exporters Insurance Co. of N. Y.	1,500.00

(b) As to Exhibits P-9, P-10, P-11, P-12, P-13, P-14, P-15 and P-16.

P-9, Assignment of Policy No. 6315, Agricultural,
P-10, " " 02343, Importers & Exporters,
P-11, " " 171302, Patriotic Ins. Co.
P-12, " " 1164854, Stuyvesant Ins. Co.
P-13, " " 194549, New Brunswick Fire Ins.
P 14, " " 2250594, Pacific Fire Ins. Co.
P-15, " " 2250662, Pacific Fire Ins. Co.
P-16, " " 02342, Importers & Exporters

Exhibit P-9 is to be printed in full and a statement printed in the state of the case that Exhibits P-10, P-11, P-12, P-13, P-14, P-15 and P-16 need not be printed for the reason that they are assignments of the particular policies and are similar in all respects to P-9.

Stipulation re Exhibits.

(c) As to Exhibits P-24, P-35, P-36, P-37, P-38, P-39, P-40, P-41 and P-42.

P-24, Receiving book,
P-35, Folder of checks and invoices for Jan. 1925,
P-36, " " Feb. 1925,
P-37, " " Mar. 1925,
P-38, Photostatic copy of check for $4,155.48,
P-39, Purchase Journal (Page 1, item 9),
P-40, Check,
P-41, "
P-42, "

These exhibits it is stipulated need not be printed and that they represent a receiving book showing the receipt of certain goods during the months of January and February, 1925; invoices of goods purchased and received during the months of January and February, 1925; and checks issued in payment thereof, showing the total value of the goods purchased and received during the months of January and February, 1925, subsequent to the inventory as of January 1, 1925, up to the date of the fire; namely, March 1, 1925.

(d) As to Exhibits P-26, P-27, P-28, P-29, P-30, P-31, P-32 and P-33.

P-26, Proof of Loss, Policy No. 2250594, Pacific,
P-27, " " 2250662, "
P-28, " " 171302, Patriotic,
P-29, " " 194549, New Brunswick,
P-30, " " 02343, Importers and Exporters,
P-31, " " 02342, "
P-32, " " 6315, Agricultural,
P-33, " " 1164854, Stuyvesant,

Exhibit P-26 is to be printed in full and a statement printed in the state of the case that Exhibits P-27, P-28, P-29, P-30, P-31, P-32 and P-33 need not be printed for the reason that they are proofs of loss on the particular policies and are similar in all respects to P- 26.

Stipulation re Exhibits.

(e) As to Exhibits P-44, P-45, P-46, P-47, P-48, P-52, P-53, P-54, P-55, P-56, P-57 and P-58.

P-44, Sales book 1925,
P-45, Sales book 1925,
P-46, Cash disbursements book 1925,
P-47, Purchase returns book 1925,
P-48, Sales returns book 1925,
P-52, Sales Book Jan. 1, 1924, to Feb. 26, 1924,
P-53, " Feb. 27, 1924, to May 24, 1924,
P-54, " May 26, 1924, to Aug. 28, 1924,
P-55, " Aug. 29, 1924, to Nov. 17, 1924,
P-56, Accounts payable ledger,
P-57, Cash book Aug. 1, 1923, to Feb. 28, 1924,
P-58, Purchases Jan. 1, 1924, to Dec. 31, 1924,

These exhibits it is stipulated need not be printed and that they represent books and specific items in books showing the sales made during the months of January and February, 1925, together with the record of sales during that portion of the year 1924 as referred to by the witness, A. H. PUDER, upon which he based his ratio of profits as against the gross business.

(f) Exhibits P-17, P-18, P-19, P-20, P-21, P-22, P-23, P-25, P-43, P-49, P-50, P-51, P-59, P-62, P-63, P-64, P-65, P-66, P-67, P-68 and P-69 are to be printed in full.

P-17, Dolid's inventory,
P-18, Mans' inventory,
P-19, Marty's inventory,
P-20, Corners Department inventory,
P-21, Handle Department inventory,
P-22, Inventory third floor Handle Department, etc.
P-23, Al Cohen inventory,
P-25, Inventory (Stock room, second floor),
P-43, Agreement of April 29, 1925, fixing loss on stock in sight.
P-49, Photograph, Stock room, fourth floor, rear of 125-131 N. J. R. R. Avenue,
P-50, Photograph, fourth floor from bridge, 113-115 N. J. R. R. Avenue,
P-51, Photograph, 129-135 N. J. R. R. Avenue.
P-62, Photograph, Corner Department, fourth floor, 113-115 N. J. R. R. Avenue,

Exhibits P. 1 to P. 8.

P-63, Photograph, second floor, 121-123 N. J. R. R. Avenue,
P-64, Photograph,
P-65, Photograph, first floor, 125-131 N. J. R. R. Avenue.
P-66, Photograph, Corner Department, 117-119 N. J. R. R. Avenue,
P-67, Photograph, Exterior of building, 113-127 N. J. R. R. Avenue,
P-68, Photograph, condition of premises 125-127 N. J. R. R. Avenue,
P-69, Schedule of claim,

Dated, June 24, 1927.

JACOB L. NEWMAN,
Attorney for Plaintiffs.

ARTHUR VANDERBILT,
Attorney for Defendants.

Exhibits P. 1 to P. 8.

Standard Fire Insurance Policies.
(see Stipulation *re* Exhibits page 338.)

"This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

Exhibit P. 9.

Exhibit P. 9.

KNOW ALL MEN BY THESE PRESENTS, That

WHEREAS, the Agricultural Insurance Company of Watertown, N. Y., has heretofore for value received issued to The Specialty Handle Mfg. Co. Inc., a corporation organized under the laws of the State of New Jersey, its policy of insurance number 6315, whereby it insured the machinery and merchandise of the said The Specialty Handle Mfg. Co. Inc. located in the premises known as Nos. 113 to 135 New Jersey Railroad Avenue, Newark, New Jersey, in the sum of Seven thousand five hundred Dollars ($7,500), against loss or damage by fire; and

WHEREAS, heretofore and on or about March 1, 1925 a fire occurred upon said premises and the said machinery and merchandise of the said The Specialty Handle Mfg. Co. Inc. were thereby damaged and/or destroyed, entailing a loss payable to the assured under said policy in an amount not yet completely fixed, said loss being now in the course of adjustment, the amount of which loss when adjusted is to become due and payable to said The Specialty Handle Mfg. Co. Inc. from the said Agricultural Insurance Company of Watertown, N. Y., under its said policy numbered 6315;

NOW, THEREFORE, The Specialty Handle Mfg. Co. Inc. in consideration of One Dollar, lawful money of the United States, to it paid before the sealing and delivery of these presents, and for other valuable considerations, the receipt whereof are hereby acknowledged, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over

Exhibit P. 9.

unto THE PUBLIC NATIONAL BANK OF NEW YORK the said policy of insurance and all sum and sums of money, interest, benefit and advantage whatsoever, now due or hereafter to arise or to be had or made by virtue thereof, including all its right, title and interest in and to the amount in which said loss shall be adjusted.

TO HAVE AND TO HOLD the same unto the said THE PUBLIC NATIONAL BANK OF NEW YORK, its successors and assigns forever.

AND, the said The Specialty Handle Mfg. Co. Inc. has hereby made, constituted and appointed, and by these presents does make, constitute and appoint the President, Vice-President and/or any Assistant Cashier of the said THE PUBLIC NATIONAL BANK OF NEW YORK, its true and lawful attorneys for it and in its name, place and stead, to ask, demand, sue for, collect, receive and give acquittance for all sum or sums of money which are due, owing and payable to it from the said Agricultural Insurance Company of Watertown, N. Y., under said policy of insurance numbered 6315, and/or the said adjustment of loss thereunder, and to receive any check or checks from the said Agricultural Insurance Company of Watertown, N. Y., in payment of said loss, and the said attorneys of The Specialty Handle Mfg. Co. Inc. or any of them are hereby authorized and empowered in its name, place and stead, to endorse any check or checks issued to it in payment of said loss, and collect and turn over the proceeds thereof to THE PUBLIC NATIONAL BANK OF NEW YORK, the said The Specialty Handle Mfg. Co. Inc. hereby giving its said attorneys or any of them full power to do everything whatsoever requisite and necessary to be done in the premises, in order to vest in

Exhibit P. 9.

THE PUBLIC NATIONAL BANK OF NEW YORK, title and possession of the said moneys due it or to become due to it from the said Agricultural Insurance Company of Watertown, N. Y., as fully as it could do if personally present, hereby ratifying and confirming all that its said attorneys or any of them shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF The Specialty Handle Mfg. Co. Inc. has caused this instrument to be executed in its corporate name by EMILE GARFINKEL its Treasurer, and its corporate seal to be hereto affixed this 18 day of May, 1925.

THE SPECIALTY HANDLE MFG. CO. INC.

By Emile Garfinkel
Treasurer.

Attest:

Harry Garfinkel
President. (SEAL)

Exhibits P. 10 to P. 16.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

On this 18 day of May, 1925, before me personally appeared EMILE GARFINKEL, to me personally known, who, being by me duly sworn, did depose and say that he resides in the State of New Jersey; that he is the Treasurer of THE SPECIALTY HANDLE MFG. CO. INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Charles Richter
(SEAL) Notary Public, New York Co. No. 430
New York Co. Register No. 6021A
Commission expires March 30, 1928

Exhibits P. 10 to P. 16.

Assignments of Policies same as Exhibit P. 9.
(See Stipulation *re* Exhibits, page 338.)

Exhibit P. 17.

Exhibit P. 17.

Jan 1925

INVENTORY—ABE

Page.....
Sheet No. 1 Priced by.....
Called by.....Department—Leather Extended by.....
Entered by.....Location .....Examined by.....

Check	Quantity	Description	Price	Extensions
√	20,900 lbs	Armour Shanks	13c	$ 2,717.00
√	1,524 lbs	Hans Rees Shanks	15c	228.60
√	493 lbs	(Kistler Lesh) Russ Bell	40c	197.20
√	20,050 lbs	U. S. Bellies	16c	3,208.—
√	6,712 lbs	Corigated	6c	402.72
√	14,300 lbs	Split	4c	572.—
√	3,500	P. E. Tanned Belly Centres (Keegan)	80c	2,800.—
√	4,514	Mah Tanned Belly Centres (U. S.)	65c	2,934.10
√	2,527	P. E. Tanned Belly Centres (U. S.)	65c	1,642.55
√	308	Mah Brief Case Belly Centres	45c	138.60
√	95	Russet Brief Case Belly Centres	45c	42.75
√	212	Russet Belly Centres	65c	137.80
√	717	Brown Belly Centres	65c	466.05
√	424	Russet Heavy Belly Centres	95c	402.80
√	420	P. E. Belly Centres	65c	273.—
√	1,900 lbs	Horsehide	30c	570.—
√	52	Black B. C. Belly Centres	45c	23.40
√	1,228	Black Bellies Half fin.	85c	1,043.80
√	150	Bellies Half fin.	60c	90.—
√	12,600 lbs	Small corner leather	5c	630.—
√	8,300 lbs	Russ. Cow. for handle loops	6c	498.—
√	1,400 lbs	Black Shanks half fin.	30c	420.—
√	210 lbs	Brown Fin. Shanks	35c	73.50
√	440 lbs	Mah Shanks half fin.	30c	132.00
√	120	Mah Bellies (Kistler Lesh)	1.25	150.—
√	1,063 Doz.	Walrus Spl. 179,545 ft	5c	8,977.25
				28,771.12

H. M. K.
M. P.

H. M. Kasnowitz √

Exhibit P. 17.

INVENTORY—ABE

Sheet No. 2 — Jan 1925 Department—Leather

Check	Quantity	Description	Price	Extensions
V	1,242 lbs	Brown Shanks half fin.	30c	372.60
V	969 lbs	Black Shanks finished	35c	339.15
V	2,022	Russet Bell (Wass)	40c	808.80
V	447 lbs	Russet Arch Supports	10c	44.70
V	291	Blk Brief Case Bell fin.	50c	145.50
V	105	Blk Sides	5.00	525.—
V	48	Russet Sides	4.00	192.—
V	126	Russet Backs	4.50	567.—
V	45	Black Backs	4.50	202.50
V	84	Russet Bd Bellies	1.25	105.—
V	120	Mah Bell fin.	75c	90.—
V	201	P. E. Bell fin.	75c	150.75
V	786	Russet Belly Centres for Bfg Cases	75c	589.50
V	183	Black Bellies	75c	137.25
V	363	Brown Bd Bellies	1.25	453.75
V	486 lbs	Russet Bellies	30c	145.80
V	93	Mahogony Bellies	85c	79.05
V	45	Mahogony Bellies	75c	33.75
V	795 lbs	Mah Shanks half fin.	30c	238.50
V	624	Brown Bellies fin.	85c	530.40
V	240	P. E. Bellies Tanned	75c	180.—
V	60	Brief Case Bellies	40c	24.—
V	225	Assorted Bellies	60c	135.—
V	255	Assorted Bellies for Blk	60c	153.—
V	600	Yards Binding	8c	48.—
				6,291.00

H. M. K.
M. P.

H. M. Kasnowitz V

Exhibit P. 17.

INVENTORY—ABE

Sheet No. 3 — Jan 1925 Department—Leather

Check	Quantity	Description	Price	Extensions
V	12,600 lbs	Splits for Handles & Part	6c	756.—
V	3,250 lbs	Heavy Bell	13c	422.50
V	6,400 lbs	Splits	7c	448.—
V	11,200 lbs	Splits	4½c	504.—
V	12,550 lbs	Flex. Splits	7c	878.50
V	6,400 lbs	Buffing	9c	576.—
V	9,200 lbs	Buffing	8c	736.—
V	1,825 lbs	Horsehide	15c	273.75
		Splits from Ruderman		96.—
		Splits from Ruderman		206.—
				4,896.75
V	1,490	Belly Centres	65c	968.50
V	1,650 lbs	Job	5c	82.50
				5,947.75

H. M. K.
M. P.

H. M. Kasnowitz

Exhibit P. 18.

Exhibit P. 18.

Jan 1925

INVENTORY

Page.....
Sheet No..... Priced by.....
Called by.....Department—Mans Examined by.....
Entered by.....Location.....Examined by.....

Check	Quantity	Description	Price	Extensions
√		Splits from Elliott		27.—
√		Last bill from Lichtman Splits		182.—
√	4,504 lbs.	Splits. M. N.	24c	1,080.96
	24	Sides from B. G. & S.		9.—
√	1,890 lbs.	Trimmed Splits for 1⅛ Str.	40c	756.—
√	1,628 lbs.	Trimmed Splits for ⅞ Str.	35c	569.80
	2,712 lbs.	Trimmed Splits for ⅞ Str.	35c	949.20
√	50	Sides Splits	1.00	50.—
√	4,776 lbs.	Trimmed Splits for 1″ Str.	35c	1,671.60
		Last bill from A. C. Laurence		1,275.—
		Labor extra		145.—
	1	Lot Russet Split Scrap		300.—
√	2,366 lbs.	Splits for Partitions	15c	354.90
	2	Bales Splits 500 lbs	15c	75.—
	3,430 lbs.	Painted Splits for Ins. Straps	20c	686.—
√	648 lbs.	Rough Splits for Ins. Straps	15c	97.20
√	1,516 lbs.	H. Hide Par Black	15c	227.40
	3,200 lbs.	Splits for Partitions	15c	480.—
√	300 lbs.	Splits for ⅞ Straps	35c	105.—
√	160 lbs.	Splits for ⅞ Straps	35c	56.—
√	2,900 lbs.	Rough Part. not painted	10c	290.—
			√	9,387.06

H. M. K.
M. P.

H. M. Kasnowitz

Exhibit P. 19.

Exhibit P. 19.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by.....Department—1st Floor Marties Extended by.....
Entered by.....Location.....Examined by.....

Check	Quantity	Description	Price	Extensions
√	4,050 lbs.	3 Rolls Kraft Paper	7c	283.50
√	3,900 lbs.	Bogus Paper	3.45c	134.55
√	225 lbs.	Rope	13c	29.25
	7½	Skins Grains		15.—
√				
	51 doz.	3P. Cut Bags painted not embossed	5.75	293.25
	123 doz.	5P. Cut Bags painted not embossed	4.25	522.75
√	60 doz.	5P. 18″ Cut Bags Wal. gr.	5.00	300.—
√	24 doz.	5P. 20″ Cut Bags Wal. gr.	5.00	120.—
√	168 doz.	5P. 18″ Cobra Grain	5.00	840.—
	9 doz.	5P. 20″ Cobra Grain	5.00	45.—
√	178½ doz.	3P. 18″ Cobra Grain	5.00	892.50
		All Embossed ready to Shellac Jobs.		
	60 doz.	3P. Cobra		
	3 doz.	3P. Shark		
	2¼ doz.	3P. Walrus		
	37½ doz.	5P. Cobra		
	6 doz.	5P. Walrus		330.—
				3,805.80
			√	

H. M. K.
M. P.

H. M. Kasnowitz

Exhibit P. 19.

Jan 1925

INVENTORY

Sheet No. 2 — Department—1st Floor Martys

Check	Quantity	Description	Price	Extensions
		#1 Partitions		
V	2,400	Mah. 16″		
V	600	Black 16″		
V	1,500	Brown 16″		
V	2,850	Brown 15″		
V	2,100	Mah 15″		
V	2,700	Black 15″	9c	1,093.50
		#2 Partitions		
V	15,600	Mah. 16″		
V	11,700	Brown 16″		
V	7,500	Black 16″	8c	2,784.—
		#3 Partitions		
V	1,350	Brown 16″		
V	1,950	Mah. 16″		
V	1,050	Black 16″	5c	217.50
		Cut, Painted, Embossed, not chopp.		
V	10,200	Mahogany 16″		
V	8,133	Black 16″		
V	1,500	Brown 16″		
V	1,500	Mah. 15″	8c	1,706.64
				5,801.64

V

H. M. K.
M. P.

H. M. Kasnowitz

Exhibit P. 19.

Jan 1925

INVENTORY

Sheet No. 3 — Department—1st Floor Martys

Check	Quantity	Description	Price	Extensions
V	10,468	#1—16″ Part, not painted	6c	628.08
V	5,776	#2—16″ Part, not painted	5c	288.80
V	1,600	#1—15″ Part, not painted	6c	96.—
V	2,768	#2—15″ Part, not painted	5c	138.40
V	2,200	Brown Pasted partitions	4½	99.—
V	18,060	lbs. 16½x30 Red Felt Sd. Board 3Pc 18″	7½	1,354.50
V	7,700	lbs. 12x16 Grey Felt Gusset Board 5P. 18″	5.65 cut	435.05
V	9,434	lbs. 15x19 Chip Side Board 5P. 18″	45.00	212.26
V	1,836	lbs. 10x19 Chip Bottom Board 5P. 18″	50.00	45.90
V	1,976	lbs. 16x21 Chip Side Board 5P. 20″	40.—	39.52
V	624	lbs. 10x20 Chip Bottom Board 5P. 20″	50.—	15.60
V	150	lbs. Grey Felt Paper in Rolls	6¼	9.38
V	400	lbs. Red Felt Paper in Rolls	6¼	25.—
V	484	Doz. 5P. Cut only	2.50	1,210.—
V	28	Doz. 3P. Cut only	3.50	98.—
V	180	Doz. 5P. Drawn up only	3.25	585.—
V	10	Doz. 3P. Drawn up only	4.25	42.50
V	60	Doz. 3P. Doped—ready to press	6.75	405.—
				5,727.99

V

H. M. K.
M. P.

H. M. Kasnowitz

Exhibit P. 20.

Exhibit P. 20.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by.....Department—Corner, not selected Extended by.....
Entered by.....Location ..... Examined by.....

Check	Quantity	Description	Price	Extensions
√	40,000	2⅞ Blk. Cow. Cor. Press & Paint only	90c	360.—
√	15,500	4½ Blk. Cow. D. T. Press only	2.00	310.—
√	23,200	3½ Cow. Cor. for P.....	1.25	290.—
√	66,000	3 & 3¼ Cow. Cor. for P.....	1.00	660.—
√	35,200	4″ Cow. Cor. for P.....	1.75	616.—
√	34,000	3¾ Blk. Cow. Cor. for P.....	1.50	510.—
√	38,000	3¾ Mah. Cow. Cor. for P.....	1.50	570.—
√	52,000	3¾ Cow. (Russet) for P.....	1.50	780.—
√	54,000	3½ & 4 Split Cor. for P.....	1.00	540.—
√	4,800	4½ Blk. Cow. Cor. for P.	2.00	96.—
√	1,600	5″ Blk. Cow. Cor. for P.	2.75	44.—
√	41,000	3½ Blk. Cow. Cor. for P.	1.50	615.—
√	3,000	4″ Russ. Cow. Cor. for P.....	1.75	52.50
√	8,000	2⅞ Roundings for P.	70c	56.—
√	2,000	4″ Blk. Cow. Painted	2.00	40.—
√	11,000	4″ Russ. Cow. Cor. for Bfg. Cases.....	1.75	12.50
√	2,800	3½ Russ. Cow. Cor. for Bfg. Cases...	1.50	42.—
√	2,200	4½ Blk. Cow. Tops Painted	2.25	49.50
√	13,600	3″ Blk. Cow. Cor. F. P.	1.00	136.—
√	14,000	2⅞ Blk. Cow. Cor. F. P.	75c	105.—
√	33,200	2½ Blk. Cow. Cor. F. P.	30c	99.60
√	7,400	3½ Mah. Cow. Cor. F. P.....	1.25	92.50
√	2,600	3¾ Blk. Cow. Cor. F. P.....	1.50	39.—
√	1,000	2½ Brown Cow. Cor. Painted	40	4.—
√	1,000	4¼ Cow. Cor. F. P.	2.00	20.—
√	4,000	3½ Blk. Cow. Cor.	2.00	80.—
				6,399.60

H. M. K.
M. P. H. M. Kasnowitz √

Exhibit P. 20.

INVENTORY

Sheet No. 2 Department—Corner not select

Check	Quantity	Description	Price	Extensions
√	47,000	4″ Blk. Cow. Corners F. P.	1.75	822.50
√	33,400	3½ Cow. Corners F. P.	1.25	417.50
√	56,000	4″ Cow.	1.75	980.—
√	31,500	3″ Roundings for Pai.	1.00	315.—
	6,900	3½ Blk. Cow. Jobs for Pai.	75	51.75
√	8,000	3 Blk. Cow. Jobs for Pai.	50	40.—
	2,000	3″ Russ. Cow. Jobs	50	10.—
√	2,000	3½ Cow. Jobs for Painting	75	15.—
√	51,500	3½ Roundings for Painting	1.00	515.—
√	41,200	4″ Roundings for Painting	1.00	412.—
√	92,000	4″ & 3½ Split Corners F. P.	1.00	920.—
√	110,000	3½ Cow. Cor. Corners F. P.	1.00	1,100.—
√	82,000	3″ Mah. Cow. Cor. F. P.....	1.00	820.—
√	70,500	3½ Roundings F. P.	1.00	705.—
				743.75
√	22,000	5″ Cow. Corners	2.75	605.—
	49,000	4½ Cow. Corners	2.00	980.—
√	62,000	3¾ Cow. Corners	1.50	930.—
√	73,000	3¾ Blk. Cow. Cor.	1.50	1,095.—
	37,000	3″ Blk. Cow. Cor.	1.00	370.—
√	48,500	2⅞ Blk. Cow. Cor.	70c	339.50
	25,000	#120 Cow. Hdle. Loops	50c	125.—
√	11,000	#110 Cow. Hdle. Loops	50c	55.—
	15,000	#119 Cow. Hdle. Loops	40c	60.—
				11,683.25

H. M. K. √
M. P.
L. B. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 3 — Department—Corners Selected

Check	Quantity	Description	Price	Extensions
√	2,300	3¼ Russ. Cow. for Bfg. Cases	1.25	28.75
	4,000	3¼ Russ. Cow. Tops for Bfg. Cases	1.25	50.—
√	5,000	3¾ All colors pasted Cow. Cor. F. P.	1.50	75.—
√	1,900	4¼ Blk. Cow. Cor. Painted	2.00	38.—
	1,300	5″ Cow. Corners F. P.	2.75	35.75
√	2,600	4½ Cow. Corners F. P.	2.00	52.—
	2,200	5″ Russ. Cow. Corners For Bfg.	2.75	60.50
√	10,600	3¾ Cow. Cor. F. P.	1.75	185.50
	6,000	4¼ Cow. Cor. F. P.	2.00	120.—
√	1,800	3¾ Mah. Cow. Cor. F. P.	1.75	31.50
√	7,000	3½ D. T. Cow. Cor. F. P.	1.50	105.—
√	41,000	2⅞ Cow. Corners F. P.	75	307.50
	40,000	3¼ Cow. Corners F. P.	1.10	440.—
√	6,200	3¼ Mah. Cow. Corners F. P.	1.10	68.20
	3,500	2⅞ Cow. Corners F. P. D. T.	75	26.25
√	40,000	3½ Cow. Corners F. P.	1.50	600.—
√	6,000	3″ Split Corners F. P.	60	36.—
√	9,100	4″ Cow. Corners F. P.	1.75	159.25
	8,500	4″ Mah. Cow. Cov. F. P.	1.75	148.75
√	3,800	3 and 3¼″ Russ. Nat. (Harrison)	1.50	57.—
	7,500	3¾ Russ. Cow. Corners For Bfg. Cases.	1.75	131.25
√	1,900	4¼ Russ. Cow. Corners For Bfg. Cases.	2.00	38.—
√	6,000	4″ Cow. Corners Tops F. P.	1.75	105.—
√	3,500	4½ Russ. Cow. Cor. For Bfg. Cases	2.00	70.—
				2,969.20

M. P. √
L. B. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 4 — Department—Corners Selected

Check	Quantity	Description	Price	Extensions
√	16,600	3¾ Cow. Corners F. P.	1.75	290.50
√	500	4½″ Cow. Corners D. T. For P.	2.00	10.—
√	9,300	3 and 3¼ Russ. Cow. For Bfg. Cases.	1.00	93.—
√	12,500	4½ Blk. Cow. Corners Painted	2.00	250.—
√	1,200	4½ Blk. D. T. Cow. Cor. Painted	2.00	24.—
√	800	5″ Blk. Cow. Corn. Painted	2.75	22.00
√	1,200	5″ Russ. Corners Cow. For. Bfg. Cases	2.75	33.—
√	800	4½ Russ. Harrison Nat. Cow. Cor.	2.75	22.00
√	9,200	3½ D. T. Cow. Cor. Painted	1.75	161.—
√	3,600	4″ Nat. Harrison Russ. Cow. Cor.	2.50	90.—
√	1,200	5″ Nat. Harrison Russ. Cow. Cor. Pasted	3.50	42.—
√	1,700	3¾ Nat. Harrison Russ. Cow. Cor.	2.25	38.25
√	4,100	3½ Nat. Harrison Russ. Cow. Cor.	2.00	82.—
√	18,400	2⅞ Blk. Cow. Roundings (Jobs) Painted	50	92.—
√	23,200	2½ Blk. Cow. Cor. Painted	40	92.80
√	2,500	2⅞ Blk. Cow. Cor. Painted	90	22.50
√	1,000	4″ Blk. Cow. Cor. Painted & creased only	2.00	20.—
√	2,000	2½ Blk. Cow. Roundings	35c	7.—
√	500	4″ Brown Cow. Corners Painted	2.00	10.—
				1,402.05

√

M. P.
L. B. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 5 — Department—Corners Flat

Check	Quantity	Description	Price	Extensions
√	15,000	3 and 3¼ Blk. Flat Corners	70	105.—
√	8,000	2⅞ Blk. Flat Corners	50	40.—
√	9,000	3½ and 4 Split Flat Corners pasted	40	36.—
√	59,000	3″ Split Corners (single) 3 to 1	10	59.—
√	48,000	3½ & 4″ Split Corners (single) 3 to 1.	15	72.—
√	4,000	4½ Split Corners For linings	5	200.—
√	3,500	4″ Cow. Corners Flat Splitted	1.50	52.50
√	10,500	3¼ Cow. Corners Flat Splitted	70	73.50
√	5,600	3½ Cow. Corners Flat Splitted	1.10	61.60
√	17,300	2⅞ Cow. Corners Flat Splitted	50	86.50
√	8,300	3¾ Russ. Cow. Corn. Flat	1.20	99.60
√	1,800	3¾ Harrison Nat Russ Flat	1.75	31.50
√	3,200	3½ Harrison Nat Russ Flat for Pasting	1.00	32.—
√	1,000	4″ Harrison Nat Russ Flat Solid	2.00	20.—
√	1,700	3″ Harrison Nat Russ Flat for Pasting	75	12.75
√	2,200	4″ Cow Corners Flat for Pasting	1.00	22.—
√	2,000	3½ Cow Corners Flat for Pasting	75	15.—
√	5,000	3 Cow Corners Flat for Pasting	50	25.—
√	6,500	2⅞ Nat Harrison Cow Cov Solid	75	48.75
	10,500	2⅞ Pig Skin Flat Cor. Solid	40	42.—
√	1,800	4″ Flat Tops Solid	1.50	27.—
√	2,600	4″ Cow Flat Corners Solid	1.50	39.—
√	2,800	2⅞ D. T. Flat Corners Solid	50	14.—
√	2,000	¾ Cow. Corners Flat Solid	1.25	25.—
				1,239.70

M. P. √
L. B. P. & A. M. K.

H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 6 — Department—Corners Flat

Check	Quantity	Description	Price	Extensions
√	11,200	2⅞″ Cow Flat Solid	50	56.—
√	2,300	4½″ Cow Flat Solid	1.75	40.25
√	3,700	3½″ D. T. Flat Solid	1.10	40.70
√	3,000	3½ Cow Flat Solid	1.10	33.—
√	5,000	3¼ Cow Flat Solid	70	35.—
√	400	2⅞ Cow Flat Solid	50	2.—
√	3,000	3¼ Cow Flat Solid	70	21.—
√	1,500	3½ Cow Flat Solid	1.10	16.50
√	1,500	4½ Cow Flat Solid	1.75	26.25
√	1,200	5″ Cow Flat Solid	2.50	30.—
√	500	4½ D. T. Flat Solid	1.75	8.75
		Last bill for Roundings & Add 11.00 Labor		23.00
√	150,000	2½ Flat Corners Solid	20	300.—
√	48,000	2⅞ Roundings Solid	40	192.—
√	3,168	lbs Cow Shanks	22c	696.96
				1,521.41

L. B. P. √
M. P.

H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 7 Department—Finished and Packed Corners

Check	Quantity	Description	Price	Extensions
√	1,400	5″ Asst Colors Cow Cor	3.50	49.—
√	1,500	4½ Asst Colors Cow Cor	3.00	45.—
√	1,800	3¾ Blk Cow Corners Plain	2.00	36.—
√	11,500	3½ Blk Cow Corners Plain	1.75	201.25
√	11,700	4″ Blk Cow Corners Plain	2.25	263.25
√	2,500	4″ Blk Fancy Cow Cor	2.25	56.25
√	4,800	3¼ Blk Fancy Cow Cor	1.60	76.80
√	2,100	3½ Blk D. T. Cow Cor	1.75	36.75
√	1,100	3¾ Blk Split Cor	1.35	14.85
√	13,200	3¾ Mah & Brown Cow Corners (Friedberg Granan)	2.00	264.—
√	5,118	4″ Bro. & Mah Cow Cor. (Fisher)	2.25	115.16
√	2,000	4″ Split Fancy, Bro & Mah	1.50	30.—
√	650	4½ Blk & Bro D. T	3.00	19.50
√	1,200	4″ Blk. Mat. Tops	2.25	27.—
√	3,100	4″ Asst Colors Cow Jobs	1.00	31.—
√	1,300	3½ Asst Colors Cow Jobs	1.00	13.—
√	2,600	4″ Mah. Cow. Plain Cor	2.25	58.50
√	1,700	3¾ Bro. Fancy Cow Cor	2.00	34.—
√	2,500	3½ Mah Cow Corners	1.75	43.75
√	1,100	3¾ Mah Split Corners	1.35	14.85
√	300	4″ Mah Alligator Corners	2.25	6.75
√	400	3½ Mah Alligator Corners	1.75	7.—
√	1,300	4″ Brown & Blk Split Cor	1.50	19.50
				1,463.16

M. P. √
L. B. P. & M. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 8 Department—Finished & Packed Corners

Check	Quantity	Description	Price	Extensions
√	900	3¼ Blk Split Cor	1.00	9.—
√	1,100	3½ Blk Split Cor. Fancy	1.25	13.75
√	1,700	3″ Mah. Split Cor.	1.00	17.—
√	2,400	2⅞ Mah. & Blk Cow Cor	1.10	26.40
√	5,200	3″ Blk Cow Corners	1.40	72.80
√	1,100	3½ Blk Cow Mission Cor	1.75	19.25
√	2,200	3¾ Blk Cow Mission Cor	2.00	44.—
√	1,750	4″ Blk Cow Mission Cor	2.25	39.38
√	1,300	3½ Brown Split Cor. Fcy	1.20	15.60
√	7,400	4″ Russet Fancy Cor. for Bfg	2.00	148.—
	900	4″ Russet Plain Cor. for Bfg	2.00	18.—
	100	5″ Mat. Harrison Cow Cor	4.00	4.—
√	2,200	3¾ Russ. Cow Cor. for Bfg	1.75	38.50
	450	5″ #57 Col. Cow Corners	3.50	15.75
	200	5″ Russ. Cow Cor. for Bfg cases	2.75	5.50
√	3,750	3½ Russ. Cow Cor. for Bfg cases	1.75	65.63
	300	4½ Harrisons Russ. Tops Ret. from Schill	3.00	9.—
√	600	4″ Harrisons Russ. Cow Cor	3.00	18.—
	1,650	3½ Harrisons Russ. Cow Cor	2.50	41.25
	1,650	3″ Harrisons Russ. Cow Cor	1.75	28.88
√	1,800	2⅞ Harrisons Russ. Cow Cor	1.25	22.50
	1,800	3″ Russet Cow Painted Cor	1.40	25.20
√	3,000	3½ P. E. Cow Corners Job	1.00	30.—
	4,200	3″ Mah Cow Corners	1.40	58.80
				786.19

M. P. √
M. H. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 9 Department—Finished & Packed Corners

Check	Quantity	Description	Price	Extensions
√	1,500	4″ Mah. Tops & Bodies (Returns)	2.00	30.—
	400	3″ Mah. Tops & Bodies (Rets)	1.30	5.20
√	4,500	2½″ Black Jobs	.30	13.50
	1,000	5″ Mah Cow Cor (Ret from H. & H.)	3.00	30.—
	7,800	3½ Mah Split Fcy Cor	1.20	93.60
√	4,500	3½ Russ Cow Corners for Bfg Not Packed	1.50	67.50
	1,400	3¾ Russ Cow Corners for Bfg	1.75	24.50
√	10,500	2⅞ Blk Mat Cow Cor. Not Packed	1.10	115.50
√	20,000	2½ Blk Mat Cow Cor. Not Packed	.40	80.—
	400	3½ Brown & Mah Cow Cor. Not Packed	1.75	7.—
√	7,000	3″ Blk Cow Corners Not Packed	1.40	98.—
√	800	3½ Blk Miss. Cow Cor Not Packed	1.75	14.—
				578.80

√

M. P.
M. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 10 Department—Corners Stock Room

Check	Quantity	Description	Price	Extensions
√	800	4″ Brown Split Corners	1.50	12.—
√	11,400	4″ Blk Cow Plain Cor	2.25	256.50
√	8,000	4″ Blk Cow Fancy Cor	2.25	180.—
√	6,200	2⅞ Brown Cow Cor	1.10	68.20
√	8,000	3¾ Black Nat. Fancy	2.00	160.—
√	17,000	3½ Block Fancy Cow Cor	1.75	297.50
√	7,400	2½ Black Cow Corners	.40	29.60
√	15,000	2⅞ Black Nat. Cow Cor	1.10	165.—
√	12,500	2⅞ Black Nat. Cow Cor	1.10	137.50
√	8,100	3½ Black Nat. Cow Cor. Plain	1.75	141.75
√	700	3¾ Brown Split Cor	1.35	9.45
√	11,300	3″ Black Nat. Cow Cor	1.40	158.20
√	9,500	3¼ Black Nat. Cow Cor	1.50	142.50
√	7,400	4″ Black Cow Cor. Fcy	2.25	166.50
√	5,200	3″ Black Cow Cor	1.40	72.80
√	5,300	3½ Brown Cow Cor. Fcy	1.75	92.75
√	4,900	3½ Black Nat Fancy Cow Cor	1.75	85.75
√	2,900	3″ Black Split Cor	1.00	29.—
√	1,300	3″ Brown Cow Cor	1.40	18.20
√	2,500	3¾ Black Split Fcy	1.35	33.75
√	5,600	4″ Brown Cow Fcy	2.25	126.—
√	900	3″ Brown Split Cor	1.00	9.—
√	5,600	3¼ Brown Cow Cor	1.50	84.—
√	4,000	4″ Russ Cow Corners	2.25	90.—
				2,565.95

M. P. √
M. P. H. M. Kasnowitz

Exhibit P. 20.

Jan 1925

INVENTORY

Sheet No. 11 Department—Corners Stock Room

Check	Quantity	Description	Price	Extensions
√	3,500	2⅞ Black Cow Tops	1.10	38.50
√	2,400	3½ Brown Cow Plain	1.75	42.—
√	2,500	4″ Brown Cow Plain	2.25	56.25
				136.75
√	419	lbs. Blk Cow Pcs for loops	10c	41.90
	465	lbs. Russ Cow Pcs for Tr. Hdles	5c	23.25
	670	lbs. Asst Cow Lea	10c	67.00
√	5,000	3½ & 4″ Jobs Corners Asst Colors		
	3,700	3″ Jobs Corners Asst Colors		
√	7,500	2⅞ Blk Cow Cor. Jobs	1.00	
	4,000	3½ Blk Cow Cor. Jobs		
√	4,500	3″ Blk Cow Cor. Jobs		247.00
√	30,000	114 & 116 Cow Loops Not Painted	15c	45.—
				424.15
				560.90

H. M. K.
M. P.
M. P.

H. M. Kasnowitz √

Exhibit P. 21.

Exhibit P. 21.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by..... Department—3rd Floor Peters Room. Extended by.....
Entered by..... Location .....Examined by.....

Check	Quantity	Description	Price	Extensions
√	50,000	#157 7-16 Coop Rivets	1.35M	42.52
√	1,800	lbs #15 Pl Wire	8	144.—
√	500	lbs #15 Pl Wire	8	40.—
√	36,575	Screw Wire for #38	6.00M	219.45
√	35	gr Eye Wire #330	.28	9.80
√	300	gr Eye Wire #335	.26	78.—
√	300	gr Eye Wire #337	.24	72.—
√	1,750	lbs #8 Wire for #80	6½	113.75
√	2,840	lbs #10 Wire for #22	7	198.80
√	215	lbs Wire Wire for #22	7	15.05
√	180	lbs Bogus Paper	3.45	6.21
√	150	gr Eye Wire #337	.24	36.—
√	3,893	doz Pr #1 Cow Tops Only Cut	6	233.58
√	277	doz Pr #3 Chr Lea Tops Only	.10	27.70
√	181	doz Pr #5½ Blk Cow Top Only	.15	27.15
√	225	doz Pr #7½ Round Tops Only	.20	45.—
√	200	doz Pr #7½ Russ Cow Only	.20	40.—
√	680	lbs Cut Spl for solid blocks	8	54.88
√	500	lb Chip board	45.00	11.25
√	30	lbs Rope	.13	3.90
√	2,059	Yds Krotol	.23	473.57
√	35	Gr 8½″ Flat Wire	.45	15.75
√	70	lbs Cut Spl for blocks	8	5.60
√	195	lbs chopp Chipboard	60.00T.	5.85
				1,919.81

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 21.

Jan 1925

INVENTORY

Sheet No. 2 Department—3rd Floor Peters Room

Check	Quantity	Description	Price	Extensions
√	70 doz	Pr #7 Russ Cow Tops	.30	21.—
√	1,250	#90 Blk Cow Tops Only	2½	31.25
√	272	#126 Buff Pap. Flled Ed N Color	9	24.48
√	200 doz	Pr #2 Blk Cow Top Only	.10	20.—
√	600	Blk Cow Tops for #326 Hold	1½	9.—
√	600	#78 Black Cow	1	6.—
√	42 doz	Pr #6½ Russ Cow Top Only	.30	12.60
√	50 doz	Pr #2 Russ Cow Top Only	.10	5.—
√	500	#39 Buff Hand F. P	3½	17.50
√	500	#126 Bfg Covers Post on Spl	1½	7.50
√	58 doz	Pr #2 Sol Tr Hand	.35	20.30
√	60 doz	Pr #4 G. Cow Tops Only	.20	12.—
√	1	Lot of Wooden Bolts	35.00	35.—
√	162 lbs	Sheepskin Ek	8	12.96
√	12 gal	Wax Paint	.92	11.04
√	100 lbs	Pot. Pomarg	.30	30.—
√	50 lbs	Sodium bi solphate	5	2.50
√	300 lbs	#15 Wire	8	24.—
√	10,000	#126 Bfg Bot Cow Only	¼	25.—
√	2,000 lbs	Chip board	45.00T.	45.—
√	100 lbs	Washer for #22	15	15.—
√	166 doz	Pr #5½ Cow Top Sl Tr	.45	74.70
√	150 doz	Pr #5½ Cow Top Black	.45	67.50
				529.33

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 21.

Jan 1925

INVENTORY

Sheet No. 3 Department—3rd Floor Peters Room

Check	Quantity	Description	Price	Extensions
√	3,116	Lea Blocks	7	218.12
√	200 doz	Pr #2½ Cow Tops Only	.12	24.—
√	1,145 lbs	Post Spl #445	.10	114.50
√	360 lbs	4 Cord Grey (Old Cola)	.70	252.—
√	120 lbs	3 Cord Grey (Ballon)	.75	90.—
√	24 lbs	4 Cord Or (Ballon)	.95	22.80
√	154 lbs	6 Cord Grey (French)	.95	146.30
√	40 lbs	6 Cord Br (Ballon)	.95	38.—
√	16 lbs	4 Cord Br (Ballon)	.95	15.20
√	285 lbs	Light Weight th for Kis	.90	256.50
√	25 doz	Pr #5½ Cow Top	.45	11.25
√	150 lbs	4 Cord Black Ballon	.90	135.—
√	2,049 lbs	Chopp. Appr for Tr Ha	8	163.92
√	1,203 lbs	Chopp Spl Filler for Tr H	6	72.18
√	12 lbs	4 Cord Blk Ballon	.90	10.80
√	100 lbs	Chopp. Spl for #405	.12	12.—
				1,582.57

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 21.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by..... Department—3rd Floor Peters Room. Extended by.....
Entered by..... Location ..... Examined by.....

Check	Quantity	Description	Price	Extensions
√	30,415 lbs	Bogus paper	3.45 cwt	1,049.32
√	2,490 lbs.	Spl from Williams	.14	24.90
√	3,575 lbs	post chip board for #330	.50	89.38
√	3,000 Sheets	fibre	7½	225.—
√	1,000 lbs	post chip board for #304	.50	25.—
√	10,200	Lea Blacks for Tr Han	7	714.—
√	2,100 lbs	Chip board	.45	47.25
√	1,000 lbs	Chip board	.45	22.50
√	2,500 lbs	Chip board	.45	56.25
√	3,000 lbs	Chip board	.45	67.50
√	60 lbs	Chop Apr	8	4.80
√	3,000 lbs	Chip board	.45	67.50
√	350 gr	8½" Wire	.45	157.50
√	400 lbs	Chopp Spl fil #3 Ha	6	24.—
√	11½ Bags	Flour for paste	3.75	43.13
				2,618.03

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Exhibit P. 22.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by..... Department—3rd Floor Handle Dept Extended by.....
Entered by..... Location ..... Examined by.....

Check	Quantity	Description	Price	Extensions
√	450	#405 Inlays Ready for Use	.10	45.—
√	470	#405x Inlays Ready for Use	6	28.20
√	1	Lot Inlays for #12	15.—	15.—
√	600	Inlays for #452 trimmed	2½	15.—
√	300	Inlays for #452x chopp	1	3.—
√	3	Boxes Starch 150 lbs	7½	11.25
√	200 lbs	Annealed Wire	9	18.—
√	400	Solid Inlays for #126	2	8.—
√	2,200	Black Inlays for #126	1	22.—
X √	90 lbs	Chip board	60.00T	2.70
√	400	#126 Bfg Cove Post on Spl	2	8.—
√	1,500	Chopp Inlays paper #126	½	7.50
√	1	Lot Chopp Inlays for #12, 13, 14	50.00	50.—
X √	800 lbs	Bogus Paper	3.45	27.60
X √	400 lbs	Bogus Paper	3.45	13.80
√	1,000	Spl Bot Covers for #25	1	10.—
√	500	Leather blacks for #25	2	10.—
√	2,000	Cow Inlays for #133 Han	½	10.—
√	100 lbs	Rope	.15	15.—
√	75 lbs	Brass Pins	.17	12.75
X √	10 gr	trimming for #44 Hard	.16	6.50
X √	8 gr	#445 ⅞x1 N. J.	1.91	15.28
X √	10 gr	#445 ¾x⅞ N. J.	1.68	16.80
X √	1½ gr	#452 ⅞ N. J.	1.66	2.49
X √	2 gr	#454 ¾ N. J.	1.44	2.88
				376.75

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 2

Check	Quantity	Description	Price		Extensions
X V	1 gr	#4300 ¾x⅞ N. J.	3.50		3.50
X V	1 gr	#4300 ½x¾ N. J.	3.00		3.—
X V	2 gr	#454 XC Pl. N. J.	1.54		3.08
X V	2 gr	#4 ¾ Soaps	6.48		12.96
X V	18 gr	#0569 Brass Pl.	.50		9.—
X V	7 gr	#450 1x1⅛	2.64		18.48
V	15 lbs	Rope	1.34		1.95
X V	100 gr	Squares	.45		45.—
X V	200 gr	Squares	.45		90.—
X V	150 gr	¾ Squares	.35		52.50
X V	150 gr	Squares	.31		46.50
X V	50 lbs	Brass Pins	.17		8.50
X V	200 gr	1⅛ Nickel Squares	.45		90.—
X V	50 gr	1″ Nickel Squares	.42½		21.25
X V	1	Case Cut toilet paper			12.25
X V	50,000	Asst Rivets	50.—M		25.—
X V	2 gr	#3212 Shell Handles	2.50		5.—
X V	1 gr	#2186 Handle Wires & Knobs	7.50		7.50
X V	3 gr	#3737 Shell Hand.	6.50		19.50
X V	2	Boxes toilet paper in rolls	13.00	13.—	26.—
X V	10 gr	#82 Goertz Rings	9.00 gr		90.—
X V	200 lbs	Shoe Tacks	16.50 cwt		33.—
					610.97
					13
					623.97

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 3 Department—3rd Floor Piece Work Room

Check	Quantity	Description	Price	Extensions
V	200 gr	8½ Wire twisted	.50	100.—
V	300 gr	6″ Wire	.25	75.—
V	100 gr	6½ Wire	.25	25.—
V	350 gr	7 Wire	.25	87.50
V	200 gr	7 9-32 Wire	.40	80.—
V	1,350 lbs	Double Annealed Wire	9	121.50
V	100 lbs	Wire	8c	8.—
V	500 lbs	Chop Chipboard for 45 & 52	60.00	15.—
V	200 lbs	Chopp Aprons Pcs for 12 & 13	8	16.—
V	1,500	Inlays for #452 not trimmed	1	15.—
V	1,095 lbs	Blk Auto Leather	2	21.90
V	800 lbs	Posted Split for #405	.10	80.—
				644.90

M. P.
A. H. S.

S. I. Garfinkel

Jan 1925

INVENTORY

Sheet No. 4 Department—Shipping Room

Check	Quantity	Description	Price	Extensions
V	95 lbs	White Shellac	.70	66.50
V	10,000	Nickel Knobs for #38	11.95 M	119.50
V	1,537 gr	⅞ Brass Pl Dees	12c	184.44
V	250 gr	⅞ Nickel Pl Dees	12c	30.—
V	550 gr	⅝ Nickel Pl Dees	12c	66.—
V	150 gr	¾″ Nickel Pl Dees	12c	18.—
V	200 gr	⅝ Nickel Pl Dees Small	10c	20.—
V	350 gr	⅝ Nickel Pl Dees	12c	42.—
V	800 gr	⅝ Brass Pl Dees	12c	96.—
V	8	Alligator Skins	$1.25	10.00
V	15 gr	#3625 loops (Neumans)	.75	11.25
V	32 gr	Brass loops for #22	50c	16.—
V	32 gr	loops for #46	35c	12.25
V	50 gr	Brass loops for #22	35c	17.50
V	1	Load of Cases	20.—	20.—
V	100 doz Pr	#1 Trunk Handles	.15	15.—
				744.44

V

M. P.
L. B. P.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 1 Department—3rd Floor Cutting Room

Check	Quantity	Description	Price	Extensions
√	600 lbs	Buffings Chips	8	48.—
√	187 lbs	Brown Cow	.25	46.75
√	400 lbs	Russ Cow	.22	88.—
√	188 lbs	Cobra Piec	.20	37.60
√	1,300 lbs	Leather from Kryad	.10	130.—
√	200 lbs	Russ Cow Wasst.	.25	50.—
√	300 lbs	Russ Belt Strips E. K.	.35	105.—
√	200 lbs	Cobr Cow Miller Gloss	.22	44.—
√	385 lbs	Seal Spl fr Trautwen	6	23.10
√	2,200	#405 Blk Cobr Covers	5	110.—
√	300	#400 Blk Cobr Covers	4	12.—
√	300	#130 Blk Cobr Covers	4	12.—
√	125	#452 Blk Cobr Covers	6	7.50
√	250	#45 Blk Cobr Covers	3	7.50
√	200	#341 Blk Cobr Covers	2	4.—
√	31,900	#346 Spl Covers	½	159.50
√	13,800	#39 Spl Covers	¾	103.50
√	500	#38 Spl Covers	1½	7.50
√	1,600	#22 Spl Covers	1	16.—
√	500	#63½ Spl Covers	1	5.—
√	4,230	#45 Spl Covers	1½	63.45
√	3,400	#45 Cow Covers Eng Ball.	3½	119.—
√	1,550	#63 Cow Covers Eng Ball.	4	62.—
√	1,500	#38 Cow Covers Eng Ball.	4	60.—
				1,321.40

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 2 Department—3rd Floor Cutting Room

Check	Quantity	Description	Price	Extensions
√	500	#39 Cow Covers (Eng Ball.	3	15.—
√	2,000	#341 Cow Covers (Eng Ball.	3	60.—
√	500	#51 Cow Covers (Eng Ball.	3	15.—
√	450	#39 Manh & Russ Nat Covers	3	13.50
√	200	#341 Wal Covers	3	6.—
√	500	#63 Buff Covers	1½	7.50
√	5,175	#341 Buff Covers	1	51.75
√	6,500	#39 Buff Covers	1	65.—
√	3,800	#346 Buff Covers	½	19.—
√	4,900	#346 Buff Covers	½	24.50
√	4,000	#346 Buff Covers	½	20.—
√	3,000	#338 Buff Covers	1	30.—
√	5	Finished Billie	1.25	6.25
√	1,000	#39 Buff Covers	1	10.—
√	1,412½ ft	Cow Cobra Gr Steinhas	.15	211.88
√	34	Sides Finish Buff	.75	25.50
				580.88

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 1 — Department—4th Floor Bridge Stock Room

Check	Quantity	Description	Price	Extensions
√	550	#52 Spl Handle	7	38.50
√	600	#338 Blk Cow Handle	.10	60.—
√	2,000	#63½ Bfg F. P.	5½	110.—
√	6,000	#185 Bfg F. P.	4½	270.—
√	6,858	#52 Bfg F. P. ⅞	8	548.64
√	3,588	#52 Bfg F. P. ⅝	8	287.04
√	3,282	#45 Bfg F. P. ⅞	9	295.38
√	1,428	#52 Bfg Manh ⅞	8	114.24
√	2,128	#52 Bfg Manh ⅝	8	170.24
√	2,606	#52 Cow Manh ⅞	.10	260.60
√	2,700	#52 Manh Cow ⅝	.10	270.—
√	2,128	#45 Manh Buff ⅝	.10	212.80
√	3,414	#45 Manh Buff ⅝	9	307.26
√	1,850	#45 Manh Buff ⅞	9	166.50
√	3,648	#52 Cow F. P.. ⅞	.10	364.80
√	2,940	#45 Cow F. P. ⅞	.10	294.—
√	3,660	#45 Manh Cow ⅞	.10	366.—
√	6,146	#52 Black Cow ⅞	.10	614.60
√	6,850	#52 Black Buff ⅞	8	548.—
√	4,730	#45 Blk Cow ⅞	.10	473.—
√	3,660	#45 Blk Buff ⅞	9	329.40
√	3,690	#341 Blk Buff 7	7½	276.75
√	9,510	#52 Cow F. P. ⅞	.10	951.—
√	3,680	#52 Blk Cor ⅝	.10	368.—
				7,696.75

M. P.
A. H. S.

S. I. Garfinkel

Jan 1925

INVENTORY

Sheet No. 2 — Department—4th Floor Bridge Stock Room

Check	Quantity	Description	Price	Extensions
√	2,258	#52 Blk Buff ⅝ R	8	180.64
√	975	#45 Blk Cow ⅝ R	.10	97.50
√	260	#45 Blk Buff ⅝	9	23.40
√	7,600	#338 Bfg F. P.	4½	342.—
√	940	#341 Bfg F. P.	7½	70.50
√	503	#341 Blk Cow	9	45.27
				759.31

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 1 — Department—2nd Floor Zinus Dept

Check	Quantity	Description	Price	Extensions
√	750 gals	Crown Cod Oil	.52	390.—
√	70 gal	Newfoundland Cod Oil	.65	45.50
√	400 lbs	Elk Paddle Oil	7½	30.—
√	100 lbs	Ammonia	6½	6.50
√	170 gal	Mord Striker	.50	85.—
√	900 lbs	Starch	7	63.—
√	1,000 lbs	Gambier	.17	170.—
√	70 lbs	Borax	5¼	3.68
√	600 lbs	Glue	.12	72.—
√	300 lbs	Tallow	.18	54.—
√	300 lbs	Quebrocho Extract	3	9.—
√	2 Bags	Sumac	7.00	14.—
√	90 gal	Alcohol	.55	49.50
√	200 lbs	Sulphuric Acid	2	4.—
√	600 lbs	Superfine Shellac	.66	396.—
√	40 lbs	Casein	.16	6.40
√	30 lbs.	Oxalic Acid	.18	5.40
√	24 gal	Prepared blood	.60	14.40
√	16 gal	D 3 Finish Irwin's Specl	.70	11.20
√	16 gal	D 3 Finish Irwin's Specl	.70	11.20
√	600 lbs	Herveating Crystals	.11	66.—
√	50 lbs	Leather black	.92½	46.25
√	16 lbs	Nigrosine	.25	4.—
√	6 lbs	Auromin O	2.00	12.—
√	12 lbs	Acid Orange	1.65	19.80
				1,588.83

M. P.
H. M. K.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 2 — Department—2nd Floor Zinus

Check	Quantity	Description	Price	Extensions
V	8 lbs	Leather Red	.90	7.20
V	8 lbs	Metalyne Green	1.90	15.20
V	10 lbs	Leather Green	1.85	18.50
V	10 lbs	Yellow	1.15	11.50
V	6 lbs	Victor Green	2.00	12.—
V	250 lbs	Bismark Brown	.40	100.—
V	500 lbs	Phosphate	.60	300.—
V	60 lbs	Spirit Nigrosine	.40	24.—
V	398 gals	Pig (Industrial)	2.00	796.—
V	100 lbs	Indian Red	.13½	13.50
V	150 lbs	Burnet Sienna	.14	21.—
V	350 lbs	Raw Sienna	7½	26.25
V	600 lbs	French Ocher	4½	27.—
V	70 lbs	Burnet Ambr	7	4.90
V	20 lbs	Venetian Red	.15	3.—
				1,380.05

M. P.
A. H. S.

S. I. Garfinkel

Jan 1925

INVENTORY

Sheet No. 1 — Department—4th Floor Spraying Room

Check	Quantity	Description	Price	Extensions
V	120 gal	Blk Pigment N Y' Color	1.10	132.—
V	130 gal	Blk Amer Lea Fin	1.50	195.—
V	400 gal	Bost Bl. Pigment	1.75	700.—
V	430 gal	Indust Pigment	2.00	860.—
V	1,000	#338 Buff F. P.	4½	45.—
V	300 gal	Bost Col by Manus	1.75	525.—
				2,457.—

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 22.

Jan 1925

INVENTORY

Sheet No. 1 — Department—Dope House

Check	Quantity	Description	Price	Extensions
	90 gal	Thinner	.75	67.50
	100 gal	Dope	.90	90.—
	19 gal	Rapesead Oil	.90	17.10
	800 lbs	Black Color	.92½	740.—
	100 lbs	Manh Color	.37½	37.50
				952.10

M. P.
A. H. S.

S. I. Garfinkel

Exhibit P. 23.

Exhibit P. 23.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 Priced by.....
Called by..... Department—Strap Dept Extended by.....
Entered by Al Cohen Location 2nd floor Examined by.....

Check	Quantity	Description	Price	Extensions
√	5M	#151 4/16″ Brass Rivets	1.15M	5.75
√	35M	#151 5/16″ Brass Rivets	1.20	42.—
√	30M	#151 6/16″ Brass Rivets	1.25	37.50
√	35M	#151 5/16″ Nickel Rivets	1.20	42.—
√	25M	151 6/16 Nickel Rivets	1.25	31.25
√	25M	151 7/16″ Nickel Rivets	1.35	33.75
√	50M	151 5/16 Japanned Rivets	1.10	55.—
√	40M	151 6/16″ Japanned Rivets	1.10	44.—
√	15M	151 4/16 Copper Rivets	1.10	16.50
√	20M	151 5/16 Copper Rivets	1.10	22.—
√	35M	151 6/16 Copper Rivets	1.15	40.25
√	25M	#116 4/16″ Copper Rivets	.99	24.75
√	15M	#116 4/16″ Brass Rivets	1.10	16.50
√	6M	#152 7/16″ Nickel Rivets	1.25	7.50
√	10M	#252 4/16″ Nickel Rivets	2.—	20.—
√	5M	#1 Caps (For Brief Case Str.	.75	3.75
√	5M	#63 4/16″ T Rivets	.95	4.75
√	50M	#151 6/16″ Brass (in boxes)	1.25	62.50
√	25M	151 6/16″ Nickel (in boxes)	1.25	31.25
√	50M	#63 4/16″ T Rivets (in boxes)	.95	47.50
√	25M	#1 Caps. (in boxes)	.75	18.75
√	5M	#116 5/16″ Copper (in boxes)	.99	4.95
				385.69
		Less 30% & 10%		612.20
	100M	Rivets (Neuman)		30.00
				415.69
√	4000	Paper Bags	8.50M	34.— 34.00
	100	Gr Helmet Straps	1.75	175.00
				√ 624.69

H. M. K. J. H. Mans

Exhibit P. 23.

Jan 1925

INVENTORY

Sheet No. 2 Department—Strap
Entered by Al Cohen Location—2nd floor

Check	Quantity	Description	Price	Extensions
√	75 gr	⅞″ #70 Br & Nickel Bkls	.65	48.75
√	211 gr	1″ #70 Br & Nickel Bkls	.65	137.15
√	88 gr	1⅛″ #70 Br & Nickel Bkls	.65	57.20
√	50 gr	1¼″ #70 Br & Nickel Bkls	.65	32.50
√	6 gr	⅝ #70 Br & Nickel Bkls	.65	3.90
√	372	1″ #2 Brass Ware Bkls Krischers	.45	167.40
√	192	⅞″ #2 Brass Ware Blks Krischers	.45	86.40
√	16 gr	1½″ #912 Brass Bkls	1.25	20.00
√	1 gr	1⅛ #59 Brass Bkls	5.12	5.12
√	11½ gr	1¼ #59 Brass Bkls	6.22	71.53
√	10 gr	1⅛″ #720 Nickld S. S. Bkls	1.25	12.50
√	3 gr	1¼″ #923½ Nickld S. S. Bkls	.80	2.40
√	3 gr	1″ #720 Nickld S. S. Bkls	1.10	3.30
√	15 gr	1″ #503 Nic. Loops for Safety Str.	.40	6.00
√	4 gr	1⅛″ #503 Nic. Loops for Safety Str.	.40	1.60
√	2 gr	1¼″ #503 Nic. Loops for Safety Str.	.40	.80
√	14 gr	1″ #51xC Bkls	1.—	14.—
√	15 gr	1¼″ #51xC Bkls	1.—	15.—
√	30 gr	⅝″ #220 Nic. Snaps	2.88	86.40
√	75 gr	½″ Nic. Snaps	1.50	112.50
√	7 gr	1″ #509 Brass & Nick. Bkls	1.15	8.05
√	18 gr	¾″ #509 Brass & Nick. Bkls	1.—	18.—
√	33 gr	⅝″ #509 Brass & Nick. Bkls.	.85	28.05
√	25 gr	½″ Bkls @ .25 gr	.25 gr	6.25
√	800 gr	⅝″ Inside Strap Bkls	.22½	180.—
√	7 gr	¾″ #923 Brass Bkls	.80	5.60
	5 gr	⅝″ #616 Japanned Bkls.	.75	3.78
	157 gr	⅝ #414 Blks.—Unfinished	.75	117.75
				1,251.90

M. P.
L. B. P. J. H. Mans √

Exhibit P. 23.

Jan 1925

INVENTORY

Sheet No. 3 — Department—Strap
Entered by Al Cohen — Location—2nd floor

Check	Quantity	Description	Price	Extensions
√	210 gr	5/8" #414 Brass Bkls.	1.00 gr	210.—
√	190 gr	5/8" 606 Brass Bkls	.40	76.—
√	35 gr	1/2" 606 Nickel Bkls	.40	14.—
√	5 dz	1" 8220 Lock Bkls	2.97 dz	14.85
√	5,800 gr	Helmet Bkls.	.10	580.—
√	27 gr	Helmet Bkls. w. tongues	.35	9.45
√	1 gr	1" #420 Nickel Bkls	2.45	2.45
√	4 gr	3/8" #420 Nickel Bkls	1.37½	5.50
√	3 gr	5/8" #420 Nickel Bkls	1.37½	4.13
√	2 gr	3/4" #23½ Nickel Swivel Snaps	2.25	4.50
√	12 gr	5/8" #223 Nickel Swivel Snaps	4.56	54.72
√	2 gr	1/2" #223 Nickel Swivel Snaps	4.56	9.12
√	1 gr	3/8" #278AA Swivel Snaps	4.56	4.56
√	8 gr	7/8" #502 Brass Tuk Loops	.35	2.80
√	20 gr	1" 502 Brass Tuk Loops	.35	7.—
√	25 gr	1⅛" 502 Brass Tuk Loops	.50	12.50
√	15 gr	1¼" 502 Brass Tuk Loops	.40	6.—
√	25 gr	1" #502 Nickel Tuk Loops	.35	8.75
√	50 gr	1¼ #59 Bkls Unfinished (See Bill)	3.12	156.—
√	850	#77 Blk Cow Handles	1½	12.75
√	925	#78 Blk Cow Handles	1½	13.88
√	915	Paper Boxes for Safety Straps	50.—M	45.75
√	2,000	Hdle Loops	.50C	10.—
√	3,100	Assted Hdle Loops	60	18.60
√	24,000	114 Blk Cow Loops Job as Split	20	48.—
√	7 dz	1"x30 Safety Straps w. bkls		10.00
	1 gr 7 dz	½"x5" w. #606 Bkls	1.00 gr	1.58
				1,342.89

M. P.
L. B. P. — J. H. Mans — √

Exhibit P. 23.

Jan 1925

INVENTORY

Sheet No. 4 — Department—Strap
Entered by Al Cohen — Location—2nd floor

Check	Quantity	Description	Price	Extensions
√	2½ gr	1⅛x50 Blk Cow Str. Cut Only	18.00	45.—
√	2 gr	1¼x52 Blk Cow Str. Cut Only	20.00	40.—
√	2 gr	1½x52 Blk Cow Str. no bkls	25.00	50.—
√	6 gr 10½ dz	1⅛x48 Blk Cow Str. cut only	18.00	123.75
√	21½ gr	1x48-52 Russ (Bfg) Cow. no blks.	12.00	258.—
√	7½ gr	1x48 Russ (Bfg) Cow cut only	12.00	90.—
√	1 gr 9 dz	1⅛x30 Russ. Sfty. Str. cut only	10.00	17.50
√	1 gr 4 dz	7/8x34 Blk Cow B. C. Str. cut only	7.00	9.33
√	1 gr 9 dz	1⅛x48 Bro Cow Str. cut only	18.00	31.50
√	1 gr 11 dz	1x48 Bro Cow Str. cut only	15.00	28.75
√	3½ dz	7/8x46 Bro Cow Str. cut only	12.00	3.50
√	3½ dz	1⅛x44 Russ Cow Trunk Str. no Bkle pieces		3.50
√	213	#5 Saxaphone Straps comp. w. trimming	8.00 p 100	17.04
√	7 gr	½"x20 Russ Cow cut only	3.00 gr	21.—
√	13 gr 10 dz	5/8x18 Blk Cow. (For U. S. Rubber cut only	5.00	69.17
√	8 gr 10 dz	5/8x14 Blk Cow. (For U. S. Rubber cut only	4.00	35.33
√	8 dz	5/8x14 Blk Cow. (For U. S. Rubber cut only	4.00	2.67
√	23 gr	5/8 Cow. Ins. (assted colors) chopped only	1.50	34.50
√	65 gr	Cow. Slide Loops	.35 gr	22.75
√	40 gr	Cow. Slide Loops	.25 gr	10.—
√	2 gr	½" Shoulder Straps	2.00	4.—
√	100 gr	Bag Tags—Assted without str.	1.50	150.—
	27 gr	½" Straps w. bkls for Bag Tags	75	20.25
	25 gr	½" Straps no bkls for Bag Tags	25	6.25
	8 gr	Double Window Bag Tags on Cards	2.00	16.—
	80 gr	#124 Bag Tags—Comp. no cards	2.00	160.—
	100 gr	Fancy Bag Tags—Comp. no cards	2.00	200.—
	51 gr	Double Window Bag Tags no cards.	2.00	102.—
				1,571.79

M. P.
L. B. P. — J. H. Mans — √

Exhibit P. 23.

Jan 1925

INVENTORY

Sheet No. 5 — Department—Strap
Entered by Al Cohen — Location—2nd floor

Check	Quantity	Description	Price	Extensions
√	11 gr 3 dz	1x48 Mah. Split Str Cut Only	7.00	78.75
√	15 gr 5 dz	⅞x43-48 Mah. 8 Blk Str. Cut Only	4.50	69.38
√	26 gr	⅞x48 Blk Str Cut Only	5.50	143.—
√	568 lbs.	Bro Split for Trunk Str	.25 lb.	142.—
√	45½ gr	⅞x48 Split—In Leather not cut	5.00	227.50
√	28 gr	⅞x43 Split—In Leather not cut	4.00	112.—
√	14 gr	⅞x45 Split—In Leather not cut	4.00	56.—
√	25 gr	1x52 Split—In Leather not cut	7.00	175.—
√	23 gr	1⅛x54-60 Split—In Leather not cut	9.00	207.—
√	6 gr	1⅛x40x20 Split—In Leather not cut	10.00	60.—
√	3,400 lbs	Offal.—Cow. All Colors	.10 lb.	340.—
√	8 gr 9 dz	⅞x46 Bro Split--Ready to bkle.	5.50	48.12
√	457 lb	Belting Lea. from Graton & Knight	36	164.52
√	4½ gr	Billets for Safety Straps	3.50 gr	15.75
√	5 gr	Split Ins. Str Complete	1.25	6.25
√	325 gr	Split Slide Loops	.25 gr	81.25
√	388 gr	Split Side Loops	.15 gr	58.20
√	33 lbs	Offal—Russ Cow (Harrison)	.50 lb	16.50
√	709 ft 5 oz.	Harrison Russ Cow	29	205.61
√	191 ft. 6 oz.	Harrison Russ. Cow	31	59.21
√	252 ft 2½ oz.	Harrison Russ. Cow	19	47.88
√	74 ft 5 oz	Am. Hide Russ. Cow	25	18.50
√	12	Shoulder (Russ 8 Blk) 2.00 ea	2.00	24.—
√	23	Bellies (Russ Cow.) .50 ea.	50 ea	11.50
√	217 gr	Split Ins. Strap Bkle Pos. chopped only	30c	65.10
√	1 gr	1⅛ Split Trunk Straps	11.00	11.—
√	5½ gr	Split Straps—All sizes—all sizes.	5.00	27.50
	20 lbs	Belting Painted (Graton & Knight)	.45 lb.	9.—
				2,480.52

M. P.
L. B. P. J. H. Mans √

Exhibit P. 24.

Receiving Book.

Exhibit P. 25.

Exhibit P. 25.

Jan 1925

INVENTORY

Page.....
Sheet No. 1 — Priced by.....
Called by.....Department—Stock Room — Extended by.....
Entered by J. H. M. — Location—2nd Floor — Examined by.....

Check	Quantity	Description	Price	Extensions
√	2 gr	1⅛x56 Bro. Cow. Straps	20.00	40.—
Job √	2 gr	⅞x44 Mah. Cow Straps	15.00	30.—
√	8 dz.	1¼x50 Blk. Cobra Gr. Straps #59 Bkle	24.00	16.—
Job √	10 dz	1¼x48 Bro Cow. Straps	24.00	20.—
√	6 dz	1⅛x48 Russ. (Buff.) Cow. Str	15.00	7.50
√	6 dz	1⅛x54 Russ. (Buff.) Cow. Str	15.00	7.50
Retn √	3 gr 6 dz.	⅞x33-35 Russ. Brief Case Straps	9.00	31.50
√	2 gr 6 dz	⅞x35 Mah. Cow. Brief Case Straps	9.00	22.50
√	14 dz	1⅛x48 Blk. Cow. Straps	20.00	23.33
√	16 dz	1¼x48 Blk. Cow. Straps no bkles	22.00	29.33
√	16 dz	1x52 Blk. Cow. Straps	16.00	21.33
√	5 gr. 4 dz	1x48 Blk. Cow. Straps	16.00	85.33
√	9½ gr	1x48 Bro. & Mah. Cow. Str	16.00	152.—
	14 gr	1x48 Russ. Cow. Straps (Bfg.)	13.00	182.—
	3 1/3	#103 S. Russ. Baby Straps	20.00	66.67
	7 dz	1⅛" Bro Split Trunks Str	12.00	7.—
	10 gr	½"x36 Split School Str	3.00	30.—
	6 gr	⅝x36 Split School Str	3.00	18.—
				789.99

M. P. √
L. B. P. J. H. Mans

Exhibit P. 25.

Jan 1925

INVENTORY

Sheet No. 2 — Department—Stock Room
Entered by J. H. M. — Location—2nd Floor

Check	Quantity	Description	Price	Extensions
√	6 dz	7/8x54-60 Russ. Cow. Sple Case #1..	24.00	12.—
	1 gr	1x48 Russ. Cow. Sple Case #1.....	24.00	24.—
	6 dz	1x66-72 Russ. Cow. Sple Case #1...	30	15.—
√	21 dz	1x66-72 Russ. Cow. Sple Case #2...	28	49.—
√	1 gr 9 dz	7/8x60 Russ. Cow Sple Case #2.	24	42.—
	1 gr 4 dz	1⅛x9 ft Russ. Baggage Str. #1	36	48.—
	5½ dz	1⅛x8 ft Russ. Baggage Str. #1..	30	13.75
√	4½ dz	1⅛x7 ft Russ. Baggage Str. #1...	27.00	10.13
√	30 dz	1⅛x7-8-9 ft Russ. Baggage Str. #2..	30.00	75.—
√	765 gr	5/8" Regular Split Ins. Str.....	1.25	956.25
√	177 gr	5/8" Tongueless Split Ins. Str.....	1.25	221.25
√	67 gr	Blk Split Ins. Str.—Jobs.....	1.00	67.—
√	98 gr	Cowhide Ins. Straps	2.75	269.50
	83 M.	#112 Tray Loops 20		166.—
	33 M.	#111 Tray Loops.....	20	66.—
	500	#120 Blk. Split Hdle Lps.....	50	2.50
	7,500	#120 Cowhide Hdle Loops.....	90	67.50
	5,300	#119 Cowhide Hdle Loops.....	70c	37.10
	3,000	#12 Bro. Cowhide Hdle Loops from Seward	20c	6.—
	3,000	#12 Bro. Cowhide Hdle Loops from		
				2,162.98

L. G. √
L. B. P. J. H. Mans

Exhibit P. 25.

Jan 1925

INVENTORY

Sheet No. 3 — Department—Stock Room
Entered by J. H. M. — Location—2nd Floor

Check	Quantity	Description	Price	Extensions
	1,500	#109 Cow Strap Loops.....	40	6.—
	19 M.	#116 Cow Strap Loops	20	38.—
	74 M.	#114 Cow Strap Loops.....	25	185.—
	54 M.	#114 Split Strap Loops.....	20	108.—
	103 M.	#116 Split Strap Loops.....	15	154.50
	5 2/3 gr.	1"x54-56 Split Straps R. B.....	9.00	51.—
	4½ gr	1"x46 Split Straps R. B.....	9.00	40.50
√	9½ gr	1"x45 Split Straps W. B.....	8.00	76.—
√	10 gr	1¼x48 Bro. & Mah. Split.....	12.00	120.—
√	20 gr	1x48 Bl & Bro. Split Straps.....	9.00	180.—
		Nickle R. B—For Freudberg—Gr.		
√	26 gr	1x52 Bro. Split Straps W. B.....	8.00	208.—
√	5 gr	1x52 Blk. Split Straps W. B.....	8.00	40.—
√	5 gr	1x52 Mah. Split Straps W. B.....	8.00	40.—
	6½ gr	1x52 Mah. Split Straps R. B.....	8.00	52.—
√	7 gr	1x52 Blk Split Straps R. B.....	8.00	56.—
√	8 gr	1x52 Bro. Split Straps R. B.....	8.00	64.—
	3½ gr	1⅛x48 Mah. Split Straps.....	10.50	36.75
	17 gr	1⅛x48 Blk. Split Straps.....	10.50	178.50
				1,634.25

M. P. √
L. B. P. J. H. Mans

Exhibit P. 25.

Jan 1925

INVENTORY

Sheet No. 4 — Department—Stock Room
Entered by J. H. M. — Location—2nd Floor

Check	Quantity	Description	Price	Extensions
√	10½ gr	7/8x48 Bro. Split Str.	6.50	68.25
√	35 gr	7/8x48 Blk Split Str.	6.50	227.50
√	41 gr	7/8x48 Mah. Split Str.	6.50	266.50
√	6 gr	7/8x45 Mah. Split Str.	6.00	36.—
√	19½ gr	7/8x45 Blk Split Str.	6.00	117.—
√	32½ gr	7/8x43 Bro. Split Str	6.00	195.—
√	65½ gr	7/8x43 Mah. Split Str.	5.00	327 50
√	50½ gr	7/8x43 Blk. Split Str.	5.00	252.50
√	34½ gr	7/8x43 Bro. Split Str.	5.00	172.50
√	9½ gr	1x48 Blk Split Str. W. B.	8.00	76.—
	2½ gr	1x48 Bro. Split Str. W. B.	8.00	20.—
√	27½ gr	1x48 Mah. Split Str. W. B.	8.00	220.—
√	9½ gr	1x48 Blk. Split Str. R. B.	8.00	76.—
√	47½ gr	1x48 Bro. Split Str. R. B.	8.00	380.—
√	23½ gr	1x48 Mah. Split Str. R. B.	8.00	188.—
		One Case & One Bdle Being Held for Majestic B. C. Co.		
	15 gr 7 dz	7/8"x33 Mah B. C. Str.	9.00	140.25
	7 gr	7/8"x33 Harr. Russ B. C. str.	9.00	63.—
				2,826.—

M. P.
L. B. P. J. H. Mans √

Exhibit P. 25.

Jan 1925

INVENTORY

Sheet No. 5 — Department—Stock Room
Entered by J. H. M. — Location—Shipping Room

Check	Quantity	Description	Price	Extensions
		One Shipment for P. & B. Mfg. Co. Packed & being held.	7 cases	
	6 gr	7/8x42 Mah Split Str.	7.50	45.—
	10 gr	7/8x42 Blk Split Str.	7.50	75.—
	8 gr	7/8x42 Bro. Split Str.	7.50	60.—
	5 gr	7/8x48 Mah. Split Str.	9.—	45.—
	5 gr	7/8x48 Blk Split Str.	9.—	45.—
	20 gr	1x48 Mah Split Str. W. B.	10.50	210.—
	15 gr	1x48 Blk Split Str. W. B.	10.50	157.50
	6 gr	1x48 Bro Split Str. W. B.	10.50	63.—
	12 gr	1x48 Mah. Split Str. R. B.	11.—	132.—
	12 gr	1x48 Blk Split Str. R. B.	11.00	132.—
	5 gr	1⅛x48 Blk Split Str.	14.—	70.—
	5 gr	1⅛x48 Mah. Split Str.	14.—	70.—
	50 gr	Mah. Split Ins. Str.	1.50	75.—
	500	#46 Blk Split Hdls. ¾r.	4.25	21.25
	503	#46 Bro. Split Hdls. ¾r.	4.25	21.38
	1,500	#39 Blk Split Hdls. ⅞r	4.25	63.75
	1,500	#39 Mah Split Hdls. ⅞r.	4.25	63.75
	500	#39 Bro Split Hdls ⅞r.	4.25	21.25
	975	#334 Blk. Ker. Hdls.	4.—	39.—
	1,050	#334 Mah. Ker. Hdls.	4.—	39.—
	650	#334 Bro. Ker. Hdls.	4.—	26.—
	3,000	4" Fancy Cow. Corners 2,000 Mah 1,000 Blk.	3.25	97.50
				1,575.38

L. B. P.
M. P. J. H. Mans √

Exhibit P. 25.

Dec 31 1924

INVENTORY

Sheet No. 1 — Department—Stock Room

Check	Quantity	Description	Price	Extensions
√	1,175	#326 Can Tags	2	23.50
√	54 dz pr	#7 Solid Tr Hdls	1.10	59.40
√	308 dz pr	#7½ Russ Tr Hdls	90	277.20
√	429	#17X Cow Hndls	6	25.74
√	482	#1 Cow Top Tr Hdls	15	72.30
√	136 dz	#7½ Cow Top	90	122.40
√	25 dz pr	#6 Sol	90	22.50
√	27 dz pr	#6 C. T.	65	17.55
√	154 dz pr	#4 G Sol	50	77.—
√	625	#15 Split	1½	9.38
√	25 dz pr	2½ Split	24	15.60
√	250	#17X Hdls.	6	15.—
√	600	#90 Hdls.	5	30.—
√	38 dz pr	7½ Hdls.	65	24.70
√	94 dz pr	#1 Sol.	20	18.80
√	76 dz pr	#6½ Sol.	90	68.40
√	24 dz pr	#6½ Blk	65	15.60
√	5 dz pr	#8 D. F.	2.00	10.—
√	43 dz pr	#8 Sol.	1.50	64.50
√	53 dz pr	#2 Sol.	35	18.55
√	66 dz pr	#2 Blocked	33	21.78
				1,009.90

M. P.
H. M. K.

J. H. Mans

Exhibit P. 25.

Dec 31 1924

INVENTORY

Sheet No. 2 — Department—Stock Room

Check	Quantity	Description	Price	Extensions
√	92 dz pr	#2 Split Top. √	20	18.40
√	25 dz pr	8L Sol	1.50	37.50
√	11 dz pr	#8 Sol √	1.50	16.50
√	144 dz pr	#3	35	50.40
√	67 dz pr	#3	24	16.08
√	28 dz pr	#3 C. T. √	36	10.08
√	75 dz pr	#5½	65	48.75
√	112 dz pr	5½ Sol. #	65	72.80
√	239 dz pr	5½ C. T.	45	107.55
√	122 dz pr	5½ S. T.	25	30.50
				408.56
√	126 dz pr	7 Sol.	1.00	126.—
√	84 dz pr	6 Sol.	90	75.60
√	210 dz pr	7½	90	189.—
√	2,300	#67 Emerg Hdls.	12	276.—
√	15 gr	Asst Shawl Hdls.	15.00	225.—
√	60 gr	Asst Bag Tags.	3.00	180.—
√	2,700	#126 Bfg.	10	270.—
√	3,200	#45 F. P.	10	320.—
√	6,800	#39 F. P.	7	476.—
√	2,400	#51 F. P.	10	240.—
				2,786.16

M. P.
H. M. K.

J. H. Mans

Exhibit P. 25.

Dec 31 1924

INVENTORY

Sheet No. 1 — Department—Shipping Room

Check	Quantity	Description	Price	Extensions
√	66,400	Brass Knobs for #38	12.00M	796.80
√	2,036	#39 Bfg Hdls F. P.	3½	71.26
√	2,618	#39 Bfg Hdls F. P.	3½	91.63
√	1,300	#46 Bfg Hdls F. P.	3½	45.50
√	855	#405 Blk Cobra Hdls	.25	213.75
√	1,000	#52 Split Hdls Mah.	7	70.—
√	1,360	#23 Bfg Hdls	7	95.20
√	1,158	#126 Russ. Hdls	.11	127.38
√	1,000	#183 Blk Cow.	8c	80.—
√	437	#341 Job Hdls	4	17.48
√	849	#341 Blk Cobra	.11	93.39
√	150	Paper Cartons	2	3.—
√	200	#341 Blk Cow Hdls	.11	22.—
√	713	#39 Bro Ker	2¾	19.61
√	250	#22½ Ker	4	10.—
√	187	#452 Blk Cobra	.18	33.66
√	130	#341 Blk Cow	.11	14.30
√	1,533	#48 Blk Bfg.	5½	84.32
√	71	#126 Blk Cow	.16	11.36
√	206	#126 Russ Bfg.	.11	22.66
√	32	#445 Blk Cobra	.22	7.04
√	36	#126 Bro Bfg Jobs	5	1.80
√	500	Boston Bg Hdls	2	10.—
√	25	#313 Hdls	.20	5.—
√	23	#321 Hdls	.10	2.30
				1,949.44

H. M. K.
M. P.

J. H. Mans

Exhibit P. 25.

Dec 31 1924

INVENTORY

Sheet No. 2 — Department—Shipping Room

Check	Quantity	Description	Price	Extensions
√	100	#52 Cow Hdls	.10	10.—
√	51	#313 Cow Hdls	.20	10.20
√	220	#338 Blk Cow	.10	22.—
√	100	#52 Bro Bfg	8	8.—
√	440	#346 Russ Split	2¼	9.90
√	2,080	#126 Russ Hdls no v.	.11	228.80
√	259	#39 Russ Bfg.	3½	9.07
	160	#51 Bro Bfg.	5½	8.80
√	144	dz #67 Emer. Hdls	1.20d	172.80
√	532	#30x F. P. Split	7	37.24
	122	30 Bf F. P.	8	9.76
√	340	#52 Bfg Jobs	5	17.—
√	3,600	#22x Bro Split	4	144.—
√	4,400	#22x Blk Split	4	176.—
	3,275	#45 Split Jobs	7	229.25
√	7,400	#346 Split F. P.	2½	185.—
	17,000	#39 Split F. P.	2¾	467.50
√	3,600	#22x F. P. Split	4	144.—
	9,600	#46 F. P. Split	2¾	264.—
√	92	#65 Cow.	.26	23.92
	14	#54 Cow.	.35	4.90
√	376	#63 Cow. Hdls F P	.10	37.60
√	182	#39 Cow. Hdls F P	7	12.74
√	332	#51 Cow. Hdls F P	.10	33.20
√	173	#39 Cow. Hdls F P	7	12.11
				2,277.79

H. M. K.
M. P.

J. H. Mans

Exhibit P. 25.

Dec 31 1924

INVENTORY

Sheet No. 3 — Department—Shipping Room

Check	Quantity	Description	Price	Extensions
√	75	#46 Cow Hdls	7	5.25
√	10,000	#63½ Split F. P.	4½	450.—
√	3,500	#51 Bfg F. P.	5½	192.50
√	8,000	#48 Bfg F. P.	5	400.—
√	4,000	#51 Bfg F. P.	5½	220.—
	1,255	#51 Cow Spec.	.10	125.50
√	1,152	#39 Bro Split	3	34.56
	200	#13 Teles.	3	6.—
	660	lbs Kraft Paper	6¼	41.25
	30	lbs rope 2 ply	.13	3.90
	85	lbs rope 3 ply	.13	11.05
√	4	Kegs 6D nails	3.85	15.40
√	2	Kegs 8D nails	3.55	7.10
√	1	Keg 10D nails	3.45	6.90
	1	Bkl Band Iron	50.—	50.—
√	10,650	#330 Ker.	3	319.50
	4,200	#330 Ker. Bro	3	126.—
√	650	#334 Ker. Bro	2¾	17.88
	200	#19 Ker. Bro	2½	5.—
√	573	#18 Ker. Bro	2¾	15.76
√	543	Spec. L. G. Hdls.	.12	65.16
√	1,800	gr. Loops for #22x	.50	900.—
√	4,500	#346 Split F. P.	2½	112.50
				3,131.21

H. M. K.
M. P.

J. H. Mans

Exhibit P. 26.

COPY COPY

Exhibit P. 26.

SWORN STATEMENT
IN
PROOF OF LOSS

To the Pacific Fire Insurance Company
of New York

By Your Policy of Insurance No. 2250594, issued at your Newark N J Agency from the 21st day of July, 1924, and expiring the 21st day of July, 1925, at 12 o'clock noon, you insured Specialty Handle Manufacturing Co. as now or may be hereafter constituted against loss or damage by fire, to the amount of $21000. according to the terms and conditions printed therein; the written portion and all endorsements, transfers and assignments being as follows:

(Rider)

copy

SPECIALTY HANDLE MANUFACTURING CO.
(as now or may be hereafter constituted.)

$21000. On stock and materials as dealer in and manufacturer of leather handles and trunk and suit case specialties, manufactured, unmanufactured and in process of manufacture or repair, including all materials, ingredients and supplies used in manufacturing and repairing the same, and on merchandise not hazardous, hazardous and extra hazardous, including boxes, samples and packages, the property of the assured, or held in trust or

Exhibit P. 26.

on commission, or on joint account with others or for which the assured may be liable, or sold but not delivered or removed, and on machines and machinery of every description and all attachments thereto, tools, implements, utensils, appurtenances, hangers, shafting, belting, gearing, pulleys, power and foot presses, scales, lathes, fitments, stands, figures, steam, gas and water pipes and fixtures, engines and boilers, their foundations and connections, dynamos and electric motors, machinery and connections, pumps and tanks, store, office and factory furniture and fixtures, labels, catalogues and other advertising matter, awnings, safes, partitions, shelving, counters, carpets, typewriting machines and attachments, trunks, benches, office and factory supplies and signs, patterns, moulds, models, dies, designs, drawings, matrices, solutions, photographic negatives or lithographic plates, or stones or engravings thereon,

All while contained in or attached to the buildings, extensions and additions thereto adjoining and communicating, or on and under sidewalks, situate No. 113-115 & rear N. J. R. R. Ave. Newark N J occupied for manufacture of leather handles and trunk and suitcase specialties.

Other insurance permitted without notice until required.

Privilege for existing communications, for existing occupations, and for other occupations not more hazardous; to use kerosene and gas for light and heat, and electricity for light, heat and power; to keep and use such materials and supplies as may be usual in the business, as stated above. It is understood and agreed that this

Exhibit P. 26.

policy does not cover bituminous coal outside of buildings.

Privilege to work overtime as occasions may require. It is understood and agreed that not to exceed 15% of the amount of this policy shall cover on patterns, models, moulds and dies.

Permission is given to make additions, alterations and repairs without limit of time in the within described premises.

Privilege is hereby granted to cease operations not exceeding sixty consecutive days at any one time in any one year.

Reduced Rate Clause.—In consideration of the reduced rate of premium at which this policy is written the Standard 90 Per Cent. Co-Insurance Clause of the State of New Jersey is attached to and made a part of this policy.

State of New Jersey, Percentage Co-Insurance Clause.—If at the time of fire the whole amount of insurance on the property covered by this policy shall be less than 90 per cent. of the actual cash value thereof, this Company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured by this policy shall bear to the said 90 per cent. of the actual cash value of such property.

Dynamo Clause.—If dynamos, exciters, lamps, motors, switches or other electrical appliances or devices are covered under this policy, this Company shall not be liable for any electrical injury or disturbance, whether from artificial or natural causes, unless fire ensues, and then for the loss by fire only.

Lightning Clause—The policy shall cover any direct loss or damage caused by Lightning (meaning thereby the commonly accepted use of the

Exhibit P. 26.

term Lightning, and in no case to include loss or damage by cyclone, tornado, or windstorm), not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. Provided, however, if there shall be any other insurance on said property, this Company shall be liable only *pro rata* with such other insurance for any direct loss by Lightning, whether such other insurance be against direct loss by Lightning or not.

Attached to and forming part of Policy No. 2250594 of the Pacific Fire Insurance Company of.....

.....Agents.

Feist & Feist
Agency, Inc.
Insurance
738 Broad Street
Newark, N. J.
1M 4-16

The total insurance on said property, or any part thereof, at the time of the fire, including the above mentioned policy, was $168000. and no more.

The property described in said policy belonged, at the time of the fire, hereinafter mentioned, to the assured and no other person or persons had any interest therein, except as follows:.....

.....

The building described, or containing the property described in said policy was occupied at the time of the fire as follows: solely by the assured and for no other purpose whatever.

Exhibit P. 26.

A fire occurred on the 1st day of March, 1925, about the hour of o'clock M., by which the property described by said policy and situate as therein named was destroyed or damaged, as hereinafter set forth in detail, said fire originating as follows: Unknown to the assured

	Sound Value	Total Loss	Total Insurance	Amount Named in this Policy	Claimed Under this Policy
First Item of Policy, -	$190,074.23	$147,107.38	$168,000.00	$21,000.00	$18,058.77
Second Item of Policy,					
Third Item of Policy, -					
Fourth Item of Policy,					
TOTAL, - - -				$21.000.00	$18,058.77

At the time said insurance was effected, the property described by said policy belonged to the assured; and the said fire did not originate by any act, design or procurement on the part of assured, or this affiant, or in consequence of any fraud or evil practice done or suffered by said assured, or this affiant; nothing has been done by or with the assured's, or this affiant's privity or consent, to violate the conditions of the policy, or render it void.

SPECIALTY HANDLE MFG CO. (SEAL)

Emile Garfinkel Treas.
Assured.

WITNESS my hand at N Y City this
18 day of June, 1925.

_____

_____

Exhibit P. 26.

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss:*

Personally Appeared Emile Garfinkel signer of the foregoing statement, who made solemn oath to the truth of the same, and that no material fact is withheld that the said Company should be advised of.

Subscribed and sworn to before me, the day and date above written.

S. STANLEY GRAY
Notary Public
N Y Co #355

THIS proof of loss is filed as a *pro forma* claim to comply with the policy requirements, under notice from the Insurance Companies, it might be subject to amendment by a fuller report from Puder & Puder, Accountants, 31 Clinton St. Newark N. J., employed by us.

SPECIALTY HANDLE MFG. CO.

Emile Garfinkel
Treas.

Exhibit P. 26.

APPORTIONMENT OF CLAIM

SPECIALTY HANDLE MFG CO.

		113-135 N. J. R. R. Ave., Newark, N. J. Fire—March 1st, 1925 STOCK & MACHY BLANKET	
		Ins.	Claim
5218	Equitable F&M	$ 13,500.00	$ 11,609.20
950665	California	12,500.00	10,749.26
467956	State Assce	10,000.00	8,599.41
171302	Patriotic	15,000.00	12,899.12
1164854	Stuyvesant	8,000.00	6,879.53
6520	Prov. Washington	20,000.00	17,198.83
960113	Royal	10,000.00	8,599.41
6315	Agricultural	7,500.00	6,449.56
194549	New Brunswick	4,000.00	3,439.76
7822022	Scottish Un & Natl	5,000 00	4,299.70
2250662	Pacific	4,000.00	3,439.76
481384	General Fire	7,500.00	6,449.56
723082	Netherlands	5,000.00	4,299.70
02343	Importers & Exporters	1,500.00	1,289.91
217081	North British & Merc.	8,500.00	7,309.50
74745	Concordia	5,000.00	4,299.70
02342	Importers & Exporters	1,500.00	1,289.91
217079	No. British & Merc.	8,500.00	7,309.50
2250594	Pacific	21,000.00	18,058.77
		$168,000.00	$144,470.09
	COINSURANCE	3,066.81	2,637.29
		$171,066.81	$147,107.38

	SOUND VALUE		CLAIM
Stock in sight	$ 50,539.04		$ 22,523.83
Total loss	103,440.44		103,440.44
Stock total	$153,979.48		$125,964.27
Machinery	36,094.75		21,143.11
S. V.	$190,074.23	LOSS	$147,107.38

Exhibits P. 27 to P. 36.

COPY

Claim No.....

SWORN STATEMENT
IN
PROOF OF LOSS
TO THE
Pacific Fire Insurance Company
of
New York

Policy No. 2250594
Amount of Policy,.....$21000.
Assured Specialty Handle Mfg Co.
Date of Fire March 1st 1925
Proof Received .....19 ,
Amount Claimed,.....$18058.77
Amount Allowed,.....$.....
Amount Paid,.....$.....

MILLER & MALTBIE
Adjusters for Assured
92 William Street, New York

Exhibits P. 27 to P. 33.

Proof of Loss same as Exhibit P. 26.
(See Stipulation *re* Exhibits, page 338.)

Exhibit P. 35.

Folder of Checks and Invoices for January, 1925.

Exhibit P. 36.

Folder of Checks and Invoices for February, 1925.

Exhibits P. 37 to P. 43.

Exhibit P. 37.

Folder of Checks and Invoices for March, 1925.

Exhibit P. 38.

Photostatic Copy of Check for $4,155.48.

Exhibit P. 39.

Purchase Journal.

Exhibits P. 40, P. 41, P. 42.

Checks.

Exhibit P. 43.

Newark, New Jersey, April 9th, 1925.
Re Claims: Specialty Handle Company,

Fire: March 1st, 1925.

Subject to the terms and conditions of the policies, it is hereby agreed by and between the Assured and the Companies signatory hereto that the Sound Value of Stock in sight is hereby agreed upon in the sum of $50,539.04, and the loss thereon $22,523.83; that the Sound Value of all machinery and fixtures is hereby agreed upon at $36,094.75, and the loss thereon $21,143.11.

THE SPECIALTY HANDLE MFG CO
Emile Garfinkel Treas.

GENERAL ADJUSTMENT BUREAU,
for Companies as represented by them.
By: Wm F Russell
Fred W. Williams
for represented Companies

Exhibits P. 44 to P. 52.

Exhibit P. 44.

Sales Book, 1925.

Exhibit P. 45.

Sales Book, 1925.

Exhibit P. 46.

Cash Disbursements Book, 1925.

Exhibit P. 47.

Purchase Returns Book, 1925.

Exhibit P. 48.

Sales Returns Book, 1925.

Exhibit P. 49.

Photograph of Stock Room, fourth floor, rear of 125-131 New Jersey Railroad avenue.

Exhibit P. 50.

Photograph of fourth floor from bridge, 113-115 New Jersey Railroad avenue.

Exhibit P. 51.

Photograph of 129-135 New Jersey Railroad avenue.

Exhibit P. 52.

Sales Book, January 1, 1924, to February 26, 1924.

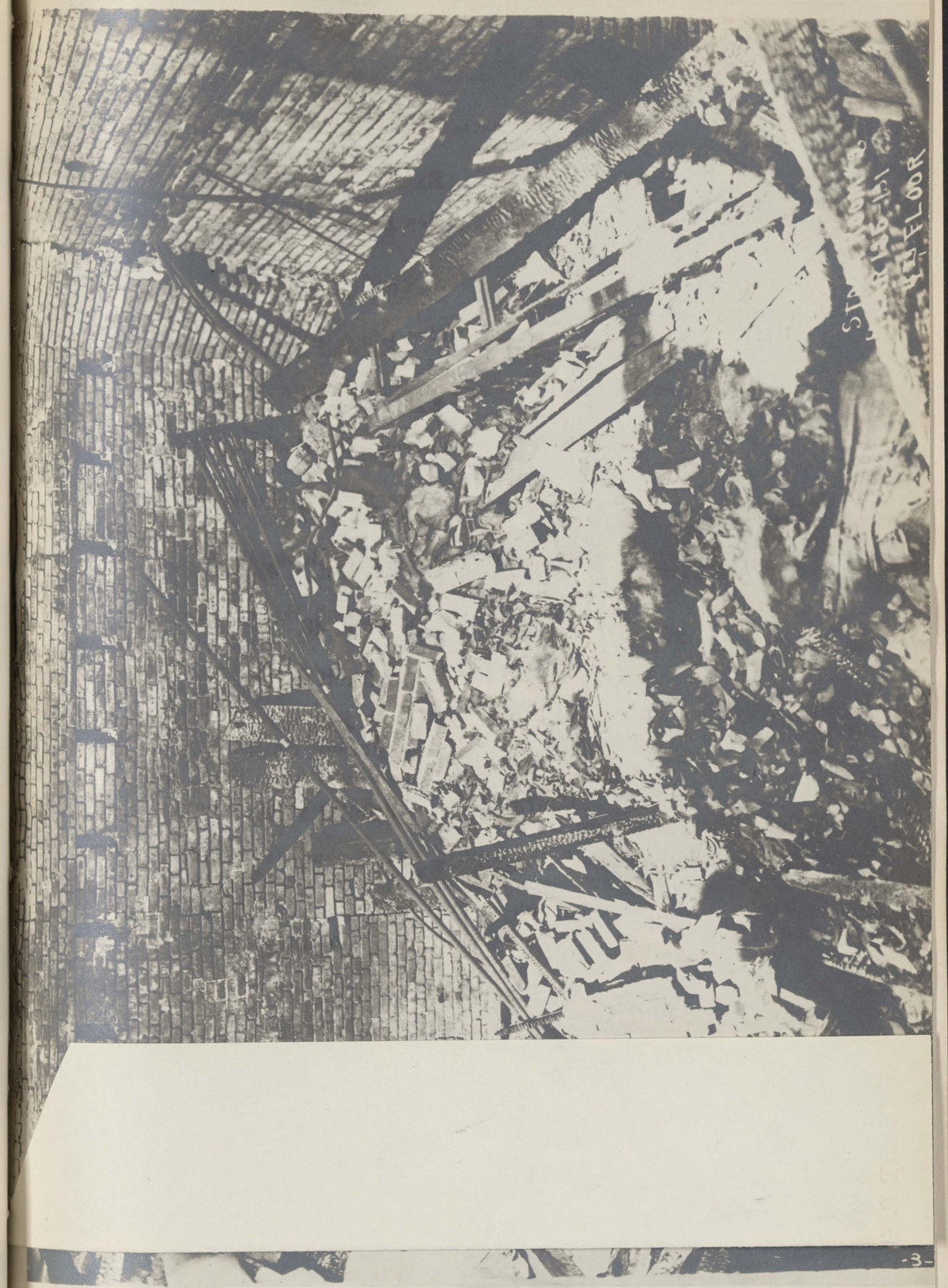


EXHIBIT P. 50.

Exhibits P. 44 to P. 52.

Exhibit P. 44.

Sales Book, 1925.

Exhibit P. 45.

Sales Book, 1925.

Exhibit P. 46.

Cash Disbursements Book, 1925.

Exhibit P. 47.

Purchase Returns Book, 1925.

Exhibit P. 48.

Sales Returns Book, 1925.

Exhibit P. 49.

Photograph of Stock Room, fourth floor, rear of 125-131 New Jersey Railroad avenue.

Exhibit P. 50.

Photograph of fourth floor from bridge, 113-115 New Jersey Railroad avenue.

Exhibit P. 51.

Photograph of 129-135 New Jersey Railroad avenue.

Exhibit P. 52.

Sales Book, January 1, 1924, to February 26, 1924.

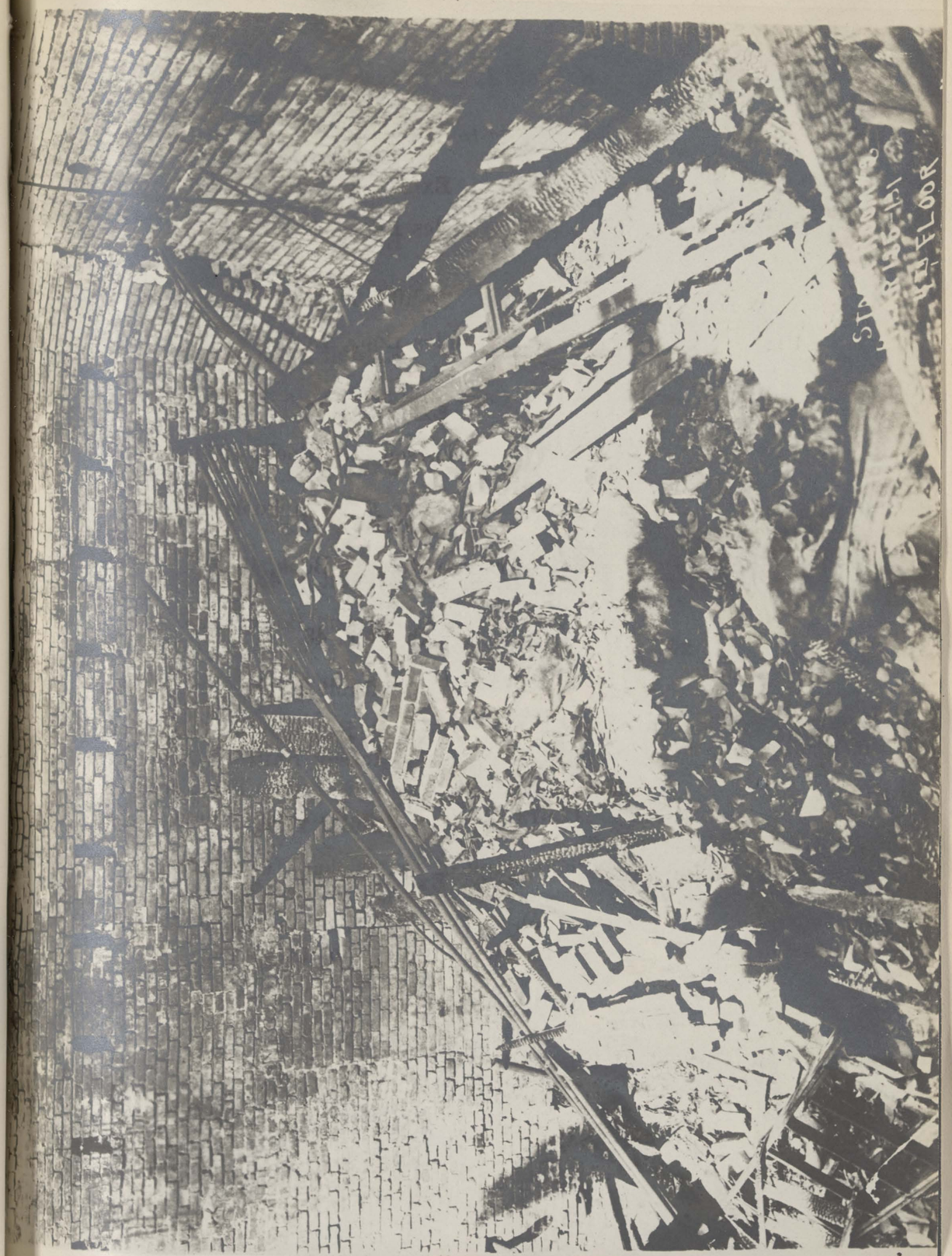


EXHIBIT P. 49.



EXHIBIT P. 50.

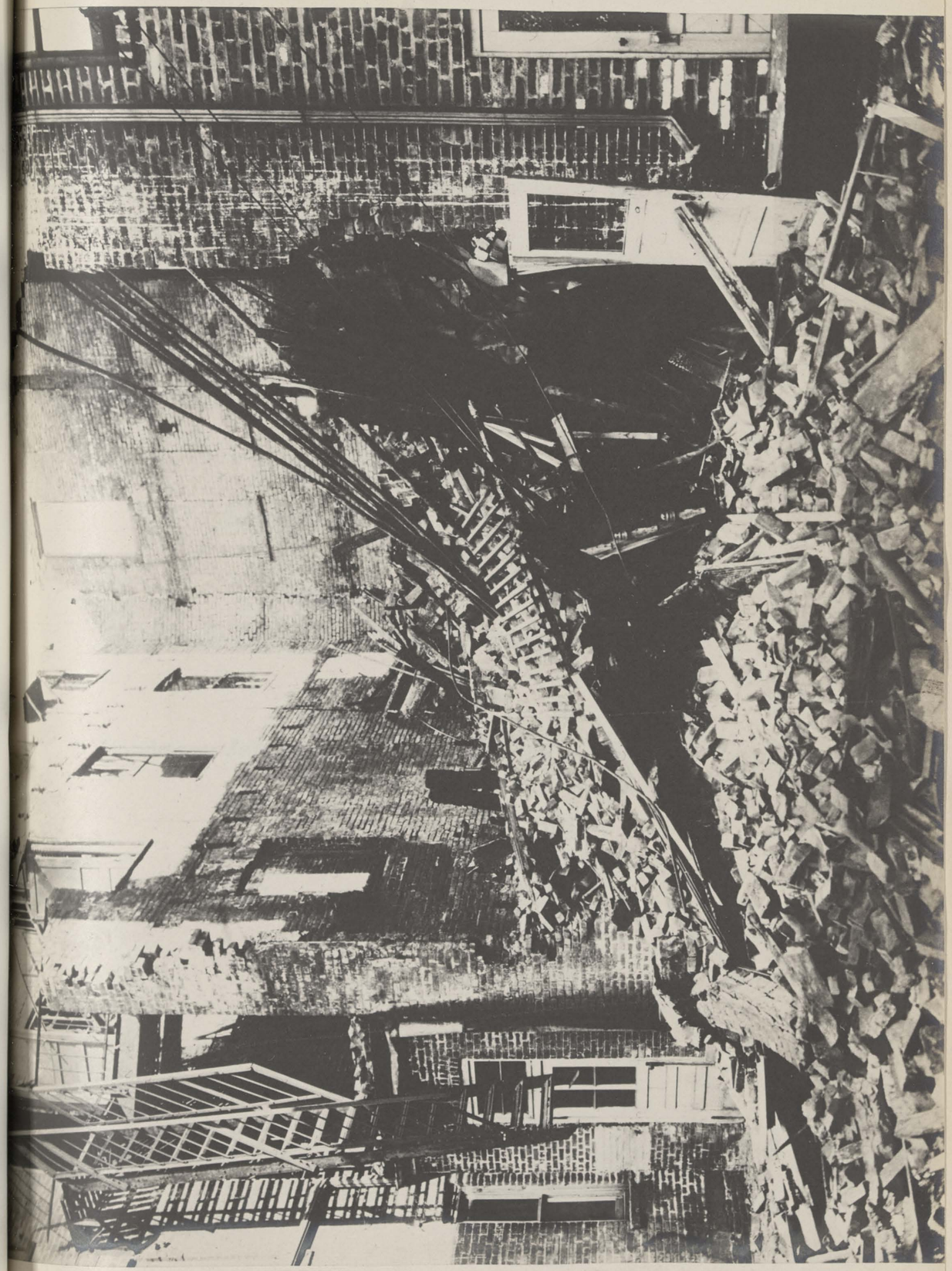


EXHIBIT P. 51.

Exhibits P. 53 to P. 58.

Exhibit P. 53.

Sales Book, February 27, 1924, to May 24, 1924.

Exhibit P. 54.

Sales Book, May 26, 1924, to August 28, 1924.

Exhibit P. 55.

Sales Book, August 29, 1924, to November 17, 1924.

Exhibit P. 56.

Accounts Payable Ledger.

Exhibit P. 57.

Cash Book, August 1, 1923, to February 28, 1924.

Exhibit P. 58.

Purchases, January 1, 1924, to December 31, 1924.

Exhibit P. 59.

SPECIALTY HANDLE MFG. CO.—113/135 N. J. R. R. AVE., NEWARK, N. J. FIRE—MARCH 1, 1925

		Stock and Mchny Ins.	Blanket Claim		Contribution on Allowed Items	Contribution on Items in Debate
5218	Equitable F & M.....	$ 13,500.00	$ 11,609.20			
950665	California	12,500.00	10,749.26			
467956	State Assce	10,000.00	8,599.41			
171302	Patriotic	15,000.00	12,899.12	$12,899.12	$ 3,828.93	$ 9,070.19
1164854	Stuyvesant	8,000.00	6,879.53	6,879.53	2,042.10	4,837.43
6520	Providence Washington	20,000.00	17,198.83			
960113	Royal	10,000.00	8,599.41			
6315	Agricultural	7,500.00	6,449.56	6,449.56	1,914.47	4,535.09
194549	New Brunswick	4,000.00	3,439.76	3,439.76	1,021.05	2,418.71
7822022	Scottish Union & National....	5,000.00	4,299.70			
2250662	Pacific	4,000.00	3,439.76	3,439.76	1,021.05	2,418.71
481384	General Fire	7,500.00	6,449.56			
723082	Netherlands	5,000.00	4,299.70			
02343	Importers & Exporters	1,500.00	1,289.91	1,289.91	382.89	907.02
217081	North British & Mercantile ..	8,500.00	7,309.50			
74745	Concordia	5,000.00	4,299.70			
02342	Importers & Exporters	1,500.00	1,289.91	1,289.91	382.89	907.02
217079	North British & Mercantile ..	8,500.00	7,309.50			
2250594	Pacific	21,000.00	18,058.77	18,058.77	5,360.50	12,698.27
		$168,000.00	$144,470.09	$53,746.32	$15,953.88	$37,792.44
	CO-INSURANCE	3,066.81	2,637.29			
		$171,066.81	$147,107.38			

	S.V.	Claim
Stock in Sight as Agreed	$ 50,539.04	$ 22,523.83
Mchny and Fixtures as Agreed	36,094.75	21,143.11
Total Agreed S. V. and Loss in Sight....	$ 86,633.79	$ 43,666.94 = 2968371% of Entire Claim
Stock Total Loss and Missing	103,440.44	103,440.44 = 7031629% of Entire Claim
	$190,074.23	$147,107.38 10000000



EXHIBIT P. 62.

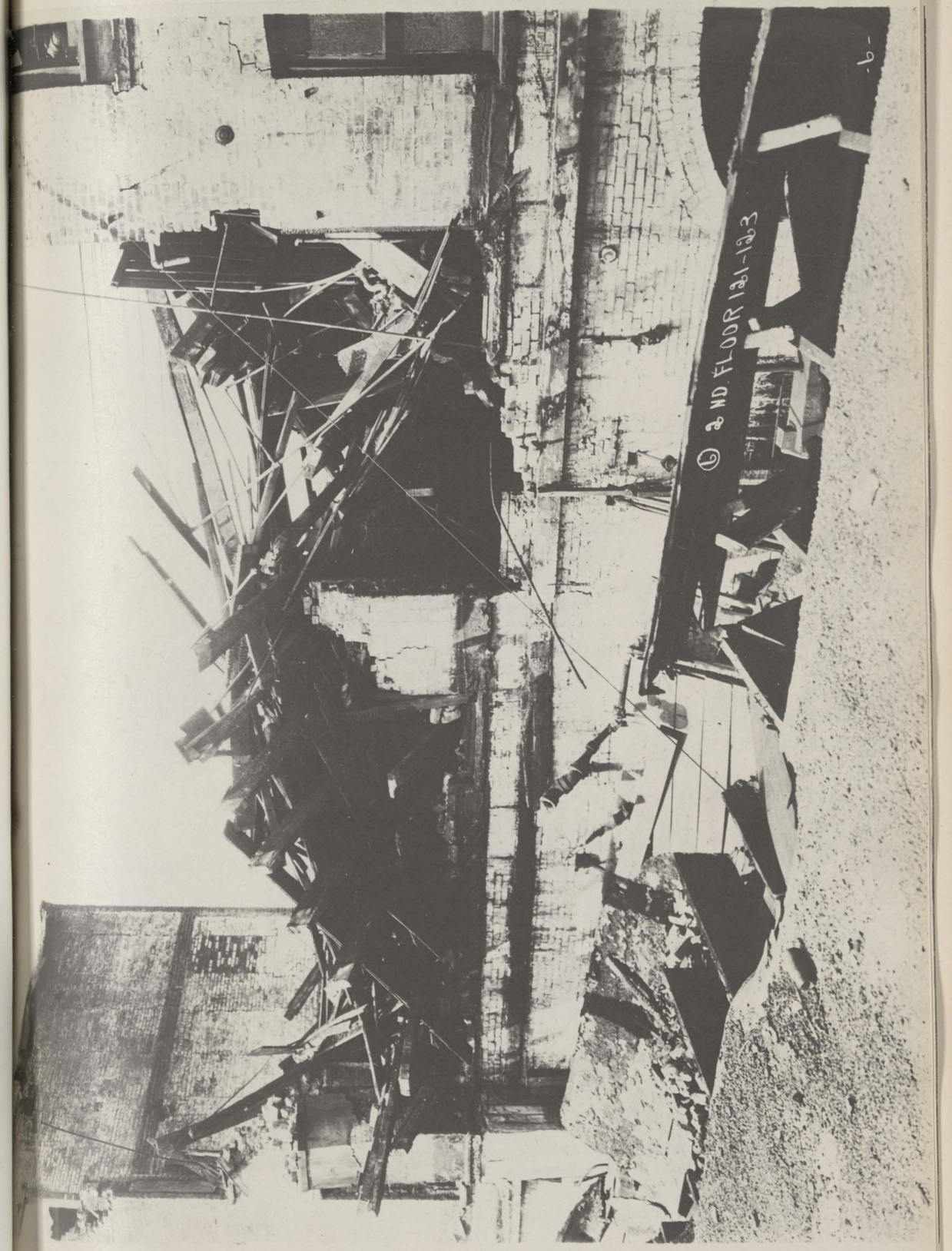


EXHIBIT P. 63.



EXHIBIT P. 65.



EXHIBIT P. 66.



EXHIBIT P. 67.

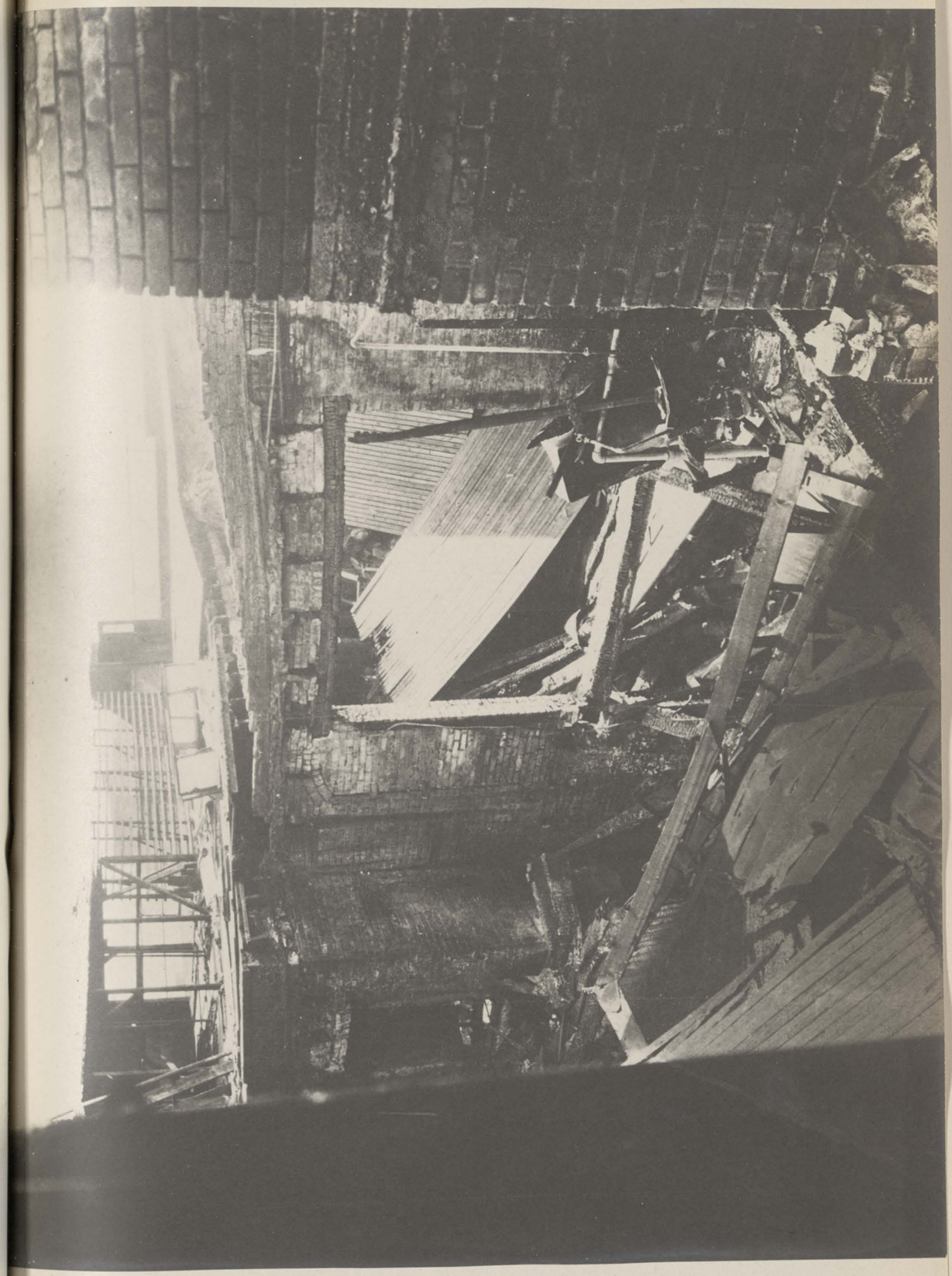


EXHIBIT P. 68.

Exhibits P. 62, P. 63, P. 65, P. 66, P. 67 and P. 68.

Are photographs of various parts of buildings.

Exhibit P. 69.

Exhibit P. 69.

SPECIALTY HANDLE MFG. CO.

			Total Physical Damage as Claimed and Pro-Rata Physical Damage as Claimed—Each Policy	Total Physical Damage as Claimed and Physical Damage as Claimed Pro-Rata Each Policy Joined This Action	Total Physical Damage as Agreed and Physical Damage Pro-Rata Each Policy as Agreed this Action
		Blanket Stocks and Machny Ins.			
5218	Equitable F & M	$ 13,500.00	$ 11,821.14		
950665	California	12,500.00	10,945.50		
467956	State Assce	10,000.00	8,756.39		
171302	Patriotic	15,000.00	13,134.60	$13,134.60	$ 3,898.83
1164854	Stuyvesant	8,000.00	7,005.11	7,005.11	2,079.38
6520	Providence Washington	20,000.00	17,512.79		
960113	Royal	10,000.00	8,756.39		
6315	Agricultural	7,500.00	6,567.30	6,567.30	1,949.42
194549	New Brunswick	4,000.00	3,502.55	3,502.55	1,039.69
7822022	Scottish Union & National	5,000.00	4,378.19		
2250662	Pacific	4,000.00	3,502.55	3,502.55	1,039.69
481384	General Fire	7,500.00	6,567.30		
723082	Netherlands	5,000.00	4,378.19		
02343	Importers & Exporters	1,500.00	1,313.45	1,313.45	389.88
217081	North British & Mercantile	8,500.00	7,442.93		
74745	Concordia	5,000.00	4,378.19		
02342	Importers & Exporters	1,500.00	1,313.45	1,313.45	389.88
217079	North British & Mercantile	8,500.00	7,442.93		
2250594	Pacific	21,000.00	18,388.43	18,388.43	5,458.36
	TOTAL	$168,000.00	$147,107.38	$54,727.44	$16,245.13

	S. V.	
Stock in Sight	$ 50,539.04	43,666.54 = 2968371 percent of Total × $54,727.44 = 1624513
Mchny	36,094.75	103,440.44 = 7031629 percent of Total × 54727.44 = ———
Total as Agreed in Sight	86,633.79	$147.107.38 10000000—100% of Total
Total Loss and Missing as Claimed	103,440.44	
Total	$190,074.23	

CLAIM

$ 22,523.83	
21,143.11	

Exhibits D. 5, D. 6.

Exhibit D. 5.

THE SPECIALTY HANDLE MFG. CO.

No. 6288

Newark, N. J. Jan. 21st, 1924

Pay to the order of Bearer.....$1066.98/100

Ten Hundred Sixty Six Dollars Ninety Eight Cents

To the Washington Trust Company
Newark, N. J.

Emile Garfinkel
Treasurer

(Stamp)—Compared Puder & Puder Certified Public Accountants

(Perforated) Paid 1-22-24
(Endorsed) Emile Garfinkel
(Usual bank endorsements.)

Exhibit D. 6.

THE SPECIALTY HANDLE MFG. CO.

No. 6481

Newark, N. J. April 12th, 1924.

Pay to the order of Cash.....$963 50/100

Nine Hundred Sixty Three 50/100.....Dollars

To the Washington Trust Company
Newark, N. J.

Emile Garfinkel
Treasurer

(Stamp)—Compared Puder & Puder Certified Public Accountants

(Perforated) Paid 4-23-24
(Endorsed) Emile Garfinkel
(Usual bank endorsements.)

Exhibits D. 7, D. 8.

Exhibit D. 7.

THE SPECIALTY HANDLE MFG. CO.

No. 1075
Newark, N. J. Jun 18 1924

Pay to the order of I. Friedman....$1500 00/100
One Thousand Five Hundred Dollars
To The Public National Bank of New York,
Broadway & 25th Street
The Specialty Handle Mfg. Co.
Emile Garfinkel
Treasurer

(Stamp)—Compared Puder & Puder Certified Public Accountants

(Perforated) Paid 6-20-24—1-238
(Endorsed) I. Friedman Emile Garfinkel
(Usual bank endorsements.)

Exhibit D. 8.

THE SPECIALTY HANDLE MFG. CO.

No. 1184
Newark, N. J. Jul 24 1924

Pay to the order of I. Friedman Leather Co.
$1293 26/100
One Thousand Two Hundred Ninety Three Dollars Twenty Six Cents
To The Public National Bank of New York,
Broadway & 25th Street
The Specialty Handle Mfg. Co.
Emile Garfinkel
Treasurer

(Stamp)—Compared Puder & Puder Certified Public Accountants

(Perforated) Paid 7-29-24—1-238
(Endorsed) I. Friedman Emile Garfinkel
(Usual bank endorsements.)

Exhibits D. 9 to D. 13.

Exhibit D. 9.

THE SPECIALTY HANDLE MFG. CO.

No. 6722
Newark, N. J. August 11th 1924

Pay to the order of Chas. S. Walton $4289 61/100
Four Thousand Two Hundred Eighty Nine Dollars Sixty One Cents
To the Washington Trust Company
Newark, N. J.
Emile Garfinkel
Treasurer

(Stamp)—Compared Puder & Puder Certified Public Accountants

(Perforated) Paid 8-14-24
(Endorsed) Chas. S. Walton
For deposit Frances Realty Co.
(Usual bank endorsements.)

Exhibit D. 10.

Check No. 7070.

Exhibit D. 11.

Check, Specialty Co. to Max Winn

Exhibit D. 12.

Photostate of Check.

Exhibit D. 13.

Charles S. Walton Co. Statement of Purchases.

Exhibit D. 16.

Exhibit D. 14.

I. Friedman Co. Statement of Purchases.

Exhibit D. 15.

Dunn-Green Statement of Purchases.

Exhibit D. 16.

SCHEDULE
OF
PROPERTY
OF

Specialty Handle Mfg. Co., 113/35 N. J. R. R. Ave., Newark, N. J.

Fire March 1, 1925

MILLER & MALTBIE
Adjusters,
92 William Street New York

SPECIALTY HANDLE MFG. CO.
113/35 N. J. R. R. Ave., Newark, N. J.
Fire—March 1, 1925

MERCHANDISE STATEMENT

Inventory January 1, 1925			$150,093.58
Purchases January & February 1925	Leather	$ 37,049.41	
	Coloring	4,532.64	
	Keratol etc.	581.22	
	Furn. & Steel	5,780.94	
	Paper, Flour & G.	1,404.87	
	Thread	464.31	
	Sundry Purchases	175.20	
			49,988.59
			$200,082.17
Labor 1925	Production only		40,709.97
			$240,792.14

Exhibit D. 16.

Sales Net Jany. & Feby.	$113,530.48	
30% Reduction (includes all items excepting direct raw material and direct labor)	34,059.14	
	$ 79,471.34	79,471.34
Total sound value stock date of fire		$161,320.80
30% includes—		
Coal		
Oil		
Shipping expense		
Petty and office expense		
Commissions		
Insurance, Fire & Compensation		
Salesmen's salaries & expense		
Office salaries		
Executive salaries		
Rent		
Depreciation		
Factory repairs		
Interest		
Taxes—Land & Water		
Net profit		
Etc.		

PRODUCTION LABOR BY MONTH

	Labor
January	$16,971.45
February	19,054.07
March	4,684.45
	$40,709 97

Exhibit D. 16.

ANALYSIS OF PURCHASES FOR 2 MONTHS

Amount of Invoice	Leather	Coloring	Keratol & Im. Lea.	Furn & Steel	Paper, Flour & Glue	Thread	Sundry Purchases
January							
$25,441.43	$17,103.18	$1,683.05	$362.65	$2,649.95	$ 674.41	$193.90	$ 55.63
February							
31,244.00	19,946.23	2,599.59	218.57	3,130.99	730.46	290.41	119.57
$56,685.43	$37,049.41	$4,282.64	$581.22	$5,780.94	$1,404.87	$464.31	$175.20

ANALYSIS OF SALES BY MONTH

	Jany.	Feby.	Total
Handles	$22,000.29	$23,452.50	$ 45,452.79
Corners	9,405.22	9,496.82	18,902.04
Straps	17,773.53	21,267.28	39,040.81
Safety straps	65.00	55.14	120.14
Partitions	2,981.18	2,875.62	5,856.80
Cut Bags	3,123.50	2,616.25	5,739.75
Buffings			
Bindings	402.26	671.39	1,073.65
Bag Tags	52.50	47.50	100.00
Splits	83.42	176.39	259.81
P P & Miscellaneous	254.40	128.27	382.67
	$56,141.30	$60,787.16	$116,928.46
Returns	$ 2,796.35	$ 601.61	$ 3,397.96
			$113,530.48

ANALYSIS OF VARIOUS ITEMS FOR PURPOSES OF SHOWING METHOD OF BOOKKEEPING

Fcty. Exp.	Coal	Oil	Elec.	In Frt.	Ship Exp.	Office Exp.	Comm.	Ins.	Sundries
Jany.									
$255.03	$293.40	$123.82	$233.05	$ 4.60	$167.59	$117.61		$ 929.36	$594.20
Feby.									
467.21	328.20	81.84	326.45	5.60	602.20	35.38	$1,578.57	421.98	360.75
$722.24	$621.60	$205.66	$559.50	$10.20	$769.79	$152.99	$1,578.57	$1,351.34	$954.95

Ex D 17

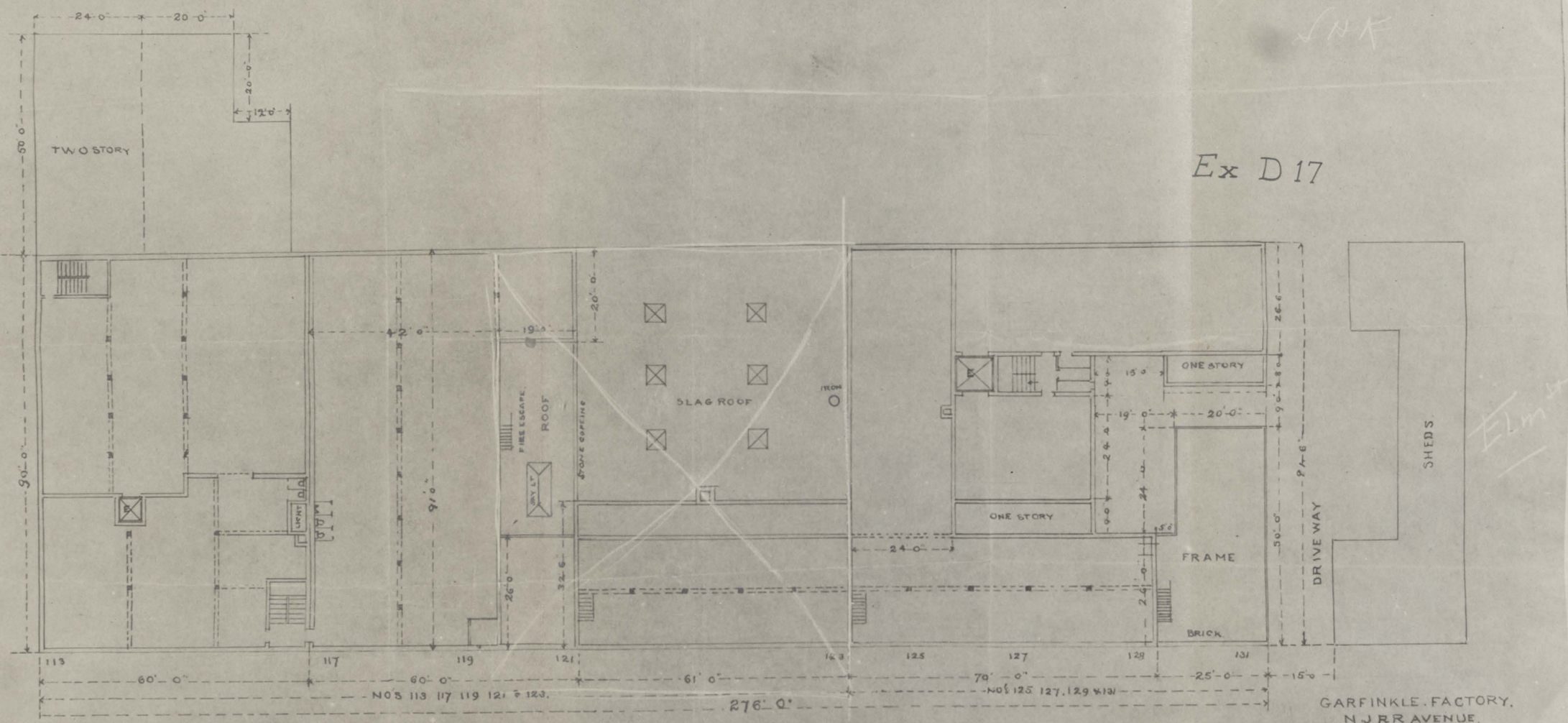


EXHIBIT D. 17.

Exhibit D. 19.

Exhibit D. 19.

Recd 8/20/24

Aug 20 1924

Schedule Rating Office,
40 Clinton St., Newark, N. J.

Gentlemen

We hereby make application for average rate covering our property situate————————N. J., and for the purpose of computing rate, in accordance with the filings made with the Commissioner of Banking and Insurance, under Chapter No. 85, of the Insurance laws of 1913 of the State of New Jersey, we make the following statement:

The values of buildings and machinery is appraised by us at full value. To the best of our knowledge and belief, the values of stock is the average annual value as follows:

	Mchry	Stock
113-115 N. J. R. R. AVE.....	10,000	30,000
117-123 " " " " "	10,000	30,000
rear 113-115 N. J. R. R. Ave.....	1,000	49,000
125-129 & rear 127 N. J. R. R. Ave.	5,000	15,000
2nd rear 127 N. J. R. R. Ave.....	1,000	4,000
131 N. J. R. R. Ave.....	100	30,000
rear 131 N. J. R. R. Ave.....	100	400
133-5 N. J. R. R. Ave.....	1,000	9,000
	28,200	167,400

As Chapter No. 85, Laws of 1913, State of New Jersey, requires that schedules for rating shall be filed with the Commissioner of Banking and Insurance at Trenton, New Jersey, before any specific rate can be used in the determination of premium to be charged for a fire insurance contract, and as these filings produce only specific rates on buildings, on machinery, and on stock, therefore, copy on this statement as compiled and

Exhibit D. 20.

executed is authorized to be filed with the Commissioner of Banking and Insurance at Trenton, New Jersey, in order that the proper blanket or floating rate may be determined from the rating data on file in that office.

The Specialty Handle Mfg. Co.,
Signed Emile Garfinkel Treas.

(Form of letter which must be signed by the assured with holograph signature in ink.)

Exhibit D. 20.

Recd 8/23/24

Newark, N. J., Aug. 23, 1924.

Schedule Rating Office,
40 Clinton St., Newark, N. J.

Gentlemen

We hereby make application for average rate covering our property situate 113-135 N. J. R. R. Ave., Newark, N. J., and for the purpose of computing rate, in accordance with the filings made with the Commissioner of Banking and Insurance, under Chapter No. 85, of the Insurance laws of 1913 of the State of New Jersey, we make the following statement:

The values of buildings and machinery is appraised by us at full value. To the best of our knowledge and belief, the values of stock is the average annual value, as follows:

Exhibit D. 20.

Designation		VALUES Building	Machinery	Stock
113-15 N. J. R. R. Ave	$		$10000.	$30,000.
117-23 "	$		$10000.	$30,000.
R. 113-15 N. J. R. R. Ave	$		$ 1000.	$49,000.
125-129 & R. 127 "	$		$ 4000.	$ 5,000.
131 N. J. R. R. Ave	$		$ 1000.	$ 1,000.
2nd R. 127 & R. 129-131 N.J.R.R. ave.	$		$ 1000.	$ 4,000.
Rear of R 131 N. J. R. R. Ave	$		$ 100.	$ 400.
133-135 N. J. R. R. Ave	$		$ 1000.	$ 9,000.
	$		$	$
	$		$	$

(Blue penciled) Voided by assured's letter of 8/25/24.

As Chapter No. 85, Laws of 1913, State of New Jersey, requires that schedules for rating shall be filed with the Commissioner of Banking and Insurance at Trenton, New Jersey, before any specific rate can be used in the determination of premium to be charged for a fire insurance contract, and as these filings produce only specific rates on buildings, on machinery, and on stock, therefore, copy on this statement as compiled and executed is authorized to be filed with the Commissioner of Banking and Insurance at Trenton, New Jersey, in order that the proper blanket or floating rate may be determined from the rating data on file in that office.

The Specialty Handle Mfg. Co.,
Signed Emile Garfinkel Treas.

(Form of letter which must be signed by the assured with holograph signature in ink.)

Exhibits D. 21 to D. 23.

Exhibit D. 21.

THE SPECIALTY HANDLE MFG. CO.
Manufacturers of
Handles Corners, Straps & Leather Novelties
Main Office: N. J. R. R. Ave. and Green St.

Newark, N. J., 8/25/24

The Atlee Brown Rating Bureau
Essex Bldg. Newark, N. J.
Attention Mr. Wissmer

Dear Sir:—
You will please disregard the values filed by Messrs. Feist & Feist and accept those filed by The Hess Agency, returning to us the value filed by Messrs. Feist & Feist, dated Aug. 23rd.

Yours truly,

THE SPECIALTY HANDLE MFG. CO.
Per Emile Garfinkel Treas.

EG/MP

Exhibit D. 22.

Inventory of stock in sight.

Exhibit D. 23.

(Statement by accountant.)

Exhibit D. 24.

Exhibit D. 24.

NAME The Specialty Handle Co.,
ADDRESS N. J. R. R. Ave. & Green St.
Newark, N. J.

SHEET NO. $1,000.00
RATING
TERMS

DATE		MEMO	FOLIO √	DEBITS
1920				
July	14	To Mdse 4/10	26 √	$ 34.24
Oct	30	" "	417 √	10.12
Nov	9	" "	461 √	8.20
1921				
Jan	31	" "	895 √	17.10
Feb	9	" "	952 √	25.38
Mch	16	" "	1180 √	12.88
"	21	" "	1210 √	867.04
Apr	14	" "	1348 √	1,470.72
Oct	11	" " memo	2221	
Nov	4	" " 490-10D	2332 √	17.64
"	5	" " 2/10	2341 √	4.80
"	15	" " 4/10	2375 √	14.40
1922				
Feb	18	" "	232 √	15.30
Mar	30	" "	435 √	16.74
Apr	22	" " 2/10	551 √	1.50
"	27	" " 2/10	586 √	30.00
May	"	" "	655 √	857.64
Oct	9	" " 4/10	1564 √	42.21
1923				
July	31	" "	1381 √	18.92
				3,464.83
Nov	17	" "	2051 √	16.84
1924				
				3,481.67
Mar	17	" "	537 √	7.56
				3,489.23
				$3,489.23

Exhibits D. 26, D. 27.

Exhibit D. 26.

THE SPECIALTY HANDLE MFG. CO.

No. 1039
Newark, N. J. May 26 1924

Pay to the order of
E. Kasnowitz $911 29/100
Nine hundred eleven dollars twenty nine cents
The Specialty Handle Mfg. Co.
Emile Garfinkel Treasurer
To The Public National Bank of New York.
Broadway & 25th Street
(Stamp) Compared Puder & Puder
Public Accountants

(Perforated) Paid 5-29-24. 1-238
(Endorsed) E. Kasnowitz Emile Garfinkel
(Usual bank endorsements.)

Exhibit D. 27.

THE SPECIALTY HANDLE MFG. CO.

No. 1211
Newark, N. J. Aug. 14th 1924.

Pay to the order of
E. Kasnowitz $1894 05/100
Eighteen hundred ninety four dollars five cents
The Specialty Handle Mfg. Co.
Emile Garfinkel Treasurer
To The Public National Bank of New York.
Broadway & 25th Street
(Stamp) Compared Puder & Puder
Certified Public Accountants

(Perforated) Paid 8-19-24. 1-238
(Endorsed) E. Kasnowitz Emile Garfinkel
(Usual bank endorsements.)

Exhibits D. 28, D. 29.

Exhibit D. 28.

THE SPECIALTY HANDLE MFG. CO.

No. 1291

Newark, N. J. Octo. 14th 1924

Pay to the order of

E. Kasnowitz & Bro.....$1500./00

Fifteen hundred dollars

The Specialty Handle Mfg. Co.

Emile Garfinkel Treasurer

To The Public National Bank of New York.

Broadway & 25th Street

(Stamp) Compared Puder & Puder

Certified Public Accountants

(Perforated) Paid 10-15-24. 1-238

(Endorsed) E. Kasnowitz Bro.

(Usual bank endorsements.)

Exhibit D. 29.

J. FRED'K E. WOOD
Certified Public Accountant
110 William Street, New York
Telephone 0340 Beekman

March 30, 1925.

Mr. William F. Russell, Manager,
General Adjustment Bureau,
Union Building, Newark, N. J.

Dear Sir:—

Re—Specialty Handles Mfg. Co.
113-35 N. J. R. R. Ave., Newark, N. J.
Fire, March 1, 1925.

The above assured has presented a "Merchandise Statement" purporting to show the sound

Exhibit D. 29.

value of stock on March 1, 1925, to be..$161,320.80
computed as follows:

Inventory, January 1, 1925,		$ 150,093.58
Purchases to March 1, 1925,		49,988.59
Labor,		40,709.97
Total,		$240,792.14
Sales,	$113,530.48	
Less 30% Gross Profit	34,059.14	
Cost of Sales		79,471.34
Value as Above		$161,320.80

There is also submitted a "Schedule of Property" inventoried after the fire of a total value of, ...$ 49,852.25 indicating a total destruction of property by the fire, or property the assured is unable to identify as the result of the fire to the amount of,...$111,468.55

Books and Records:

The General Ledger of the assured is not written up for the years 1923 and 1924. The reason for this is that the income tax returns have been examined only up to December 31, 1922, and it is apparently the assured's policy to write the General Ledger after the tax returns are audited by the Income Tax Department.

The above claim is based upon an alleged physical inventory as of December 31, 1924. This inventory consists of 51 pages containing quantity and description of merchandise on hand and the apparent location of the stock.

An analysis of the books and records covering the years 1920, 1921, 1922, 1923 and 1924, shows a very extraordinary experience for the year 1924, based upon the alleged inventory of December 31, 1924, as compared with the previous years, (Exhibit A).

Exhibit D. 29.

Year	Sales	Net Loss	Net Profit
1920	$606,466.52	$3,861.37	$
1921	322,866.59	82.21	
1922	509,709.72		1,315.94
1923	779,960.06	2,798.81	
1924	604,015.02		50,159.79

The above summary shows that for the year 1923 on net sales of $779,960.06, the net loss was $2,798.81, while in 1924, based upon the alleged inventory of December 31, 1924, and on sales of only $604,015.02 the assured claims a net profit of $50,159.79.

In response to my request for an explanation of the above results, I received the following typewritten statement:

"The improved condition shown in the year 1924 over those of previous years can be partially explained by the fact that during 1924 the ruinous competition that prevailed during 1922 and 1923 was partially relieved by agreement between the two largest producers and by elimination of some of the smaller competitors. We contented ourselves with a smaller quantity of business by agreement, making only profitable articles and picking our customers. We discontinued some lines and added others. Our raw material sources were in constant competition and at times demoralized and *were* were able to purchase either at lower prices or better qual*i*ties. Labor had also reconciled themselves to lower wages and a greater proportion of our product was produced on a piece work basis. Economies were also introduced."

I requested the assured's accountant to submit to me a comparison of selling prices received

Exhibit D. 29.

in 1923 as compared with selling prices received in 1924, in order to substantiate the above statement of increase in selling prices in 1924, and which would account for the large earnings in 1924. This he could not do.

During all these conferences Mr. Emil Garfinkle was present. He finally said "Mr. Wood, I'll tell you just what happened. We have been reducing our inventories in the past years so as to reduce taxes. We have also increased the purchase accounts by drawing checks to the order of cash and charging the amount to "Purchase Accounts." We would then redeposit the cash or check and credit our "Capital Stock Account."

He further stated that if the fire had *occured* after filing the tax returns for 1924, the amount of the inventory of December 31, 1924, would have been reported at a very much lower figure than as charged to the Insurance Companies.

The records therefore contain many fraudulent entries, and seriously raises the question as to the accuracy of the alleged inventory submitted as of December 31, 1924, on which the assured's claim is predicated.

Book Value of Stock—December 31, 1924

The book value of stock on hand December 31, 1924 based upon the gross profit experience covering the period from January 1, 1920 to January 1, 1924, is, ...$ 81,968.74,
as per Exhibit B, attached, compared with the value stated as the amount of the inventory of December 31, 1924, of, ...$150,093.58.

Exhibit D. 29.

I am of the opinion that if the fire had *occured* after the Income Tax Report had been filed, the inventory as of December 31, 1924, would have been reported at approximately, ...$ 81,968.74

Book Value at Date of Fire:

Therefore, based upon the book value of stock on hand, December 31, 1924, (Exhibit B) the value of stock at the date of the fire was, ...$ 81,842.91 as set forth in Exhibit C, attached.

Remarks:

The claim as presented by the assured, cannot in my opinion be relied upon as being the true value of the stock on hand at the date of the fire, in view of the many admittedly false entries in the books and the many financial statements made which are not in agreement with the books.

I am somewhat doubtful whether any further examination of the books of this company will develop any additional information. It is impossible from their books to determine the true financial condition as at the time of the fire, without making a complete audit of all their records which would involve considerable time. I therefore await your further instructions.

Respectfully submitted,

J. FRED'K E. WOOD,
Certified Public Accountant.

EXHIBIT A.

SPECIALTY HANDLES MFG. CO.

STATEMENT OF PROFIT AND LOSS AS PER RECORDS SUBMITTED

Year	1920	1921	1922	1923	1924
Sales,	$622,852.71	$335,705.19	$524,984.73	$803,821.40	$625,011.29
Deduct—Return Sales & Allowances	16,386.19	12,838.60	15,275.01	23,861.34	20,996.27
Net Sales	$606,466.52	$322,866.59	$509,709.72	$779,960.06	$604,015.02
Cost of Sales					
Inventory at Beginning,	$ 75,622.39	$ 93,496.99	$ 78,010.57	$ 85,012.59	$126,402.10
Purchases,	268,195.03	100,511.66	220,814.97	343,476.50	202,471.08
Labor,	265,184.60	119,695.36	197,629.91	325,446.28	236,307.58
	$609,002.02	$313,704.01	$496,455.45	$753,935.37	$565,180.76
Deduct—Inventory at End	93,496.99	78,010.57	85,012.59	126,402.10	150,093 58
	$515,505.03	$235,693.44	$411,442.86	$627,533.27	$415,087.18
Deduct—Fire Loss Collected			15,660.35		
Cost of Sales (Material & Labor),	$515,505.03	$235,693.44	$395,782.51	$627,533.27	$415,087.18
Gross Profit on Sales	$ 90,961.49	$ 87,173.15	$113,927.21	$152,426.79	$188,927.84
Percentage of Gross Profit to Sales,	14.99%	26.99%	22.35%	19.55%	31.28%
Add: Other Income,	$ 16,277.01	$ 3,395.17	$ 5,376.87	$ 9,496.59	$ 7,761.50
Total Income	$107,238.50	$ 90,568.32	$119 304.08	$161,923.38	$196,689.34
Expenses,	111,099.87	90,650.53	117,988.14	164,722.19	146,529.55
Net Loss for Year	$ 3,861.37	$ 82.21	$	$ 2,798.81	$
Net Profit for Year,			1,315.94		50,159.79

Exhibit D. 29.

EXHIBIT B.

SPECIALTY HANDLE MFG. CO.
STATEMENT SHOWING BOOK INVENTORY
DECEMBER 31, 1924

January 1, 1924, Inventory		$126,402.10
Purchases, ...		202,471.08
Labor, ...		236,307.58
Total, ...		$565,180.76
Sales, Less Returns & Allowances, ...	$604,015.02	
Deduct: Average Gross Profit on Sales 1920 to 1923 inclusive, 20%, ...	120,803.00	
Cost of Sales, ...		483,212.02
Book Inventory—December 31, 1924		$ 81,968.74

EXHIBIT C.

SPECIALTY HANDLES MFG. CO.
STATEMENT SHOWING BOOK VALUE OF STOCK
MARCH 1, 1925.

Book Inventory, January 1, 1925 (Exhibit B)		$ 81,968.74
Purchases to March 1, 1925, ...		49,988 59
Labor, ...		40,709.97
Total, ...		$172,667.30
Cost of Sales Sales, ...	$113,530.48	
Less 20% Gross Profit (Exhibit A), ...	22,706.09	
Cost of Sales, ...		90,824.39
Book Value, March 1, 1925, ...		$ 81,842.91

Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed February 2, 1928.

NEW JERSEY SUPREME COURT.

No. 41, October Term, 1927.

THE PUBLIC NATIONAL BANK OF NEW YORK, *et als.*, *Plaintiffs,*

vs.

AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, NEW YORK, *Defendant.*

On Rule to Show Cause.

6 CASES.

Argued October 5, 1927; decided January 31, 1928.

Before Gummere, Chief Justice, and Justices Black and Lloyd.

For the plaintiffs, Messrs. Jacob L. Newman and Merritt Lane.

For the defendants, Messrs. Leo Levy and Arthur T. Vanderbilt.

PER CURIAM.

This suit was brought to recover loss by fire to stock and machinery used in the manufacture of leather specialties, partially destroyed by fire on March 1, 1925, on premises located at Nos. 113-135 N. J. Railroad Ave., Newark, N. J., under policies of insurance.

There are six defendants. The several actions by order of the trial judge were consolidated and tried together as one case. The trial of the

cases resulted in verdicts for the defendants. The plaintiffs obtained a rule to show cause reserving exceptions and write down one reason for a new trial, viz., the verdict was against the clear weight of the evidence. Not so.

The policies provide: "This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance, concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

Our reading of the voluminous record and the briefs submitted in the cause satisfies us that the terms of the policy as above stated were violated, that the verdict so far as being against the clear weight of the evidence was in harmony with the evidence. The verdict is supported fully by the evidence.

The rule to show cause is therefore discharged.

RULE DISCHARGING RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

THE PUBLIC NATIONAL BANK OF NEW YORK, *et als.*, *Plaintiffs,*	*Action at Law.*
vs.	*Rule Discharging Rule to Show Cause.*
NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, *Defendant.*	

The Court having heard the argument of counsel on plaintiffs' rule to show cause why the verdict in favor of defendant should not be set aside and a new trial granted and having duly considered the reasons filed under said rule to show cause,

It is ORDERED that said rule to show cause be discharged with costs against the plaintiffs and in favor of defendant.

Dated February , 1928.

Entered February 8, 1928.

On motion of
ARTHUR T. VANDERBILT,
Attorney of Defendant.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y.,
Defendant.

Action at Law.

Notice of Appeal.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PACIFIC FIRE INSURANCE COMPANY, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
IMPORTERS & EXPORTERS INSURANCE COMPANY OF NEW YORK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
STUYVESANT INSURANCE COMPANY OF CITY OF NEW YORK, a corporation,
Defendant.

To Arthur T. Vanderbilt, Esq., attorney of defendant, 790 Broad St., Newark, N. J.

SIR:

PLEASE TAKE NOTICE that the plaintiffs above named hereby appeal to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above-entitled causes in this Court in favor of the defendants and against the plaintiffs, on the seventeenth day of March, Nineteen Hundred and Twenty-seven.

Dated March 13, 1928.

Yours, etc.

JACOB L. NEWMAN,
Attorney of Plaintiffs.

STIPULATION TO CONSOLIDATE.

NEW JERSEY SUPREME COURT.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y.,
Defendant.

Action at Law.

Stipulation to Consolidate.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PACIFIC FIRE INSURANCE COMPANY, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
IMPORTERS & EXPORTERS INSURANCE COMPANY OF NEW YORK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
STUYVESANT INSURANCE COMPANY OF CITY OF NEW YORK, a corporation,
Defendant.

It is stipulated and agreed by and between the undersigned attorneys for the respective parties hereto that the argument of the above-entitled causes may be consolidated, but one record need be prepared by the Clerk of the Supreme Court and filed with the Court of Errors and Appeals.

Dated March 13, 1928.

JACOB L. NEWMAN,
Attorney of Plaintiffs.

ARTHUR T. VANDERBILT,
Attorney of Defendants.

Grounds of Appeal.

GROUNDS OF APPEAL.

New Jersey Court of Errors and Appeals

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW BRUNSWICK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
AGRICULTURAL INSURANCE COMPANY OF WATERTOWN, N. Y.,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
PACIFIC FIRE INSURANCE COMPANY, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
IMPORTERS & EXPORTERS INSURANCE COMPANY OF NEW YORK, a corporation,
Defendant.

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*,
Plaintiffs,
vs.
STUYVESANT INSURANCE COMPANY OF CITY OF NEW YORK, a corporation,
Defendant.

Action at Law.

On Appeal from New Jersey Supreme Court.

Grounds of of Appeal.

Grounds of Appeal.

To Arthur T. Vanderbilt, attorney of defendants-respondents, 790 Broad St., Newark, N. J.

SIR:

TAKE NOTICE that the following are the grounds of appeal which the plaintiffs-appellants hereby assign and upon which they will rely at the hearing:

1. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness William F. Russell to answer the following question:

"Q Did you find any evidence of the goods or personal property which had been rendered indistinguishable by reason of the fire?" (S. C. 192.)

2. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence the schedule of merchandise marked "Exhibit D. 16" (S. C. 193).

3. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Benjamin Newman to answer the following questions:

"Q I show you check #984 of the Specialty Handle Manufacturing Company, drawn on the Public National Bank of New York, and I ask you if you are the payee named on that check?" (S. C. 198.)

"Q What was the check given to you for?"

4. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence check No. 984, referred to in the foregoing questions (S. C. 202).

5. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Emil Garfinkle to answer the following question:

"Q What do you think they were using them for?" (S. C. 208.)

6. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence two applications for rating to the Schedule Rating Bureau, marked "Exhibit D. 19" and "Exhibit D. 20" (S. C. 211).

7. Because at the trial the Court, upon the objection of the defendants, refused to permit the witness Emil Garfinkle to answer the following question propounded by plaintiff:

"Q Do you know whether or not that is the way leather businesses are usually conducted?" (S. C. 212.)

8. Because at the trial the Court, upon the objection of the defendants, refused to permit the witness Emil Garfinkle to answer the following question propounded by plaintiff:

"Q Do you know of any business that keeps an annual physical inventory every day of the year?" (S. C. 214.)

9. Because at the trial the Court, over the objection of the plaintiffs, permitted in evidence the letter of August 25, 1924, to the Atlee Brown Rating Bureau marked "Exhibit D. 21" (S. C. 212).

10. Because at the trial the Court, over the objection of the plaintiffs, permitted in evidence the statement by the accountant, Casnowitz, marked "Exhibit D. 23" (S. C. 233).

11. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Robert T. Boyd, Jr., to answer the following question:

"Q I show you the endorsement on the check and ask you if that is the signature of Charles S. Walton" (S. C. 254).

12. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence the ledger sheet of Charles S. Walton Company marked "Exhibit D. 24" (S. C. 256).

13. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness John F. E. Wood to answer the following question:

"Q Have you made a record of the personal drawings of Mr. Garfinkle charged to Labor?" (S. C. 258),

and thereafter permitted the witness to testify in detail to such drawings.

14. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence the report of the accountant, Wood, marked "Exhibit D. 29" (S. C. 289).

15. Because at the trial the Court, over the objection of the plaintiffs, admitted in evidence the ledger marked "Exhibit D. 30" (S. C. 289).

16. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Emil Garfinkle to answer the following question:

"Q Were you asked these questions and did you make these answers in the examination under oath?" (Reading questions and answers from an examination under oath, pursuant to the terms of the insurance policy.) (S. C. 291.)

17. Because at the trial the Court refused to strike out the testimony of Emil Garfinkle, upon the motion of the plaintiffs, because none of the testimony was contradictory to anything the witness had sworn to (S. C. 294).

18. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Emil Garfinkle to answer the following question:

"Q Were they true at the time you gave them?" (S. C. 297.)

19. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Emil Garfinkle to answer the following question:

"Q Do you recall being asked this question in the examination under oath and making this answer?" (On the bottom of p. 74; reading from the same examination referred to above.) (S. C. 298.)

20. Because at the trial the Court, over the objection of the plaintiffs, permitted the witness Emil Garfinkle to answer the following question:

"Q I ask you if this question was asked you in the examination under oath (p. 76): 'Question: Weren't you to get some income taxes for me or take that under advisement?

Mr. Newman: No, but I am not prepared to say we will give you that. I wouldn't say you could use those. You do not represent the Government.' Did you produce your income tax returns?" (S. C. 299.)

21. Because at the trial the Court refused to strike out the affirmative defense upon the ground that there was no evidence to go to the jury thereon when so requested by the plaintiffs (S. C. 318).

22. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the first request:

1. The jury are instructed to disregard the affirmative defense of fraud alleged to have been perpetrated by the insured as there is no evidence of such fraud as would prevent the plaintiff from recovering."

23. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the second request:

2. The jury are instructed to disregard the affirmative defense of false swearing, as there is no evidence before the Court of such false swearing as would prevent the plaintiff from recovering."

24. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the third request:

"3. The plaintiff is entitled to a verdict for the amount of the loss actually sustained by it as a result of the fire, such loss to be determined in accordance with the provisions of the policies in suit."

25. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the fourth request:

"4. Under the terms and conditions of the policy there has been an adjustment of the amount of loss on the machinery and goods in sight and the plaintiff is entitled to a judgment for that agreed amount and also in addition thereto such other amount, if any, as the jury may find represents the loss on the goods called in this suit 'out of sight,' for which the companies are responsible under the terms and conditions of the policies in suit."

26. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the fifth request:

"5. The defenses of fraud and false swearing are affirmative defenses interposed by the defendant and the burden of proof is on the defendant to establish these defenses, or one of them, by a fair preponderance of the proof" (S. C. 332-334).

27. Because the learned Trial Court denied the request of the plaintiffs to charge the jury as requested in the eighth request:

"8. There was no obligation upon the part of the Specialty Handle Manufacturing Company to keep correct books of account so far as its relations with the insurance companies are concerned."

28. Because the learned Trial Court charged the jury at the request of the defendant as follows:

"1. This is a suit against several fire insurance companies on policies issued by them to the Specialty Handle Manufacturing Company. The defendant insurance companies contend that the Specialty Handle Manufacturing Company violated the provision of the policy reading as follows: 'This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstances concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.' If you find as a fact that the Specialty Handle Manufacturing Company submitted to the defendant insurance companies or their representatives any statements, schedules, inventories, proofs of loss, books of account, checks, or other documents, or that the officers, and in particular the treasurer of said Company, made any statements to the insurance companies or their representatives which were untrue and if you find that these statements were made or their documents were submitted with intent to cheat and defraud the defendant insurance companies and to obtain from them the payment of a sum which the companies would not have been required to pay if truthful and correct statements and documents had been submitted, you will find that the Specialty Handle Manufacturing

Company has violated the provision of the policies which I have just quoted and your verdict will necessarily be for the defendants, even though the Specialty Handle Manufacturing Company may have suffered a loss in a lesser amount than it represented to the insurance companies. Fraud and false swearing as to any part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties."

29. Because the learned Trial Court charged the jury at the request of the defendant as follows:

"2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers but merely to promote its own interest in evading Federal income taxes."

30. Because the learned Trial Court charged the jury at the request of the defendant as follows:

"3. Nor is it any defense to the charge of fraud and false swearing and misrepresentation of material facts under the clause of the policy I have just quoted for the assured to say that after the fraud and false swearing has been detected by the defendant insurance companies through an examination of the books and records of the assured made by the public accountants they have withdrawn the fraudulent items in their accounts and the fraudulent statements and representations made by the assured to the defendant insurance companies."

31. Because the learned Trial Court charged the jury, at the request of the defendant, as follows:

"4. In this connection, I desire to draw your attention to the fact that there is no evidence before us that the assured or his representatives ever withdrew the schedule submitted by Miller & Maltbie to the companies, marked 'Exhibit D. 16.' "

32. Because the learned Trial Court charged the jury, at the request of the defendant, as follows:

"5. The contract stated in the insurance policies is an indivisible one, and, therefore, if you find any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the insurance companies, the entire policy is void and the plaintiff cannot recover thereon, even though there be an admitted loss of goods in sight."

33. Because the learned Trial Court charged the jury, at the request of the defendant, as follows:

"6. The policies of insurance in this suit are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used. The contract of insurance therefore being one prescribed by the Legislature is to be construed by you according to the true and natural meaning of the words of the policy as if it were a contract between two individuals or two ordinary corporations, and it is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the court and not to modify them either in favor of the plaintiff or of the defendant insurance companies."

34. Because the learned Trial Court charged the jury, at the request of the defendant, as follows:

"7. The plaintiff Public National Bank brings its suit as assignee of the assured Specialty Handle Manufacturing Company and stands in no different relation to the matter before you than would the Specialty Handle Manufacturing Company if it were the plaintiff. The bank plaintiff has no greater or other rights than what the assured Specialty Handle Manufacturing Company had and is subject to the same defenses" (S. C. 326-328).

35. Because the learned Trial Court charged the jury as follows:

"Mr. Wood, an accountant who was produced by the defendant, testified that taking the inventory of December 31, 1923, at what it appeared on the books, not taken physically, but as shown on the books, $126,402.20, and auditing the books without questioning the propriety of any items, that is, taking them at their face value, that would show that there should be stock of merchandise on hand at a book value of $81,842.91, as against Mr. Puder's figure of $153,979.48, a difference of approximately $72,000. That is, the books as audited by Mr. Wood, assuming them to be correct, that is, at their face value, and the books as audited by Mr. Puder correctly, and using the higher inventory, produces a difference of $72,000. Mr. Wood admits taking the smaller inventory reduces the book value of the stock on hand March 1, 1925. He also admits that there are many false items in the books; Mr. Puder claims to have eliminated them" (S. C. 323).

36. Because the learned Trial Court charged the jury as follows:

"If you treat Mr. Wood's figures in the same way—in treating them I am not suggesting that as your figure; I don't think the insurance companies suggest that as

your verdict; they merely say those figures offset Mr. Puder's computation—but if we treat Mr. Wood's figures in the same manner as Mr. Puder has treated them, we arrive at these figures: The book value of the stock March 1, 1925, $81,842.91; deducting the sound value as admitted of $50,529.04, we leave the book value of the stock burned out of sight at $31,303.87, the agreed loss to be added, of $43,666.94, leaving a loss by fire, if these figures are adopted, of $74,-970.81. The defendant does not admit this $31,000 odd, as I say, as being goods burned out of sight. They dispute the books as proof of the claim and claim that there has been no such loss."

The foregoing grounds of appeal to apply to all the cases consolidated and tried as one case at the Essex Circuit.

Dated, March 6, 1928.

JACOB L. NEWMAN,
Attorney of Plaintiffs-Appellants.

15 OCT.1.1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

PUBLIC NATIONAL BANK OF NEW YORK, and SPECIALTY HANDLE MANUFACTURING COMPANY, INC., *Plaintiffs-Appellants,* *vs.* AGRICULTURAL INSURANCE COMPANY, *et als.,* *Defendants-Respondents.*	*Action at Law.* *Defendants' Appeal.*

REPLY BRIEF FOR APPELLANTS.

(Italics, etc., ours except where otherwise noted.)

Statement of the Case.

Respondents assert on p. 3 of their brief, by inference at least, that Wood, the accountant for the Insurance Companies, had no knowledge of the incorrectness of the books until, from an examination of them, he had reached a figure of $81,000 as the amount of the loss, and thereafter had a conference with Garfinkel and Kasnowitz.

Reference to the testimony of Wood, on his direct (p. 237) and his cross (pp. 270, 271, 272), referred to on pp. 16, 17 and 18 of our original brief, will indicate that Wood *had* knowledge from the onset that the books were incorrect, and were so kept for income tax purposes.

Speaking of his *first* inspection of the books he testified on p. 272, on re-cross—

"Q You knew that the books could not be depended upon? A *Not at that time.*

> Q You knew that the books could not be depended upon because Garfinkel told you they had been kept for income tax purposes? A *Yes, sir.''*

And, on p. 270, he says that he was told on his *first* visit by Garfinkel that the books were *fixed* for income tax purposes, and he said, p. 268, that a *casual* inspection of the books *indicated their incorrectness.*

And, at the same time the books were handed over, invoices, checks, etc., were likewise handed over which *demonstrated the incorrectness of the books.*

Wood, in effect, says (p. 271) (p. 17 of our original brief) that *no representation* whatever was made by anybody that the books were correct. He says that he assumes that ''they'' certified to the records because ''they'' handed him the books although, at the time ''they'' handed him the books, ''they'' handed him invoices and checks which *proved the books to be incorrect,* and although Wood was informed that the books had been ''*fixed*'' for income tax purposes. If the books were correct it would be of advantage to the Insurance Companies, not the insured, and Wood, notwithstanding his knowledge that the books were *incorrect,* insisted upon computing the loss as if they were correct because the Insurance Companies were benefited thereby (pp. 287, 282, 280, 277, 276, 268, 271, 270).

Respondents complain (p. 5 of their brief) because income tax returns were not produced to support the explanation that the books were incorrectly kept for income tax purposes and that the company's accountant Kasnowitz was not called as a witness for plaintiffs.

It would also seem from this statement, and from statements later made in the brief, that, notwithstanding the effort which respondents made to prove that the books were incorrect, which was conceded, they, like their accountant, because it would benefit them if the books were correct, now insist that they *are* correct.

Respondents' schedule, on p. 5 of their brief, what they say are the most glaring varities of the fraud and misrepresentation practiced upon them by the assured.

1. To the statement that the assured presented false books to the insurance companies in an attempt to substantiate its claim of $103,440.44 for alleged stock burned out of sight, and also admittedly submitted fraudulent vouchers, bills and checks to Wood to the same end, complete answers are first, that the evidence is to the contrary, and second that it would be absurd for the assured to present these fraudulent books, vouchers, bills and checks to substantiate its claim of a loss of $103,440.44 for alleged stock burned out of sight, when the falseness of the books and of the vouchers, books, checks, etc., purported to *decrease* and not increase the loss, and if correct, the books etc., would show that there was no such amount of stock as of a value of $103,440.44 burned out of sight.

2. The answer to the charge that fraud was shown by the written statements made by the treasurer of the assured, Garfinkel in August, 1924, to the Schedule Rating Bureau, is that the court expressly charged the jury (p. 332)— ''*No defense of fraud* can be predicated upon the statements given in August, 1924, to the rating bureau for the purpose of obtaining a rate,''

so that, upon the theory upon which the case went to the jury, *that* item is out of the case.

The third, fourth and fifth glaring varities of fraud have to do with the examination under oath, the alleged fraudulent schedules, the proofs of loss, and they are considered, so far as it is proper that they may be considered upon this appeal, elsewhere.

POINT I.

Respondents answer the objection made to the introduction of the testimony of the witness Russell to the effect that, after the fire, he found no *evidence* of goods or personal property which had been rendered indistinguishable by reason of the fire by asserting that the proper objection was not made.

Complaint is made that the argument of appellants now is not only that the subject was not one for expert testimony but that the witness Russell was not properly qualified.

The ground of objection was and *is* that the subject was *not one for expert testimony.* The lack of qualification of the witness Russell is pointed out as indicative of the kind of a witness from which expert testimony is sought to be illicited upon the subject. He qualified in such a way as *any* man could qualify. If the subject is one of expert testimony, then *any* man may give his conclusions.

Respondents assert baldly (p. 8) that the question *did involve* a subject on which an opinion from a qualified witness was admissible, but cite no cases, from which we assume that not a single case can be found.

The privilege of using expert testimony is an exception to the general rule that conclusions of witnesses cannot be given in evidence and it would seem that, if this matter was one for expert testimony, *some* case would be found so adjudicating, in view of the numerous cases which must have arisen involving the same subject, for almost every fire involves a claim that there are some goods burned to the extent that they are indistinguishable.

We repeat the question which is said to involve a subject of expert testimony: "Q Did you find any *evidence* of goods or personal property which had been rendered *indistinguishable* by reason of the fire?" and the answer, over objection, was, *"Not to any extent."*

The witness was *not* asked to testify as to what he *had* found from which the jury might base a conclusion as to whether what he found was evidence of goods burned which were indistinguishable by reason of the fire. On the contrary, he wes permitted to substitute himself for the jury and to testify, as an expert, to his conclusion that there *was no evidence* of goods burned which had been rendered indistinguishable by reason of the fire.

Respondents seeks to sustain the propriety of the question upon the ground that it was a preliminary one (p. 8). A question which permits a witness, where the issue involved is whether there were any goods burned which were rendered indistinguishable by reason of the fire, and the value of those goods, to testify, as an expert, that there was *no evidence* of "any extent" that there were any goods burned rendered indistinguishable by reason of the fire can hardly be called a preliminary question. It is conclusive

of the issues. It is a summing up, not a preliminary.

And if it was preliminary, what was it preliminary to? for, on direct examination, with respect to this subject, only two more questions were asked the witness, both of which called, not for the result of his observation as matter of fact, but for his conclusion.

> "Q By that you mean what? A I mean there might have been some debris lying about which would indicate merchandise, but a small value.
>
> Q But was there anything from which you could find any *evidence* of indistinguishable merchandise running up into thousands of dollars? A No, indeed."

Both questions called for, and the answers involved, conclusions.

Respondents say that it was a preliminary question "qualifying the witness to give his opinion of the *amount* and *value* of the personal property burned out of sight." How the witness could base an opinion as to the amount and value of the personal property burned out of sight is not apparent.

The purpose of the question was *not* to qualify the witness to give an opinion as to the amount and value of personal property burned out of sight, but to have him testify, as an expert, as he did, that there was *no evidence of any property burned out of sight of any substantial amount.*

Respondents, lastly, on page 10, contend that, even if the ruling of the court was erroneous, "it was clearly not prejudicial, in view of the several material violations by the assured of the provisions of the policies as to fraud and false swearing (see opinion of the Supreme Court, p.

428) any one of these violations being sufficient to sustain the verdict for defendants."

In the first place, the rule is that legal error is presumed to be prejudicial and it is only in a clear case that the court will sustain a verdict where evidence offered by the prevailing side has been erroneously admitted over objection.

This is the effect of

Ryan v. *State,* 60 N. J. L. 552;
Bell v. *Samuels,* 60 N. J. L. 370;
Ruckman v. *Bergholz,* 37 N. J. L. 437.

The testimony, respondents indicated that they conceived it *material* and *of importance.*

Whether there was fraud or false swearing depended, in large measure, upon whether there was the amount of goods claimed by appellants actually burned out of sight, and it was upon *this* issue that this testimony was admitted.

Respondents themselves, on page 7 of their brief, concede the importance of the testimony when they say (p. 7), "In other words, the *principal dispute was as to the amount and value of the goods rendered indistinguishable and burned out of sight,*" and the matter of how much, if any, goods were burned out of sight was of *great importance* upon the issue of fraud, for, if there were no goods burned out of sight, then appellants were guilty of fraud in their proofs of loss, and otherwise.

Respondents now say, in effect, that this testimony was of so little importance as that, if erroneously admitted, yet the verdict should stand, but, in the Supreme Court, they said (p. 7 of their brief in the Supreme Court):

> "The testimony of the adjusters, Williams and Russell, which plaintiffs object to in

their brief, to the effect that they saw no *evidence* of stock burned out of sight, does not go, as plaintiffs seem to think, to any question of either the origin of the fire or incendiarism, *but is directed to the issue of whether or not Specialty Handle suffered the loss it claimed, and whether or not it misrepresented and concealed the true facts in making its claim for the alleged loss of stock burned out of sight.* How this testimony of the adjusters can be tortured into statements relating to the origin of the fire is incomprehensible. It is apparent that it related to the *vital* issue of whether or not any evidence existed that a large quantity of stock claimed to have a value in excess of $100,000.00 had been burned out of sight. Both Mr. Williams and Mr. Russell merely stated that they discovered no such evidence from an examination of the premises."

Reference to the testimony of Williams and Russell by appellants in the Supreme Court, referred to by respondents (p. 7 of their brief in the Supreme Court), was not an objection to the *admission* of the testimony now objected to, but one going to the effect of the testimony upon another branch of the case. The question now argued was *not* argued in the Supreme Court.

The importance of this testimony, so erroneously admitted, *upon the issue of fraud* is, we submit, pointed out in our original brief (p. 21).

It is quite immaterial whether *one* of the violations of the policy would be sufficient to sustain a verdict, for it is impossible to determine *which one* of the violations the jury found had occurred, and it is impossible to determine what evidence the jury considered, and the rule is that if the erroneous testimony *may* have influenced the result its admission is prejudicial.

Ryan v. *State,* 60 N. J. L. 552;
Bell v. *Samuels,* 60 N. J. L. 370.

Respondents assert (p. 9) that further questions were asked of Russell as to the value of the goods rendered indistinguishable based upon what he had seen, and that they called for an expert opinion but that no objection was made. The only further questions asked were the two which we have quoted (p. 192) and, as heretofore stated, they did *not* call for opinions as to value but for an opinion that there was no evidence of any merchandise rendered indistinguishable by reason of the fire of any real value. The objection having been once made, it was not necessary to repeat it.

Respondents complain that we are incorrect in our assertion on page 21 of our original brief that the witness Williams was not permitted by the court to testify upon similar lines. The statement we made on page 22 of our brief is exactly correct. When the witness Williams was on the stand (p. 189) the following occurred:

"Q From your experience in adjusting these fires can you tell whether or not the amount of goods burned out of sight was large or small?

Mr. Lane: I object to that as immaterial and also on the ground that the witness has not been properly qualified.

The Court: On the qualification I will allow the question; on the other ground it does not seem to be proper. I will sustain the objection.

Q Was there anything about this fire which had a tendency, or which would have resulted in goods being burned out of sight?

Mr. Lane: I object to that as immaterial and not the subject of expert testimony."

This question was not answered.

POINT II.

We have little to add under Point II to what we have already said in our original brief.

Respondents insist that we cannot argue that this Schedule D. 16 is not required by the provisions of the policy because our witness, England, in one part of his testimony, said it was. Notwithstanding the fact that England so testified in one part of his testimony, we are not bound by his statement. The policy is a written contract and what is required under it appears upon its face, and, no matter what *any witness* has said, if, in fact, the policy does not require such a schedule, and it does not, we are not precluded from so asserting and from taking advantage of what the real fact is.

It is not as if the schedule stood solely as evidence in the case, but the trial judge, *at the request of respondents,* directed the jury's particular attention to the fact that the assured *never withdrew* the schedule, in other words, permitted the jury to consider the fact that the schedule was never *formally withdrawn* as evidence which would indicate a fraud.

We have fully gone into the facts, page 30 of our original brief, which indicate that there was no burden upon appellants *to withdraw* the schedule. Upon this issue it is immaterial whether the proofs of loss, *as a legal matter,* superseded it. As matter *of fact,* the proofs of loss did supersede it, and the insurance companies had possession of the books, had examined them, and their falseness had been made apparent.

We have no quarrel with respondents' statements on p. 19 that, *assuming now that the schedule was otherwise admissible,* if the court had charged the jury that the proof of loss replaced

the schedule and that no defense of fraud and false swearing could be, therefore, predicated on the schedule, it would have been error. What we say is that, after this schedule was produced to the insurance adjuster, the facts became such as that the failure of the appellants *to withdraw the schedule* could *not* be considered as *evidence bearing upon the issue of fraud,* and that, when the court directed the jury's particular attention to the fact that the schedule had not been withdrawn, it was in error in permitting the jury to consider the fact that it had not been withdrawn as evidence upon the issue of fraud.

Respondents attempt on page 19 of their brief to read the charge so that it may be inoxious.

But the charge was in response to the request of respondents and in *their* language and, if there is any doubt as to what it means, the fault is theirs and not appellants' or the court's.

The clear import of the charge is that, upon the issue as to whether appellants had been guilty of fraud, the jury might take into consideration the fact that appellants had not formally withdrawn the schedule, and under the circumstances existing in this case we submit that this was error.

From pp. 13 to 16 of their brief respondents indulge in a reference to testimony apparently to demonstrate *that the books were not false at all.* They apparently argue, page 14, that, although Wood, the insurance company's adjuster, concedes that he based his determination as to the amount of the loss upon the fraudulent books, his estimate as to the sound value of all the goods *on hand at the time of the fire* to wit, $81,968.74 is correct. If this figure of Wood is correct, then

the books are not false. But everybody knows that the books *are* false.

This is another illustration of the insurance companies attempting to take advantage of entries in books which they concede to be false, if it serves their purpose to reduce the loss, and then, and in the same breath charging appellants with fraud because the books are false.

Indeed, it is hard to determine, from the argument from p. 13 to 16 of the brief, whether the insurance companies contend that the books are false or not.

POINT III.

From page 22 to 30 of their brief respondents attempt to show that the line of testimony objected to under Point III of our brief (p. 34) was admissible.

Respondents contend—

(a) (p. 22) That the testimony was admissible to prove the falseness of the books. But the falseness of the books was admitted, and Wood, the insurance adjuster, had been informed, upon his first visit that they were false. Had they been correct, respondents and not appellants would have been advantaged.

(b) It is a little difficult to determine what the position of respondents is under their paragraph 2, page 24. They again refer to the figure reached by the insurance companies' adjuster, Wood, based upon the fraudulent entries in the books, as representing the correct value of the merchandise on hand, and they refer to the fact (p. 25) that it was by impeaching the books that appellants increased the value of the merchandise on hand at the time of the fire. In this aspect of the case respondents would be advantaged by proving the books correct, and yet they say, under the same subdivision, that the books, having been offered by appellants "for the purpose of supporting their claims wherever possible, it was clearly proper for defendants to show that these books were inaccurate." The answer is that it was *conceded* that the books were incorrect and the fact is that appellants did *not* make their proofs from the books nor did they rely on any one of the fictitious items. (See p. 36 of our original brief), which were the subject matter of the questions objected to under Point III.

The *books* were *not* offered in evidence by appellants to support appellants' claim.

Certain specific items in the books *were* offered not including any one of the items, the fictitiousness of which respondents sought to prove by the evidence objected to.

As pointed out on page 38 of our original brief, respondents attempted to force appellants (pp. 117, 118) to include in the offer these fictitious items. The purpose of attempting to force appellants to offer these fictitious items was to lay a basis for respondents' attack upon those items. Not having succeeded in forcing respondents to offer the items, respondents proceeded to prove their fictitiousness anyway. The inference from their assertion on page 25 of their brief is that appellants did, in fact, offer these fictitious items in evidence, which is not the fact.

Under their subdivision 3 respondents insist that it was relevant for them to prove the fictitiousness of these items as bearing upon the question as to whether the checks were submitted to

Wood, the insurance companies' accountant, for the purpose of deceiving him.

There are several answers to this contention. The first is that, at the time these items were handed to Wood, the insurance companies' adjuster, he knew that the books were false and *the items themselves proved the falseness of the books.* If fraud on the insurance companies had been contemplated the checks evidencing the fictitious items would have been destroyed. Handing over the books and invoices, which were fictitious, was handing to the insurance companies' adjuster *evidence of the fraud.* As Wood himself intimates, if fraud had been intended, the items would have been destroyed instead of being handed over, and fictitious items, which were in accord with the books, would have been substituted (p. 268).

A second answer is that the items were conceded to be fictitious and had been excluded in making up the proofs of loss and in the proofs upon the trial.

Respondents next say, under their subdivision 4, that "The evidence objected to was admissible because Mr. Garfinkel testified that he did not know that before the fire there were large amounts withdrawn by him which were charged to merchandise or labor."

But Garfinkel was called by respondents and he was not called by them on the subject until p. 291, after all of this evidence had been admitted. It was not offered upon any such theory, and, here again, the fictitiousness of the items were conceded.

Respondents next say that it was admissible upon the question of whether Exhibit D. 16, the

schedule filed by plaintiffs' adjusters claiming a stock of the sound value of $161,320.80, was truthful or fraudulent.

But there was no evidence whatever that these fictitous items had been included in the making up of that schedule and there was no evidence at the conclusion of the case to that effect. Respondents insurance adjuster Wood says (p. 260) that he *cannot tell* that they were used in making up that schedule (see p. 37 of our original brief).

Respondents next say, subdivision 6, that it were admissible because appellants called Puder, their expert witness, who testified that he had not been apprised by Garfinkel, or any other person, that the checks in question represented fictitious transactions.

But Puder testified, and there was no evidence to the contrary, that "each one of these fictitious transactions" had been excluded in his calculations and it was conceded that the transactions were fictitious.

The important point, if there was one, was that Garfinkel had not advised Puder of the fictitiousness of the items and *that* was proven *by the testimony of Puder.*

Finally respondents say that it was of "the utmost importance and materiality for them to prove the fraudulent check transactions *which Mr. Puder did not take into consideration* in reaching the figure of $153,979.48 * * * since these transactions had a bearing *upon the accuracy of the method employed by him as an accountant.*"

And they proceed—"Furthermore, this figure was subsequently incorporated in the sworn

proofs of loss filed with the defendants, and it was certainly material for defendants *to prove that this sworn claim was inaccurate.*''

But if these fictitious items were *excluded* in the computation of Puder, and therefore excluded in making up the proof of claim, to prove the *inaccuracy* of the proof of loss, it would have been necessary for respondents to prove that the fictitious items were, in fact, *authentic.* By proving them fictitious, they proved the *accuracy* of the proof of claim and of Puder's figures.

The fact is, we submit, that, notwithstanding that these fictitious items had been carefully excluded by appellants both in their proof of loss and in the proof upon the trial, respondents set out to prove them so as to prove ''fraud'' upon the *books generally* rather than fraud upon the insurance companies and to prejudice the jury by the injection of matters which were wholly immaterial.

The effort made by respondents to compel appellants in their own case to put in evidence these fictitious items is a clear indication of the purpose, and no other useful purpose could be accomplished by the introduction of this testimony.

As the court said in *Huskie* v. *Griffin*, 75 N. H. 345, 74 Atl. 595, 139 American State Reporter 718, 27 L. R. A. (N. S.) 966—

> ''Proof of the absence of any good reason for performing an act will support a finding of malicious intent.''

And so here. The absence of any good legal reason for the presentation of this testimony, particularly in view of the admission of the fictitiousness of the items and of the conduct of respondents in attempting to compel appellants to

offer them, is a clear indication that the testimony was offered for the purpose of prejudicing the jury because that could have been the only purpose.

In *Deitz* v. *Providence Washington I Co.,* 33 West Va. 526, 25 American State Reporter 908, an action upon an insurance policy where the defense was based, in part, upon fraud, the court said, having reference to certain questions put to the plaintiff:

> ''The question, obviously, therefore was not intended to throw light on the character of the risk, or upon any other issue legitimately involved. The object, so far as it can be conjectured from the obvious effect of the questions, was to prejudice the minds of the jury against the witness, and the first two questions were properly ruled out by the court.''

POINT IV.

Respondents assert (p. 31), that the portion of the charge objected to under Point IV of our original brief (p. 40) ''is understandable and legally justifiable *when read together with the part of the charge which precedes it,*'' and they say (p. 34)—''Assuming, without admitting, that the charge as given was not sufficiently specific on this point, and that plaintiffs' tenth request to charge is more specific and was not adequately covered by the court, the failure to charge this tenth request is not made a ground of appeal and the argument on this score must fail.''

We are not arguing here that the court erred in refusing to charge the tenth request of appellants for the refusal of the court to so charge is not assigned as a ground of appeal although exception was taken. We are referring to the

refusal of the court to charge the tenth request for the purpose of indicating that the court, at the time it charged the second request of respondents, had before it the tenth request of appellants so that its attention was specifically directed to the fact that it was only in case the books and false statements were, in fact, used with intent to prejudice the insurance companies, that appellants could be prevented from recovering.

Notwithstanding that the court's attention was specifically directed by appellants to that matter, the court charged the second request of respondents, which was entirely too broad for the reasons stated in our original brief (p. 40, etc.).

Respondents insist (p. 33), that the court had already sufficiently indicated to the jury, by charging respondent's request No. 1, what fraud and false swearing involved and they ask—if the court must repeat "over and over again principles of law already fully expounded and explained"?

But respondents considered that, notwithstanding what the court had said as to what was involved upon the issue of fraud and false swearing, the jury should be specifically instructed that it "is no excuse or justification to the charge of fraud and false swearing for the assured to say that it did not mean thereby to prejudice the insurers, but merely to promote its own interest in evading the Federal Income Taxes," and requested the court to so charge.

Having requested the court to charge upon this specific matter, it was the duty of respondents to so frame the request as to cover the exact situation and not part of it.

The charge is objectionable because it left out of consideration an essential element and the case is within *Migliaccio* v. *Public Service Railway Company*, 1 N. J. Misc. 119 (p. 45 of our original brief). It cannot be said that the attention of the trial court was not specifically called to the matter because the trial court was asked by appellants to charge their tenth request.

POINT V.

1. Respondents insist (p. 36) that they did not call Garfinkel to the stand to impeach him but for the purpose of having him repeat the statements made, under oath, on the examination under the terms of the insurance policies and that Garfinkel's repudiation *was not expected* by defendants but was wholly unexpected (p. 38) and that it was to neutralize the denials and to compel Garfinkel to speak the truth that Garfinkel was confronted with the statements in the examination under oath.

But what useful purpose could be accomplished by calling Garfinkel to the stand to repeat what he had stated under oath on the examination. The facts with respect to the fictitious items, as to which Garfinkel testified upon the examination, were not only admitted from the beginning of the case, but had been proven by respondents and there was *no dispute* with respect to them, and, if the examination was one under oath within the terms of the insurance policies and respondents desired to prove the fact, why did they not offer so much of the examination under oath as was material without calling Garfinkel? He had already identified the examination (p. 78).

Respondents offered the examination under oath (p. 291). It was objected to as an omnibus offer, and the court said:

> "You may offer parts which are material, but I imagine many immaterial statements are contained in it."

Instead of then offering those parts of the examination which respondents considered to be material, the offer was withdrawn (p. 291).

It being wholly unnecessary to respondents' case to call Garfinkel to repeat his statements made under oath on the examination, some object *not connected with the merits of the case* must be looked for.

Either the purpose was, by having Garfinkel repeat the statements which he made upon the examination as to the fictitious items, although their fictitiousness was admitted and proven, to prejudice the jury, as was the purpose in introducing the testimony objected to under Point III, or the object was to call him with the idea that he would testify upon the stand differently than he had testified upon the examination, and by this method create a conflict and place respondents in the position where they could claim, as they did in the Supreme Court (their brief in the Supreme Court, pp. 22, 44, 45) *either* false swearing in the examination under oath *or* at the trial. When this subject was opened (p. 292) objection was made and counsel for appellants said:

> "Of course, he has, but I am assuming that this testimony is being offered for the purpose of proving a false statement—*a false oath* under the terms and conditions of the policy."

To that statement counsel for respondents said nothing.

Again, on page 294, counsel for respondents in arguing for the admissibility of a certain portion of the testimony, said:

> "It is *contradictory* of the very first statement."

Respondents are mistaken when they assert (p. 36 of their brief) that the effect of the fraudulent checks was to "swell the book inventory beyond the actual physical inventory." The proof is that the effect of the fraudulent items was *to reduce the amount of the loss.* That this is so is agreed to by all of the witnesses, including Woods, the insurance companies' adjuster. (See p. 11 of our original brief and p. 12.)

If the purpose of calling Garfinkel was to *repeat* the statements he had made on the examination under oath the result would be to *sustain the claim of appellants* that the books were incorrect and that the loss was much *greater* than indicated by the books.

Respondents argue, in at least two places in their brief (pp. 12 to 16, p. 24) that the loss was in fact *about the amount which would be indicated by the fraudulent books,* assuming the fraudulent entries to be bona fide, and, notwithstanding the *admitted* (on both sides) incorrectness of the books, they rely upon the figures of their adjuster Woods, who testifies that his figures are based upon the bona fides of the fraudulent entries.

The admissions, therefore, that Garfinkel made in the examination under oath were not at all "damaging" to appellants so far as the amount of the loss was concerned. On the contrary, they were beneficial to appellants.

Although respondents in their brief say that the answers of Garfinkel were "wholly unex-

pected and took defendants completely by surprise," they did not suggest this upon the trial as a reason for asking him as to what he had testified at the examination under oath (pp. 292, 293, 294).

2—Defendants now argue (although there is no suggestion of the idea in the testimony (pp. 298, 299, 300, 302) that the production of the income tax returns might throw some light upon the question as to whether the books were false.

Respondents say: "A comparison of the tax returns with the books submitted might show one of two things—either that the books coincided with the returns or that the books were higher than the returns. If they coincided, it would confirm the assured's explanation. If the books were higher, it would show that the books' figures were not an understatement of the assured's condition."

We do not follow the last statement of respondents. Inasmuch as it was demonstrated, by respondents themselves, that the books were false, then, if the books were higher than the income tax returns, it would only mean that the Specialty Handle Manufacturing Co. had proceeded to a greater fraud on the Government by making a return lower even than the false books showed proper.

Upon no hypothesis could the returns show that the books and figures were not an understatement of the assured's condition, for that would mean that the books were correct, and it is a conceded fact in this case that they were not.

There is no theory upon which these income tax returns could have been material and we

refer to what we said upon that subject on page 60, etc. of our original brief. Although immaterial, it was prejudicial to appellants for the reasons stated on pages 61 and 62 of our original brief.

3—In answer to the contention, made on page 50 of our original brief, that the requests of respondents to charge Nos. 1, 2 and 5, the charging of which are the bases of grounds of appeal Nos. 28, 29 and 32, permitted the jury to believe that false swearing at the trial voided the policy, respondents first intimate that appellants' exception to the court's charge was not sufficiently specific.

The exception is found on page 332 and it is "to the court's charging the various requests of the defendant and *to each request specifically.*"

Each request to charge is supposed to contain but one statement of law and we cannot conceive what more specific objection can be imagined to the court charging a request to charge than a specific objection to the charge as so requested.

It is the usual method of making objections to the court charging requests of the opposite party. No more specific exception was taken to *any portion* of the charge.

Respondents say (p. 41 of the brief) that appellants made a specific exception "to a portion of charge 7 only, but is not made a ground of appeal" and point to the fact that this specific exception was taken as an indication that counsel for appellants "was well aware of the proper manner in which to direct the attention of the court to matters complained of," and again say the fact that" a similarly specific exception was not taken to the other portions of the charge

shows that either appellant did not really consider the charges objectionable, or that appellant chose to gamble on the jury's verdict, relying on surprising the defendants in this court with what the ingenuity of counsel can, at leisure, work out the instructions to mean.

What respondents point to *as the specific exception* was that taken by appellants "to that portion of the court's charge wherein the court permitted the jury to consider as evidence of the amount of loss the figures used by Mr. Wood, which were concededly based upon false books and were therefore completely incorrect."

When we turn to respondents' requests to charge we find that this is *not* included in any request. The 7th request of respondents appears on page 237 of the record and has no reference to this matter at all. The fact is that the language to which this "specific exception" was taken is language of the court which appears on page 323 of the record, by which the court refers to the figures of Wood, the insurance companies' adjuster, and the purpose of appellants, in referring to the language of the court, was to direct the court's attention to that specific part of its charge because that specific part of the charge was *not* involved in any request and, under the rule, appellants were obliged to identify it in some manner or other. But when the court has charged the requests of a party which are in writing and numbered, reference to the specific requests charged is sufficient identification.

A party is *not* obliged to give a reason for an objection to any specific part of the charge unless the court asks for a reason. All that is required is an identification of the part objected to, and in this case appellants objected to each and

every request made by respondents "specifically."

Van Blarcom v. *C. R. R.*, 73 N. J. L. 540.

Respondents *now* argue that the charge did not permit the jury to find that the policy had been voided because of false swearing upon the trial, notwithstanding the fact that, in respondents' request to charge No. 1, which was charged by the court, the language of the policy, to the effect that it was voided for false swearing, etc., either *before* or *after* a loss, is contained, and notwithstanding the fact, as pointed out on page 48 of our original brief, that respondents themselves in the Supreme Court on rule contended that the policy was voided if there was false swearing, either at the examination under oath *or at the trial* on matters material to the subject of insurance, and relied upon this examination of Garfinkel as demonstrating that he testified falsely *either* at the examination under oath *or* the trial.

We do not believe that respondents would argue in the Supreme Court that the verdict should be sustained upon an issue which was *not* before the jury, so we are bound to assume that respondents considered that, either these requests to charge, which they themselves prepared, or other portions of the court's charge, permitted the jury to find that the policy was voided because of false swearing *at the trial* and we submit, therefore, that, to say the best for respondents, these requests to charge, which were drawn by respondents, were so ambiguous as to permit respondents to argue conscientiously in the Supreme Court that the jury's verdict might be rested upon the voiding of the policy by false swearing *at* the trial.

Respondents next seem to contend that, if the charge permitted the jury to consider false swearing at the trial as voiding the policy, it was the duty of appellants to request the court to charge language excluding this idea. We submit that no such burden rests upon appellants and the cases cited by respondents do not so indicate. In each one of the cases cited the portion of the charge excepted to was unexceptional and did not permit the jury to consider anything it was not entitled to consider, but the claim was that the court omitted to charge additional matter which might well have been charged, and the reviewing court held that no complaint could be made that this additional matter had not been charged in the absence of a specific request.

Mead v. *State,* 53 N. J. L. 601, cited by respondents is a striking example of all the cases.

That is not this case. The complaint here is that the portions of the charge excepted to are *not* exceptional; that, on the contrary, they permit the jury to consider false swearing on the trial as voiding the policy. If, in fact, the charge permitted the jury to consider that false swearing upon the trial voided the policy, there was no burden resting upon appellants to request the court to charge that false swearing on the stand would not void the policy. All that appellants were obliged to do was to except to the charge as delivered.

The case is within *Migliaccio* v. *Public Service Railway Company,* 1 N. J. Misc. 119, and not within the cases referred to by respondents.

A different situation is created when the court charges requests of a party than when it delivers its charge without that assistance. When charges are prepared by a party the presumption is that

they have been carefully studied and represent the law, applicable to the facts, upon which the party is willing to stand. If requests to charge are erroneous no other duty rests upon the opposite party than to except to them when charged. The duty does not rest upon the opposite party to prepare counter-requests to avoid any legal error that may be contained in the requested charges.

A party does not know until the charge is delivered what the judge is going to charge nor does he know what the opposite party has requested the court to charge. Under the rule at circuit *all* requests must be delivered to the court before the summing up of counsel. What opportunity then has a party to prepare requests to *explain* the language used in requests of the opposite party?

4. Respondents next argue that false swearing upon the trial *does* void the policy and refer to three cases.

The first case cited, *Columbian Insurance Co.* v. *Modern Laundry Co.,* 277 Fed. 355, 360, did not turn upon a determination of the question.

After deciding the case upon the issue which *was* before the court the Circuit Court of Appeals casually called attention—"As this case must be tried again," to what it said was the rule that if the insured "knowingly and wilfully makes a false statement of or regarding a material fact in its proof of loss, or in its testimony regarding the value of the property insured, or the loss or damage thereto by fire, *the intention to deceive the insurer is necessarily implied as the natural consequence of such act,*" and it then cites cases which have nothing whatever to do with the question as to whether or not false swearing *at the trial* will void the policy.

Pottle v. *L. L. & G.*, 85 Atl. 1058, Maine, 1913, was a case on motion to set aside a verdict as being unwarranted by the evidence. The testimony of the plaintiffs at the trial was precisely the same as their statements in their proof of loss and, if their testimony at the trial was false, then their proof of loss was false and fraudulent, and if the proof of loss was false and fraudulent, the policy would be voided. There is no consideration of the question as to whether, had the proof of loss not been fraudulent, false swearing *upon the trial* would have voided the policy. The quotation from this case contained on page 45 of respondents' brief is from the headnote. What the court *said* was:

> "The conclusion is irresistible from all the evidence that the quantity and value of goods, as stated by the plaintiffs, were not in the store, and that their statement as to the quantity and value of the goods, made in their proof of loss and in their testimony, was false and fraudulent. The law is well settled that in such cases no recovery can be had."

And this is a precisely correct statement for, if the proofs showed that the statement of the quantity and quality of the goods "made in *their proof of loss and* in their testimony was false and fraudulent" there is no doubt but that there could be no recovery.

Follett v. *Standard Fire*, 92 Atl. 956 (N. H. 1915), is the only case in which the question is considered, and all that the court says upon the subject is:

> "The instruction that false swearing at the trial would be an attempt to defraud within the meaning of the policy should have been given, with the modification before indicated as to what constitutes a fraudulent intent. No reason is perceived why a fraud might not be perpetrated in this way as well as in any of the preliminary steps taken before the cause came to a trial. In the language of the contract, it would be an 'attempt to defraud the company * * * after the loss.'"

The language of the policy must be construed most strongly against a forefeiture. The rule still is "that conditions contained in them (insurance policies) which create forfeiture are to be construed most strongly against the insurers."

Precipio v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports 1065.

The language of the clause of these insurance policies with respect to voiding the policy is of such a nature as that it can be construed *not* to apply to false swearing upon a trial for, as the West Virginia Court said in *Deitz* v. *Providence Washington I. Co.,* 33 West Virginia 526, the rights of the plaintiffs have been fixed by the commencement of an action.

No violence is done to the language of the clause if it be confined to fraud and false swearing made to representatives of the insurance companies in connection with the subject matter of the insurance or the loss, and not to extend to false statements made in court upon a trial of the issue where the insurance companies and the assured are parties litigant before an impartial tribunal, and where the insurance companies are not depending, in anywise, as an inducement to any action, upon anything which may be said by the assured.

The general rule is that to void the policy the fraud and false swearing must be with the intent to defraud the insurance companies. There must be wilfulness and an intent to misrepresent and knowledge that the insurance companies may

act upon the fraudulent or false statements under oath.

Mick v. *Corporation of Royal Exchange,* 87 N. J. L. 628;

26 *C. J., Title, Fire Insurance,* p. 154, Sec. 188, *et sequi;*

Cooley's Brief on Ins., 2nd Ed., Vol. 7, p. 5838, *et sequi.*

There is no such situation when the case is being tried before a court and false swearing before the court is not within the purview of this provision of the policy.

5. Respondents, in answering the point that the false swearing upon the trial could not void the policy because of the assignment to the Public National Bank of New York, etc. (p. 52 of our original brief), refer to cases bearing generally upon the rights of an assignee but do not attempt to distinguish *Fields* v. *German American Ins. Co.,* 140 Mo. App. 158, 120 S. W. 697; *Same* v. *Queen Ins. Co.,* 140 Mo. App. 168, 120 S. W. 700, which are upon the precise point that, after an assignment, the false swearing of an agent of the insured, or of one of the insured in the course of trial will *not* defeat the policy, the first of which cases was approved by this court in *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 607.

POINT VI.

In their answer to appellants' Point VI respondents first concede that, as the charge reads, it is erroneous for it leaves to the jury the construction of the contract of insurance. But respondents insist that the main objection to the charge is the use of the word "construe" and that "since the veriest abecedarian in the law

knows that the construction of a contract is for the court, it is evident that the use of the term 'construe' was a slip, an oversight. What was intended was 'regarded' or 'considered.' "

And respondents then indulge in definitions of the word "construe," etc.

This portion of the charge of the court was delivered in response *to a request of respondents,* and, if there is any error, it is the error of respondents. If it was not for the jury to *construe* the contract, it was not the jury's concern whether the contract was one prescribed by the legislature or not. That matter was for the court. For some reason, best known to respondents, they considered that they desired the attention of the jury directed to the fact that the contract of insurance was one prescribed by the legislature. They were not content with requesting the court to charge the jury that the jury was bound by the construction and interpretation put upon the contract by the court. They desired the jury's specific attention directed to the fact that the contract was one prescribed by the legislature. For what purpose?

Having determined to request the court to direct the jury's attention to the fact that the contract was one prescribed by the legislature, which the "veriest abecedarian in the law" knows was no concern of the jury, the burden was on respondents to prepare a request to charge which would be precisely proper and no burden rested upon appellants to correct the request. Respondents, by submitting the charge, *guaranteed* to the court that the charge contained a proper legal principle applicable to the facts in the case.

It is the rule that if a request to charge contains *anything* which is illegal, the court is not obliged to charge any part of it.

Consolidated Traction Co. v. *Chenovich,* 58 N. J. L. 416.

In this case, the court adopted the request to charge. If any part of it is illegal, the only duty resting upon appellants was to except to its being charged and, if there is *any* illegal matter contained in it, we submit the judgment should be reversed and the fault is neither that of the court nor of appellants but of respondents themselves.

It was not incumbent upon respondents to request the court to charge the jury "that conditions contained in the policy which created forfeitures are to be construed most strongly against the insurers." See p. 52 of respondents' brief.

Again we direct attention to the fact that a party has no knowledge of the requests of the opposite party until the charge is delivered and yet his requests must be submitted before the summing up.

Respondents assumed the burden of requesting the court to charge the jury with respect to what construction should be put upon the contract and, having assumed the burden, it was the duty of respondents to request the court to charge properly and to cover the entire matter.

As determined by this court in *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports, p. 1065, those conditions of the policy which create forfeitures, and it is with those conditions of the policy with which the jury was *alone* concerned in this case, *are* to be construed *most strongly against the insurers.* And, as pointed out on p.

66 of our original brief, the language of the clause providing for a forfeiture because of false swearing "*either before or after a loss*" is *not clear and unambiguous,* and the courts have held that, notwithstanding that language, false swearing *on the trial* does not defeat recovery.

We have already answered the argument of respondents that, taking the charge as a whole, the jury was not permitted to find a verdict for respondents based upon the alleged false swearing at the trial. A sufficient answer to that contention, if there were no other, would be that respondents themselves in the Supreme Court took the position that the verdict might be sustained because of false swearing at the trial.

Respondents argue that this charge of the court must be taken in connection with the remainder of the charge and that the charge, as a whole, was proper. How the respondents can take *that* position is not apparent when respondents themselves, in the Supreme Court, argued that the verdict might be sustained because of false swearing *at the trial* and *now* argue, in this court, that the charge of the court *did not permit the jury to consider false swearing at the trial.* If respondents themselves have taken these *two* positions with respect to what issues were before the jury upon the charge of the court, it is hard to argue we submit, that it is clear that the jury must have understood the entire charge in a proper manner as they argue, on p. 49 of their brief, and *unless it is clear* that the charge, as a whole, conveyed a proper meaning to the jury, there is error for which the judgment must be reversed.

Ruckman v. *Bergholz,* 37 N. J. L. 437;

Brown v. *Public Service,* 98 N. J. L. 747, at 754;

Collins v. *C. R. R.,* 90 N. J. L. 593.

Legal error is presumed to be injurious.

And this rule should not be relaxed, we submit, where the legal error was caused by respondents.

Respondents refer to *Loiseaux Lumber Co.* v. *O'Reilly,* 6 N. J. Adv. Rep. 892, 141 Atl. 763. This case is not within the second clause of the remarks of the court in that case quoted in respondents' brief (p. 52). On the contrary, it is within the first clause and within the cases of *Brown* v. *Public Service Ry. Co.,* 98 N. J. L. 747 at p. 754 and *Collins* v. *C. R. R. of N. J.,* 90 N. J. L. 593.

Nor is this case within

Camden and Atlantic R. R. Co. v. *Williams,* 61 N. J. L. 646;

Blumenfeld v. *Hudson &c. R. R. Co.,* 89 N. J. L. 580;

Lange v. *N. Y. S. & W. R. R. Co.,* 89 N. J. L. 604

referred to on p. 53 of respondents' brief. On the contrary it is within *Migliaccio* v. *Public Service Railway Company and Jacob Peppe,* 1 N. J. Misc. 119, referred to on p. 45 of our original brief. It is only where the charge, standing alone, is perfectly legal that the obligation rests on a party, if he requires an enlargement of the charge to request the court for that enlargement. That rule does not apply where the charge in itself is incorrect, or where it omits an essential element. The charge in the instant case was *not* a correct statement of the law, so far as it went, based on the line of cases

referred to under this point" (p. 59 of respondents' brief). It omitted an essential element to be taken into consideration in construing these contracts, *i. e.* that words creating a forfeiture are to be considered most strongly against the insured.

The court was instructing the jury as to how the contract should be *construed.* It was as much error for it, when charging upon the general subject, to omit to refer to the rule announced by this court in *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports 1065, as it was for the court, in *Migliaccio* v. *Public Service Railway Company and Jacob Peppe,* 1 N. J. Misc. 119, when charging upon the liability of the railroad company for a disregard of its legal duty, to leave out of consideration the question as to whether or not the descendent by his own want of care contributed to the accident.

Respondents, from pp. 54, 55, 56, 57 of their brief, in effect attempt to re-argue *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports 1065. We do not intend to reply as we assume the matter is settled by that case.

It is respectfully submitted that the judgment should be reversed and the record remitted to the Supreme Court with directions to issue a *venire de novo.*

Respectfully submitted,

JACOB L. NEWMAN,
MERRITT LANE,
Of Counsel—Appellants.

New Jersey Court of Errors and Appeals

PUBLIC NATIONAL BANK OF NEW YORK, *et al.*, *Plaintiffs-Appellants,*	*Action at Law.*
and	*Tried at the Essex Circuit before* SMITH, *J., and a Jury.*
PATRIOTIC INSURANCE COMPANY OF AMERICA, a corporation, *Defendants-Respondents.*	*Rule to Show Cause why Verdict Should Not Be Set Aside as against the Clear Weight of the Evidence.*
And five other cases tried at the same time.	*Argued before* GUMMERE, *C. J.;* BLACK *and* LLOYD, *JJ.*

PLAINTIFFS' APPEAL.

(Italics, etc. ours except where otherwise noted.)

BRIEF FOR APPELLANTS.

Statement of the Case.

These were actions brought by Specialty Handle Manufacturing Company, Inc., as the assured, and Public National Bank of New York, as assignee of the causes of action, against several

insurance companies to recover for loss sustained by fire to the goods, wares and merchandise of Specialty Handle Manufacturing Company, Inc., insured under policies of insurance issued by the respective defendants (Complaint, p. 2).

The cases were consolidated into one action (p. 14). The answers set up, in their first separate defense, the provision of the policy that it should be void if the insured had concealed or misrepresented, in writing, or otherwise, any material fact or circumstance concerning the insurance or the subject thereof; or in case of any fraud or false swearing by the insured relating to the insurance or the subject thereof, whether before or after the loss, and that, in violation of such provision, "with intent to cheat and defraud this defendant and gain an advantage over it and secure a sum of mony not otherwise justly due said plaintiff knowingly and wilfully, falsely and fraudulently misrepresented in writing and otherwise the amount and value of the property claimed by it to be involved in the fire, the cost of said property, the amount of damage caused by said fire, the origin and cause of said fire, and the ownership of said property, well knowing that in truth and in fact the amount of property claimed to belong to it and involved in said fire and its value, the cost of said property and the amount of damage caused by said fire was much less than the amount represented and stated by it; and well knowing that the origin and cause of the fire and the ownership of said property was otherwise than as represented and stated by it; and further produced and exhibited to this defendant false and fraudulent books and records; all of which was done by said plaintiff with intent, as aforesaid, to secure the payment of a

sum of money from this defendant not otherwise justly due" (p. 10).

Upon the trial no evidence was adduced by defendants in support of, nor any reliance placed upon, any defense which would defeat a judgment in *some* sum of money for plaintiff except a violation of the provision of the policies just referred to and the defense under that provision of the policies was claimed to be made out by proof of—

(a) In examination, under oath, officers of the assured had falsely testified.

(b) After the fire the adjusters of the insured presented a schedule of property to the Insurance Companies (Exhibit D. 16, p. 410) showing the sound value of the stock at the date of the fire $161,320.80, which statement was fraudulent.

(c) The proofs of loss were fraudulent.

(d) The books of the company contained false entries and had been given to the Insurance Companies for their use.

Aside from the question of the amount of damage, it being conceded that, if plaintiffs were entitled to recover, there must be a verdict for at least the admitted loss of $43,666.94 (p. 331), this issue of fraud was the only one left to the jury.

The jury returned a general verdict in favor of defendants and upon that verdict judgment was entered (pp. 16, 17).

A rule to show cause was allowed (p. 18). It was special in nature and confined to the claim that the verdict was against the clear weight of the evidence, all exceptions being expressly reserved (Rule, p. 18; Reasons, p. 20).

The Supreme Court discharged the rule (Opinion, p. 427; Rule, p. 429).

Thereupon this appeal was taken (Notice, p. 430; Grounds of Appeal, p. 434).

THE FACTS.

While the case is here on appeal and no question can arise as to the weight of the evidence, the rulings of the court, which are excepted to, can only, we feel, be properly appreciated by a rather extended review of the facts.

Conceded Facts.

Plaintiff, Specialty Handle Manufacturing Co., Inc., was engaged in the business of manufacturing leather specialties, used in the suitcase, truck and bag trades, and conducted its business at Nos. 113-135 New Jersey Railroad avenue, Newark, being the owner of the premises (p. 26).

On March 1, 1925, the property was partially destroyed by fire. As a result the buildings were damaged, certain stock which, after the fire, could be identified, called, during the trial of the case, "stock in sight," and machinery and fixtures were damaged; other stock was so completely destroyed as that it could not be identified after the fire by any remnants.

At the time of the fire Specialty Handle Manufacturing Company, Inc., was the holder of divers insurance policies issued by the respective defendant corporations, which policies provided for the reimbursement of any loss sustained by it by reason of damage as a result of fire to the premises or stock. The policies are not printed, but a stipulation with respect to them appears in the State of Case (pp. 338, 339). After the

fire Specialty Handle Manufacturing Company, Inc., because of the failure of the insurance companies to pay all of the loss, was obliged to borrow $60,000 from the Public National Bank of New York (p. 22), which it secured by an assignment, made May 18, 1925, of the policies of insurance, "and all sum and sums of money, interest, benefit and advantage whatsoever, now due or hereafter to arise or to be had or made by virtue thereof, including all its right, title and interest in and to the amount in which said loss shall be adjusted" (p. 343).

The Public National Bank of New York is a party plaintiff.

The amount of the loss to the building has been paid by the insurance companies and is not involved in these cases.

On April 9, 1925, Specialty Handle Manufacturing Co., Inc., and the General Adjustment Bureau, representing the insurance companies, acting through William F. Russell and Fred W. Williams, two of the witnesses produced by defendants herein (pp. 195, 190), *agreed* to an adjustment of the sound value and the loss to the stock in sight and the sound value and the loss to the machinery, the sound value of the stock in sight being adjusted at $50,539.04, and the loss thereon $22,523.83; the sound value of all machinery and fixtures being adjusted at $36,094.75, and the loss thereon $21,143.11 (p. 401, Exhibit P. 43).

In pursuance of the terms of the policies and in response to the request of the Insurance Company plaintiff, Specialty Handle Manufacturing Co., Inc., on or about June 18, 1925, filed a Proof of Loss (Exhibit P. 26, p. 393). This Proof of Loss included the damage to the stock in sight,

machinery and fixtures, which had been adjusted in the aggregate at $43,666.94, and the total sound value of the stock in sight, out of sight, machinery and fixtures was stated to be $190,074.23, and the total loss $147,107.38 (p. 397). And see the charge of the court (p. 322).

The Proof of Loss contained the following statement (p. 398)— "This proof of loss is filed as a *pro forma* claim to comply with the policy requirements, under notice from the Insurance Companies, it might be subject to amendment by a fuller report from Puder & Puder, accountants, 31 Clinton street, Newark, N. J., employed by us."

Attached to the Proof of Loss was an apportionment which showed the respective amounts claimed from the various companies upon the stock in sight, stock out of sight, machinery and fixtures (p. 399). On the companies refusing to pay even that portion of the loss applicable to stock, machinery and fixtures in sight, the amount of which had been agreed upon, these suits were brought, summons tested December, 1925 (p. 1).

The Proceedings at the Trial.

Plaintiffs produced the adjustment upon the damage to the stock in sight, machinery and fixtures (Exhibit P. 43, p. 401), an aggregate of $43,237.33 (p. 130).

The proof of the amount and the loss to the goods out of sight was made in the following manner—

The physical inventory taken as of January 1, 1925, was proven by the persons who took it, Dolid (p. 26), Kasnowitz (p. 28), Max Mans (p. 39), Leinbach (p. 46), Skuratovsky (p. 50), Kisco (p. 54), Cohen (p. 64), J. Harry Mans (p. 67).

In some instances the persons who actually made the physical inventory were experts in values and placed the values on the stock. In other instances, the values were fixed by Samuel I. Garfinkel, president of the Specialty Handle Manufacturing Co., Inc. (p. 57) or by Emil Garfinkel, secretary and treasurer of the company (p. 75).

The persons who fixed the value on the items were produced and examined.

To further support the inventory plaintiffs called as experts Schatt (p. 101), Gross (p. 103), Lerner (p. 110), Schottenfeld (p. 114), no one of whom had any connection whatever with plaintiffs. The inventories are printed as Exhibits P. 17, P. 18, P. 19, P. 20, P. 21, P. 22, P. 23, P. 25 (pp. 347, 392). In many instances, the values placed upon the items by the experts were in excess of the values placed thereon at the time the inventory was taken.

The amount of this physical inventory, the integrity of which was not seriously questioned, was $150,093.58, and that was the value of the stock on hand January 1, 1925.

Plaintiffs then proved the purchases of merchandise from January 1, 1925, to the date of the fire. This proof was made by the production of the *actual invoices and the checks showing payment* (pp. 99, 117, 87, 88). When plaintiffs first attempted to make this proof by the primary evidence, *i. e.,* checks and invoices, counsel for defendants objected (p. 88) upon the ground that it was the duty of plaintiffs to prove the purchases through the purchase journal. The purpose of this was to force plaintiffs to rely upon the purchase journal which concededly contained a record of items which had not, in fact, been re-

ceived. The purpose of the fictitious items, as will be hereafter set forth, was to influence the income tax. In connection with this proof the receiving book was proven and offered (Exhibit P. 24, p. 100). There was no contention that there was any fraud with respect to any entries in this book. The fact is that the book did not contain all items which had, in fact, been received. Goods were received and either no one was present to make an entry in the receiving book or the matter was overlooked. The book is not a part of the regular set of books. The court was right when it said (p. 100)— "It is correct so far as it goes, if they got more goods than the book shows. If that is the only objection, I will allow it in evidence."

There were certain items of purchases for which there were checks evidencing payment but no invoices. To prove these plaintiffs introduced the specific entries in the purchase journal together with the checks in payment (p. 124). The book itself was not offered, merely the specific entries, and to this counsel for defendants specifically stated he had no objection (pp. 126, 127).

Puder, an expert accountant, testified that the amount of purchases, as proven by the invoices and checks, *excluding all items which appeared in the purchase book which were fictitious,* after the making of the physical inventory of January 1, 1925, was $43,237.33 (p. 133). He verified every item and eliminated from the purchase journal invoices aggregating $2,034, due to his inability to completely verify that these items represented purchases or evidenced the receipt of goods (p. 133).

The aggregate amount of the physical inventory of January 1, 1925, plus the purchases from

January 1, 1925, until the date of the fire, was $193,330.91.

Puder then added the labor for the months of January and February, 1925, amounting to $39,-813.37, as shown by the cash disbursement books (p. 132). This gave him an aggregate of $233,-144.28.

He then deducted the cost of goods sold during the months of January and February, 1925, which amounted to $79,164.80, giving him a figure of $153,979.48 as the merchandise inventory on March 1, 1925, the date of the fire.

In computing the cost of goods sold Puder omitted every item of disbursement which appeared upon the books except such items as he could and did verify (p. 142). Every item questioned by defendants was omitted (pp. 142, 143, 144).

In getting at the sales cost it is, of course, necessary to apply an estimated percentage of profit, and Puder applied the percentage of profit as shown by the experience of the year 1924. In obtaining that percentage of profit, however, he took the *physical* inventory for December 31, 1923, of $146,838.49 and *not* the inventory which appeared upon the books of $126,-402.20 (pp. 148, 256, 269).

The inventory of December, 1923, consisted of a large number of sheets bound together within canvas covers and each sheet bore upon its face intrinsic evidence that it was the result of the actual taking of an inventory. It was apparent that, when the amount of the inventory was entered upon the ledger, the figure of $146,838.49, the total of the amounts appearing upon the sheets, was arbitrarily changed to $126,402.20 for

income tax purposes (p. 147). Had Puder taken the inventory at the amount as it appeared upon the ledger and also taken the figures of the actual inventory of December 31, 1924, proven in this case by the persons who took it, as he was bound to do and did, the result, so far as this case is concerned, would have been "*far more advantageous to the Specialty Handle Manufacturing Co. Inc.*"

In making his calculation of profit for 1924, Puder also reduced the purchases by $8,089.70, representing items which appeared in the purchase ledger for 1924 arbitrarily inserted for income tax purposes. He eliminated every item which he could not verify and every item which is questioned by defendants (pp. 148, 149, 150). Had he included these fictitious items he would have reached a result more favorable to the Specialty Handle Mfg. Co. (p. 172).

In other words, *if reliance were placed by plaintiffs upon the fraudulent books the result would be more favorable to the Insurance Companies,* or, in other words, *the fraud always operated in favor and not against the Insurance Companies by reducing the loss.*

The amount of merchandise on hand, as of March 1, 1925, being $153,979.48, and the sound value of the stock in sight having been adjusted at $50,539.04, the amount of the loss on merchandise wholly destroyed was $103,440.44. Adding to this $103,440.44, the adjusted loss on stock in sight, $22,523.83, and the adjusted loss on machinery, $21,143.11, gave a total loss of $147,-107.38 (p. 315).

And see the figures set out in the charge of the court (pp. 322, 323).

England, insurance adjuster, was called to apportion the loss, which he did (pp. 173, 174), applying the co-insurance clause. It was agreed (p. 317) that the jury should fix the total amount of loss due to the fire, and that the court would assess against the defendants a certain percentage of that loss applying the conditions of the policies (p. 318), and the court, in accordance with that agreement, directed the jury, if they found for plaintiffs, to bring in a verdict for the amount of the adjusted loss on machinery, fixtures and stock in sight, $43,666.94 plus such amount as they found represented the value of merchandise completely destroyed.

There was no testimony, worthy to be termed "evidence," produced by defendants as to the amount of the loss.

Wood, the accountant for the Insurance Companies (p. 229), testified that he had made a calculation which showed that the amount of the loss was $81,000 (p. 265). And see the charge of the court (p. 324). He reached this result by taking the books of the company *as correct,* although he knew that they were incorrect (p. 266). He ignored physical inventories, although he knew that the amounts of the inventories, which were placed in the ledger, were false, and were designedly false for the purpose of influencing the income tax. He assumed the false entries as to purchases as correct and the reason why he preferred to take the book entries, designedly false, rather than the true facts, **was because the fraudulent book entries, if the physical inventory of December 31, 1924, proven in this case by the persons who took it, be ignored, and Wood ignored it, benefited the Insurance Companies** (pp. 266, 267, 243, 244).

And yet it is these false entries in the books, which, *in fact, benefited, not harmed,* the Insurance Companies, which defendants claimed were made for the purpose of *cheating and defrauding the Insurance Companies.*

GENERALLY THE CLAIM AND PROOF OF FRAUD.

It was conceded at the onset of the case that the books of account of Specialty Handle Manufacturing Co., Inc., had been fraudulently kept. They were so fraudulently kept for income tax purposes (p. 147).

It is conceded by Wood, the accountant of the Insurance Companies, that, if the books of the company represented the correct situation, the loss would be much less than claimed in the proofs of claim and upon the trial. He made up a statement from the books which showed a book inventory March 1, 1925, the date of the fire (p. 266), of $81,968.74 as against an actual inventory of $153,979.48, the inventory which was arrived at by plaintiffs' accountants by taking the *physical* inventory proven by the persons who took it and by disregarding all fictitious items, or a difference in favor of the Insurance Companies, if the fraudulent books had, in fact, been correct, of some $70,000.

In referring to the fraudulent entries, Wood, accountant for the Insurance Companies, said (p. 253)—

> "Q In other words, the books show a purchase and a payment of that purchase? A Exactly.
>
> Q Whereas, in fact, there was no such purchase or payment of purchase, but a sum of money withdrawn by a bearer check? A It helped them in one respect; it reduces their income taxes.

By Mr. Lane.

Q *That is the only thing it does?* A *As far as I know, yes.*"

It is apparent that any fraud which would have the effect of defrauding the Government of income tax would have an effect of reducing the loss upon the policies because, to defraud the Government of income tax, the inventories and the rate of profit must be kept low.

It was claimed by defendants that a certain schedule presented to the Insurance Companies immediately after the loss was fraudulent.

Within ten days after the fire Miller & Maltbie, insurance adjusters representing Specialty Handle & Manufacturing Co., Inc., furnished to the General Adjustment Bureau, representing the Insurance Companies, a schedule purporting to show the amount of the loss (Exhibit D. 16, pp. 410, 175). This document is not called for under the terms of the policy (p. 178) nor was it under oath. It was delivered to the adjusters to check (pp. 180-181). The best recollection of England is that he delivered it two or three weeks after the fire. He is mistaken in this, if Wood, adjuster for the Insurance Companies, is to be believed, for *he* says he commenced his examination on March 10th, ten days after the fire, and that, *at that time,* he had the schedule. It neither was, nor took the place of, the formal proofs of loss required by the policies. It is the practice to prepare such a schedule prior to the preparation of Proofs of Loss. These schedules are never accepted by the Insurance Companies (p. 182). The Insurance Companies call for the data from which the merchandise statement is prepared and require that data for their examination. It represents merely an estimate of the loss.

The amount of the sound value of the stock, upon the date of the fire, as shown by the schedule, was $161,320.80 (p. 411).

After a careful check-up, using actual physical inventories, excluding all fictitious items in the books, the amount of the sound value of the stock at the time of the fire was found by Puder, the accountant, to be $153,979.48, or a difference between the first estimate and the amount reached by final check-up of approximately $7,000.

There is not a scintilla of evidence that the figures in this schedule were arrived at by including any fictitious items in the books. On the contrary, it is demonstrated that the fictitious items must have been omitted because the accountant for the insurance company made an examination of the books and, considering the fictitious items as true items, arrived at a result that the sound value of the stock, at the time of the fire, was but $81,968.74 (p. 265).

Not only was there no evidence that fictitious items had been relied upon in the preparation of this schedule but, although the accountant for the Insurance Companies had full access to the books and had made a complete examination, when he was asked by counsel for defendants whether he could tell if the fictitious items had been included in the schedule the following occurred (p. 260)—

> "Q Can you tell whether or not these eight instruments (fictitious items) are included in the figures given in the instruments D. 16, which was the schedule furnished by Miller & Maltbie to the insurance companies, and on which you started to work? A *I cannot tell that.*"

And, if such schedule had contained figures, based upon such fictitious items, it would have

been to the disadvantage of Specialty Handle Manufacturing Co., Inc.

The proof of loss (Exhibit P. 26) was filed about the 18th day of June, 1925, in accordance with the terms of the policy, and was prepared by Puder & Puder, accountants. There is no question as to how the figures, contained in this proof of loss, were arrived at. Puder & Puder had carefully gone over the books of the company; had eliminated from consideration all fictitious items; had made a thorough examination; had used physical inventories; had, bona fide, attempted to arrive at a correct result (p. 131, etc.) and the proof of loss, as filed, was the result. At the time it was filed, in June, 1925, the companies had full knowledge of the inaccuracies in the books and had made an examination.

Notwithstanding the fact that Puder & Puder had attempted to arrive at a correct result, to guard against any mistake, the proof of loss contained this statement— "This proof of loss is filed as a *pro forma* claim to comply with the policy requirements, under notice from the Insurance Companies, it may be subject to amendment by a fuller report from Puder & Puder, accountants, 31 Clinton street, Newark, N. J., employed by us."

In the proof of loss the sound value of the merchandise, at the time of the fire, was stated to be $153,279.48, and the loss, including that to stock in sight and machinery, the amount of the damage to which had been adjusted, was stated to be $147,107.38.

Continuing the examination of the books, Puder & Puder found that they had no reason to change their opinion, and the proof offered at the trial showed that the amount of the sound value of

the merchandise, at the time of the fire, was $153,979.48, the precise figure stated in the proof of loss (p. 134), and that the loss, including that to the machinery, fixtures and stock in sight, the amount of which had been adjusted, was $147,-107.38, the precise figure stated in the proof of loss (p. 315).

It cannot be said, we submit, where the testimony at the trial shows the sound value of the merchandise on hand at the time of the fire and the loss to be precisely the same as that shown in the proof of loss and where the proof of loss and the testimony show the sound value of the merchandise on hand, where an amount exceeding $150,000 is involved, to be but approximately $7,000 less than a hasty estimate made immediately after the fire, a difference between proof and estimate of but five or six per cent. (pp. 316, 317), that there is any proof of fraud.

It was claimed that the books were delivered to the adjuster of the Insurance Companies containing the fraudulent items for the purpose of deceiving the Insurance Companies. When the Insurance Companies called for *all* of the books it was obligatory upon the insured to deliver the books to them. Plaintiffs' testimony showed that, when these books were delivered, the accountant of the Insurance Companies was informed that they contained fictitious items. At one place in his testimony Wood, the accountant to whom the books were delivered, indicates that he was not informed at the *onset* that the books were fictitious but he testified (p. 237):

> "Q Did Mr. Garfinkel or any of the other officers ever tell you about these fictitious entries? A Mr. Garfinkel told me in a general way that the books were incorrect for income tax purposes."

On page 272 on re-cross examination, he testified—

> "Q You knew that the books could not be depended upon? A Not at that time.
>
> Q You knew that the books could not be depended upon because Garfinkel told you they had been kept for income tax purposes? A *Yes, sir.*"

And, again (p. 270)—

> "Q Do you want me to understand you were not informed by us the first time of these so-called fictitious entries? A I was not.
>
> Q And you were not informed until you went there the second time? A I was told by Mr. Garfinkel, as I testified, that the books were fixed for income tax purposes.
>
> Q When? A *On my first visit.*
>
> Q *Then you were told on your first visit?* A *Yes, sir.*
>
> Q Did you mean to insinuate a few moments ago you were not told anything about the condition of the books? A You mean fictitious entries?
>
> Q They told you the very first time you could not depend upon the books? A Yes, sir, after I had called their attention to the condition of them.
>
> Q How long did it take you to call their attention to the books? A I was there about two days."

And then the statement in his report made to the Insurance Companies on March 30, 1925, was brought to his attention (p. 270) in which report he had informed the Insurance Companies that Garfinkel had explained to him the scheme which had been used for the purpose of defrauding the Government. And he testified further (p. 271)—

> "Q And he (Garfinkel) never said one word and no one else ever said one word, when you were present at that plant, to lead you to believe that the statements in that

book were to be examined at face value? A *When I went there they handed me the books and I assume they certified to the records.*

Q You went there and asked for all the records of the company? A I did.

Q And you got them? A I did.

Q And within a short space of time you were told you could not depend upon the correctness of those books, weren't you? A Yes, sir.

Q And though you were told you could not depend upon the correctness of the books, you went there and made up the figures of $81,000? A I just used the books.''

There is not a word of testimony to the effect that any officer of Specialty Handle Mfg. Co. at any time represented that the books were correct. Incorrect as they were when the Insurance Companies called for them it was the duty of the Specialty Handle Mfg. Co. to turn them over.

Puder, the accountant for the Specialty Handle Manufacturing Co., Inc., testified (p. 169) that he advised Wood of the fictitious items before the examination was made.

There was no attempt to cover up the fictitious entries by preparing fraudulent invoices, which would have been the natural thing to have done had fraud upon the Insurance Companies been intended (p. 268). On the contrary a casual inspection of the books would indicate their falseness (p. 268), and there was handed over to Wood, at the time the books were handed over, documents and papers which prove their falseness.

But the strongest proof that there *was no intent* to deceive the Insurance Companies by these books was the conceded fact that, if the books be assumed to be correct, the Insurance Companies would be benefited to the extent of ap-

proximately $70,000. Indeed Wood, the Insurance Companies' accountant, refused to accept the statement of Garfinkel that the books contained the fictitious entries because, if they did, it would be an advantage to the insured and not the insurer (pp. 287, 282, 280, 277, 276, 268, 271, 270). Wood made no attempt to determine the actual loss having discovered that there were fictitious entries in the books, apparently because he believed that the fact of the books containing the false entries prevented the insured from recovering any actual loss, although there is no provision in the policy requiring the insured to keep correct books or any books and because he knew that, with respect to the amount of the loss, the insurers would be benefited by accepting the books as correct.

With this view of the general nature of the claims of the insurers and of the testimony offered to support them, we will consider the grounds of appeal (p. 434).

ARGUMENT.

I.

The trial court erred, over the objection of plaintiffs, in permitting the witness, William F. Russell, to answer the following question: ''Q Did you find any evidence of the goods or personal property which had been rendered indistinguishable by reason of the fire?'' (p. 435). **The witness answered—''Not to any extent.''** 1st ground of appeal (p. 435).

William F. Russell was a fire insurance adjuster representing the insurers, the defendants. This was his *only* qualification. He stated that he had examined the premises to see what had been damaged by fire. He was then asked the

question which was objected to (p. 192). It called for an opinion in two respects, first, what was or was not "evidence" was a matter of opinion, and, second, whether personal property had been rendered indistinguishable by reason of the fire was a matter of opinion. He was *not* asked what he had, in fact, seen, so that the jury might determine whether what he said he saw indicated that there had been personal property which had been rendered indistinguishable by reason of the fire.

He was further asked (p. 192) as to what he meant by what he had said and his reply was that there might have been debris lying about which would indicate merchandise "but of small value," and he said that he could not find any evidence of indistinguishable merchandise running up into thousand of dollars.

The subject being opened by the inadmissible question, he was permitted to testify, as an expert on the value of leather goods, whether what he saw indicated merchandise of *any great value.* He was not qualified in any respect to make any such statement.

It transpired, upon his cross examination, that he had not looked in the place where it would be natural to suppose that debris, indicating personal property rendered indistinguishable by reason of the fire, was to be found, to wit, under the debris of the roof which had fallen in (pp. 196, 197).

This testimony was of importance. The major part of the claimed loss was for goods which had been rendered indistinguishable by reason of the fire or goods burned out of right. The admitted loss of machinery and merchandise in sight was $43,666.94 (p. 320). The balance of the claimed

loss of $153,979.48 or $103,440.44 was made up of stock which was burned as to be indistinguishable (p. 330).

Of course, if there was no stock burned so as to be indistinguishable the Specialty Handle Manufacturing Co., Inc., was unquestionably guilty of fraud.

The evidence, therefore, of Russell, so admitted was of extreme importance upon the issue of fraud.

As against the positive proof of the persons who had made the physical inventory and of the persons who made, and paid for, the purchases, after the making of the inventory, Dolid (p. 26), Kasnowitz (p. 28), Max Mans (p. 39), Leinbach (p. 47), Skuratovsky (p. 50), Kisco (p. 54), Cohen (p. 64), J. Harry Mans (p. 67) Schadt (p. 101), Gross (p. 103), Lerner (p. 110), Schottenfeld (p. 114); Inventories and Exhibits P. 17, 18, 19, 20, 21, 22, 23, 24, 25 (pp. 347-393), the jury were permitted to consider the statement of Russell, who examined the premises two or three days after the fire (p. 191), that he had found no "evidence" of personal property which had been rendered indistinguishable by reason of the fire—a matter which was not the subject of expert testimony and, if it were, the witness had not qualified except by his statement that he was a fire insurance adjuster. Whether his duties as fire insurance adjuster made him an expert in determining whether there was any "evidence" of personal property which had been rendered indistinguishable by reason of the fire is left to the imagination.

A similar line of inquiry was sought to be opened when the witness Williams, a fire insurance adjuster, was on the stand (pp. 188, 189).

The court refused to permit *this* witness, although he had qualified to a much greater extent than had Russell, to testify as to whether the condition found by him indicated that the amount of goods burned out of sight was large or small. Notwithstanding the action of the court in the case of Williams, Russell *was permitted* to, over objection, answer a similar question.

This testimony is the *only* testimony which defendants offered which could, in any wise, be considered as directed to the value of the goods which had been contained in the buildings at the time of the fire. It is not corroborative or cumulative. It was permitted, standing alone, to be considered by the jury in determining the truth or falseness of the stories told by those who had actually made the physical inventory.

II.

The trial court erred in admitting in evidence Exhibit D. 16, which is the schedule furnished by Miller & Maltbie to the General Adjustment Bureau purporting to show the amount of loss (p. 193, printed p. 410). 2nd ground of appeal (p. 435).

The trial court erred at the request of the defendants in charging: "4. In this connection I desire to draw your attention to the fact that there is no evidence before us that the assured or his representatives ever withdrew the schedule submitted by Miller & Maltbie to the companies, marked 'Exhibit D. 16' " (p. 328). 31st ground of appeal (p. 441), also 28th ground of appeal (p 440).

The court, by charging the fourth request of defendants, permitted the jury to consider this schedule D. 16, if it contained untrue statements, as a matter upon which fraud might be predicated to avoid liability. It also referred to this schedule in charging the first request of the defendants to charge (p. 326), *the charging of which request is made a ground of appeal* (No. 28, p. 440).

Miller & Maltbie, insurance adjusters, were called into the matter by Specialty Handle Mfg. Co., Inc., two or three days after the fire as adjusters for it. The information upon which the schedule was based was given to England of Miller & Maltbie by Garfinkel and Kasnowitz of Specialty Handle Manufacturing Co., Inc. (p. 175). The document was delivered within ten days after the fire (Wood, p. 230). England was led by counsel for defendants on cross examination to indicate (p. 176) that the giving of this schedule to the Insurance Companies was in compliance with the policy provisions "as to making an inventory or schedule to be delivered to the company." On re-direct examination, when called to point to any provision of the policy covering it, he pointed to line 67 (p. 177). His attention was directed to the fact that *that* provision does not require any such schedule but that what it *does* require is that the insured shall give notice of loss and "forthwith separate *the damaged and undamaged* personal property, put *it* in the best possible order, *make a complete inventory of the same,* stating the quantity and cost of each article and the amount claimed thereon."

Such an inventory was, in fact, given to the Insurance Companies (D. 22, p. 228). And England says (p. 179) that this schedule is not required by any provision in the policy, nor is it signed (pp. 228, 227). Exhibit D. 16 does not purport to be an inventory.

It is the practice to prepare such a schedule prior to the preparation of proofs of loss, and such a schedule is never accepted by the Insurance Company (pp. 180, 181). It is always subject to check. The proofs show that it represents merely an estimate, a guess, made before there can be any accuracy.

There is no evidence that any figures in this schedule were arrived at by including any fictitious items contained in the books. On the contrary, it is demonstrated that the fictitious items *must* have been omitted because, if they had been included, the sound value of the stock at the time of the fire, instead of being, as shown by the schedule, $160,320.80 (p. 411) would have been but $81,968.74 (p. 265), and Wood, the accountant for the Insurance Companies, testifies (p. 260) that he cannot say that any of the fictitious items were included in the figures and, as we said before, after a careful check-up, when the proofs of loss were prepared, they showed a sound value of $153,979.48, or a difference between preliminary estimate and final check-up of only approximately $7,000 and the proofs at the trial sustained these figures.

While the proofs show that the figures from which this schedule was made up were furnished by Garfinkel and Kasnowitz of the Specialty Handle Manufacturing Co., Inc., **there is no proof that any representative of the Speciality Handle Manufacturing Co., Inc., knew that any such schedule was to be furnished to the Insurance Companies.**

Miller & Maltbie had been called in by Specialty Handle Manufacturing Co., Inc., as adjusters for it. Such information as was given by the representatives of Specialty Handle Manufacturing Co., Inc., to Miller & Maltbie was given to them presumably for *them* to work upon. If this schedule had, in fact, been *required* by the policies it might have been argued that, if representatives of Specialty Handle Manufacturing Co., Inc., gave the information to Miller & Maltbie, they must have given it to file with the Insurance Companies in compliance with the provisions of the policies but the policies *do not require any such schedule.* Prior to the formal proofs of loss they require only an immediate notice and a forthwith separation of "damaged and undamaged personal property," the making of a complete inventory of the same (the *damaged* and *undamaged* personal property) stating the quantity and cost of each article and the amount claimed thereon. This refers, of course, to *a physical inventory of visible goods.* It does not require any such schedule as D. 16.

The policies then require that, within sixty days, there should be a statement rendered to the insurers, *signed and sworn to by said insured,* stating, among other things, the items of the *entire* loss.

There is no proof in the case that Garfinkel or Kasnowitz had any reason to believe that the figures given upon this schedule were not correct. And England says that, at the time it was delivered to the representatives of the insurance companies, he believed it to be correct (p. 176).

The provision of the insurance policies under which defendants claim, provides that the policies shall be void "if the *insured* has concealed or misrepresented—or in case of any fraud or false swearing *by the insured.*"

In *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 607, this court held, three judges dis-

senting, that, where an insured employed a professional adjuster "to whom, in conjunction with the son Wilbert, was entrusted the *entire responsibility* of dealing with the companies in collecting the insurance" and the Insurance Company, after proofs of loss had been filed, had *requested,* in writing, *of the insured,* certain statements together with duplicate bills, which letter was turned over to the adjuster "to comply with the request contained therein," and the son had procured certain bills, including several which were fraudulent and had turned them over to the adjuster for the purposes of sending to the company *in response to the company's request,* the son having "*unlimited* power" that the insured was bound by the act of the son as his agent. Even in such a case three judges of this court dissented. The case came again to this court in *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 628, and this court then said (p. 633):

> "We think that the weight of authority favors the proposition, that where a person employed by the insured to adjust a fire loss, innocently and without intent to defraud, furnishes to an insurance company upon its demand, without the knowledge or concurrence of the plaintiff, copies of bills of purchases, procured for him by a third person whom he might justly assume had knowledge of the facts, and some of the bills proved to be false, such act is not a 'fraud' chargeable to the plaintiff within the meaning of a clause contained in a policy of insurance that it shall be void for 'fraud or false swearing,' *where the insurer has not relied upon it or suffered any loss therefrom. Forfeitures are not favored in the law, and where the insurance company has not been injured by an innocent mistake of an agent of the insured, his right to recover his actual loss is not forfeited for that reason.*"

There is no proof in this case that the adjusters were employed to do "everything that was necessary to adjust the loss" nor is there any proof that anyone had any unlimited power. This case, so far as schedule D. 16, is concerned, differs from *Mick* v. *Corporation of Royal Exchange, &c.,* in that the information furnished to the Insurance Company in that case, after proof of loss, was furnished in direct *response to a demand made by the company,* which demand the company was authorized to make under the terms of the policy. In this case *no demand had been or could be made* by the companies under the terms of the policies and the schedule was *not* required under the terms of the policies, and there is no proof that any representative of Specialty Handle Manufacturing Co. had any knowledge that the information given to the adjusters was other than for the use of the adjusters themselves.

While this court, in *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 607, said that when an insurance policy is written in a standard form, approved by governmental authority, the maxim *Verba chartarum fortius accipiuntur contra proferentem* has no *special* application, it said, in *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L., page 628: "Forfeitures are not favored in the law," and it said in *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports, 1065, referring to *Mick* v. *Royal Association Co.,* 87 N. J. L. 607, and *Del Guidici* v. *Imp. & Ex. Insurance Co.,* 98 N. J. L. 435 at p. 1068—

> "Thus, it appears that, going back to the authority relied upon by this court on this question, a form of insurance contract, written upon a standard policy, *neither repeals the law that such policies are to be liberally*

construed to uphold the contract between the parties, nor that conditions contained in them which create forfeiture are to be construed most strongly against the insurers.''

The effect of these decisions is that there will be nothing read into the contract of insurance in favor of the insurer but, if this schedule D. 16 is to be considered as called for by the policies of insurance, something *must* be read into the policies and, if the insured is to be held responsible for the act of the adjusters in sending the schedule to the insurance companies when it was not called for by the policies and when there is no proof that the insured knew it was to be so sent, and a forfeiture is to be based upon its falseness, then the policy provision with respect to the forfeiture in case of fraud must be construed most strongly in favor of, rather than against, a forfeiture.

There being no proof before the court that this schedule was required by the terms of the policy, and no proof that the insured gave the information to its adjuster for transmittal to the insurance companies, the schedule was improperly admitted in evidence (p. 175) and, for these reasons, and the further reason that there was no proof from which the jury could infer that there was any intent on the part of the ''insured'' to deceive the insurance companies by such schedule, the court improperly charged the fourth request of the defendants to charge (p. 328) which permitted the jury to consider the schedule as a factor of fraud, made the basis of the 31st ground for reversal, and the court also erred in charging the first request, so far as it referred to the schedule, made the basis of the 28th ground of appeal.

The admission of the schedule was highly detrimental to plaintiffs. The fact that, when the formal proofs of loss came in they showed a total sound value of $153,979.48 as against a total sound value as shown upon the schedule of $161,320, was made the basis of an argument of fraud *in the schedule,* as appears by the questions of counsel for defendants put to the witness, England, just before the case went to the jury (p. 316)—

''By Mr. Vanderbilt.

''Q How much higher is the amount under Exhibit P. 16 than it is under the proofs of loss which you have just been testifying to?

Mr. Lane: That, I submit, appears by the document itself and it is not required in a mathematical calculation.

Mr. Vanderbilt: That is exactly the same process of subtraction he indulged in for Mr. Lane.

The Witness: I had to answer that question on a comparative basis; I would have to have the schedule of total stock in sight as computed at the time.

Q You have to have the proof of loss from which the figures were made up? A This paper has no bearing on the proofs of loss and is no part thereof.

Q It is the first paper you furnished the insurance companies? A Yes, sir.

Q And it shows a total stock at March 1, 1925, of $161,320.80? A Yes, sir.

Q On the proofs of loss as submitted, what is the total stock shown? A The total sound value of the stock on the date of the fire is shown in the proofs of loss as $153,979.48.

Q And it is the difference between those figures that I want, isn't it?

Mr. Lane: $8,000.

The Witness: The difference between the figure on this shedule and the figure on the proofs of loss?

Q Yes. A That is a matter of computation.

Q Like all the figures you gave Mr. Lane.

Mr. Lane: About five or six per cent.

Mr. Vanderbilt: I don't want counsel to testify.

Q And you are unwilling to compute that? A Yes, sir."

While we submit the difference is *not* sufficient to show any fraud in the schedule, nevertheless counsel for defendants thought it so important as that he desired the witness to figure the difference just before the case was submitted to the jury. And the court was asked to, and it did, direct the jury's attention to the fact that this schedule had not been withdrawn.

There is further objection to the fourth request of defendants which was charged in that it directed the jury, upon the issue of fraud, to give *weight* to the fact that the assured or his representatives *never withdrew the schedules submitted by Miller & Maultbie,* to wit., Exhibit D. 16.

We repeat that Exhibit D. 16 was not a document called for by the policy of insurance. It was *superseded* by the proofs of loss which were subsequently filed *in accordance with the provisions of the policies.*

All of the books and papers of Specialty Handle Manufacturing Co., Inc., from which any information could be obtained as to the accuracy of schedule D. 16 were immediately turned over to Wood, accountant for the Insurance Companies, at the request of the Insurance Companies, for his investigation with the explana-

tion that there were fictitious items in those books, and Wood immediately began to work upon them. The evidence was that schedule D. 16 was only handed to the Insurance Companies for purposes of check. If schedule D. 16 was fraudulent it would immediately be disclosed by an examination of the books. *That the books did not support Exhibit D. 16 immediately appeared.* But this was not because the statements contained in Exhibit D. 16 were false but because the books were false.

Notwithstanding the fact that defendants were not content with taking the explanation of plaintiffs that the books did not accurately represent the condition of the business and proceeded *to prove* that the books were false, in their brief in the Supreme Court on the argument of the rule to show cause, they attempted to demonstrate that the statements contained in Exhibit D. 16 and in the proofs of loss, with respect to the amount of loss, were false *because the figure reached by Wood as to the amount of stock on hand at the time of the fire was $81,842.91, which figure he reached only by using the concededly false books.*

In other words, defendants say that the policies are vitiated because the books were handed to them containing false entries, but *then* they say that the policies are vitiated because Exhibit D. 16 and the proofs of loss show a loss greater than that which would be shown if the books accurately represented the situation, or, to put it more shortly, they take the books as correct when it suits their purposes and take them as incorrect when it suits their purposes.

The Insurance Companies having started immediately upon an investigation of the books and their attention being brought to the fact that

the books were inaccurate, there was no obligation on the insured or on the adjusters to do any withdrawing of Exhibit D. 16. It was not a formal paper to be withdrawn.

The result of the work performed by Wood, adjuster for the Insurance Companies, and by Puder & Puder, accountants for Specialty Handle Manufacturing Co, Inc., in going over the books and producing the figures which were submitted to the Insurance Companies in conference and in the proofs of loss, *superseded and took the place of Exhibit D. 16,* and the figures submitted by Puder & Puder on behalf of Specialty Handle Manufacturing Co., Inc., were, in fact, *a substitution for any figures which were contained on Exhibit D. 16.*

And the insured turned over to Wood not only the books but all the invoices in its possession which showed that there were invoices lacking for some of the items, and also the checks, photostatic copies of which were made by the Insurance Companies, and produced by counsel for defendants upon the examination of Schlosser (p. 121), bookkeeper for the company, and upon the examination of Wood (p. 251), and it is not denied but that the testimony of the bookkeeper Schlosser, to the effect that *everything* including books, checks, invoices, etc., from the beginning to the end, were handed to Wood (p. 121), accurately represents the fact. Not only did Specialty Handle Manufacturing Co., Inc., when the books were turned over, inform the accountant for the Insurance Companies, that there were fictitious items but, at the same time, it handed over documents from which the fraud would be apparent even if it had not informed him that the books contained fictitious items.

Puder, the accountant for Specialty Handle Manufacturing Co., Inc., testified (p. 167):

> "Q And at the time you met him had the insurance companies made their detailed examination of the books? A No, sir."
>
> "Q When you saw Mr. Wood did you have a conversation with him as to these questionable items and tell him about them? A Yes, sir.
>
> Q And did you tell him about every one of these items which have been referred to by counsel here? A Yes, sir.
>
> Q So the insurance companies had that information *before they made that examination?* A Yes, sir."

The books were in such a condition as that a casual examination would show their inaccuracy.

At the very start of his examination Wood found that there were fictitious items (p. 236) and (p. 268):

> "Q The first thing that you would ask for in checking the books of the company would have been to have asked for the invoices as against each of these bills? A Yes, sir.
>
> Q And there were not any invoices there? A Not for those items.
>
> Q If you had wanted really to cover up those figures, fraudulent invoices might have been prepared? A I have seen them, yes, sir; they couldn't cover up the checks though.
>
> Q Why? A Because it shows their endorsement.
>
> Q So that anybody going into these books and examining them could not help finding them, could he? A Yes, he could find them."

A representative of Puder & Puder was present during the examination by Wood and pointed out

the various fictitious items (p. 236) and, as Wood testifies (p. 237):

"A We were assisted in many ways by Mr. Bradley of the office of Puder & Puder. The help he gave me saved a lot of time."

Not only does it appear, therefore, by this direct examination of Wood, that, at least almost immediately upon his starting with his examination of the books, he was informed that certain items were fictitious but that the accountants for Specialty Handle Manufacturing Company, Inc., went over the books for the purpose of picking out the specific fictitious items, gave the information to Wood, and the examination by Wood checked with the examination of Puder & Puder.

The jury was erroneously directed in this portion of the charge to consider the fact that the assured never withdrew the schedule as bearing upon the issue of fraud.

III.

Under Point III the following co-related grounds of appeal will be argued:

"3. **Because at the trial the court, over the objection of the plaintiffs, permitted the witness, Benjamin Newman, to answer the following questions:**

"**Q I show you check No. 984 of the Specialty Handle Manufacturing Company, drawn on the Public National Bank of New York, and I ask you if you are the payee named on that check?** (S. C., p. 198).

"**Q What was the check given to you for?**"

"4. **Because at the trial the court, over the objection of the plaintiffs, admitted in evidence**

check No. 984 referred to in the foregoing question (S. C., p. 202).

"11. **Because at the trial the court, over the objection of the plaintiffs, permitted the witness, Robert T. Boyd, Jr., to answer the following question:**

"**Q I show you the endorsement on the check and ask you if there is the signature of Charles S. Walton?** (S. C., p. 254)."

"12. **Because at the trial the court, over the objection of the plaintiffs, admitted in evidence the ledger sheet of Charles S. Walton Company marked 'Exhibit D. 24'** (p. 256).

"13. **Because at the trial the court, over the objection of the plaintiffs, permitted the witness, John F. E. Wood, to answer the following question:**

"**Q Have you made a record of the personal drawings of Mr. Garfinkel charged to labor?** (S. C., p. 258)."

and thereafter permitted the witness to testify in detail to such drawings."

On page 198 of the record Benjamin Newman was permitted to say that a check of April 28, 1924, drawn by Specialty Handle Manufacturing Co., Inc., on the Public National Bank to his order, had been received by him either as a cash loan or an exchange of checks. It appeared in the ledger as a payment for merchandise.

On page 254 Boyd of Charles S. Walton Company was permitted to show that a check drawn by Specialty Handle Manufacturing Co., Inc., in 1924 to Charles S. Walton Company was never received by that company and that it never sold any such bill of goods as the check purported to evidence payment of, *i. e.* $4,289.61,

and to support that statement the ledger sheet of Charles S. Walton Company was offered in evidence (p. 256). Wood testified that this represented a fictitious transaction (p. 258).

On page 258 Wood was permitted to testify as to the personal drawings of Garfinkel which, on the books of the company, had been charged to labor.

The reason first given for the introduction of this testimony was that the items had an effect upon the percentage of profits of the plaintiff for the year 1924 and that to arrive at an inventory as of March 1, 1925, the date of the fire, it was necessary to obtain a ratio of sales profits. The testimony was finally admitted, as appears by what the court said on page 239, to discredit the books "as a set of books, because they are offered here practically in effect as a witness."

But plaintiffs did not make their proof from the books nor did they rely upon these fictitious items. On the contrary, as heretofore set forth, plaintiffs took, not the book, but the physical inventory for December 31, 1923, or $146,838.49 (pp. 148, 268), and the physical inventory of January 1, 1925, for the purpose of getting at the ratio of profit to apply from January 1, 1925, to the date of the fire, March, 1925, and so to get at the inventory of March, 1925. In making their calculation of the profit for 1924 plaintiffs *excluded* every item which could not be verified by their accountant and every item questioned by defendants (pp. 148, 149, 150). Plaintiffs did not, therefore, introduce in evidence, or rely upon, these items to which the testimony, covered by these grounds of appeal, was adduced.

Plaintiffs further took the *physical* inventory of January 1, 1925, and added the purchases as

proven by the invoices and checks, *excluding all items claimed to be fictitious* (p. 133). No attempt was made to prove that the items, referred to in the testimony of Newman and Boyd, were relied upon by plaintiffs either upon the trial or in making up the proofs of loss or Schedule D. 16. The testimony of plaintiffs' accountant, Puder, is to the effect that they were not, and Wood, accountant for the Insurance Companies, testifies that he cannot say that they were included in making up Exhibit D. 16, or the proofs of loss. As Wood testified (p. 260):

> "Q Can you tell whether or not these eight instruments are included in the figures given in the instrument D. 16, which was the schedule furnished by Miller & Maltbie to the insurance companies and on which you started to work? A I cannot tell that."

Of course, defendants knew that they were *not* relied upon by plaintiffs upon the trial and that they were *not* included in the figures produced by their accountant because their accountant produced the figures upon which he relied and traced those figures to the sources and the figures showed that these items *were not* included, and, of course, they could not have been relied upon in the proofs of loss because the figures of the proofs of loss agree exactly with the figures given by the accountant upon the stand. The only place they could have been used was in making up schedule D. 16, and the defendants' accountant frankly says that he *cannot tell* that they were used in making up that schedule and there is no proof that they were.

The testimony, therefore, was not admissible for the purpose of showing that the figures produced by plaintiffs upon the trial were inaccurate because the figures demonstrated that the items had not been included, and there is no

claim that they were. It was not admissible for the purpose of showing that the proofs of loss were fraudulent because the figures contained in the proofs of loss were precisely the same as those given upon the trial. It could not be used for the purpose of showing that Exhibit D. 16 was inaccurate because there is no proof whatever that the items were used in making up Exhibit D. 16. It could not be used to discredit the books because the books concededly contained fictitious items and the books, as such, were not relied upon by plaintiffs, although, for their own purposes, defendants sought to compel plaintiffs to rely upon the books although they knew the books contained fictitious items.

On pages 117, 118, when counsel for plaintiffs offered the actual invoices and checks evidencing payment, with respect to purchases subsequent to January 1, 1925, counsel for defendants objected to the offer unless plaintiffs would also offer in evidence the fictitious items aggregating $6,576.90 (p. 118). In other words, defendants sought to compel plaintiffs to attempt to prove fictitious items, and, in the course of the colloquy, counsel for defendants said that these items had been offered to defendants under the proof of loss although there was no evidence at the time, and there was no evidence later, that these items had anything to do with the proofs of loss.

We repeat what we have said before, that it is apparent that plaintiffs did not rely upon the fictitious items in the books, either in schedule D. 16 or the proofs of loss or upon the trial because, had they so relied, the Insurance Companies would have been benefited to the extent of over $70,000 or, in other words, reliance upon the fraud would have injured plaintiffs and benefited the Insurance Companies (pp. 266, 267, 243, 244, 148, 149, 150, 172).

This testimony was all directed *to show fraud on the books rather than fraud on the Insurance Companies.*

The court correctly charged the jury plaintiffs' ninth request (p. 334): "There was no obligation upon the part of the Specialty Handle Manufacturing Company to keep correct books of account so far as its relations with the insurance companies are concerned"; merely to show, therefore, that Specialty Handle Manufacturing Co., Inc., books contained false entries was immaterial. The particular false items must be shown to have been, in some way, material to the Insurance Companies, and to have been used with intent to defraud the Insurance Companies.

There was no proof indicating the materiality of these fictitious items nor was there any proof that they were used in any way to, or with intent to, defraud the Insurance Companies.

The case of *Claflin* v. *Continental Insurance Company,* 110 U. S. 81, 28 L. Ed. 76, has no application. In that case there had been a false statement made with respect to amount of stock and then the insured, or the representative of the insured, had sworn that the statement was correct. It was sought to show that, because the *purpose* of the affiant was not to deceive or defraud the companies but to prevent the disclosure that a statement made by R. G. Dunn & Company to obtain credit was false, it did not constitute a fraud upon the company by false swearing, etc. Of course, the Supreme Court of the United States held that this undisclosed purpose was no excuse and, if the false statement was wilfully made under oath and intended to conceal

the truth and *resulted* in fraud, the intent to commit fraud would be inferred.

But in this case, from the very beginning, Specialty Handle Manufacturing Co., Inc., admitted that the books were fraudulently kept for the purpose of deceiving the Government of the United States. The representatives of the company did not attempt to shield themselves. They were truthful to the Insurance Companies and deliberately exposed themselves to prosecution by the Government. And there was no injury to the Insurance Companies and therefore there could be no inference of fraud upon the Insurance Companies.

And this leads us to the 29th ground of appeal.

IV.

"29. Because the learned Trial Court charged the jury at the request of the defendant as follows:

> **"2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers but merely to promote its own interest in evading federal income taxes."**

(The 29th ground of appeal, p. 441, at p. 327).

The trial court refused to charge the tenth request of plaintiffs to charge stating that it had covered that request (p. 332).

The tenth request was:

> "10. Unless the books or false statements were, in fact, used with intent to prejudice the insurance companies (and the burden is on the defendant to prove that they were so used) the plaintiff cannot be prevented from recovering the actual loss which may have been proven notwithstanding the fact that entries in the books and statements taken therefrom may be fictitious."

The court had charged the jury (p. 329) "The mere proof of facts that the books were improperly or falsely kept is not sufficient to sustain this defense (fraud). We are not concerned with any question of the defrauding of the United States Government. That is beside the case; whether they defrauded the Government or not is no concern of ours. We are dealing with the question whether this provision of the policy has been violated. Misstatement of the facts or over-valuation of goods on hand is not sufficient to sustain this defense. The fraud or false swearing must be as to a fact or circumstance and must be material as to the rights and liability of the defendant companies; they must be wilful and made with intent to misrepresent."

This portion of the charge is what the court referred to on page 332 when it said it had covered the tenth request of plaintiffs to charge.

In view of the fact that, notwithstanding the admission of plaintiffs of the fictitious items contained in the books, which items were concededly untrue for income tax purposes, defendants had been persistent in proving the fictitious items contained in the books, not relied upon by plaintiffs (pp. 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 156, 158, 159, 160, 161, 162, 163, 164, 165, 250, 251, 252, 253, 256, 257, 258, 259, 260, 261, 262; 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301) and had, over objection, proven fictitious items wholly immaterial, argued under the last ground of appeal, it is submitted that plaintiffs were entitled to a clear and

precise instruction to the jury, in effect, that they should *disregard* all proof of fictitious or fraudulent items contained in the books, except insofar as those items might, *in fact,* have been used with intent to prejudice the Insurance Companies, which precise instructions were asked by the tenth request of plaintiffs to charge and that the charge of the court, which has heretofore been referred to, quoted from page 329, taken in conjunction with the court's charging the second request of defendants to charge, heretofore quoted, did *not* cover the situation, but, on the contrary, permitted the jury to act upon an erroneous conception of the law.

The court, on page 329, *did* instruct the jury that the *mere* proof of the fact that the books were improperly or falsely kept was not sufficient to sustain the defense and that the jury was not concerned with any question as to the defrauding of the United States Government, but that they were to deal with the question as to whether this provision of the policy had been violated. *The remaining statements contained in the charge had no application to the books.*

The second request of the defendant to charge, which was charged by the court (p. 327) *had particular reference to the books* for the entries in the books were the *only* matters which had to do with promoting the interest of Specialty Handle Manufacturing Co., Inc., in evading Federal income taxes. The jury was, at no point in the charge specifically directed to ignore the fraud in the books unless the fraudulent entries in the books were, in some way, used to defraud the Insurance Companies.

In view of the lack of such precise instruction the jury might well have believed that it was

entitled to consider the fraud contained in these books whether, in fact, used to defraud the Insurance Companies, because of the instruction that it was no excuse or justification for the insured to say that it did not mean to prejudice the insurers, but merely to promote its own interest in evading Federal income taxes, and this particularly in view of the argument which had taken place before the jury when the testimony of Newman was objected to (p. 199 at p. 201), at which point defendants referred to the case of *Claflin* v. *Continental Insurance Company,* 110 U. S. 81, 28 L. Ed. 76, heretofore referred to.

In *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 628, this court said, at page 632:

> "To work a forfeiture under this clause of the policy there must be a fraud, and in order to make the misstatement a fraud, it must have been made wilfully with intent to misrepresent."

And this is the rule recognized by all of the cases.

See cases collated in Cooley's Briefs on Insurance, 2d Ed., Vol. 7, p. 8538, and, as heretofore stated, *Claflin* v. *Continental Insurance Company,* 110 U. S. 81, 28 L. Ed. 76, is not to the contrary, for *there a* false statement was designedly made, which false statement operated to the disadvantage of the Insurance Companies, and it was properly held that, having designedly made this knowingly false statement, which would operate to the disadvantage of the companies, the party making it could not hide behind an undisclosed intent not to deceive or defraud the Insurance Companies.

But the second request of defendants to charge is without qualification and is entirely too broad as applied to the circumstances in this case.

If, in fact, the insured designedly made a false statement to the Insurance Companies with respect to a material matter, which would prejudice the Insurance Companies, *then* an undisclosed intent not to prejudice the insurers, but merely to promote its own interest in evading Federal income taxes would be no answer.

No false statement or fraud was proven to have been indulged in by plaintiff Specialty Handle Manufacturing Co., Inc., which had any reference to the purpose of Specialty Handle Manufacturing Co., Inc., to promote its own interest in evading Federal income taxes, except with reference to the books and, applying the charge to the particular circumstances of the case it should have read, "If, in fact, books containing fictitious entries were delivered to the representatives of the Insurance Companies, without directing the attention of such representatives to the fact that the books contained fictitious entries, *then* it is no answer for the assured to say that it did not mean, by handing such books to the Insurance Companies, to prejudice the insurers, but that the fictitious entries were made merely to promote its own interest in evading Federal income taxes, and that the handing over of such books to the Insurance Companies, without directing their attention to the fact that the books contained fictitious entries, was to promote its own interest, for, to disclose the fictitious entries, would be to invite prosecution by the Government," which would have been in effect charging the tenth request of plaintiffs to charge.

The court charged the jury at page 329—"The *mere* proof of facts that the books were improperly or falsely kept is not sufficient to sustain this defense." But it did *not* charge the

jury that it *must* appear, before reliance could be placed upon these books, as an item of fraud, that the books, in fact, were used in some way in an attempt to defraud the Insurance Companies. If they were not so wilfully or recklessly used, the answer of plaintiffs that the books were fraudulently kept for the purpose of defrauding the Government rather than for the purpose of prejudicing the Insurance Companies *is a perfect answer* to the charge of fraud with respect to the fraudulent entries contained in the books.

In *Migliaccio* v. *Public Service Railway Company and Jacob Pepe,* 1 N. J. Misc. 119, the Supreme Court reversed a judgment because the court charged the jury "It is a fact that both Pepe and the Public Service Railway Company did rest under a legal duty to Migliaccio and, if they disregarded that duty, they subjected themselves to legal liability." The Supreme Court held that there was harmful error in the charge for it *left out of consideration* entirely the question whether or not the decedent, by his own want of care, contributed to any extent to the happening of the accident, and there was direct evidence in the case upon which contributory negligence on his part might have been predicated.

So with respect to the second request of defendants, which was charged by the court. The charge left out of consideration entirely the fact that it would only be in case the fraud or false swearing of the insured was with respect to a material matter and of such a nature as that it would prejudice the Insurance Companies that the fact that the assured did not mean thereby to prejudice the insurer but merely to promote its own interests in evading Federal income taxes offered no excuse or justification. The fraud

or false swearing must be, in legal contemplation, wilful. That element was entirely taken out of the case by the second request to charge.

By this request to charge the jury were permitted to consider "the charge of fraud and false swearing" as something substantive. The charge itself is of no importance. It calls for neither excuse nor justification. It is the *proof* of the charge which is of importance and it is only when proof of fraud or false swearing, within the meaning of the policy provision, is adduced that the plaintiffs are called upon to make any justification or excuse, and then whether the fact that it was not meant to prejudice the insurers is an excuse or justification, depends upon the nature of the proof of fraud or false swearing.

V.

The 16th, 17th, 18th, 19th and 20th grounds of appeal, also the 28th, 29th and 32nd.

These grounds of appeal have to do with the offer in evidence, when the witness, Emil Garfinkle, was on the stand, of statements made by him, from an examination, assumed in the questions of counsel for defendants put to the witness, to have been conducted by representatives of the Insurance Companies. There is the statement of Garfinkel (p. 78), that he was examined, under oath, and that he initialed and signed the pages of his testimony. Emil Garfinkle was the secretary and treasurer of the Specialty Handle Manufacturing Company (p. 75).

He was called as a witness *for defendants* (p. 291) and asked the question— "Q Mr. Garfinkle, you knew, did you not, that in the period before the fire there were large amounts withdrawn from the deposits in the banks of your company by you, and those deposits charged to merchandise? A I didn't. Q Or that there were items charged to payroll or labor which were withdrawn by you? A I didn't."

Counsel for defendants, having asked the witness this question, then confronted him with a portion of his examination (pp. 292, 293) during the course of which the witness, when asked what became of the money that was drawn out of the firm or out of the corporation in loading the figures of expense, and whether it went into his individual account, answered "Not exactly," and further said that he could not account for money withdrawn two years before. He was asked: "Oh, yes, you do. You were shown by me a large number of checks which were checks of the Specialty Handle Manufacturing Company drawn on two different bank accounts, signed by you and endorsed by you to the aggregate of several thousands of dollars, which you know and I know were not business expenses or business charges of any kind. Now, where did you put that money?" and he stated that he could not tell offhand, and further that "I needed it at the time and I used it" and "I possibly bought some property on my own name," and that the money practically belonged to him and that he did not have to account to anybody for it. This testimony was read to the witness over objection (pp. 292, 293) and he stated that he had given the answers; that they were true at the time and that they were true then (p. 293) (at the time of the trial).

It is not claimed that the answers given by this witness on the so-called examination under

the terms of the policies, and there is no proof that this examination *was* under the terms of the policies except the statement of Garfinkle and his knowledge as to whether it was is not disclosed, were false. On the contrary, the proofs of defendants show that Garfinkle did, in fact, withdraw moneys which were used for his own purposes, the charges being made to merchandise or labor, the purpose being that Garfinkle might take this money out really as dividends without being obligated to pay an income tax, and that the income tax of the corporation itself might be reduced, and the proof of all of the witnesses was to that effect.

The confronting of the witness with his testimony upon examination given under oath must, therefore, to have been to contradict the statement of Garfinkle *made upon the stand when called by defendants* and asked the question whether he knew that, in the period before the fire, there were *large* amounts withdrawn from deposits in the banks of the company by him and those deposits charged to merchandise and labor to which question he had answered, "I didn't."

In the argument before the Supreme Court defendants urged that there was a conflict between the statements made by the witness upon the stand and upon the examination under oath and that this indicated that the treasurer of the company testified falsely "*either* at the examination under oath *or* at the trial on matters material to the subject of insurance," and in the Supreme Court, defendants relied upon *this* proof as indicating false statements made *at the trial* by the witness Garfinkle *which would defeat a claim under the provision against false swearing, etc.,* defendants stating in their brief in the

Supreme Court (pp. 44, 45)— "And a whole series of fraudulent misrepresentations was made by Garfinkle in his examination under oath *and* in his testimony at the trial (which we have discussed under 'Reply to Point B') * * *" and, on page 22— "His purpose in thus impeaching his own company's records does not free him of the charge made under this point, that in his examination under oath, *and at the trial,* he made material misstatements knowing them to be untrue," and page 20— "It is therefore apparent that there is no ground for plaintiffs' statement that there is no evidence of false swearing in the examination under oath, *or at the trial,* which the jury could have considered."

The words "*or at the trial*" in this last statement are injected into the statement which was made by plaintiffs in their brief in the Supreme Court at page 22. Plaintiffs did not refer to the lack of any evidence of false swearing *at the trial.*

But defendants apparently contend that, under the law and the charge of the court, if the jury found that Garfinkle testified falsely *at the trial,* it was bound to find that the insured had breached the condition of the policies which voids them in case of false swearing.

But this is not the law.

We find the following statement made in Cooley's Briefs on Insurance, 2d Ed., Vol. 7, p. 5835—

> "Though the operation of such a clause as to fraud is not affected by the fixing of the liability by loss, it will not operate to forfeit the claim of the insured on account of false statements *made after the commencement of action on the policy.* In such a case the rights of the parties must be

determined by their status *at the commencement of the action* (Deitz *v.* Providence Washington Ins. Co., 33 W. Va. 526, 11 S. E. 50, 25 Am. Bt. Rep. 908). So insured's overstatement of losses or damages in his petition, *or false statements in his testimony,* will not work a forfeiture of the insurance, though the policy provides that it shall be void in case of misrepresentation in the proofs (Goldberg *v.* Provident Washington Ins. Co., 97 S. E. 1077, 144 Ga. 783).

> "The provision in an automobile policy that it shall be void if false statements were made by insured as to the insurance or subject thereof before or after loss, insofar as it relates to matters occurring after loss, refers to statements made by insured to insurer to induce payment of loss, and is not applicable to false statements by insured in depositions made after the refusal of the company to pay the loss and after filing of suit. Third Nat. Bank *v.* Yorkshire Ins. Co., 218 Mo. App. 660, 267 S. W. 445."

The charge of the court was broad enough to permit the jury to consider *any* false swearing by the witness Garfinkle, not only as affecting the credit of Garfinkle as a witness, but to defeat the policy under the terms of the provision and this appears from a consideration of the first, second and fifth requests of defendants to charge which were charged by the court (p. 326), to the charging of which objections were taken, which objections are the basis for grounds of appeal 28, 29 and 32. In request No. 1 (p. 326) the provision of the policy is quoted, and it concludes—"Fraud and false swearing as to *any* part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties."

By request No. 5, the jury are instructed that the contract is indivisible one and if the jury find

any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the Insurance Companies the entire policy is void.

No distinction is made in the requests between false swearing under the terms of the policy and false swearing at the trial.

The jury may well, in view of the reading to it of the provision of the policy that the policy would be void in case of "false swearing by the insured touching any matter relating to this insurance *whether before or after a loss*" have considered that, if Emil Garfinkle testified falsely *at the trial, that* was sufficient to void the obligation of the policies. If the charge was so broad it was erroneous.

That it was considered by defendants to be so broad is indicated by the argument which they made before the Supreme Court on the rule to show cause when they relied upon the assumed falseness of Garfinkle's statement *upon the trial* as sufficient to defeat the obligation of the policies under this provision. These sections of the charge were duly objected to and are made grounds of appeal.

Confronting the witness with his examination before trial for the purpose of contradicting what he said upon the trial was wholly improper. The witness Garfinkle was called *by defendants* (p. 291). He had not been examined by plaintiffs on direct examination upon the subject matter. The general rule is that a witness called by a party may not be contradicted by his own previous statements. There may be apparent exceptions to the rule. The witness' recollection may be stimulated by something which he has previously said. The party may plead surprise and

the witness' prior statements may be offered to wipe the slate clean.

State v. *D'Adame,* 84 N. J. L. 386;
State v. *Kysilka,* 85 N. J. L. 712;
State v. *Burnet,* 88 N. J. L. 415.

There may be other exceptions, but this case does not fall within any of the exceptions. The examination, under oath, was not used to stimulate the witness' memory. No surprise was expressed and it was not used for the purpose of wiping the slate clean. The record shows that the witness was called for the specific purpose of laying a foundation for subsequently contradicting him. That is never permitted.

There is further objection to any claim that the false swearing of this witness upon the stand could be given the effect of avoiding any liability under the policy.

Whatever the rule may be as to whether the witness Garfinkle in the examination under oath was such an agent of the insured as that any false swearing by him could be considered the act of the insured under the terms of the policies he could *not* be considered the agent of the Public National Bank of New York to which the loss had been assigned, prior to the commencement of suit. Where the loss has been so assigned, the false swearing of an agent of the insured or of one of the insured in the course of a trial will not defeat the policy.

Fields v. *German American Ins. Co.,* 140 Mo. App. 158, 120 S. W. 697;
Same v. *Queen Ins. Co.,* 140 Mo. App. 168, 120 S. W. 700.

Field v. *German American Insurance Company,* 140 Mo. App. 158, 120 S. W. 697, was approved by this court in the Mick case, *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 607, at p. 617.

In arguing before the Supreme Court counsel for defendants (page 17 of their brief), said: "Garfinkle's answer given *at the trial* (p. 291) contradicts his answer given in the examination under oath (p. 293). *One or the other is false.* That these statements concern a material issue is easily shown."

Counsel seem to think that the entire claim of plaintiffs is defeated if *either* one of these statements is false. Not so. If the statement made on examination under oath be false, then, perhaps, plaintiffs' claim would be defeated for false swearing, but if Garfinkle's statement made upon the trial be false, plaintiffs' claim is not defeated although its credit may be shaken. But the jury were permitted, we submit, under the general charge of the court to find that plaintiffs' claim was defeated for false swearing if either of the statements were false.

Pages 294, 295, 296 and 297 are taken up, particularly from page 296, with reading to the witness Garfinkle, extracts from his testimony given on the examination under oath. This testimony was read avowedly for the purpose of contradicting the witness' statement on direct examination of defendants at page 295:

"Q Are you familiar with the account of Kasnowitz & Brother with the Specialty Handle Manufacturing Company? A Fairly.

Q Do you know of a group of some thirty-five checks which were all fictitiously charged to that account? A I don't know how many.

Q A considerable number of them? A I don't know how many.

Q Do you know there were more than fifteen or twenty? A I don't think so.

Q Can you tell us in round numbers how many there were that there fictitiously charged to Kasnowitz & Brother? A There are some but I don't know how many."

Again, the witness, *called by defendants*, was asked the questions on page 295, apparently solely for the purpose of permitting the defendants to contradict his testimony *at the trial* by his statement made upon the examination under oath. He could not have been asked the questions he was asked on page 295, for the purpose of contradicting the statements which he had made on the examination under oath because the statements he had made on the examination under oath were admissions of fraud on the books and were in favor of defendant's position taken on the trial that the books were fraudulent, so the *only* purpose that there could have been in asking him the questions on page 295, was to permit, by the presentation of the statements made by him on examination under oath, a contradiction. The reading of these questions and answers is subject to the same objections as made to those just heretofore dealt with.

But there is another objection and the court should have sustained the objection made by plaintiffs to the questions put to the witness (p. 297)—

"Q Are the answers that you gave to the questions true? A The best I could.

Q Were they true at the time you gave them?"

the overruling of which objection is made the subject of the 18th ground of appeal.

The witness was then asked (p. 298)—

"Q You know, do you not, Mr. Garfinkle, that there were approximately $20,000 of these Kasnowitz transactions charged up to merchandise improperly and incorrectly on

the books? A I know there was some of them charged up; I don't know how many or how much."

And then there was read to him further statements made by him in the examination under oath (pp. 298, 297) and he was asked the question—

"Q Were you asked those questions and did you give those answers?"

to which plaintiffs objected. The objection was overruled and the action of the trial court is made the basis of the 19th ground of appeal. The witness answered, over objection (p. 299)—

"Q Were they true at the time? A The best I knew.

Q Are they true now? A The best I know."

A consideration of the statements made by the witness on the examination under oath will indicate that they did not contradict anything which he said upon the trial.

He stated upon the trial that there were *some* checks of Kasnowitz Brothers which had been fictitiously charged; that he did not know how many there were. Examining the testimony which he gave at the examination under oath we find that it starts out with *the statement of examining counsel*— "Now, I find here, *among these thirty-five checks, the following.*" And then counsel referred to thirteen checks. When asked whether those checks represented merchandise purchased the witness answered on the examination under oath "I couldn't tell you that * * *." Again, on the examination under oath the witness was asked (p. 298): "I show you about eighteen or twenty thousand dollars worth of checks covering a period of years which are not correctly charged to the accounts they appear

in. Answer: Yes, sir. Question: Those checks were not right transactions, were they? Answer: Not at all. (Undoubtedly what the witness said was "not all"). It was urged in the Supreme Court by defendants that, in the statements on the examination under oath, the witness had admitted that there were thirty-five fictitious checks, and that, upon his examination upon the trial, when called by the defendants, he had said that he did not know how many and that he did not know that there were more than fifteen or twenty (p. 296). Now, referring to his examination under oath, we find that he did *not* admit that there were thirty-five fictitious checks. Counsel who was examining him held in his hand, as he stated in the question, thirty-five checks but there is no statement anywhere that all of these thirty-five checks were Kasnowitz checks. On the contrary, examining counsel starts out: *"Now, I find here, among these thirty-five checks, the following,"* and he picks out thirteen Kasnowitz checks. Far from contradicting the witness' testimony upon the trial, the statements in his examination, under oath, coincides with it. There were *not* more than fifteen or twenty. He did not know how many there were, and he never said that he did.

Again, it is said that his testimony on the trial (p. 298) when confronted with the question: "Q You know, do you not, Mr. Garfinkel, that there were approximately $20,000 of these Kasnowitz transactions charged up to merchandise improperly and incorrectly on the books?" he answered, "A I know there was some of them charged up; I don't know how many or how much," is contradicted by his testimony on the examination, under oath, when he acquiesced in the question of counsel: "I show you about

eighteen or twenty thousand dollars worth of checks covering a period of years which are not correctly charged to the accounts they appear in?" and when he acquiesced in the suggestion of counsel contained in the question: "Those checks were not right transactions, were they?" Taking the examination under oath *as a whole* it is clear that the witness' statements made upon that examination were precisely the same as the statements he made upon the trial. He admitted, in the examination under oath, that some of the transactions were fictitious. He did not know how many nor the amount involved, and that is precisely what he testified upon the trial, and yet the jury were permitted to consider this statement offered from the examination under oath as contradictory of the witness' testimony upon the trial when the witness was called *by defendants* apparently solely for the purpose of permitting a subsequent contradiction, because the transactions *were* fictitious and were abundantly proven so in the case.

It was, we submit, error to admit all of these statements from the examination under oath, especially because the jury was permitted to consider that if the witness' testimony, *either upon the trial or upon the examination under oath,* was false, the plaintiffs' case was defeated by reason of the violation of the provision of the policies against false swearing.

The testimony of the witness given upon the trial could *not* show that there was any false swearing by the witness in the examination under oath, which would defeat the policies under the provision against false swearing. In the examination under oath, Garfinkel admitted the fraud upon the books. Indeed, the claim is that he had admitted the fraud upon the books much more

freely than he admitted the same fraud upon the stand. While it is true that, if the books correctly stated the situation, the Insurance Companies would be benefited, no one contends that the books did not contain fictitious items and one of the claims of defendants is that they were deceived because the books were handed to them as accurate expressions of the business transactions of the company whereas they were, in fact, fraudulent. Each one of the transactions referred to in the statements made by the witness in the examination under oath read into the record, was concededly a fictitious transaction and so proven by defendants.

The testimony of the witness on the trial, therefore, *could not prove* that his admissions of fraud in the examination under oath, were false. There was, therefore, no proof whatever that the statements made by him in his examination under oath, were false, and yet the jury were permitted to consider false swearing, *particularly by the treasurer of the company,* as evidence of fraud which would defeat any claim upon the policies under the provisions of the policy against false swearing, etc.

Again, any statements made by Garfinkel in the examination under oath, could not have prejudiced the Insurance Companies because the Insurance Companies had full knowledge of all of the facts involved; they had knowledge of the fraud and the fictitious entries; the proof of the fraud and fictitious entries had been handed over to them by the Specialty Handle Manufacturing Company, Inc. (pp. 230, 233, 237, 272, 270, 167, 121) (Wood's report of March 30, 1925, to the Insurance Companies, Ex. D. 29, p. 420). The examination under oath, took place *after full knowledge of the Insurance Companies and after*

the claim had been assigned to the Public National Bank (pp. 291, 292).

Moreover, it was to the interest of Garfinkel *to prove the fraud.*

It was argued on page 201 that *Claflin* v. *Commercial Insurance Co.,* 110 U. S. 81, 28 L. Ed. 76, governs the case.

But this case is *not* authority for the proposition that there must not be shown a possibility of injury to the insured and a false statement made deliberately or wilfully.

In Cooley's Briefs on Insurance, 2nd Ed., page 5845, the author, in referring to the Claflin case says:

> "But in many cases a question has arisen as to whether a wilfully false statement in relation to a matter having to do with the insurance, but made under such circumstances that its truth or falsity could not prejudice the company, would amount to fraud. Though many of these cases seem to depend on the Claflin case, and though they speak of the necessity of a purpose to defraud as distinguished from an intentional false statement, it is not clear that they should be governed by the same principle; for in the Claflin case, as already pointed out, and as emphasized by the court, the misrepresentation *was one calculated to mislead the company in a matter upon which its defense was based and it is evident that a false statement might well be held to have been fraudulent where the liability of the company was dependent on its truth, while it would not have been held fraudulent had it been evident that its truth or falsity could not have prejudiced the insurer.* An extreme example of the distinction is found in Runkle *v.* Hartford Ins. Co., 99 Iowa 414, 68 N. W. 712, where no question was raised as to the materiality of the statement, but where, if true,

it precluded any recovery by the insured. Manifestly, as pointed out, no fraud could be imputed to the insured on account of falsehood in such a statement.

"But in most of such cases it has only appeared that the company, even though it relied on the statement, could not have been thereby induced to do anything which it was not bound by its contract to do."

If the position of defendants had been that Garfinkel had sworn, in the examination under oath, that the books were false for the purpose of increasing his loss, whereas, in fact, the books were correct, *then* it would be material for defendants to show that Garfinkel made statements, either upon the stand or otherwise, inconsistent with these statements made, in the examination under oath, admitting the fraud in the books. But that is not the position of defendants, for they contend and have proven and it is conceded that the books *were* false.

It is true, of course, that Wood, their accountant, when he discovered that, if the books accurately represented the transactions, the loss would be about $70,000 less than if the books were, in fact, false, made up a statement showing the loss, assuming the books to be accurate, although he knew them to be false. In other words, whatever the fact may be, the Insurance Companies treat the books as accurate when it serves their purposes to so treat them and as false when it serves their purposes to claim that they were imposed upon by being given books containing fictitious entries.

On page 299, over the objection of plaintiffs, upon the ground that it was immaterial, which objection is made the basis of the 20th ground of appeal, the following was permitted to be read to the witness Garfinkel from the examination, under oath: "Q I ask you if this question was asked you in the examination under oath (p. 76) 'Question. Weren't you to get some income taxes for me or take that under advisement? Mr. Newman: No, but I am not prepared to say we will give you that, I wouldn't say you could use those. You do not represent the government,' " and he was asked the question: "Q Did you produce your income tax returns?" to which he answered "No, I did not" (pp. 299, 300).

This question was wholly immaterial and injected into the case an issue that was not in it. No claim was made in the answer that there had been any violation of any provision of the policy with respect to the production of books and papers. The only claim contained in the first separate defense (p. 10) is the violation of the provision of the policies against concealment, misrepresentation of material facts and circumstances and against fraud and false swearing. The witness had not been asked any question which this statement from the examination under oath was designed to contradict; he had been asked whether, upon the examination under oath, he had been asked to produce the income tax returns of the corporation and his answer was "I don't recall it" (p. 299). Whether he had been asked to produce his income tax returns or the income tax returns of the corporation was wholly immaterial and irrelevant. Had the witness said "no" the defendants would not have been permitted to contradict him upon this immaterial matter.

Although immaterial, the fact that he had been asked to produce these income tax returns and had not complied with the request was permitted to go to the jury apparently upon the issue as to

whether the Specialty Handle Manufacturing Company, Inc., had complied with some provision of the policies requiring it to produce books and papers, although refusal to comply with any such provision was not pleaded as a defense.

VI.

The 33rd request to charge.

The Court charged the jury at the request of the defendant:

"6. The policies of insurance in this suit are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used. The contract of insurance therefore being one prescribed by the Legislature is to be construed by you according to the true and natural meaning of the words of the policy as if it were a contract between two individuals or two ordinary corporations, and it is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the Court and not to modify them either in favor of the plaintiff or of the defendant insurance companies."

By this charge the jury was instructed (p. 328) that *it was the province of the jury to construe this written contract.* It is quite true that the court proceeded to inform the jury that it was incumbent upon it "to apply the interpretation of the policy provisions according to the instructions of the court and not to modify them either in favor of the plaintiff or of the defendant insurance companies," *but* this latter statement of the court did not, we submit, cure the preceding erroneous statement that it was *for the jury* to *construe* the contract of insurance "according to the true and natural meaning of the words of the policy as if it was a contract between two individuals or two ordinary corporations."

The jury is first advised that it is for *it,* if it shall see fit, to *construe* the provisions of the policies, and it is then given a rule by which it should proceed to construe those policies, *i. e.,* "according to the true and natural meaning of the words of the policy as if it was a contract between two individuals or two ordinary corporations," and it had previously been instructed that the *reason* why it should put such a construction upon the contract of insurance was that the policies are in the standard form prescribed by the Legislature of New Jersey which has also prescribed that no other or different form shall be used.

Having been instructed to *construe* the provisions in the policies according to the true and natural meaning of the words of the policies as if the contract was between two individuals or two ordinary corporations, because the policies of insurance are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used, what could the jury think was meant by the following provision of the charge that it was "therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the court and not to modify them either in favor of the plaintiff or of the defendant insurance companies." Did the charge mean that, in the construction *to be put by the jury* upon the terms of the policies "according to the true and natural meaning of the words of the policy as if it was a contract between two individuals or two ordinary corporations" the

jury should apply the instructions of the court and not modify the policy provisions either in favor of the plaintiff or of the defendant insurance companies, or, in other words, having reached a *construction* based upon the true and natural meaning of the words of the policy, that the jury should apply *that construction* and not modify the true and natural meaning of the words.

To say the best for this portion of the charge, given in the language requested by defendants, it was contradictory for it first directed the jury to construe the language of the policy giving the jury rules by which it should construe it and the reasons for the rule and then directed the jury not to construe the policy but to apply the interpretation of the court as to the terms and conditions of the policy, which would mean that the jury *should wholly disregard the true and natural meaning of the words* and should disregard the reason for the rule that the true and natural meaning of the words should be applied, and should confine itself to the interpretation put upon the words of the policy whether, in the jury's mind, it was the true and natural interpretation to put upon these provisions or not.

It must be conceded, we assume, that the direction to the jury to *construe* the terms of this written contract was wholly erroneous and it was no concern of the jury as to what reason induced the court to put the construction it did upon the written words of the contract.

With this contradictory charge what was the jury to do? If there is an erroneous statement contained in a charge, the mere fact that there is also in the charge a correct statement of the law

is not sufficient to undo the effect of the erroneous statement.

This is always so unless there is an express withdrawal by the court of the erroneous statement.

In this case the erroneous submission of the construction of this contract to the jury was not withdrawn. The best that can be said of what follows is, we submit, that it was inconsistent with what had previously been said.

But if the construction of this contract was for the jury, the charge of the court, as to the rule to be applied in the construction of the contract, was erroneous.

The request as charged adopted the statement of this court in *Mick* v. *Corporation of Royal Exchange, &c.,* 87 N. J. L. 607, without considering the effect of what this court subsequently said in *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. Advance Reports 1065:

> "Thus, it appears that, going back to the authority relied upon by this court on this question, a form of insurance contract, written upon a standard policy, *neither repeals the law that such policies are to be liberally construed to uphold the contract between the parties, nor that conditions contained in them which create forfeiture are to be construed most strongly against the insurers.*"

The result of this more recent opinion of this court is that insurance policies, although on a standard form, are not to be construed, so far as the provisions which create forfeitures are concerned, and it was one of these provisions, the construction of which was in issue in this case, "as if it were a contract between two individuals and two ordinary corporations," but, on the con-

trary, such provisions are to be construed "most strongly against the insurers."

The jury, therefore, were given an erroneous rule to apply in the construction of the contract of insurance.

It will not do, we submit, for defendants to argue that this language of the court, which included an express direction to the jury to construe the contract in a certain way, giving the reasons why it should so construe the contract, was harmless error because followed by the statements that it was incumbent upon the jury to apply the interpretation of the policy provisions according to the instructions of the court for that must be upon the theory that the language of the court objected to was immaterial and should be ignored by the jury.

If such language was immaterial and should be ignored by the jury, or, in other words, of no importance, why did defendants, in their request to charge, ask that this language be charged? Defendants must have had some purpose and must have thought that the language would have some effect upon the jury. It does not lie in their mouths, we submit, to *now* say that it must be presumed that the jury ignored this language which they themselves requested to the court to charge.

By this charge of the court the jury was permitted to so construe the language of the contract as that false swearing of Garfinkel *upon the stand* might be considered by it as false swearing sufficient to bring into play the provisions of the policies making them void if there be false swearing by the injured *either before or after a loss.* In other words, the jury may have so construed the policies as defendants construed them in the

Supreme Court in arguing that Garfinkel *either* falsified on the examination under oath *or* at the trial, the inference being that it is wholly immaterial which was the case, while in law the difference was quite material for, in the one case, it would defeat any claim upon the policies and, in the other case it would only go to the weight to be given to the witnesses' testimony. If this question arose in the jury room, and that it may well have arisen is indicated by the argument of defendants in the Supreme Court, and the jury had proceeded to construe the contract in accordance with the *natural* meaning of the words of the policies, as if the contract were a contract between two individuals or two ordinary corporations, *it would have unquestionably reached an erroneous result,* not being advised as to the law, for this provision of the policies *does* state, in so many words, that false swearing by the insured "touching any matter relating to this insurance, or the subject thereof *either before or after loss*" shall defeat the policies. By the terms of the court's charge the jury was permitted to consider Garfinkel as the agent of the insured. His false swearing upon the stand, if he swore falsely, *was* after a loss. Why, then, to a layman, would not such false swearing be within the provision of the policies?

But the law has, without exception, determined otherwise as heretofore argued. If the jury had proceeded further and remembered that the court had charged it also to "apply the interpretation of the policy provisions according to the instructions of the court and not to modify them either in favor of the plaintiffs or defendant insurance companies," it would have then searched the charge of the court for any interpretation of this provision of the policies bearing upon the ques-

tion as to whether false swearing upon the stand was sufficient, in and of itself, to defeat *any* claim upon the policies, and the jury would have found *no interpretation* placed by the court upon the provision of the policies which would prevent the jury from considering false swearing upon the stand as sufficient to defeat any claim whatever upon the policies. On the contrary, it would have found in the first request to charge, as charged by the court, to which exception was taken and which exception forms the basis of the 28th ground of appeal, a statement: "Fraud and false swearing as to *any* part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties," and in the second request to charge, the charging of which is made the basis of the 29th ground of appeal, another reference to fraud and false swearing: "in violation of the clause of the insurance policies which I have just read" without any distinction being drawn as to when this false swearing took place. It would also have remembered that there was permitted in evidence extracts from the examination under oath of Garfinkel, *not* for the purpose of showing that the examination under oath was false but that the statements made by the witness upon the trial were false (p. 293), and the jury would have remembered that these statements made upon the trial which it was sought to prove were false, were statements made by the witness when called as a witness for defendants so that the only legitimate purpose of permitting his contradiction would be that, by showing the falseness of those statements made *upon the trial,* the claim under the policies would be defeated because of false swearing.

CONCLUSION.

We are precluded by the decisions of this court from arguing the grounds of appeal having to do with the failure of the defendants to sustain the affirmative defense by any proofs, grounds 21, 22, 23, 24, 25. We think that there was, in fact, no legal evidence upon which these defenses could be sustained. Plaintiffs approached the trial under a heavy burden. The conduct of the Specialty Handle Manufacturing Co., Inc., the insured, was concededly reprehensible. It kept its books in such a manner as to defraud the Government of the United States. It had an admitted adjusted loss of at least $43,000. It not only lost this admitted amount of $43,000 for the insuring of which the Insurance Companies have accepted premiums, but it and its officers have been exposed to prosecution by the Government for fraud on the revenue. It must be conceded that, reprehensible as its conduct may have been, it was not the province of the jury, in a suit between the Specialty Handle Manufacturing Co., Inc., and the Public National Bank, as assignee of the loss, to punish it for this fraud by depriving it of its right to recover any actual loss. The circumstances of the case were such as to naturally raise a prejudice against plaintiffs. That prejudice was accentuated by the manner in which the trial was conducted by defendants, defendants not being content with an admission of fraud, but insisting upon going into each item in detail, calling witnesses to prove *conceded* fraud, attempting to go back as far as 1922, which attempt, however, was prevented by the court (pp. 117, 118, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 153, 152, 154, 156, 158, 195, 160, 161, 246, 252, 253, 256, 257, 258, 259, 260, 261, 262, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299,

300, 301). What defendants did must be assumed upon this appeal to have been within their legal rights except where the matter is argued in this court upon proper objection. The condition created, however, was such as that error of the trial court in the admission or rejection of evidence or in its charge which might be considered to be harmless under other circumstances, might well affect the plaintiffs in this case before the jury in view of the natural prejudice which the jury must have felt against them.

In argument before the Supreme Court it was said that the jury may have been so impressed by the fraud of Specialty Handle Manufacturing Co. as against the Government and the unreliability of any of its records as that it would not believe any of the witnesses. That might account for the jury refusing to bring in a verdict for more than the *admitted* loss upon the theory that there was no reliable evidence of a greater loss, but it cannot justify a verdict for defendants, for defendants, upon the issue of fraud, cannot succeed upon the failure of plaintiffs to prove a greater than the admitted loss by reliable evidence. The burden rests upon *them to prove* the fraud. Plaintiffs may not have produced reliable evidence of loss greater than the admitted loss but defendants have *not* proven fraud.

It is respectfully submitted that the judgment should be reversed and the record remitted to the Supreme Court with directions to issue a *venire de novo*.

Respectfully submitted,

JACOB L. NEWMAN,
MERRITT LANE,
Of Counsel Appellants.

S15 OCT.T.1928

New Jersey Court of Errors and Appeals

PUBLIC NATIONAL BANK OF NEW YORK and SPECIALTY HANDLE MANUFACTURING COMPANY, INC., Plaintiffs-Appellants, *vs.* AGRICULTURAL INSURANCE COMPANY, *et als.*, Defendants-Respondents.	ACTION AT LAW, ON PLAINTIFFS' APPEAL.

BRIEF FOR DEFENDANTS-RESPONDENTS.

Beginning on page 4 of plaintiffs' brief is what purports to be a statement of "conceded facts". Defendants do not accede to all the facts as therein stated.

Specialty Handle Manufacturing Company, Inc. (hereinafter called "Specialty Handle"), was engaged in the business of manufacturing leather specialties at #113-135 New Jersey Railroad Avenue, Newark, N. J.

On March 1, 1925, its stock and machinery were partially destroyed by fire. On April 9, 1925, it and the insurance companies' adjusters agreed that the sound value of the stock in sight was $50,539.04, and the loss thereon $22,523.83; and that the sound value of all machinery and fixtures was $36,094.75, and the loss thereon $21,143.11. This agreement was reduced to writing (Ex. P-43; p. 401). This agreement was not, as stated in the "conceded facts" of plaintiffs' brief, "an adjustment", but an agreement "subject to the terms and conditions of the policies". It is so vital to

the determination of the case that it is here quoted in full.

"Newark, New Jersey, April 9th, 1925.

Re Claims: Specialty Handle Company.

Fire: March 1st, 1925.

Subject to the terms and conditions of the Policies, it is hereby agreed by and between the Assured and the Companies signatory hereto that the Sound Value of Stock in sight is hereby agreed upon in the sum of $50,539.04, and the loss thereon $22,523.83; That the Sound Value of all machinery and fixtures is hereby agreed upon at $36,094.75, and the loss thereon $21,143.11.

THE SPECIALTY HANDLE MFG. CO.
Emile Garfinkel Treas.

GENERAL ADJUSTMENT BUREAU,
for Companies as represented by them.

By Wm F. Russell
Fred W. Williams
for represented Companies."

Specialty Handle did not rest with filing a claim on the basis of the agreement above quoted. It proceeded to file its proof of loss (Ex. P-26; 393) duly sworn to (p. 398) by Emil Garfinkel its secretary and treasurer (p. 75), largest stockholder and moving spirit (p. 85), for stock with a total sound value of $153,979.48, with a loss thereto of $125,964.27 (plus the machinery and fixtures claim above mentioned). In other words, it claimed for stock alleged by it to have been burned out of sight and not capable of being physically inventoried, the difference between $50,539.04, the agreed sound value of stock in sight, and $153,979.48, the total claimed sound value of stock in sight and out of sight, or $103,440.44. This claim is summarized in the proof of loss at page 399.

It was because of this claim, asserted by Specialty Handle, for stock alleged to have been burned out of sight, that the companies' adjusters insisted that the agreement (Ex. P-43 above quoted) be "subject to the terms and conditions of the policies", and not an absolute agreement to pay the sums therein mentioned, as plaintiffs erroneously contend throughout their brief.

Defendants did not and do not now concede that the large stock claimed by plaintiffs to have been burned out of sight was in the plant at the time of the fire or destroyed by the fire. There were no remnants of such stock observable after the fire, and for this reason they required proof that it had been purchased by Specialty Handle, and that it was in the plant at the time of the fire and destroyed by the fire. Manifestly, in the absence of physical proof, the only proof of such an alleged loss is in the assured's books and records.

In support of this claim for $103,440.44 for stock alleged to have been burned out of sight, Specialty Handle submitted its books of account and records for examination by J. F. E. Wood, a certified public accountant designated by the defendant companies. Mr. Wood made an examination of the books in the presence of Mr. Garfinkel and his nephew and accountant, Mr. Sidney Kasnowitz (p. 82; p. 230), and determined from the books of Specialty Handle that its total stock at the time of the fire on March 1, 1925, was about $81,000.00 (p. 231, l. 28; p. 233, l. 37), as against a claim by the insured in its proof of loss of $153,979.48.

After Mr. Wood had reached this figure of $81,000 from the books which Mr. Garfinkel and his accountant had presented to him for inspection and examination, Mr. Wood had a conference with Mr. Garfinkel and Mr. Kasnowitz (p. 232, ll. 9-15), in which he showed them his figures and asked them to explain the large profit in the year before the

fire and the losses in other years (p. 232, ll. 15-20). The accountant, Sidney Kasnowitz, explained that "they had come to an agreement with two or three of their competitors adjusting prices, and during that year they had selected their customers and sold only certain merchandise and resulted in their making a good deal more money". Mr. Wood then asked Mr. Kasnowitz if he would not put that in writing and he did (p. 232, ll. 22-30). Mr. Garfinkel was present at this conference and when the typewritten paper was handed by Mr. Kasnowitz to Mr. Wood (p. 233, ll. 35-40).

This typewritten memorandum is so important that it is here quoted in full:

> "The improved condition shown in the year 1924 over those of previous years can be partially explained by the fact that during 1924 the ruinous competition that prevailed during 1922 and 1923 was partially relieved by agreement between the two largest producers and by elimination of some of the smaller competitors. We contented ourselves with a smaller quantity of business by agreement, making only profitable articles and picking our customers. We discontinued some lines and added others.
>
> Our raw material sources were in constant competition and at times demoralized and we were able to purchase either at lower prices or better qualities. Labor had also reconciled themselves to lower wages and a greater proportion of our product was produced on a piece work basis. Economies were also introduced" (Ex. D-23, last page, Supp. State of Case).

The next day, Mr. Wood having found more discrepancies, Mr. Garfinkel told Mr. Wood that he had not stated the true cause of the condition shown on the books, but that it was "an income tax proposition" (p. 233, l. 22), and that the books were false.

The income tax reports were not, however, produced to support this explanation, nor was the company accountant (Garfinkel's nephew, Kasnowitz) called as a witness by plaintiffs.

Of the several varieties of fraud and misrepresentation practised upon defendants by the assured, the following are the most glaring:

1. Not only did Specialty Handle present false books to the insurance companies in its attempt to substantiate its claim of $103,440.44 for alleged stock burned out of sight, but it admittedly submitted fraudulent vouchers, bills and checks to Mr. Wood to the same end, details of which will be presented during the course of the argument.

2. Nor was the fraud of Specialty Handle confined to its books, bills, vouchers and checks alone. The claim for stock alleged to have been burned out of sight was shown to be inconsistent with written statements made by its treasurer, Garfinkel in August, 1924, to the Schedule Rating Bureau, representing defendant Companies, for the purpose of obtaining favorable insurance rates.

3. The treasurer of Specialty Handle, Garfinkel, who was submitted by it for examination under oath in accordance with the provisions of the New Jersey Standard Fire Insurance Policy (ll. 82 and 83), swore falsely and fraudulently concerning material matters.

4. Specialty Handle, by its authorized agents, presented a fraudulent schedule to the defendant companies after the alleged loss, claiming a sound value of $161,320.80, for stock. This schedule was submitted for the purpose of defrauding defendant companies, contrary to the provisions of the New Jersey Standard Fire Insurance Policy, and it was never withdrawn.

5. The sworn proofs of loss submitted by Specialty Handle to the insurance companies were in material respects false and fraudulent, contrary to the provisions of the New Jersey Standard Fire Insurance Policy, and were never withdrawn.

Plaintiffs sought to have the verdict in favor of defendants set aside on a rule to show cause, but the defenses were so clearly sustained that the Supreme Court said in its opinion (S. C., 428, ll. 18-25):

> "Our reading of the voluminous record and the briefs submitted in the cause satisfies us that the terms of the policy as above stated were violated, that the verdict so far as being against the clear weight of the evidence was in harmony with the evidence. The verdict is supported fully by the evidence."

With this brief summary of the facts, the grounds of appeal will now be considered in the order in which they are argued in appellants' brief.

Point I.

William F. Russell, called as a witness for the defendants, testified that he has been an insurance adjuster for nine years and that previous to that time he had had considerable experience adjusting losses as an insurance company representative (S. C., 190, l. 36, to 191, l. 5). He testified also that he had visited the burned premises two or three days after the fire and made a detailed examination (S. C., 191, l. 6, to 192, l. 7). He was then asked:

> "Q. Did you examine the premises to see what had been injured by fire? A. I did.

> "Q. *Did you find any evidence of goods or personal property which had been rendered indistinguishable by reason of the fire?*
>
> "Mr. Lane: *I object to that as not the subject of expert testimony.*
>
> "The Court: I will allow it.
>
> "Plaintiffs' counsel prays an exception to this ruling of the Court.
>
> "Exception noted as ground of appeal.
>
> "The Witness: Not to any extent.
>
> "Q. By that you mean what? A. I mean there might have been some debris lying about which would indicate merchandise, but a small value.
>
> "Q. But was there anything from which you could find any evidence of indistinguishable merchandise running up into thousands of dollars? A. No, indeed."

It is to be noted that appellants objected to the italicized question solely on the ground that what was asked was not the subject of expert testimony, thus indicating to the court that they recognized the witness as an expert. In their brief, however, appellants seek to enlarge this objection by urging that the witness was not qualified to testify as an expert.

As appellants admit (p. 20 of their brief), "the major part of the claimed loss was for goods which had been rendered indistinguishable by reason of the fire, or goods burned out of sight." In other words, the principal dispute was as to the amount and value of the goods rendered indistinguishable and burned out of sight.

The witness had inspected the burned premises shortly after the fire. He had examined the debris, and was merely asked to testify as to the results of his observation. It was entirely proper to ask this witness, with his many years of experience in the handling of fire losses, whether the debris disclosed evidence of goods which had been ren-

dered indistinguishable by reason of the fire. To him it was more a question of fact, based on his observation of the burned premises. This is one answer to appellants' objection.

Another answer is that the question did involve a subject on which an opinion from a qualified witness was admissible. In effect, it asked the witness to state whether, in the debris resulting from the fire, he found evidence of goods which had been rendered indistinguishable. The question called for the results of an inspection made by this witness, in the course of which he applied his years of experience to determine whether the remains of the fire gave any evidence of personal property which had been so burned as to become unidentifiable.

This question was a *preliminary* one concerning the witness' observation of the physical situation resulting from the fire, qualifying the witness to give his opinion of the *amount* and *value* of the personal property burned out of sight. Thus the logical relevancy and legal propriety of the question is apparent.

Counsel for appellants are in error in stating (bottom pp. 21-22 of their brief) that the court refused to permit the witness, Williams, also a fire insurance adjuster of considerable experience, to answer a similar question. Williams was not permitted to testify as to his experience with other fires in which leather goods were involved, but on the question under consideration he was permitted to testify over the objection of counsel for appellants, who in this instance did not except to the ruling of the court. This testimony appears on page 188, ll. 17-30:

> "Q. Could you find any evidence of goods burned out of sight?
>
> "Mr. Lane: I object to that as immaterial whether he could find evidence of goods burned out of sight.
>
> "The Court: I suppose there might be evidence of indistinguishable goods; the goods that could not be distinguished.
>
> "Q. Were there any goods there after the fire that you saw that were not capable of being distinguished or identified? A. There were scraps here and there, but not to amount to anything."

By subsequent questions, the witness Russell was asked to give his opinion of the value of the goods rendered indistinguishable, based on what he had seen. These questions called for his expert opinion, but no objection was made by counsel for appellants. Yet appellants argue (page 20 of their brief) that:

> "The subject being opened by the inadmissible question, he was permitted to testify, as an expert, on the value of the leather goods, whether what he saw indicated merchandise of *any great value*. He was not qualified in any respect to give any such statement."

Appellants now urge for the first time the objection to Mr. Russell's qualifications to give an opinion on values. It is sufficient to say that no such objection was made at the trial. The witness on direct examination, had testified concerning his qualifications (S. C., 190, l. 36, to 191, l. 5). If counsel for appellants desired fuller information on this point, they should have asked the trial court for leave to cross-examine the witness as to his qualifications.

Furthermore, in entering the objection to the question heretofore considered on the ground that what was asked was not the subject of expert testimony, appellants in effect conceded to the court that they recognized the witness as an expert.

By specifying this one objection appellants waived all others, and cannot now be heard to raise a new one based on the witness' qualifications.

This court in *Precipio* v. *Ins. Co. of Pennsylvania,* 5 N. J. A. R. 106, 5, 137 Atl. 549, approving *Electric Park Co.* v. *Psichos,* 83 N. J. L. 262, held that:

> "It is undoubtedly true that such qualification [as an expert] may be waived by the parties by express stipulation or by not objecting to the testimony when offered."

Concerning appellants' contention that the one question objected to opened a series of objectionable questions, this court held in the Precipio case that:

> "When an objection is to a single question and not to a line of questions on the same subject the party objecting to the testimony may insist only upon the particular question objected to."

The remainder of appellants' argument under this point on pages 21 and 22 of their brief deals with the *weight of the evidence* as to the property alleged to have been burned out of sight, a subject which is not properly involved on this appeal.

With respect to the single question objected to by appellants, the action of the trial court in permitting the witness to give the results of his inspection of the burned premises was entirely proper. But even if erroneous, it was clearly not prejudicial, in view of the several material violations by the assured of the provisions of the policies as to fraud and false swearing (see opinion of Supreme Court, p. 428) and one of these violations being sufficient to sustain the verdict for defendants.

Point II.

The New Jersey Standard Fire policy (ll. 7-10) provides (S. C., 342, ll. 20-35):

> "This entire policy shall be void if the insured has *concealed* or *misrepresented, in writing or otherwise,* any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of *any fraud or false swearing* by the insured touching any matter relating to this insurance or the subject thereof, *whether before or after a loss.*"

It also provides (ll. 67-76):

> "If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a *complete inventory of the same,* stating the quantity and cost of each article and the amount claimed thereon. * * *."

As is shown by the foregoing clauses, in the event of fire the insured is obliged to produce a complete inventory. Such an inventory or schedule was submitted by Mr. England, of Miller & Maltbie, Adjusters representing the Specialty Handle, from information according to Mr. England "given to us by Mr. Garfinkel and Mr. Kasnowitz" (p. 175, l. 16). This document, Ex. D-16, was presented to the companies at the same time as the inventory of stock in sight and the schedule of machinery (p. 175, ll. 20-28). Mr. England, as plaintiff's witness, admits that this schedule and the inventory were given in compliance with the policy provisions (p. 176, ll. 1-8).

"Q. And that, and the other schedules which were supplied by your firm to the companies after the fire, were in compliance with the policy provisions as to making an inventory or schedule to be delivered to the company? A. Yes, sir."

Mr. England further stated that this schedule and the others which were furnished to the companies were the schedules given Mr. Wood and his associates, the accountants, to start work on; that he, England, believed they were correct; that he so represented to the insurance companies; and that he informed the insurance companies that the figures contained in the schedules were given to him by Mr. Garfinkel and Mr. Kasnowitz (p. 176, ll. 12-25).

Counsel for plaintiffs, on re-direct examination, questioned Mr. England as to what provisions of the policy he thought required such a statement, and Mr. England replied by referring to the provisions (ll. 67-76 of the policy) which have been quoted hereinabove (p. 177, ll. 28-40). Moreover, Mr. England said that the rendering of such a statement was a custom of the business (p. 178, l. 2). Counsel then endeavored to lead his witness to say that all that this policy required under this point was the filing of an inventory of goods in sight, but Mr. England said "I would say that it was necessary to indicate the amount of the loss which could *not* be inventoried" (p. 178, ll. 15-18).

On recross-examination, Mr. England admitted that the first thing which is done by him as a public adjuster is the preparation of an inventory and schedule (p. 179, ll. 20-23); and that it is the basis from which an adjustment would start (p. 179, l. 25); and that in this case the Ex. D-16, was given to the companies *for the purpose of starting an adjustment* (p. 179, ll. 32-40); and further:

"Q. And that is understood by the adjusters who took them as representing your understanding of the loss and the extent of the damage? A. Yes, sir.

Q. Line 699 does state *'Inventory and cost of each article'?* A. Yes, sir.

Q. When there are goods burned out of sight, can that be done? A. No, sir.

Q. *When that cannot be done,* what do you do? A. *We make a merchandise statement.*

Q. *That was this paper?* A. *Yes, sir.*

Q. You say you *made that up from material given you by Mr. Kasnowitz and Mr. Garfinkel?* A. Yes, sir.

Q. Have you their original data? A. I have given what papers I had to Mr. Newman and they may be in my files or Mr. Newman's" (p. 180, ll. 11-28).

Plaintiffs are therefore arguing in the teeth of the clear facts as stated by their own adjuster when they attempt to show that this schedule D-16 was a purely voluntary act and not intended to be relied upon by the companies. Mr. England's testimony demolishes this contention and establishes that he, as the representative of the Specialty Handle for this very purpose, intended it to be acted upon by the defendant companies as part performance of the assured's obligations under the policy conditions. This schedule was at no time withdrawn by the plaintiffs and therefore became part of the proofs because the policy requires an inventory as well as a proof of loss. The sole purpose of Ex. D-16, as will be quickly demonstrated by inspecting it (at p. 410 and more particularly at p. 411 of the record) is to show a "total sound value stock date of fire of *$161,320.80.*"

The defendants turned over this schedule to their accountant, J. F. E. Wood, for verification against the assured's books. Mr. Wood went to

the assured's plant, and there Garfinkel and Kasnowitz gave him the books (S. C., 230). From an inspection it appeared that in the years 1920, 1921 and 1923, the assured had lost money, in the year 1922 it had made a small sum, but in the year preceding the fire it had made $50,000! Mr. Wood thereupon called upon Garfinkel and Kasnowitz to explain (S. C., 232) and they gave him the typewritten fraudulent statement (Ex. D-23) hereinbefore quoted, which declared that the profit in 1924 was due to economies, better sales, rise in prices, and elimination of competition. Wood continued his examination of the books and found from them that the sound value of *all* the goods on hand at the time of the fire was $81,968.74. The assured and the companies had agreed that the sound value of the property remaining in sight was $50,539.04. Deducting this $50,539.04 from $81,968.74 (the sound value of all the property) the sound value of the goods burned out of sight was found to be about $31,400, *a figure which almost coincided with the assured's representation to the Schedule Rating Bureau that the average amount of goods in the building in which the goods burned out of sight had been located was $30,000* (see Ex. D-19, p. 414 and D-20, p. 415).

Garfinkel, called as defendants' witness, testified (pp. 202-206) to the work carried on in the different departments and where the various departments were located. He stated that the departments had for two years been arranged in the manner which existed at the time of the fire (p. 205, l. 25). He further testified that the severest fire was in building #3, known as 121-123 New Jersey Railroad Avenue (p. 206; see map, Ex. D-17, opposite p. 412) and in this he is borne out by the photographs showing the destruction caused by the fire (see Exs. p. 49, P-40, P-51, opposite p. 402). Both Mr. Williams and Mr. Russell testified that this building was the only building in which there could have been any stock burned out of sight (S. C., 187, ll. 10-23; 191, l. 13 to 192, l. 28). It is in this building that the assured, in both statements to the Schedule Rating Bureau (Ex. D-19 and Ex. D-20), claimed only $30,000.00 average annual value of stock. With the arrangement of the departments remaining the same for two years before the fire, according to Garfinkel's testimony, the question naturally arose how it happened that this building, which normally contained only $30,000.00 stock could have contained in excess of $100,000 stock at the time of the fire. Mr. Wood therefore examined the books and found that they showed that the building *did* contain only about $30,000 stock at the time of the fire.

Garfinkel, alarmed over the large discrepancies found by Mr. Wood between the schedule and the books of the assured, stated that the books were doctored to defraud the Federal Government of taxes (p. 233). Wood reported all he found to the defendants and to Miller & Maltbie, the adjusters for the assured (p. 235). Thereupon the assured called in Puder & Puder, C. P. As., to prepare a proof of loss. This proof showed a total loss of $153,979.48, or a loss out of sight of about $103,000 (Ex. P-26, p. 393).

Appellants argue that since the schedule submitted to the companies is never relied upon but is always checked by them, a falsehood in the schedule would not avoid the policy. The evidence shows that this "checking" is a comparison of the figures in the schedule with the books of the assured (S. C., 181). Certainly appellants cannot say that fraud and false swearing may be accomplished *only* with such documents which are trusted implicitly by the companies, for all documents, inventories, schedules, and proofs of loss

are "subject to check", *i. e.,* the companies will always endeavor to test their correctness. Does that mean that fraud and false swearing in all such documents would not avoid the policy? The question answers itself. The mere fact that the schedule is checked does not mean that the company does not rely on it and that the fraud in it is immaterial, if it is fraudulent.

Appellants admit that Garfinkel and Kasnowitz gave Miller & Maltbie the figures which appear in the schedule. They contend, however, that Garfinkel and Kasnowitz did not expect the figures would be presented to the companies. For what purpose does an assured give figures to his own adjuster, if not to present them to the companies as a basis for adjustment and payment? Certainly the adjuster has no academic interest in the figures. Certainly there can be no object in deceiving the adjuster. Appellants do not indicate for what other purpose the figures were submitted, except to say vaguely that they were "presumably for Miller & Maltbie to work upon". Work upon with whom? Furthermore, what Garfinkel and Kasnowitz expected to accomplish by means of the schedule was a question for the jury, and protestations of their innocent intentions could not render inadmissible a document submitted by an agent of the assured to defendants, and otherwise clearly admissible.

But the question is narrower than what Garfinkel and Kasnowitz expected Miller & Maltbie to do with the figures. The real question is, was it within the scope of Miller & Maltbie's authority to submit those figures to the companies? The assured's mental reservations are immaterial. Can the appellants say that it is not within the scope of the authority of a public adjuster to submit to the companies the figures given him by the assured for the purpose of adjusting a loss? How

else is an adjustment to be made? Plaintiff's witness, Walter A. England, of the firm of Miller & Maltbie testified that it was the usual course of adjustment to submit an inventory and schedule to the companies (p. 176, ll. 3-24) but that proofs of loss were very often *not* submitted (p. 179, l. 20, to 180, l. 27). The assured chose a professional adjuster to act for them and cannot quarrel with the usual, sensible procedure adopted by him and say it was unauthorized.

Appellants further contend that this schedule should not have been admitted in evidence because assured was not required by the policies to furnish it to the defendants. England, assured's adjuster testified on re-direct examination as a witness for plaintiffs that he furnished the schedule to defendants to comply with the provision beginning with line 67 of the standard policy (p. 177, ll. 30-40), under which the insured is required to "make a complete inventory" of the property involved in a fire "stating the quantity and cost of each article and the amount claimed thereon". In this case the claim was for goods which could not be inventoried, i.e., the goods burned out of sight, and the witness submitted the schedule in question, in addition to an inventory previously filed because "it was necessary to indicate the amount of loss which could not be inventoried" (S. C., 178, ll. 3-17). The schedule really comprised a merchandise statement, which is submitted to insurance companies in lieu of, or supplementary to, an inventory, to show the amount and value of goods rendered indistinguishable and incapable of being inventoried (S. C., 179, l. 30, to S. C., 180, l. 27).

The provision of the policies on which the defense in this case was based voids the policies

> "if the insured has concealed or misrepresented in writing or otherwise, any *material*

fact or circumstance concerning this insurance or the subject thereof, * * * or in case of any fraud or false swearing by the insured touching *any matter relating to this insurance* or the subject thereof, whether before or after a loss."

Assuming that appellants are right in saying that the schedule is not required to be furnished under the terms of the policies, the provision quoted nevertheless applies to fraudulent written or oral statements *in fact* furnished the companies by the assured, material to the subject of the insurance. Accordingly, the trial court properly admitted the schedule in evidence. Whether it was fraudulent, and whether it was prepared and submitted by the assured with the purpose of defrauding defendants, were questions which the jury could pass upon properly only by examining the schedule as an exhibit and considering it together with the oral testimony relating to it.

Appellants further intimate that the schedule was not fraudulent and there was no evidence that Garfinkel and Kasnowitz wilfully misrepresented the amount of the loss. But appellants have already argued at length before the Supreme Court the sufficiency of the evidence in the case to justify the verdict, and that court has unqualifiedly sustained the finding of the jury.

Appellants further contend that under *Mick* v. *Corporation of Royal Exchange,* 87 N. J. L. 628, which held that the innocent misrepresentation of an adjuster will not affect the rights of the assured, the fraudulent schedule "innocently" submitted by Miller & Maltbie to the defendants cannot affect the rights of the assured. But in that case the assured had no part in the fraud—the fraudulent invoices were prepared and delivered to the adjuster by a third party without the assured's knowledge or consent. Here the assured

itself, through its Secretary-Treasurer (who was also the largest shareholder), and its accountant, delivered the fraudulent figures to the adjusters for transmission to the companies.

But, says, counsel for appellants, the court charged the jury that the schedule had not been withdrawn, when in fact it had been superseded by the proof of loss submitted a month later. What meaning the charge carried to the jury must be found in the light of the facts proved at the trial. At the trial is was shown that the schedule was submitted to the companies within very few days of the fire (p. 175) and turned over by them to the accountant Wood, who used it as a basis for his examination of the books (p. 176, ll. 12-15). The assured knew of this and did not withdraw the schedule, but permitted the defendants to proceed on the representation that the schedule was correct. If the schedule was false and fraudulent the policy was then avoided, and the subsequent proof of loss could not revive it. The jury must have understood the charge to mean that if indeed the schedule was submitted by Miller & Maltbie without the assured's knowledge, it made no effort to withdraw it *when it did learn of it.* Thus the schedule remained as an independent material statement made by the assured to defendants, the truth or falsity of which was a question for the jury.

But had the court charged the jury that the proof of loss replaced the schedule and that no defense of fraud and false swearing could be, therefore, predicated on the schedule, it would have been error. A case in many respects analagous to the case at bar is *D'Aigle Co.* v. *Western Insurance Co. of Pittsburg* (*Louisiana 1915*), 67 Southern 827. In that case, the policy required the assured to make one inventory annually. The assured made one early in 1912 and a second, a

fraudulent one, late in 1912 just before the fire. After the fire the whole inventory book was given to the defendant company. In making its proof of loss, however, the assured based its claim on the true inventory. The court held that the policy was nevertheless avoided for fraud and false swearing, saying (pp. 827-28):

> "Plaintiff did attempt to perpetrate a fraud when it entered a fraudulent inventory upon its inventory book and when it submitted this fraudulent inventory to the defendant company. It falsely misrepresented that it had a stock of goods of some $23,000 on hand when in reality it had a stock valued at about $11,000.
>
> "In the case of Jones & Pickett *v.* Michigan Fire & Marine Ins. Co., 132 La. 847, 61 Southern 846, when the insured showed that certain foreclosure proceedings against the property insured had been withdrawn and the claim was settled before the fire occurred, and that there was no existing seizure at the time of the fire and that the risk had not been increased by such abandoned seizure, it was held that the condition providing that the policy should be avoided in the event of a seizure was a binding condition upon the parties and that the policy had been avoided by the violation of the condition and that it had not been revived when the seizure was released before the fire occurred. * * *
>
> "The contention of plaintiff that the fraudulent inventory made in September was not made for the purpose of deceiving the defendant and that it had not made out its proof of loss from such false inventory is immaterial. It submitted the two inventories made in 1912 together with inventories made in previous years to defendant without any explanation whatever. The wide discrepancy between the two inventories caused the defendant to suspect fraud and to refuse to pay the amount of the policy. It may have been that the second and fraudulent inventory made in 1912 was made to deceive others when additional insurance was sought and obtained by plaintiff or it may have been for some other purpose.
>
> "In the case of *Claflin* v. *Insurance Co.*, 110 U. S. 81, it was decided as set forth in the syllabus:
>
> > 'Altho it appeared that the statements were not made for the purpose of deceiving the insurer, but for the purpose of covering up some false statements previously made to other parties,
> >
> > 'Held that the motive which prompted them was immaterial. * * *'
>
> "The case is with the defendant on the question of fraud and should have been decided in its favor * * *."

It is respectfully submitted, therefore, that the trial court did not commit error in admitting the schedule (Ex. D-16) in evidence, nor in its reference to this schedule in the charge. The only specific objection urged by counsel for the assured against the admission of this document was that "it is not required by the policy" (p. 193, ll. 15-20). This we deny. But even assuming this to be so, the schedule was in fact submitted to defendants by plaintiffs' adjusters as a document relating to the insurance claim, and it was, therefore, admissible. Counsel for appellants should have adduced testimony to show that the adjusters went beyond their authority in submitting the schedule to the companies. But no such proof was offered, and facts are assumed and urged in appellants' brief concerning the exhibit in question which, had testimony of such character been produced at the trial, would have raised questions for the jury to decide.

Point III.

Under this point, appellants argue that the trial court committed error in permitting witnesses to testify concerning certain checks which, on the books of the company, were recorded as payments for merchandise, when, in fact, they were either exchange checks or entirely fictitious, having no relationship whatever to merchandise purchases. And appellants also complain under this point because the trial court allowed Mr. Wood, the accountant, to testify as to the amount of money drawn for his personal use by Mr. Garfinkel, which on the books of the company were charged to labor.

The burden of appellants' argument with respect to these fraudulent transactions is that they merely show that the books of the company were improperly kept and that the assured had admitted that the books were so kept for the purpose of evading income taxes. The falsity of the books having been admitted by the assured, it follows, appellants contend, that the questions objected to, which were calculated to show fraudulent charges against the merchandise and labor accounts, were immaterial.

Appellants summarize their argument under this point by stating on page 39 of their brief that "there was no proof indicating the materiality of these fictitious items, nor was there any proof that they were used in any way to, or with intent to, defraud the insurance companies."

Proof of these fictitious items was material and relevant for the following reasons:

(1) The policies in suit contained this provision (ll. 81-85):

> "The insured, as often as required, shall exhibit to any person designated by this company, all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made."

When the accountant Wood, representing the defendant companies, called upon the officers of the assured to submit their books for his examination, Garfinkel and Kasnowitz tendered the books to him without a single word concerning their fraudulent character. Appellants contend that there was no duty on the part of the assured to keep correct books so far as its relations with the insurance companies are concerned, and the trial court charged plaintiffs' ninth request (p. 334) to this effect. Under the provision of the policies quoted above, it is at least doubtful whether this was a proper statement of the law. Irrespective of this legal question, the books were in fact tendered by the officers of the assured to a representative of the companies as correct. This was a material representation in connection with the insured's claim. It is only when Mr. Wood, *by his own efforts,* discovered that the books contained fraudulent entries (the checks in question comprising only a few of the many fraudulent entries), that the officers of the assured attempted to make explanations. Their first explanation that the improved condition shown for the year 1924, resulting in a profit of some $50,000, was due to better labor conditions and elimination of competition was a fraudulent explanation which they repudi-

ated the next day with the second explanation that the books contained fraudulent entries for income tax purposes.

Accordingly, we submit that it was a material question for the jury to decide whether the books of the assured had, in the first instance, been represented to the defendants as correct, and that in connection with this inquiry, it was material and relevant for defendants to show that checks had been charged to the merchandise and labor accounts when the proceeds had been used by officers of the company for their own private purposes.

(2) On the basis of the books submitted to him by the assured, defendants' accountant reached the conclusion that the value of the entire stock of merchandise in the insured's place of business on the date of the fire was $81,000. *This figure harmonizes with the agreed loss of goods in sight, amounting to $50,539.04 (Ex. P-43, p. 401), plus the $30,000, which Garfinkel in his two statements of August 20th and August 23rd, 1924, said was the average annual value of stock in the building 121-123 N. J. Railroad Avenue, where the loss out of sight occurred. This total of $80,539.04 (bearing in mind that the one figure of $30,000 is an estimated average annual figure) is remarkably close to the finding of Mr. Wood of a total stock value of $81,842.91.*

Wood was concerned with what the profit and loss had been for the preceding years, because he had "to determine a profit ratio in order to reduce the sales to cost in order to arrive at a value for a particular date" (i. e., the date of the fire). He then prepared "a statement, starting with January 1, 1924, to determine just what the book value would show as of December 31, 1924, and found that the book value of stock was about *$81,000*" (p. 231, ll. 10-28). He explains that by book value

he means "the value arrived at by starting with inventory at a certain date, add purchases and labor, and deduct cost of sales, that is, sales less profits" (p. 231, l. 31, to p. 232, l. 6).

By impeaching its books, the assured presented a claim showing a stock value of $153,979.48, or approximately $72,000 greater than the figure reached by Wood. Starting with the inventory as of January 1, 1924, Wood proceeded to verify all of the book entries for the year 1924. In this process of verification, he discovered a large number of checks which had been improperly charged to the labor and merchandise accounts. His testimony concerning these checks is found on S. C., 251, ll. 5-17; 252, ll. 8-22; 257, ll. 8-37; 259, ll. 10-25.

The books were introduced by plaintiffs as exhibits in the case (See index of Exhibits P-24, 34, 39, 44, 45, 46, 47, 48, 52, 53, 54, 55, 56, 57, 58). Having been offered by plaintiffs for the purpose of supporting their claims wherever possible, it was clearly proper for defendants to show that these books were inaccurate.

(3) Another independent ground justifying the admission of the evidence concerning fictitious checks is that these checks were tendered to Mr. Wood pursuant to the provision of the policy heretofore quoted, without any explanation that they did not represent genuine transactions. It is by his own efforts that Wood discovered that these checks, which ostensibly represented payments for merchandise and labor, were applied by Garfinkel to his own uses. It was a question for the jury to decide whether these checks were submitted to defendant's accountant as representing genuine transactions, for the purpose of defrauding defendants. The books showed that although in the four years 1920-1923 Specialty Handle had lost money, in 1924, the year before the fire, it had made $50,000! The question naturally arose, was this extraordinary profit not the result of pad-

ding the inventory of December 31, 1924, to show a larger stock on hand at the time of the fire in March, 1925? Wood determined to verify this inventory. His method was as follows: He took the inventory of January 1, 1924, *added purchases and labor* and subtracted the cost of the goods sold, during that year (S. C., 231, l. 20, 232, l. 8). The fictitious charges to merchandise and labor would have led him to reach a higher estimate of the goods on hand December 31, 1924, than he did. Had Wood attempted to verify the earlier inventories, then the earlier fictitious entries were there to deceive him. These fictitious charges were therefore material, and hence the evidence properly received.

(4) The evidence objected to was also admissible because Mr. Garfinkel testified that he did not know that before the fire there were large amounts withdrawn by him which were charged to merchandise or labor (p. 291, ll. 20-27). The checks bearing his personal endorsement constituted proof entitled to go to the jury as to whether he, as the principal officer and stockholder of the company, knew of the falsity of these transactions and book entries.

(5) Evidence of the fraudulent check transactions was also material on the question of whether Exhibit D-16, the schedule filed by plaintiffs' adjusters claiming a stock of the sound value of $161,320.80, was truthful or fraudulent. It was a question for the jury to determine whether the assured in this schedule made allowance for these false entries charged to the merchandise and labor accounts, with the knowledge of the officers of the assured who prepared the statement upon which the schedule was based. The evidence concerning the checks in question was also admissible for this reason.

(6) Another ground for the admission of the testimony objected to is that plaintiffs on their direct case called Abraham H. Puder, their accountant, as a witness, and he testified that he was not apprised by Garfinkel, or any other person representing the assured, that the checks in question represented fictitious transactions (S. C., 144, l. 30 to 145, l. 13).

Mr. Puder instead of going back over the records for a reasonable number of years to obtain the experience of the Specialty Handle as to sales costs and ratio of profits, confined himself to the year 1924 alone (p. 136, ll. 34-35) although he admitted that the books showed records of earlier physical inventories (p. 137, ll. 7-40). It will be recalled at this point that Mr. Wood had found in 1924, the unusual profit of $50,000. as against small profits or losses in the preceding years. This, of course, makes a test of one year's experience (which Mr. Puder applied in obtaining the sales cost and profit ratio) absolutely unreliable, for the average ratio of profit would have been far different. Mr. Puder admitted that the inventories of earlier years were summarized in the books of the company (p. 139, ll. 18-19) but he declined to use them because the full physical inventories of these earlier years could not be located (p. 137, ll. 37-38). But in dealing with the question of sales costs and ratio of profits detailed inventories were not necessary but merely the total inventory value. It is, therefore, obvious that Mr. Puder by limiting his examination to a one year period where the company's experience was totally different from that of previous years as disclosed by its records, was bound to reach a result that could not be relied upon.

But even with respect to the records of 1924, which he did take, the books were honeycombed with fraudulent entries. Instead of attempting

to verify the physical inventory of December 31, 1924, by tracing the purchases and sales for the year 1924, Mr. Puder assumed the correctness of this inventory, giving as his reason that he was told by Mr. Garfinkel and Mr. Kasnowitz that it represented the true condition (p. 148, ll. 10-17). In answer to the question, "How do you know that this is the physical inventory?" he replied, "Because I was advised that that represented the complete inventory of merchandise on hand on that day priced at either cost or market price whichever was lower" (p. 140, ll. 10-17). There was no justification for Mr. Puder's accepting the correctness of this inventory because, as he testified, there was a difference in the December 31, 1923, inventory as it stood on the books (at $126,402.20) and the physical inventory of the same date (showing $146,838.48) of $20,436.28 (p. 146, l. 35 to p. 147, l. 30).

In this connection it is highly significant that although he was employed by Mr. Garfinkel to make an exhaustive examination after Mr. Wood's expose had been brought to the attention of the assured, Mr. Puder insisted that he was not told by Mr. Garfinkel about any of the fraudulent transactions. For example, with respect to the transactions involving Kasnowitz & Brother, Mr. Puder stated that he excluded the two items appearing on the purchase books of Specialty Handle because he found no substantiation for them, but that he did not discuss those items with the officers of the company nor did he advise them that he was excluding those items (p. 144, ll. 20-35; p. 145, ll. 8-13).

After he had been interrogated concerning the checks and notes improperly charged to labor and merchandise by means of the fictitious Dunn-Green, C. S. Walton Company, I. Freedman Leather Company, and Keegan Leather Company transactions, he was asked, "And all those entries

are fictitious?" and his answer was "I don't know" (p. 159, ll. 30-32).

The question quite naturally occurs why Mr. Garfinkel did not apprise Mr. Puder of the various fraudulent transactions concerning which he must have had knowledge because the monies had been used by him for his own purposes. It is apparent, therefore, that Garfinkel even misled his own accountant. The result which Mr. Puder arrived at without any help from Mr. Garfinkel, so far as the fraudulent transactions are concerned, is incorporated in the proofs of loss submitted to defendants Exhibit P-26 (pp. 393-399) in which a total loss on stock of $153,979.48 is claimed. The jury was entitled to consider the fact that originally Exhibit D-16, plaintiff's schedule of property, was submitted, claiming a total loss of stock of $161,320.80; that fraudulent items of which Garfinkel was aware, were not deducted from, nor allowed for in, this schedule which was submitted to defendants with Garfinkel's knowledge and consent. Mr. Puder reduced the loss originally claimed in the schedule by $7,341.32. The jury was entitled to ask whether, if Garfinkel had apprised Mr. Puder of the fact that many fraudulent transactions had taken place, Mr. Puder would have assumed the correctness of the inventories of January 1, 1925, or would have attempted to check up the accuracy of this inventory by tracing sales and purchases through the year 1924. Not only, therefore, did Garfinkel misrepresent to defendants when he filed his schedule claiming a loss of $7,341.32 greater than his own certified public accountant claimed, but he misled his own accountant by concealment, and the jury was entitled to find that the figures in the proofs of loss prepared by Mr. Puder did not represent accurately the condition at the time of the fire.

For by informing Mr. Puder that a correct physical inventory was taken January 1, 1925 (all of which is disputed) and by failing to apprise him of various fraudulent transactions, Garfinkel in effect prevented his accountant from going back to the inventories, stock costs, and profit ratios for a reasonable period prior to 1925, with the result that the stock value of $153,979.48 claimed in the sworn proofs which Puder prepared, though lower by $7,341.32 than the amount previously claimed in the Schedule (Ex. D-16), still misrepresented the actual value at the time of the fire. For they claimed a loss approximately $72,000 greater than the figure reached by Mr. Wood, which, as we have argued, harmonized with the agreed value of the *goods in sight,* plus the average value of the goods which were burned *out of sight* in building #3, as twice certified to the Schedule Rating Bureau.

Accordingly, it was of the utmost importance and materiality for defendants to prove the fraudulent check transactions which Mr. Puder did not take into consideration in reaching the figure of $153,979.48 as the value of the merchandise involved in the fire, since these transactions had a bearing upon the accuracy of the method employed by him as an accountant. Furthermore, this figure was subsequently incorporated in the sworn proofs of loss filed with the defendants, and it was certainly material for defendants to prove that this sworn claim was inaccurate. Whether it was fraudulent was a question for the jury to determine in the light of all the evidence.

Point IV.

The sole ground of appeal involved under this point questions the soundness of defendants' second request charged by the trial court (p. 327).

But appellants' argument is based largely on the failure of the trial court to charge plaintiffs' tenth request to charge, set forth at the bottom of page 40 and top of page 41 of their brief. The trial judge did refuse to charge this request on the ground that it had been covered elsewhere in the charge (p. 332), but this refusal to charge has not been made a ground of appeal, and appellants cannot, therefore, under this point go beyond the validity of defendants' second request to charge, which is alone involved in the 29th ground of appeal.

This portion of the charge is understandable and legally justifiable when read together with the part of the charge which precedes it. The court first instructed the jury as follows (p. 326):

> "This is a suit against several fire insurance companies on policies issued by them to the Specialty Handle Manufacturing Company. The defendant insurance companies contend that the Specialty Handle Manufacturing Company violated the provision of the policy reading as follows: 'This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.' If you find as a fact that the Specialty Handle Manufacturing Company submitted to the defendant insurance companies or their representatives any statements, schedules, inventories, proofs of loss, books of account, checks, or other documents, or that the officers, and in particular the treasurer of said company, made any statements to the insurance companies or their representatives which were untrue and if you find that these

> statements were made or these documents were submitted with intent to cheat and defraud the defendant insurance companies and to obtain from them the payment of a sum which the companies would not have been required to pay if truthful and correct statements and documents had been submitted, you will find that the Specialty Handle Manufacturing Company has violated the provision of the policies which I have just quoted and your verdict will necessarily be for the defendants, even though the Specialty Handle Manufacturing Company may have suffered a loss in a lesser amount than it represented to the insurance companies. Fraud and false swearing as to any part of the assured's claim voids the entire policy, even though the amount of the loss of goods in sight be admitted as between the parties."

No complaint is urged against this portion of the charge. It is to this instruction as well as the one quoted on page 41 of appellants' brief that the trial court must have referred when it stated that plaintiffs' tenth request had been covered.

Immediately following defendants' first request (p. 326), which instructed the jury what was meant by fraud and false swearing, and what facts would constitute fraud and false swearing, the court charged the jury that (S. C., 327, #2):

> "2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers but merely to promote its own interest in evading Federal income taxes."

Appellant complains that this instruction was erroneous and prejudicial because the court should have stated that the fraudulent entries in the

books must have been made with intent to cheat and defraud the insurance companies.

But was such reiteration necessary? Charges 1, 2, and 3 were given as one. They carried one continuous thought. In Charge 1 the court defined fraud and false swearing. Was it necessary to explain that over again in charge 2? It was sufficient for the trial judge to say what he did say in effect, "I have just told you what fraud and false swearing is. Now, it is no justification to the charge of fraud and false swearing for the assured to say that it did not mean thereby to prejudice the insurers, but merely to promote its own interest in evading Federal Income Taxes". Must a court repeat over and over again principles of law already fully expounded and explained? We cannot assume that a jury is incapable of remembering the words just spoken to it, and incapable of continued attention. Charges 1, 2 and 3 all expressed one idea which the jury could not have misunderstood. Charge 1 said "This is fraud and false swearing". Charge 2 said "To fraud and false swearing it is no excuse to say that it was meant for another". Charge 3 continued the thought saying (p. 327):

> "Nor is it any defense to the charge of fraud and false swearing and misrepresentation of material facts under the clause of the policy I have just quoted for the assured to say that after the fraud and false swearing has been detected by the defendant insurance companies through an examination of the books and records of the assured made by the public accountants they have withdrawn the fraudulent items in their accounts and the fraudulent statements and representations made by the assured to the defendant insurance companies."

The objection urged is invalid, and was in the charge as given, fully, explicitly and unambigu-

ously overcome, with close application to the facts as proven at the trial. But the court went even farther and charged that (p. 329):

> "The mere proof of facts that the books were improperly or falsely kept is not sufficient to sustain this defense. We are not concerned with any question of the defrauding of the United States Government. That is beside the case; whether they defrauded the government or not is no concern of ours. We are dealing with the question whether this provision of the policy has been violated. Misstatement of the facts or over-valuation of goods on hand is not sufficient to sustain this defense. The fraud or false swearing must be as to a fact or circumstance and must be material as to the rights and liability of the defendant companies; they must be wilful and made with intent to misrepresent."

And further charged (p. 332) plaintiffs' 9th request (p. 334) that:

> "There was no obligation upon the part of the Specialty Handle Manufacturing Company to keep correct books of account so far as its relations with the insurance companies are concerned."

But appellants contend also they were injured by the refusal to charge their tenth request because "plaintiffs were entitled to a clear and precise instruction to the jury, in effect, that they should disregard all proof of fictitious or fraudulent items contained in the books, except insofar as these items might, in fact, have been used with intent to prejudice the insurance companies, which precise instructions were asked by the tenth request of plaintiffs * * *" (Appellants' Brief, bottom p. 41, top p. 42).

Assuming, without admitting, that the charge as given was not sufficiently specific on this point,

and that plaintiffs' tenth request to charge is more specific and was not adequately covered by the court, the failure to charge this tenth request is not made a ground of appeal and the argument on this score must fail. Certainly appellants cannot say that error was committed because the court gave the jury an instruction which is sound in itself, but which would have been clearer had it been made more specific by charging another requested instruction which is not involved on this appeal.

Moreover, as demonstrated elsewhere in this argument, it was proved at the trial that the fraudulent books were submitted to the companies with no explanation of the fraudulent items, and that some of the explanations given when they were discovered were contradictory and false. Accordingly, plaintiffs clearly were *not* entitled to a charge that the jury should disregard *any* fraudulent items contained in the books. Under the facts as proven at the trial such a charge would have been highly prejudicial to the defendants, and erroneous.

Point V.

With the matters complained of in the 16th, 17th, 18th, 19th, 20th, 28th, 29th and 32nd grounds of appeal, appellants have built up an argument in this fashion: defendants made Garfinkel their own witness for the sole purpose of impeaching him with the admissions he had made in the examination under oath, to show the jury that Garfinkel was lying on the stand; defendants then induced the Court to give charges 1 and 5 which told the jury that false swearing *at the trial* by the assured is such fraud and false swearing as avoids the policy; this charge was erroneous and preju-

dicial; and even if this does not constitute reversible error, Garfinkel's testimony was not admissible against the plaintiff Public National Bank, assignees of the policies, and hence should not have been received. That this argument is without merit will appear from a separate consideration of the points urged by appellant.

1. Appellants contend that defendants' sole purpose in calling Garfinkel to the stand was to impeach him with his previous examination under oath. Such a position presupposes that defendant knew when it called Garfinkel that he would lie—that his testimony would contradict his statements in the examination under oath. Garfinkel was appellant's own witness (S. C., 75, *et seq.*); he was Secretary and Treasurer of the assured corporation (S. C., 75); he owned 1100 of the 1900 shares of its capital stock (S. C., 83); the assured corporation was a party plaintiff and is a party appellant. Garfinkel's interests are appellants' interests, and yet appellants urge that Garfinkel was relied upon by the defendants to lie upon the witness stand. The absurdity of the contention is its own refutation. Defendants called Garfinkel not to lie, but to tell the truth; not to contradict his statements in the examination under oath, but to repeat them.

In his examination under oath Garfinkel had revealed that for several years he had drawn checks for his personal use which had been charged to purchases of merchandise, or to labor, on the books of the assured corporation. Some of these checks had been drawn only a few weeks before the fire. The effect of this was to swell the book inventory beyond the actual physical inventory. Proof of the wilful submission of such entries to defendants was direct proof of fraud and false swearing within the terms of the policy. Mr. Woods, the accountant, called by the defendants,

had shown that the books bore entries apparently fictitious. It was then incumbent upon defendant to show that the entries were in fact fraudulent, that they were made with the knowledge of the fiscal officers of the assured, and that with such knowledge, the fiscal officers of the assured had submitted the books to the defendants. To prove these facts, defendants called Garfinkel to repeat to the court and jury what he had stated in his examination under oath. The very first question asked of him shows that that was defendants' object (p. 291):

> "Q. Mr. Garfinkel, you knew, did you not, that in the period before the fire there were large amounts withdrawn from the deposits in the banks of your company by you, and those deposits charged to merchandise? A. I didn't.
>
> "Q. Or that there were items charged to payroll or labor which were withdrawn by you? A. I didn't."

Appellant itself states that "it is not claimed that the answers given by this witness on the so-called examination under the terms of the policies were false. On the contrary, the proofs of defendants show that Garfinkel did in fact withdraw moneys which were used for his own purposes, the charges being made to merchandise or labor" (brief, pp. 47, 48), and that "the statements he had made on the examinations under oath were admissions of fraud on the books and were in favor of the position taken on the trial that the books were fraudulent" (p. 54). Obviously then, it was part of defendant's case to have Garfinkel *repeat* those statements. It would have been curious indeed if defendant had called the assured to *repudiate* the damaging admissions he had previously made.

Garfinkel's repudiation was not expected by defendants, as appellants contend, but was wholly unexpected and took defendants completely by surprise. It was to neutralize the effect of these denials and to compel Garfinkel to speak the truth, that defendants then confronted him with his statements in the examination under oath. If what is accomplished is proof of what was intended we have that proof in appellants' admission in their brief (p. 57) that:

> "Taking the examination under oath *as a whole,* it is clear that the witness' statements made upon the examination were precisely the same as the statements he made upon the trial."

So we see that defendants did not call Garfinkel to lie, but to tell the truth; not to repudiate the statements made under oath, but to confirm them. When he *did* lie, he was contradicted to bring out the truth. Appellants concede that contradiction for this purpose is proper, but contend that the questions excepted to did NOT contradict but impeached, defendants' own witness.

In *Lenz* v. *Public Service Railway Co.,* 98 L. 849 at 851, this court said:

> "Impeachment, as heretofore defined by this court, is an attack upon a witness' general reputation for truth and veracity, and is not, strictly speaking, the effect which is produced upon the credibility of his testimony by proof of contradictory statements made by him upon a matter in issue or relevant thereto. *Fox* v. *Forty-four Cigar Co.,* 90 N. J. L. 483, 488."

That there was no attempt to impeach the witness is evident from the testimony itself, especially pages 291-299.

Briefly summarizing this testimony, it appears that Garfinkel first stated he did not know of large amounts drawn for his own use and charged to payroll or labor; then it was shown by his admission in the examination under oath, that he had drawn out large amounts for his own use to purchase real estate, that he had drawn a check to the order of I. Freedman for $1,500 (Exhibit D-8) as payment for a fictitious purchase and had endorsed it, pocketing the money, that the account of Kasnowitz & Brother was used to disguise as purchases any such withdrawals and that Garfinkel received the proceeds of all these transactions and knew of the fraudulent entries by which they were concealed. Clearly, then, we have here proper contradiction for a proper purpose and not impeachment.

2. At this point we will consider the 20th ground of appeal. Garfinkel was asked (p. 299):

> "Were you asked to produce the income tax returns of the corporation in the examination under oath? A. I don't recall it.
>
> Q. Did you refuse to produce them? A. It was up to my counsel.
>
> Q. I ask you if this question was asked you in the examination under oath (page 76): 'Question: Weren't you to get some income taxes for me or take that under advisement? Mr. Newman: No, but I am not prepared to say we will give you that. I wouldn't say you could use those. You do not represent the government.' Did you produce your income tax returns?"

After further examination, Garfinkel was asked the following question (p. 301):

> "Q. And now you remember you refused to produce your income tax returns and Federal Capital Stock Tax Returns?"
>
> The answer was, "Yes, sir" (p. 301).

Appellants contend that it was wholly immaterial whether or not the assured refused to submit the income tax returns, and therefore it was harmful error to permit the question objected to.

Was the question immaterial? The assured had submitted books which on their face showed a loss of about $81,000, yet claimed a loss of over $153,000. The books contained many fictitious items which made even $81,000 appear too high. To explain those fictitious items, and to show why the books showed a smaller loss than was claimed, the assured told the defendant, and the court and jury that there were many other fictitious items in the books, and that the whole was a scheme to defraud the government of taxes.

A comparison of the tax returns with the books submitted might show one of two things—either that the books coincided with the returns, or that the books were higher than the returns. If they coincided, it would confirm the assured's explanation. If the books were higher, it would show that the book figures were not an understatement of the assured's condition. Certainly an examination of the tax returns was material on the correctness of assured's explanation concerning the books, and it was equally material for the jury to know that the assured had refused to submit its tax returns. The same story was being told to the jury that had been told to defendants—that the books were improperly kept to defraud the government—and the jury had the right to know that the assured had refused to back up its story with evidence within its control.

3. Appellants contend that Charges 1 and 5 caused the jury to believe that false swearing at the trial avoided the policy.

At this point the attention of the Court is respectfully directed to the fact that no exception

was taken to any of the charges except in terms so vague and general as to be nugatory. After the Court had charged the jury, counsel for appellants declared (S. C., 332):

> "Plaintiffs' counsel prays an exception to the Court's charging the various requests of the defendant and to each request specifically.
>
> Exception noted as ground of appeal.
>
> Plaintiffs' counsel prays an exception to that portion of the Court's charge wherein the Court premitted the jury to consider as evidence of the amount of loss the figures used by Mr. Wood, which were concededly based upon false books and were therefore completely incorrect.
>
> Exception noted as ground of appeal."

These were the *only* exceptions taken to the Court's long charge. The specific exception taken was to a portion of Charge 7 only, but is not made a ground of appeal. That this specific exception was taken shows that counsel for the appellant was well aware of the proper manner in which to direct the attention of the Court to matters complained of. The fact that a similarly specific exception was not taken to the other portions of the charge shows that either appellant did not really consider the charges objectionable, or that appellant chose to gamble on the jury's verdict, relying on surprising the defendants in this Court with "what the ingenuity of counsel can, at leisure, work out the instructions to mean".

But Charges 1 and 5 did not permit the jury to infer that false swearing at the trial avoided the policy. Charge 1 (pp. 326, 27), which has been heretofore quoted, specifically told the jury that the false and fraudulent statements must have been made *to the companies or their representatives*. Certainly those words forbid any inference that false swearing on the stand avoided the

policy. The lies on the stand were not to the companies or to their representatives, but to the Court and jury.

But then Charge 5 is objected to as permitting the inference. This charge reads as follows (p. 328):

> "5. The contract stated in the insurance policies is an indivisible one and, therefore, if you find any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the insurance companies, the entire policy is void and the plaintiff cannot recover thereon, even though there be an admitted loss of goods in sight."

As we have seen, Charge 1 defined fraud and false swearing, making one element of it misrepresentation to the companies or their representatives. Charge 5 simply told the jury that if it found that which the court had defined as fraud and false swearing, the policy was entirely avoided. Charges 1 and 5 should be read together. The intervening Charges 2, 3 and 4 were all on the same subject of fraud and false swearing, and all five charges carry one continuing thought.

We see, therefore, that the charge is correct, and does not permit the inference that fraud and false swearing at the trial avoids the policy, but forbids it. It is significant that at the trial appellants did not see in the charge given any of the prejudicial inferences and connotations which are now urged. They did not ask the court to instruct the jury that false swearing at the trial was not such false swearing as avoided the policy. They did not ask the court to modify the charges given. But appellants were alert to narrow the field of proof of fraud and false swearing. For example, their eleventh request to charge was "No defense of fraud can be predicated upon the statements given in August, 1924, to the rating bureau for the

purpose of obtaining a rate" (p. 332). Appellants, alert and anxious as they were to narrow the field of proof of fraud and false swearing, made no request to charge the jury that Garfinkel's false swearing on the stand would not avoid the policy.

The charge as given, is a correct statement of the law. If appellants desired a specific, cautionary instruction, they should have asked for it, and having failed to do so, cannot now complain. This court in *Camden and Atlantic R. R. Co.* v. *Williams,* 61 L. 646, 649 an analagous case, declared:

> "That the judge in his charge failed to refer to and explain the legitimate use of the table, affords no ground of complaint in the absence of any request for cautionary instruction and of any exception in that regard." *Mead* v. *State,* 24 Vroom 601.

In the case of *Blumfeld* v. *Hudson and Manhattan Railroad Company,* 89 L. 580, 581, Justice Garrison, speaking for this court, said:

> "The language, therefore, of the charge was a correct statement of the law. It does not follow that the plaintiff below may not have been entitled by a proper request to have the jury instructed that in the case before it reasonable care was a high degree of care. It may be that the denial of such a request would have been error.
>
> That question, however, is not before us; there was no such denial and there was no such request."

Justice Trenchard, speaking for this court in *Lange* v. *N. Y., etc. R. R. Co.,* 89 L. 604, 606, lays down the rule that:

> "If counsel conceived that a pertinent proposition of law had been omitted they should have requested the desired instruction (Newark Railway *v.* Block, 55 L. 605)."

and Justice Kalisch, delivering the opinion of this court in *Thibodeau* v. *Hamley,* 95 L. 180, stated that:

> "It seems hardly necessary to say that an exception taken to what a judge says in his charge to a jury, either is for the purpose of challenging the accuracy of a legal principle laid down by him or the accuracy of his statement of certain facts. We have not been shown in what respect the court erred in stating that there was no statute in this state requiring jitney owners to provide guards for their jitney windows. We perceive no error in that statement. If appellants' counsel desired a more specific instruction, then the duty devolved upon him to present to the court a request to charge embodying the legal proposition which counsel deemed necessary and applicable to properly answer the jury's inquiry, and if the request was refused to have taken an exception to such refusal. * * * "

In the recent case of *Kemp* v. *Bright,* 6 Adv. Rep. 1035, 141 Atl. 796, 798, this court, through Chief Justice Gummere, disposed of a similar contention by saying:

> "If counsel had desired the instruction to be enlarged or the effect of the statute as applicable to the subject matter of the litigation to be explained to the jury, he should have submitted to the court a request for the same."

And as was said by this court in *Lenz* v. *Public Service Railway Co.,* 98 N. J. L. 849, 852, and in *Kargman* v. *Carlo,* 85 N. J. L. 632, 638:

> "So long as the law is stated correctly and intelligently, the ultimate test of the soundness of instructions is, not what the ingenuity of counsel can, at leisure, work out the instructions to mean, but how and in what sense, under the evidence before them and circumstances of the trial, would ordinary men and jurors understand the instructions as a whole."

4. We contend that the charge as given permitted no inference that false testimony at the trial avoided the policies. But assuming that it did, it would still be correct.

In *Columbian Insurance Co.* v. *Modern Laundry Co.,* 277 Fed. 353, 360, the court held:

> "As this case must be tried again, attention is called to the rule that, where the insured knowingly and wilfully makes a false statement of or regarding a material fact in its proof of loss, *or in its testimony regarding the value of the property insured,* or the loss or damage thereto by fire, the intention to deceive the insurer is necessarily implied as the natural consequence of such act. Claflin *v.* Commonwealth Insurance Co., 110 U. S. 81, 95, 3 Sup. Ct.; Fidelity & Casualty Co. *v.* Bank of Timmonsville, 139 Fed. 101, 103, 71 C. C. A. 299; Mutual Life Ins. Co. *v.* Hurni Packing Co., 260 Fed. 641, 646, 171 C. C. A. 405."

In *Pottle* v. *L. L. & G.,* 85 Atl. 1058, *Maine 1913*:

> "No recovery could be had under a fire insurance policy where the insured parties, in their proofs of loss and *in their testimony, in an action thereon,* falsely and fraudulently misstated the quantity and value of the goods destroyed."

In *Follett* v. *Standard Fire,* 92 Atl. 956 (*N. H. 1915*):

> "The instruction that false swearing at the trial would be an attempt to defraud within the meaning of the policy should have been given, with the modification before indicated as to what constitutes a fraudulent intent. No reason is perceived why a fraud might not be perpetrated in this way as well as in

any of the preliminary steps taken before the cause came to a trial. In the language of the contract, it would be an 'attempt to defraud the company * * * after the loss.' ''

5. We come now to the last point raised by appellants under this head—to wit, that since the assured had assigned its rights under the policy to the appellant, Public National Bank, no acts or statements made by the assured thereafter could be binding upon them. No authority is cited by appellant to support this contention. The rights of the assignee were not independent, but derivative. They rose no higher than the rights of the assignor, and the rights of the assignor were defined and limited by the terms of the policy. One of those terms was that fraud and false swearing by the assured avoided the policy. A contract of insurance is a personal contract, and Specialty Handle Manufacturing Co. was the assured after as well as before the assignment. *Rose* v. *Hartford Fire Ins. Co.,* 58 N. J. L. 34. Proof of loss, submission to examination under oath, etc., were to be made by the assured, not by his assignees, and the assignee is bound by the assignor's breach of the conditions upon which his rights depend. See *Borefant* v. *American Fire,* 76 Mich. 653; *Buffalo Works* v. *Sun Mutual Ins. Co.,* 17 N. Y. 401; 26 C. J. "Fire Insurance", 273, note 84, and cases cited.

The assured Specialty Handle was a party plaintiff. The assignment did not take place until May 18, 1925, more than two months after the fire, and after the false books and schedules had been submitted by Specialty Handle to defendants. Accordingly the assignee took subject to existing violations of the policies by the assured.

Furthermore, the court did charge the jury as follows (p. 329):

"I will add to that last provision, however, that the bank is not bound by any representation or false swearing or fraud which might have occurred after the assignment was made to them."

It is respectfully submitted, therefore, that the several grounds of appeal argued under this point do not involve any prejudicial errors on the part of the trial court.

Point VI.

Appellants contend they were harmed by the sixth charge, which was as follows:

"6. The policies of insurance in this suit are in the standard form prescribed by the Legislature of New Jersey, which has also prescribed that no other or different form shall be used. The contract of insurance therefore being one prescribed by the Legislature is to be construed by you according to the true and natural meaning of the words of the policy as if it were a contract between two individuals or two ordinary corporations, and it is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the Court and not to modify them either in favor of the plaintiff or of the defendant insurance companies."

The main objection to the charge is that by using the word "construed", the court abandoned its province to the jury, and permitted the jury to "construe" the contract.

Since the veriest abecedarian in the law knows that the construction of a contract is for the court, it is evident that the use of the term "construe" was a slip, an oversight. What was intended was "regarded" or "considered". Again

we point out that appellants did not direct the court's attention to this inappropriate use of a single word. Had appellants done so, it would have been instantly corrected. This court disapproved such procedure in *Kargman* v. *Carlo,* 85 N. J. L. 632, when it said (p. 638):

> "What we have said with respect to the necessity of objections to rulings relating to evidence applies here likewise. If counsel notices a slip in judicial language he should call the judge's attention to it. It is solely upon the assumption that this has been done that the right of review rests; appellate courts uniformly refusing to give to an unsuccessful litigant the benefit of a trial error that he himself could have had corrected at the trial for the mere asking. *Benz* v. *Central Railroad of New Jersey, supra.*"

And on page 635:

> "The reason for this rule may be gathered from the remarks of Mr. Justice Garrison in *Benz* v. *Central Railroad of New Jersey,* 53 Vroom 197. It is not based on technical or captious grounds, but, on the contrary, is essential to the administration of justice with due regard to private interests and the policy against needless litigation. Common sense and common fairness alike require that if counsel thinks the trial judge has fallen into legal error he should call attention to it at a time and in such manner that the judge may know that his ruling is to be made a ground of appeal, and thereby afford an opportunity to the judge to revise his ruling and to opposing counsel to modify his position so as to save error. Where at the trial the attention of the judge is not called to an alleged error the abiding presumption will be that the correction of the error at the trial was not desired by the party who complains of it on appeal."

But even as given, the charge does not constitute reversible error.

It is axiomatic that a charge is to be considered as a whole (*McLaughlin* v. *Damboldt,* 100 N. J. L. 127, 125 At. 314; *Loiseaux Lumber Co.* v. *O'Reilly,* 6 Adv. Rep. 892, 141 At. 763; *Brown* v. *Spence,* 79 N. J. L. 452). The language of the court is to be regarded as it was understood by the jurors—not technically, but in the lay sense. *Lenz* v. *Public Service,* 98 N. J. L. 849; *Kargman* v. *Carlo,* 85 N. J. L. 638.

"Construed" technically means "interpreted" or "explained". Non-technically it often means "regarded" or "considered" or "understood" or "taken to mean". For example, in *Churchill* v. *Pacific Importing Co.,* 31 Pac. 560, 96 Calif. 490, the Court said:

> "Appellant's contention that the word 'construed' as used in section 5 means simply to 'interpret', to 'explain', to 'translate' or to 'show the meaning of' cannot be sustained. As there used, the legislature clearly intended it to mean 'regarded' or 'considered'.

See also the case of *Delworth* v. *Schuylkill Land Co.,* 69 Atl. 47 (Pennsylvania, 1908).

The important question is, how did the jury understand the words? "The language of this excerpt and its effect upon the mind of the jury, must be considered with reference to the charge *in toto.*" (*Brown* v. *Spence,* 79 N. J. L. 452-453; *Lenz* v. *Public Service Railway Co.,* 98 N. J. L. 849, and "in the light of the entire charge", *Kargman* v. *Carlo,* 75 N. J. L. 638.)

Examining the charge as a whole, we see that the court charged the jury (p. 320):

> "Now, as to your duties, gentlemen. You are here to decide facts. You are the judges of the facts in this case. My duty is to charge

you and tell you what the rules of law are which should govern you in determining the case and in arriving at a verdict."

Then the trial judge gave the jury an exhaustive charge on the various elements entering into the case, incorporating either his own statements of legal principles or referring to the appropriate requests to charge submitted by plaintiffs and defendants. It is clear from a reading of the entire charge that the court instructed the jury what the relevant provisions of the insurance contract meant, and that the jury could not have failed to understand that their duty was to apply to the evidence the construction of the fraud and false swearing provision as enunciated by the court. It is especially significant that the portion of the charge complained of immediately follows charges 1 to 5 in which the court construed for the jury the pertinent language of the policy (pp. 326, l. 15 to p. 328, l. 32).

And in Charges 2 and 3 the court said:

"2. It is no excuse or justification to the charge of fraud and false swearing, in violation of the clause of the insurance policies which I have just read, for the assured to say that it did not mean thereby to prejudice the insurers but merely to promote its own interest in evading Federal income taxes.

3. Nor is it any defense to the charge of fraud and false swearing and misrepresentation of material facts under the clause of the policy I have just quoted for the assured to say that after the fraud and alse swearing has been detected by the defendant insurance companies through an examination of the books and records of the assured made by the public accountants they have withdrawn the fraudulent items in their accounts and the fraudulent statements and representations made by the assured to the defendant insurance companies."

And finally in Charge 5 the court declared:

"5. The contract stated in the insurance policies is an indivisible one and, therefore, if you find any fraud or false swearing or misrepresentation of a material fact with intent to cheat and defraud the insurance companies, the entire policy is void and the plaintiff cannot recover thereon, even though there be an admitted loss of goods in sight."

Moreover, within fifteen lines of the instruction objected to the court again construed the fraud and false swearing provision to make it clear to the jury (p. 329, ll. 11-25):

"The mere proof of facts that the books were improperly or falsely kept is not sufficient to sustain this defense. We are not concerned with any question of the defrauding of the United States Government. That is beside the case; whether they defrauded the government or not is no concern of ours. We are dealing with the question whether this provision of the policy has been violated. Misstatement of the facts or over-valuation of goods on hand is not sufficient to sustain this defense. The fraud or false swearing must be as to a fact or circumstance and must be material as to the rights and liability of the defendant companies; they must be wilful and made with intent to misrepresent."

And in the latter part of the charge complained of, the court said, "*It is therefore incumbent upon you to apply the interpretation of the policy provisions according to the instructions of the court and not to modify them.*" These latter words certainly cured any ambiguity which might have arisen from the use three lines previously in the same sentence of the phrase "construed by you".

We see, then, that the policy was carefully and thoroughly interpreted and explained by the court

to the jury. When the court said "the contract is to be construed", it could have meant only *one* thing to the jury, i. e., that the jury were to *regard* the contract fairly, favoring neither one side nor the other, and applying the court's interpretation of the policy provisions.

Appellants contend that the fact that the remainder of the charge rectifies the unprecise terminology is insufficient without an express withdrawal of the offending word. This court in the recent case of *Loiseaux Lumber Co.* v. *O'Reilly,* 6 Adv. Rep. 892, 141 Atl. 763, 764, held that:

> "Where the judge charges the jury incorrectly on a particular question involved and later charges correctly on that same question without withdrawing the incorrect charge, there is error; but where as here the question on which the court charged must necessarily be read in connection with other matter then when the two deliverances are read together and they, thus read, correctly state the law there is no error."

Interpreting this charge most strongly in appellants' favor, the most that may be said against it is that it instructed the jury that the contract must be construed by them as it had been interpreted to them by the court. The jurors could not have been misled into believing that the interpretation, the explanation, the translation of the contract was for them.

Appellants further contend that the court erred in failing to charge the jury that conditions contained in the policy which create forfeiture are to be construed most strongly against the insurers. A sufficient answer to this is that no such charge was requested by the appellants. The charge as given by the court is correct. If appellants desired a more specific charge, or felt that a pertinent proposition of law was omitted, they should have asked for it. (*Camden R. R.* v. *Williams,* 61 L. 646; *Blumenfeld* v. *Hudson & Manhattan R. R.,* 89 L. 580; *Lange* v. *N. Y. etc.,* 89 L. 604.)

The decision in the case of *Precipio* v. *Insurance Co. of Pennsylvania,* 5 Adv. Rep. 1065, 137 Atl. 551 does not make this charge wrong. When insurance policies were drawn by the companies, doubtful language was construed *against* the companies and in favor of the assured. That is, when the *words* used by the companies bore two or more meanings, one of which would uphold the policy, while the other defeated it, that meaning which upheld the policy was adopted by the court. Such construction is well settled in contracts generally—indeed it is axiomatic—"*Verba chartarum fortius accipiuntar contra proferentum.*" That maxim is simply that the *meaning* of the words of a contract will be most strongly construed against the party choosing them.

When the standard form of policy was enacted by the legislature, it was no longer true that the words were chosen by the insurer. The *meaning* of the words used was therefore no longer construed against the insurer, and the *ordinary, natural meaning* of the words was sought and applied by the courts.

The contract of insurance then stood on the same footing as any other contract. That is the result of the decisions in the cases of *Mick* v. *Royal Assurance Co.,* 87 L. 607; *Del Guidici* v. *Importers & Exporters Insurance Co.,* 98 L. 435 and *Nelson* v. *Traders Insurance Co.,* 181 N. Y. 472. As is stated in the Precipio opinion, the Mick and Del Guidici cases were based upon the Nelson case, in which the New York Court of Appeals said (p. 474):

> "This was a contract, which, like any other contract, should be enforced according to its plain provisions. Its language is clear and

unambiguous, and the provision, or condition, in question, cannot be construed otherwise than it has been, without twisting the words, and thus rendering nugatory a limitation of the hazard, which it was not improper, nor unfair, for the insurer to impose. It was for the purpose of having contracts of insurance read clearly and intelligibly to the ordinary understanding of men that the Legislature, in 1886, provided for an uniform, or standard, policy of insurance. Insurers issuing policies were compelled to use one form of contract, whose meaning should not be obscured by unusual clauses, nor concealed in a mass of verbiage, and whose provisions, being plain, could result in no injustice in their enforcement. When such is the contract, the courts should not refuse to enforce the forfeitures, or limitations, which the parties are deemed to have agreed upon."

This statement of the law was unqualifiedly approved by this court in the Precipio case by the observation that "this fully expresses the law upon the subject in general, and is in accord with our views upon it" (p. 550). The portion of the charge objected to is in conformity with the principle thus adopted, and was, therefore, properly charged.

But counsel for appellants urges that the charge in question is wrong because it did not also incorporate the statement in the Precipio opinion that the standard policy "neither repeals the law that such policies are to be liberally construed to uphold the contract between the parties, nor that conditions contained in them which create forfeiture are to be construed most strongly against the insurers." There are several answers to this contention:

1. This court in the Precipio case merely states that the principle in question has not been

repealed by the standard policy, but does not discuss the circumstances under which this principle is applicable. The court could not have meant that it was applicable to all provisions of the standard policy irrespective of whether they were clear or ambiguous. In fact, the court indicated the line of demarcation when it approved the language of the Nelson case that where provisions are plain, "the courts should not refuse to enforce the forfeitures, or limitations, which the parties are deemed to have agreed upon." The inference to be drawn from the Precipio case is that only where an ambiguity enters into a forfeiture provision does the principle of construction in favor of upholding the contract and against forfeiture enter into consideration.

Such was the law of this State even prior to the adoption of the standard form of fire insurance policy. In *Martin* v. *Insurance Company of North America,* 57 N. J. L. 623, at 624 (Beasley, C. J., Van Syckel, Garrision, and Lippincott, JJ., sitting), it was held in an opinion by Justice Garrison:

> "A court of law deals with the written contracts of parties as the conclusive evidence of their agreements. *If the language employed be free from ambiguity, the writing will be enforced in accordance with its terms.*"

Similarly, in *Kupfersmith* v. *Delaware Ins. Co.,* 84 N. J. L. 271, at 275, Chief Justice Gummere, delivering the unanimous opinion of this court, said:

> "The law will not make a better contract for parties than they themselves have seen fit to enter into, or alter it for the benefit of one party, and to the detriment of another. The judicial function of a court of law is to enforce a contract as it is written."

This quotation from the *Kupfersmith* case was followed by this court in *Smith* v. *Fidelity and Deposit Company,* 98 N. J. L. 534, dealing with a policy which was not in the standard form. Justice Black in rendering the court's opinion, pointed out (p. 536), that it is in the event of an ambiguity in the terms of a policy that a meaning should be given which is most favorable to the assured. In the absence of such ambiguity, it is the function of the court to enforce a contract as it is written.

Another case which involved an insurance policy not in the prescribed standard form is *Bew* v. *Travelers Insurance Company,* 95 N. J. L. 533, at 534, in which the Court of Errors and Appeals unanimously adopted the opinion of Donges, J., which stated in part:

> "It is well settled that courts are averse to forfeitures, and *in case of doubt or ambiguity* will adopt that construction which will defeat it, if such construction is reasonably deduceable from the words or terms used. *Hampton* v. *Hartford Fire Insurance Company,* 65 N. J. L. 265."

The Precipio case was decided at the May term, 1927. At the October term, 1927, this Court handed down a decision in *Perry* v. *North American Accident Insurance Company,* 5 N. J. L. Adv. Rep. 1608.

In the latter case, this Court resolved the question raised in the minds of counsel for appellants in this case by the Precipio decision, Justice Katzenbach stating the pertinent principle as follows (p. 1611):

> "There is no ambiguity in the language of the policy. The principle of law that when an ambiguity exists the policy should be liberally construed against the company and in favor of the insured has no application. The ordinary and usual meaning of the words must be sought and given to them. Where the words are used to express the meaning of the party using them the court will not adopt a strained and improbable construction. *Bew* v. *Travelers' Insurance Co.,* 95 N. J. L. 533."

Similarly, in the case at bar there is no ambiguity in the fraud and false swearing provisions of the standard policy upon which the defense was based. Accordingly, there was no room for construction, and the trial court was right in instructing the jury to apply these provisions according to the instructions of the Court, without modifying them in favor of either party.

2. It would have been erroneous for the trial court to have charged the jury in this case in the language of the Precipio case which counsel for appellants urge was improperly disregarded. The construction of a written instrument such as a policy of insurance is a matter for the Court, unless an ambiguity exists which requires evidence concerning the intention of the parties, when the question becomes one for the jury. No such ambiguity existed in the fraud and false swearing clause of the policy, and consequently there was no jury question which would have justified a charge that "policies are to be liberally construed to uphold the contract between the parties, and conditions contained in them which create forfeiture are to be construed most strongly against the insurers". Taking this language of the Precipio case in the light most favorable to the appellants, the most that can be said is that the trial court itself was obliged to take this principle into consideration in explaining to the jury the legal meaning of the fraud and false swearing clause. In other words, that the trial judge in instructing

the jury what the evidence must show to sustain the defense, had to consider that since the provision in question was one creating a forfeiture it should be construed most strongly against the insurers in charging the jury what constituted sufficient legal proof of fraud and false swearing.

An examination of the charge discloses that the trial court did charge the accepted legal requisites of fraud and false swearing. Appellants do not complain that the lower court deviated in its charge from the strict legal interpretation of fraud and false swearing, which was itself formulated by the courts in the light of the rule of liberal construction to uphold a contract and avoid forfeitures. What they now object to is that the court did not tell the jury that there is a rule of law to construe the policies so as to uphold the contracts and avoid forfeitures. Under the circumstances of this case, involving a single provision which is clear and unambiguous, such a charge would not have been legally justifiable, for the jury's task was merely to apply to the evidence without modification in favor of either side the principles of law enunciated by the court, which principles had been arrived at with due consideration paid to the rule against forfeitures. Appellants were not entitled to have the jury apprised in express words of a rule of law which had already entered into the court's exposition of the quality and quantum of proof necessary to sustain the defense under the unambiguous provision of the policy concerning fraud and false swearing. Had ambiguous language working a forfeiture been involved, such a charge would have been justified to aid the jury in determining the true meaning of the language.

3. Another answer to appellants' contention under this point is that no specific exception was

taken to the portion of the charge under consideration and no reasons directed against this charge were stated to the trial court with the consequence that the trial court had no opportunity to make any corrections it might have deemed necessary.

Furthermore, the charge as given is a correct statement of the law so far as it went, based on the line of cases referred to under this point. If counsel for appellants felt that they were entitled to an instruction based on the dictum from the Precipio decision (a dictum since the court ultimately disposed of that ground of appeal because it pointed out no error in the proceeding), they should have submitted a proper request to charge. The record, as it stands, contains no proper exception upon which to support appellants' argument under this point.

Conclusion.

Appellants in the conclusion of their brief state that the jury was naturally prejudiced against them because of the circumstances of this case, and that this fact accentuated the effect of the alleged errors of the trial court. Such a charge, incapable as it is of proof, does not deserve any consideration from this tribunal, especially where the Supreme Court, on a rule to show cause under which prejudice can be urged, has decided that "The verdict is supported fully by the evidence" (p. 428, ll. 18-25).

For the reasons urged under the several points of this brief the grounds of appeal relied upon by appellants do not disclose any prejudicial error, and the judgment under review should be affirmed, with costs

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