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NOTICE OF APPEAL.

(Filed July 26, 1930.)

IN CHANCERY OF NEW JERSEY.

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Between

THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his  
wife,

*Complainants,*  
and

THE STANDARD FIRE IN-  
SURANCE COMPANY, a  
corporation of New  
Jersey, and ATLAS AS-  
SURANCE COMPANY,  
LIMITED, of London,  
England,

*Defendants.*

10

On Bill, etc.  
Notice of Appeal.

20

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The plaintiffs, Theodore Olkowski and Hattie Olkowski, his wife, hereby appeal from the final decree made in this court, in the above cause, on April 4, 1930, by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Malcolm G. Buchanan, Vice-Chancellor, dismissing the bill of complaint, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 30

BENJAMIN CIERESZKO,  
*Solicitor for Complainants.*

2

*Notice of Appeal*

I conceive there is good cause for appeal in the above-entitled cause.

AUGUSTINE V. GRIBBIN,  
*Of Counsel with Complainants.*

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10

[ENDORSED]

Service of the within Notice is hereby acknowledged this 19th day of July, A. D. 1930.

Louis B. Levine,  
Solicitor of Defendants.

20

30

PETITION OF APPEAL.

(Filed August 11, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

Between

THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his  
wife,

*Complainants-Appellants,*  
and

THE STANDARD FIRE IN-  
SURANCE COMPANY, a  
corporation of New  
Jersey, and ATLAS AS-  
SURANCE COMPANY,  
LIMITED, of London,  
England,

*Defendants-Appellees.*

On Appeal from the  
Court of Chancery.  
Petition of Appeal. 20

*To the Honorable, the Court of Errors and Appeals,  
in the Last Resort in All Causes:* 30

The petition of Theodore Olkowski and Hattie Olkowski, his wife, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor,

Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 4, 1930, in a certain cause in said Court of Chancery wherein the said Theodore Olkowski and Hattie Olkowski, his wife, were complainants and the said The Standard Fire Insurance Company, a corporation of New Jersey, and Atlas Assurance Company, Limited, of London, England, were defendants, in this respect, to wit, that the said decree adjudges that the bill of complaint be dismissed.

10 And your petitioners appeal from the said decree of the Chancellor, upon the ground that the same is erroneous, for that the said bill of complaint should not have been dismissed and complainants were entitled to the relief prayed for in their bill of complaint.

20 Petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

BENJAMIN CIERESZKO,  
*Solicitor for Complainants-  
Appellants.*

AUGUSTINE V. GRIBBIN,  
*Of Counsel with Complain-  
ants-Appellants.*

PROOF OF SERVICE OF PETITION OF  
APPEAL.

(Filed August 27, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS. 10

Between

THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his  
wife,

*Complainants-Appellants,*  
and

THE STANDARD FIRE IN-  
SURANCE COMPANY, a  
corporation of New  
Jersey, and ATLAS AS-  
SURANCE COMPANY,  
LIMITED, of London,  
England,

*Defendants-Appellees.*

On Appeal from the  
Court of Chancery. 20  
Proof of Service of  
Petition of Appeal.

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

30

AUGUSTINE V. GRIBBIN, of full age, being duly  
sworn, according to law, upon his oath deposes and  
says:

1. On August 11, 1930, I served upon Louis Levine, one of the solicitors of the defendants-appellees, a certified copy of the petition of appeal filed in this cause on August 11, 1930, by delivering the same to him personally at his office in the Trenton Trust Building, Trenton, New Jersey.

AUGUSTINE V. GRIBBIN.

Sworn and subscribed to before me this 27th day  
10 of August, A. D. 1930.

FRANK J. BACKES,  
*Atty.-at-Law of N. J.*

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BILL OF COMPLAINT.

(Filed October 30, 1929.)

20

IN CHANCERY OF NEW JERSEY.

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*To the Honorable Edwin Robert Walker, Chancellor  
of the State of New Jersey:*

The complainants, Theodore Olkowski and Hattie Olkowski, of Trenton, New Jersey, respectfully show  
30 that:

1. On July 30, 1927, the Standard Fire Insurance Company of New Jersey entered into insurance contract with the complainant, Theodore Olkowski, policy #H-84425, standard form of New Jersey, for the term of three years from date thereof in the

sum of \$3,000, covering buildings at 196-198-200 Jefferson Street, in the City of Trenton, N. J.

2. On May 3, 1929, the Atlas Assurance Company, Limited, of London, England, entered into insurance contract with the complainant, Hattie Olkowski, by policy #922203, standard form of New Jersey, for the term of three years from date thereof in the sum of \$2,000, covering buildings at 196-198-200 Jefferson Street, in the City of Trenton, N. J. 10

3. On July 2, 1929, while both policy contracts were in force and a fire having occurred on that date and having destroyed a part of the buildings of the complainants covered by said policies, the said companies became liable to the complainants thereon in accordance with the terms thereof.

4. That the complainants filed proofs of loss with the said insurance companies and the said companies having disputed both sound value and loss. 20

5. That on August 20, 1929, an agreement for appraisal was entered into with both companies, as follows:

“This agreement by and between Theodore Olkowski and Hattie Olkowski of the first part, and the insurance company or companies whose names are signed hereto, each for itself and not jointly, of the second part:—WITNESSETH: 30  
that whereas the party of the first part claims to have sustained a loss by fire occurring on the 2nd day of July, 1929, to and upon the following described property, to wit:—On the two story frame building and additions thereto, occupied as store and dwelling situate nos. 196,

198 and 200 Jefferson Street, city of Trenton, New Jersey, and WHEREAS a disagreement has arisen between the parties hereto, as to the amount of the loss, and WHEREAS, it is provided by the policy (policies) of the second part, held by said party of the first part, that in the event of disagreement as to the amount of loss the same shall, as in said policy (policies) provided be ascertained by appraisers.

10

THEREFORE THIS AGREEMENT WITNESSETH; that in conformity to the terms and conditions of the policy (or policies) of the party (or parties) of the second part, B. F. Robinson of Newark, N. J. and Stanley Midura of Trenton, N. J. have been selected, and are hereby appointed appraisers, to estimate and appraise, in accordance with the terms and conditions of said policy (policies), the sound value of said property and amount of loss or damage directly caused by said fire to and upon the same.

20

The said appraisers shall first select competent and disinterested umpire, as provided in said policy (or Policies); the said two appraisers together shall then estimate and appraise the loss, in conformity to the conditions of said policy (or policies), stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss. Such loss or damage shall be ascertained or estimated according to the actual cash value of said property at the time of the occurrence of said fire, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace

30

the same with material of like kind and quality, but such appraisement does not in any respect waive any of the provisions or conditions of said policy (or policies) of insurance of any forfeiture thereof, or the proof of such loss and damage required by the policy (or policies) of insurance thereon.

Witness our hands in duplicate at Trenton N. J. this 20th day of August 1929.

Hattie Olkowska

Theodore Olkowski

10

Witness

William M. Crozer

Atlas Fire Insur. Co

by Wm. M. Crozer, Adjuster.

Standard Fire Ins. Co of N. J.

by Wm. M. Crozer, Adjuster

Witness: Margaret M Magee''

6. That thereafter, on the 22nd day of August, 1929, the said appraisers were duly sworn and signed a DECLARATION OF APPRAISERS, and selecting umpire in form as follows: 20

“We, the undersigned, hereby select and appoint Fred P. Parker to act as umpire to settle matters of difference that shall exist between us, if any, by reason of and in compliance with foregoing agreement and appointment.

Witness our hands this 22nd day of August, 1929.

B. F. Robinson.

Stanley Midura.”

30

7. That thereafter, on the 24th day of August, 1929, the said appraisers and umpire signed what purports to be an award in the form as follows:

“We, the undersigned, pursuant to the within appointment DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned us, agreeably to the foregoing stipulations and have appraised and determined and do hereby award as the sound value of said property on the second day of July, 1929, and the actual damage thereto by the fire on that day, following sums, to wit:

	sound value	loss and damage
10	1st Item As described \$3000	\$300
	Total Sound Value	
	and Total Loss and	
	Damage	\$3000                  \$300

Witness our hands this 24th day of August, 1929

B. F. Robinson ) Appraisers  
Stanley Midura )  
Fred R. Parker    Umpire”

20    8. That the said award was not a true and just award to fix the sound value of the buildings and loss, as the sound value of the building is \$5,000, and the loss is \$3,000; and that the signature of Stanley Midura, complainants' appraiser, was affixed under mistake of fact, taking the sum of \$3,000 for the loss instead of value of buildings, as it was in the purported award.

30    9. That the purported award is grossly inadequate; the suggested umpire by the companies' appraiser, was biased, did not give an opportunity to the complainants to show all damages to their property; and the umpire with the companies' appraiser did not take proper method of adjusting the loss, as trimmings, woodwork, beams and timber that

were more than one-half consumed by fire were not included in the estimation of loss.

10. That the complainants requested the said companies to surrender and cancel the alleged award dated August 24, 1929, attempting to fix sound value and loss to said buildings, as therein stated, and to have it re-submitted to new appraisers and umpire, to determine true value and loss. But the defendants refused.

10

Complainants are without adequate remedy in the courts of law, therefore pray:

1. That the Standard Fire Insurance Company, a corporation of New Jersey, and the Atlas Assurance Company, Limited, of London, England, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That both defendants be decreed to surrender up to the complainants the alleged award fixing value and loss or that it be decreed by this Court to be null and void.

20

3. That the matter in dispute be submitted to new appraisers and a new umpire to make a fair and just appraisal, and that previous appointment be declared null and void.

4. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in this cause.

30

BENJAMIN CIERESZKO,  
*Solicitor of Complainants.*  
JOSEPH D. KAPLAN,  
*Of Counsel with Complainants.*

## ANSWER.

(Filed November 27, 1929.)

## IN CHANCERY OF NEW JERSEY.

10	THEODORE OLKOWSKI and HATTIE OLKOWSKI, his wife,	}	On Bill. Answer.
	<i>Complainants,</i>		
	v.		
20	THE STANDARD FIRE INSUR- ANCE COMPANY, a cor- poration of New Jersey, and the ATLAS ASSUR- ANCE COMPANY, LIMITED, of London, England,	}	
	<i>Defendants.</i>		

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The answer of the defendants, the Standard Fire Insurance Company, a corporation of New Jersey, and the Atlas Assurance Company, Limited, of London, England.

30 These defendants, the Standard Fire Insurance Company, a corporation of New Jersey, and the Atlas Assurance Company, Limited, of London, England, answering the bill of complaint, says that:

1. Paragraphs 1 to 3, inclusive, are admitted.

2. Paragraph 4 is denied as to filing of proofs but admitted as to disputing sound value and loss.

3. Paragraphs 5 to 6 are admitted.

4. Paragraph 7 is admitted, except that the award as set out in the bill is the true award.

5. Paragraph 8 is denied.

6. Paragraph 9 is denied.

10

7. Paragraph 10 is admitted.

HUSTON DIXON,  
*Solicitor of Defendants.*

20

30

## REPLY.

(Filed December 4, 1929.)

76-146.

10 IN CHANCERY OF NEW JERSEY.

THEODORE OLKOWSKI and  
 HATTIE OLKOWSKI, his  
 wife,

*Complainants,*

v.

20 THE STANDARD FIRE INSUR-  
 ANCE COMPANY, a cor-  
 poration of New Jersey,  
 and the ATLAS ASSUR-  
 ANCE COMPANY, LIMITED,  
 of London, England,

*Defendants.*

On Bill, &c.  
 Reply.

The complainants join issue on the answer of the  
 30 defendants.

BENJAMIN CIERESZKO,  
*Solicitor of Complainants.*

TESTIMONY.

76-146—5450.

IN CHANCERY OF NEW JERSEY.

Between

THEODORE OLKOWSKI, *et al.*,

Complainants,  
and

STANDARD FIRE INSURANCE COMPANY, *et al.*,  
Defendants.

On Bill, &c.  
Testimony.

10

20

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, the twenty-seventh day of March, 1930, at 10.30 A. M.

Before HON. MALCOLM G. BUCHANAN, Vice-Chancellor.

30

APPEARANCES:

BENJAMIN CIERESZKO, ESQUIRE, for complainants.

LOUIS B. LAVINE, ESQUIRE, representing HUSTON

DIXON, ESQUIRE, for defendants.

STANLEY RYBA, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination.

By Mr. Ciereszko:

10 Q. Mr. Ryba, are you a builder in the City of Trenton?

A. I am.

Q. Have you been asked by Theodore Olkowski to appraise the damage to his building?

A. I have.

Mr. Lavine: I object to this testimony.

20 The Court: There is no question pending.

Mr. Lavine: The objection is withdrawn.

Q. Were you asked how much you would charge for the rebuilding of the damage?

A. I was.

Mr. Lavine: I object to that question.

30 The Court: It has not hurt you.

Q. Have you an itemized statement of the damage to the building?

A. I have.

Q. Will you show the Court that itemized statement?

The Court: Is this one of the men that appeared before the appraisers?

Mr. Ciereszko: No.

The Court: Why do you call him?

Mr. Ciereszko: This man was asked to appraise the damage, how much it would cost to repair the damage by fire. I think it will be to show they mis-  
conducted themselves, and whether there was any bias. 10

The Court: All right; proceed.

Q. Will you itemize to the Court the itemized statement of the loss by fire?

A. This is dated 7/17/29. Mr. Olkowski —

20

The Court: Don't read it.

Q. Just an itemized statement. How much would it cost to replace it?

A. Clearing the condemned woodwork and block walls, \$250.00. Carpenter labor and cost of replacing thirteen windows and frames which were damaged through fire and breakage, \$286.00.

Q. Go ahead.

30

The Court: If you want to offer this in evidence, offer it.

Mr. Ciereszko: This is a memorandum made just for the refreshing of the witness.

By the Court:

Q. Did you make this bid in the form of an offer to the defendants?

A. Yes, sir.

Mr. Ciereszko: I offer in evidence this bid.

Mr. Lavine: I object to that going into evidence, 10 because it had nothing to do with the award.

The Court: Let it be received and marked.

(Said bid is marked Exhibit C1.)

By Mr. Ciereszko:

Q. What was the total amount?

A. I don't know offhand; forty-seven hundred and 20 some odd dollars.

Q. How many rooms have been destroyed by fire?

A. Every room.

Q. Including the roof?

A. Including the roof. I have it all itemized there.

Cross-examination.

By Mr. Lavine:

30 Q. How long have you been in the building business?

A. About seven years.

Q. Is this the first estimate you made for Mr. Olkowski?

A. No, sir, that's the second estimate.

Q. What made you change the estimates?

A. He wanted an itemized statement.

Q. Why should there be any difference in the sums?

A. In the first place, I wanted more profits on it, and in the second place I cut my profits down when he wanted an itemized statement.

Q. You say you itemized your second statement?

A. I have.

Q. What do you mean?

10

A. I give separate costs, the items that were put in there; it was separate.

Q. Do you call clearing work an itemized statement?

A. Sure it was; that's the way you estimate the job.

Q. In an itemized statement you should itemize each separate article, shouldn't you?

A. You put the cost on there.

Q. But you are supposed to make an itemized bill?

20

The Court: It isn't a question of what he is supposed to do.

Q. How did you figure the profits first?

A. I figured more.

Q. More first?

A. Yes.

Q. What percentage?

30

A. I figured at least twenty-five per cent.

Q. How much did you figure on your second one?

A. About ten per cent.

Q. Do you recall the original bid?

A. I do not.

Q. What price do you always work on?

A. On a basis of ten and twenty per cent.

Q. What made you ask for ten per cent profit on this particular occasion?

A. I knew the insurance company would check up on me.

Q. Why didn't you think of that before when you made your original bid?

The Court: What difference does it make?

10

Mr. Lavine: I don't think it does.

Q. You said, in effect, that the fire practically destroyed the entire premises?

A. I did.

Q. Do you know whether the fire which occurred in one of the rooms—do you know where the fire started?

20

A. I do not.  
Q. Well, do you know whether it started in the shed of that particular building?

A. I told you I don't know where it started.

Q. You said that the fire destroyed the entire building?

A. I did say that.

Q. Did you examine the building after the fire?

A. I did.

30

Q. What made you draw your conclusion that it was entirely destroyed?  
A. Every room was damaged, and I gave them a statement of what it would cost to fix it. It wasn't worth anything after the fire; that's why I say it was all destroyed; that's why I say that.

Q. Did you know the property before the fire?

A. I did.

Q. What particular condition was it in at that particular time?

A. He was drawing \$65.00 a month rent on it; that's how good it was.

Q. Did you ever hear of the building being condemned by the city?

A. I did not.

Q. You didn't?

A. No.

Q. Do you know who the tenant was? 10

A. I do.

Q. What kind of business did he have?

A. Grocery business.

Q. Are you sure it wasn't a bootlegging business?

A. I never bought any there.

Q. What is his name?

A. Mr. Stoy.

Q. Was he arrested several times and indicted for the sale of liquor?

A. I don't know. 20

Q. How did the fire spread?

A. What I could see of it, it was between the roof and the ceiling plaster and all your floor space. The water caused damage to your plaster and caused the roof to be destroyed and all your walls inside, and when you would walk in the building, you weren't safe to walk in. And your ceiling —

Q. The rooms were all smoked on account of the fire?

A. They were destroyed. 30

Q. What do you mean?

A. The plaster was burned, the doors were burned and the floors were burned, and the wood joists.

Q. Was the building in very good condition before the fire, Mr. Ryba?

A. I wouldn't say first-class condition.

Q. What condition?

A. Fair condition.

Q. What do you mean?

A. He received enough rent to keep it going.

Q. Was the upstairs rented?

A. I don't know.

Q. How many rooms in the upstairs?

A. Three rooms and a back little room. You would say it was four rooms there.

10 Q. Four rooms, including the store downstairs?

A. No; that's the second floor you're talking about.

Q. Any on the third floor?

A. None at all.

Q. Do you remember any of the windows being broken before the fire upstairs?

A. I do not.

Q. Did you remember the walls being cracked before the fire, upstairs?

20 A. You might have plaster cracks in any building.

Q. I mean that particular building.

A. Not that particular building, no.

Q. You said on the stand you investigated the building before the fire and it was in good condition. I am asking you whether there were any cracks in the walls in that particular building?

A. I would say there was cracks in the plaster.

Q. You are not sure?

30 A. Yes, I'm sure; I've seen it.

Q. You say there are cracks in all buildings. Confine yourself to this particular building. Describe it more fully for us?

A. It was an old building and there was a few plaster cracks in there, but they were no damage to the building before the fire.

Q. An old building?

A. Sure, and there was cracks in it as would be in any other wall.

Q. You did find cracks?

A. Sure; I found two cracks, two plaster cracks, in there, but they were no damage to the building.

Q. How was the wall paper upstairs?

A. It wasn't new.

Q. Was it hanging down?

A. In places and on the ceiling; that's all I've 10  
seen.

Q. Isn't it true that that building was untenant-  
able?

A. I wouldn't say.

Q. Isn't it true that that building was untenant-  
able?

A. I don't know who was collecting the rents.

Q. I am talking about the upstairs. Isn't it true  
that that second story was untenantable?

A. I wouldn't say; I've seen worse than that. 20

Q. Do you know whether it was rented before the  
fire?

A. The entire building was rented.

Q. Do you know if anyone lived upstairs?

A. I don't know that.

Q. Then it wasn't in good condition, was it, prior  
to the fire?

A. I said it was in fair shape.

Q. You said the building was cracked and it was  
an old building?

A. When you ask a question of that kind — 30

The Court: The witness has testified concerning  
what the facts are.

Re-direct examination.

By Mr. Ciereszko:

Q. Were you asked to act as an appraiser for the complainants in this cause?

A. I was not; I was just asked to give a bid for the job to put the place in shape.

10 Q. How much was that building worth before the fire, in your judgment?

A. How much was the building worth before the fire, in my judgment? At least \$5,500.00.

Q. \$5,500.00?

A. Yes.

---

20 DIMTY HASONAK, a witness produced on behalf of the complainants, was duly sworn.

The Court: Do you want to prove fraud or mistake by this witness?

Mr. Ciereszko: No.

The Court: Put on your witnesses to prove the alleged mistake or fraud first.

30

Mr. Ciereszko: I will withdraw the witness.

FRANK GULE, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination.

By Mr. Ciereszko:

10

Q. Mr. Gule, what is your occupation?

A. \$3,800.00.

Q. What is your occupation?

A. Oh. Mason and builder.

Q. Were you an appraiser at the time this damage was appraised by these appraisers?

A. The damage and fire.

Q. Were you an appraiser at the time Mr. Midura, Mr. Robinson and Mr. Parker estimated the loss by fire?

20

A. \$3,800.00.

Q. Were you present at that time when they estimated the loss to the building? Did you see them?

A. See who?

Q. Mr. Midura, Mr. Robinson and Mr. Parker?

A. Yes.

Q. Did they figure the damage to this store?

A. Mr. Parker or Mr. Robinson—Mr. Robinson didn't even want to figure. He said, "It ain't worth nothing."

30

Q. Did they estimate any damage to the store?

A. Mr. Parker, thirty-two or thirty-three hundred.

Q. What?

A. The damage, the total damage to the building.

Q. The total damage to the building?

A. Yes; so after a while I took the old man, Mr. Midura, and I told him—he said thirty per cent.

Q. What thirty per cent?

A. From that he would get.

Q. Thirty per cent out of thirty-eight hundred?

A. Yes, sir. And I told Mr. Midura, "Let's go out and see the owner." The owner said, "Thirty per cent? Go ahead and sign." And after a while we come back and he wasn't there, and we met Mr. Robinson, and Mr. Midura signed the papers, and then after that it was ten per cent, or something like that, \$300.00.

Q. Who appraised the loss for \$3,200.00?

A. It was thirty-two, thirty-one or thirty-three—Mr. Parker.

Q. Did Mr. Midura agree to this figure?

A. No, not till we seen the owner.

Q. Did Mr. Robinson agree to this figure?

A. Yes.

20 Q. \$3,200.00?

A. Yes.

Q. Did they take the value of the building before the fire?

A. Who?

Q. Mr. Parker, Mr. Midura and Mr. Robinson?

A. The way they was talking, they said it wasn't worth anything, "What's the use talking?"

Q. Who said that?

A. Parker and the others; they was chewing the rag.

30 Q. Did they fix any value or estimate on the building before the fire, at the time they were appraising the property? Did they fix any definite value, how much the building was worth before the fire?

A. Before the fire?

Q. Yes.

A. It's so long I forget anything about it. I didn't even think about it. I don't want to tell no lie.

Q. They just estimated the loss?

A. Yes, sir.

Q. And did they take the complete loss caused by fire or from heating? Have they estimated every one of the damage cause by fire in every one of the rooms?

A. Yes, they went all over the rooms. 10

Q. Did they estimate the damage to the roof?

A. Yes.

Q. Did they state what was the damage to each room?

A. No, they didn't state that.

Q. They only stated the total damage?

A. That's all.

Cross-examination.

20

By Mr. Lavine:

Q. You heard the appraisers talking about thirty-two hundred, you said?

A. Yes, between thirty-two and thirty-three.

Q. Do you remember what they referred to it as being? Was it sound value they were talking about? Do you remember the term, "sound value?"

A. Sound value?

Q. Yes.

30

A. I don't know.

Q. Let me ask you this question: Were they talking about the sound value of the building prior to the fire less depreciation? Do you remember them talking about depreciation and the value of the building prior to the fire? Did you hear that?

A. No, I don't remember that.

Q. You were talking about thirty-eight hundred?

A. Yes.

Q. What did that refer to?

A. What did that refer to?

Q. Yes.

A. I figured that would bring it in shape again.

Q. Thirty-eight hundred?

A. Yes.

10 Q. What is the thirty-one hundred or thirty-two hundred?

A. That's what they figured on.

Q. What they figured on?

A. Yes.

Q. You don't know whether it referred to the sound value of the building or whether it referred to the loss of the fire, or you don't know what it referred to?

A. No.

20 Q. You say they went over the different rooms?

A. Yes.

Q. Did you hear them arguing about the different amounts?

A. Arguing?

Q. Yes, the amounts assessed for each room that was damaged there?

A. Mr. Robinson didn't even want to look around, and told them it wasn't worth anything.

30 Q. Was that because the building was in such bad shape?

A. No, it wasn't in bad shape before the fire. I was in there a couple of times.

Q. Before the fire?

A. Yes, before the fire; that place stood there I don't know how many years, and it could stay there along twenty or thirty years —

- Q. It was pretty old?
- A. Yes.
- Q. Do you recall the condition of the interior of the building, the inside?
- A. I don't know.
- Q. Do you remember the inside of the building?
- A. Yes, I do.
- Q. What was the condition of it?
- A. Fair good condition.
- Q. Fair good? 10
- A. Yes, sir.
- Q. Do you recall the upstairs?
- A. Yes.
- Q. How was the wall paper?
- A. The paper was only in one side room was the ceiling bad, and the rest of it it was good.
- Q. The paper hung down?
- A. Yes, one corner.
- Q. How about the plaster walls?
- A. The plaster was good; a couple of cracks, 20 that's all; that place was in pretty good shape.
- Q. That was after the fire?
- A. Before the fire.
- Q. How about after the fire?
- A. It was a sight.
- Q. What do you mean by a sight?
- A. All ripped up, damaged up, burned up, knocked down.
- Q. All upstairs?
- A. Upstairs and downstairs. 30
- Q. Who did you discuss this with, Midura, at the time?
- A. Yes.
- Q. Whom do you work for?
- A. Myself.
- Q. Whom did you work for at the time this assessment was made?

A. Me and Midura was partnership.

Q. He is the appraiser for the complainants?

A. Yes, sir.

Q. Then, you don't know what this represented, this \$3,300.00 item? It might have been sound value?

The Court: Why ask him over and over again the same question?

10 Mr. Lavine: That is all.

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STANLEY MIDURA, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination.

20 By Mr. Ciereszko:

Q. Mr. Midura, do you recognize this as your signature? (Showing witness paper.)

A. That is mine.

Q. Did you see Mr. Robinson and Mr. Parker sign?

A. I didn't see Mr. Parker.

Q. Did you see Mr. Robinson sign?

A. Yes.

30

Mr. Ciereszko: I offer it in evidence.

(Said document, being an award for damage, dated August 24, 1929, stating the sound value of the property as \$3,000.00 and the loss and damage as \$300.00, and signed by B. F. Robinson and Stanley

Midura as appraisers and Fred R. Parker as umpire, is marked Exhibit C2.)

Q. Will you state why did you sign this award?

A. I can't speak good English.

Q. Why did you sign that paper?

A. I signed the paper to figure damage for \$3,700.00 before and after thirty-three the last time we signed.

Q. Talk slowly and answer just the questions. Not so fast. Who figured out for \$3,300.00 the damage to the building? 10

A. Damage \$3,300.00.

Q. Who figured out?

A. I figured out.

Q. And who else?

Mr Lavine: I object to these leading questions.

The Court: That is not leading.

20

Q. Who figured out thirty-three hundred?

A. I figured the damage for the fire.

Q. Who else?

A. I and the insurance man, the next day come another fellow. No figure, only say, "No damage, no damage." I figure two days, one day in the afternoon and another day I figure the damage thirty-seven and after thirty-three the last time.

Q. Did you estimate the value of the building before the fire? 30

A. Before the fire I know the building about —

Q. Before the fire do you know how much the house was worth?

A. Well, about fifty-five or fifty-six hundred dollars.

Q. Did you figure it out at that time?

A. Yes.

Q. Who else figured?

A. I repaired this house about three years ago.

Q. Did Mr. Robinson say how much that building was worth?

A. Well, I only figured the damage for the fire.

Q. Answer the question. Did Mr. Robinson say how much that building was worth?

10 A. That's what he told me, about \$5,000.00, or something like that.

Q. Did Mr. Parker say how much the building was worth?

A. I don't know; I don't know this, and she only look for five.

Q. Did you know that they put \$300.00 as loss to the building?

A. How much?

20 Q. \$300.00 was the loss to the building in the award?

A. Three hundred?

Q. Yes.

A. Oh.

Q. Did you know the amount was \$300.00 in the award?

A. The damage?

Q. Yes.

30 A. No. Signed thirty per cent \$3,300.00. I no sign. I asked that fellow Mr. Olkowski and she say "All right," and I sign it. She satisfied. I sign on the street; no inside.

Q. Did you ever act before as an appraiser, in your life? Were you asked before to appraise the value of some other property?

A. I understood good this.

Q. Were you asked sometime before today or

somewhere, to appraise the value of the property after the fire?

A. I told him fifty-five or six —

Q. No, just answer the question. Did you ever have the same work before, to appraise the damage to building by fire?

A. Only damage. You talking how much damage for the fire?

Q. No. How many times did you work before as an appraiser before? Before. 10

A. Oh, that house. All around?

Mr. Ciereszko: May I have an interpreter, your Honor?

The Court: Yes.

(STANLEY RYBA is duly sworn as interpreter, and the examination is continued through his interpretation.) 20

Q. Did you work before as an appraiser, before this job?

A. I was, but in Perth Amboy, N. J.

Q. How many times did you act as an appraiser before?

A. I was two times in Perth Amboy.

Q. Then, did you know what it was all about?

A. I did.

Q. Did you appraise the value of the building 30 before the fire?

A. I have, because I have worked there before and repaired the place before the fire.

Q. What was the amount of the value of the building that you fixed?

A. I appraised it at \$7,000.00, and the owner that

lived there before this man, he valued it at \$7,000.00, too.

Q. Did you hear Mr. Robinson appraise the value of the building before the fire?

A. I haven't heard him say that; I have just heard him say that never was worth anything.

Q. Did Mr. Parker say anything what was the building worth before the fire?

A. I haven't heard that.

10

Cross-examination.

By Mr. Lavine:

Q. Was this the second time you ever made an appraisal in your life?

A. I have several times acted as an appraiser.

Q. Do you remember saying that this was the second time that you made an appraisal?

20 A. I say I have been two times in Perth Amboy, and this is my third time.

Q. How long before this fire did you make your last appraisal?

A. I have about four or five years ago.

Q. How did you determine the damage, Mr. Midura?

A. After the fire?

Q. Oh, yes, certainly.

30 A. After the fire I went to my partner and estimated all the cost of all damage done by the fire, such as walls, roofs, ceilings and floors, and on that I have placed my figures.

Q. Did that also include the trimmings, the woodwork, beams and timbers?

A. I have just figured the items that were damaged by the fire, that were needed —

Q. I asked whether that included the beams, wood-work and the timber and trim?

A. I have only figured the trim that was burned and timber that was burned.

Q. Do you know the difference between sound value and market value?

A. If I didn't know the difference I wouldn't be a builder.

Q. What is sound value?

A. I recognize sound value or the value to the owner and market value what a builder or other man would appraise it. 10

Q. Do you recall Mr. Robinson talking about the sound value?

A. I wasn't interested in it; I didn't pay attention to it.

Q. When you determined the damage due to the fire, did you go through the different rooms?

A. I was.

Q. How did you determine the loss for each room? 20

A. I estimated each room separate and then I put all figures together and gave in my statement.

Q. Gave who the statement?

A. I gave it to the insurance man; I showed it to the man.

Q. You said that you thought the building was worth between five and six thousand dollars before the fire. Is that right?

A. Yes, sir.

Q. How did you determine the loss to be three thousand? 30

A. I estimated only damage that was caused by fire and the items ran up to \$3,000.00.

Q. Can you tell us what those items were that ran up to the three thousand?

A. I can't tell.

Q. Then how do you know it amounted to \$3,000.00?

By the Court:

Q. What were the items?

A. I arrived at the figure first figuring to clean out the debris caused by fire, replacing all new plaster, replacing damaged lath, replacing roof, all timber that was damaged and the outside boards that were damaged and cement block walls, papering and so forth.

By Mr. Lavine:

Q. Did you furnish this estimate to the insurance company?

A. I have.

20 Q. Do you remember whom you gave it to?

A. I gave it to the insurance man that was there.

Q. Now, isn't it true that you never made an estimate?

A. I did not give but I showed.

Q. Do you recall arguing with the other appraisers on the amount of the loss?

A. I remember arguing, because they have not estimated all damage that was burned, but I—and our figures did not correspond, and we have argued over that.

30 Q. You argued because their figures were too low. Is that right?

A. Yes, sir.

Q. And then, after that the other appraisers left and you remained in the building?

A. They have left the building, and before leaving

they asked me to sign the paper with their estimate and I didn't do it, so I remained and they left.

Q. Then after they left, you ran after them and asked to sign the award. Isn't that true?

A. I left the building after they have left and went to the owner and told him that they have appraised the building, and they would give him thirty per cent of the value, and after the owner said that thirty per cent would be sufficient they came back and I met those fellows on the street, and there I have signed the paper. 10

Q. Did you read the award?

A. I have read it inside but not on the outside. My partner has read it and understood it more than I have.

Q. Did he explain it to you?

A. He has explained it to me.

Q. And you knew what it was all about?

A. I did.

Q. And after that you went out and signed the award, after consulting the complainant in this case? 20

A. I have understood everything, but with the understanding that it was to be for thirty per cent.

Q. And you saw the sound value estimated as three thousand and the actual loss estimated as three hundred on the award. Is that right?

A. I didn't agree with the \$300.00 figure on there at all.

Q. Then why did you sign it?

A. I have signed the paper for \$3,200.00 damage and thirty per cent of it. 30

Re-direct examination.

By Mr. Ciereszko:

Q. Did you hear what the figures they placed on the value of that building?

A. While they were present, I haven't heard the sum they appraised it to.

10 Q. So you don't know what sum they fixed for the loss of building?

A. They talked between themselves and they have not asked me whether I agreed or not.

Q. Who talked first?

A. The insurance man and the both appraisers.

Q. Did they tell you for how much they appraised the loss to building?

A. They have told me that there was \$300.00 of damage, and I told them the cleaning of the debris would be that alone.

20 Q. Who told you that first?

A. They have talked between themselves; they have not questioned us at all.

Q. Did you see in the paper the sum of \$300.00 before you signed that?

A. I haven't seen it.

Q. Did you see in the paper \$3,000.00 as the value of the building before the fire?

A. It was worth more.

30 Q. Answer the question. Did you see in that award \$300.00 that it was worth before the fire?

A. I haven't seen it, but I thought that was the damage appraised.

Re-cross examination.

By Mr. Lavine:

Q. Yet, you heard them talk about \$300.00 actual loss, didn't you?

A. I said I heard them say \$300.00. It was the same as my figure of thirty-seven which I dropped to thirty-three. 10

Q. How was the umpire selected?

The Court: There is no issue on that.

Mr. Lavine: I wish to show Mr. Midura was the one who selected the umpire. It is charged he was biased.

The Court: There is no issue on it. 20

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THEODORE OLKOWSKI, the above-named complainant, being produced on behalf of the complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Ciereszko:

Q. You are the owner of that building that was destroyed by fire? 30

A. Yes.

Q. Did you speak to Mr. Crozer after the fire?

A. Yes.

Q. What did you tell him?

A. I told him some fire damage, "I would like you to see that property."

Q. Did he make any offer of settlement?

A. Yes, he made me an offer the first time \$400.00 or \$450.00, and after a few days he made me an offer \$850.00 less the price —

Q. Did you tell him you wanted to submit to appraisal?

10 A. Yes. He told me to go and get a contractor and appraise the property, and I took Mr. Ryba for the appraiser, and he give me a statement, and Mr. Crozer told me he didn't want Mr. Ryba for the appraiser and he told me to look for another appraiser.

Q. Did he tell you why he didn't want Mr. Ryba?

A. No, sir.

Q. Did you find somebody else to act as your appraiser?

A. Yes, I go to Mr. Bebda, contractor.

20 Q. Did you see someone before to be your appraiser for this loss?

A. I took Mr. Hubda. He didn't come, and Mr. Crozer told me to get some other fellow. He said, get somebody in thirty minutes time, because the fellow is going to leave the town and maybe he is not coming to town again.

Q. When was that?

A. Saturday.

Q. Did you look for appraiser at that time?

30 A. Yes, I found Mr. Midura. I saw him and he was —

By the Court:

Q. You saw him and you asked him and he consented to act?

A. I got him Saturday afternoon, or Saturday before noon, and he had been working —

Q. Never mind about that.

By Mr. Ciereszko:

Q. He agreed to act?

A. Yes, sir.

Q. And were you present at the appraisal when they appraised the damages? 10

A. Yes, I took them in the premises. I took him right to the office of the insurance company.

Q. Did you hear them arguing the value of the building before the fire?

A. Yes, sir.

Q. Did you hear them arguing the amount of the loss by fire to the building?

A. After the appraisers appraised the property.

Q. Did you hear Mr. Robinson say what was the amount of the loss to the building? 20

A. Mr. Robinson don't talk to me at that time.

Q. Did he talk to Mr. Midura and Mr. Parker?

A. Yes, sir.

Q. Did Mr. Parker say how much the loss was to the building?

A. I see in the paper, Mr. Midura gave me a paper, \$300.00, \$3,000.00 property value and \$300.00 damage.

Q. When did you get this paper?

A. He showed me on the street about half an hour or so after they appraised the property, then I go to the insurance office and tell it is not enough, I am not satisfied. 30

Q. Did you get the paper before it was signed or after it was signed?

A. After it was signed.

Q. You didn't know the amount before it was signed?

A. No, sir.

Q. Did Mr. Midura tell you you are getting thirty per cent?

A. Yes, he told me; he say thirty-three hundred or thirty-two hundred and thirty per cent. I told him he got enough time, he didn't have to go right now, and he leave me and go.

10 Q. He told you you were getting thirty per cent of \$3,300.00. Is that right?

A. Yes, sir.

Q. Did you advise him to sign the award?

A. No, he leave me and say, "I going to sign it; if I don't go you don't get nothing."

Mr. Lavine: No questions.

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20

DIMTY HASONAK, a witness produced on behalf of the complainants, having been heretofore sworn, testifies as follows:

Direct examination.

By Mr. Ciereszko:

30 Q. Did you see the premises 196 to 200 Jefferson Street after the fire?

A. Yes, sir.

Q. Were you asked to appraise the damage for the purpose of repairing the building?

A. Yes, I looked over and give them a price about \$3,300.00.

Q. You submitted a bid?

A. Yes, sir.

Q. Can you tell what you found damaged in that building?

A. The damages was about one-third of the building; all the back part, all the way back to the store.

Q. How many rooms were damaged by fire?

A. There was three rooms upstairs and the store downstairs, and two rooms.

Q. Can you tell the condition of the ceiling on the first floor?

10

A. Yes.

Q. What was the condition of the ceiling?

A. About one-third was burned out of the ceiling.

Q. One-third?

A. Yes.

Q. What was the condition of the rooms?

A. About half burned and the other half was all broke.

Cross-examination.

20

By Mr. Lavine:

Q. The \$3,300.00 you speak about was putting the property back into repair, wasn't it?

A. Yes, sir.

Q. But it might not have been all out of repair due to the fire?

A. Just the fire. All repairs it cost more if you put the stucco out and repair new, it would cost more.

30

Q. What would it cost to put the entire building back in repair?

A. The whole building?

Q. Yes.

A. I guess about six or seven thousand.

Q. It would cost more to put it back in repair than the building was worth?

A. Certainly.

Re-direct examination.

By Mr. Ciereszko:

10 Q. Did you understand that question, that the entire repair of the entire building would cost six or seven thousand dollars?

A. He didn't ask me about that time.

Q. I mean the counsel asked you. Did you understand that question, that the repairs to the building would cost \$7,000.00?

A. That is building new; not repairs.

20

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ERNEST E. SCHMID, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination.

By Mr. Ciereszko:

30 Q. Mr. Schmid, what is your occupation?  
A. \$5,100.00.

Q. What is your occupation?

A. What building?

Q. No. What is your business?

A. Oh, carpenter.

Q. Were you asked by Mr. Olkowski to be his appraiser?

A. No, I was asked to figure the job, to figure it the way it was before to be tenantable.

Q. Did you estimate the loss?

A. Yes; not writing.

Q. What amount?

A. \$5,100.00, figuring in the electric. I figured it would all have to be wired. I figured it would have to be in steel or in BX.

Q. The damage by fire?

A. The damage would practically take in water, too. They were warped up to V-shape, which meant some of the flooring had to be cut out, and the roof was practically burned out in the northwest section, and you couldn't see back in the other section as well. You could see it was charred, but to what extent I don't know.

Q. What was the amount of loss by fire?

A. I figure \$5,100.00; it may be a few hundred less, but I figure that amount in full, \$5,100.00, taking in the electric.

Q. Excluding the electric?

A. Excluding the electric, \$150.00 less.

Q. Were you asked to be an appraiser to Mr. Olkowski?

A. I was, but the Standard Fire Insurance Company said I was a relative to Mr. Olkowski, and I never heard any more of it.

Q. Are you a relative?

A. No, sir.

Cross-examination.

By Mr. Lavine:

Q. You estimated the cost of repairs to be \$5,100.00?

A. Yes.

Q. You heard the gentleman on the stand before you say he estimated it to be \$3,300.00?

A. Yes.

Q. Yours is just for the carpenter work?

A. No, taking in everything.

Q. How do you account for the difference between the two amounts?

A. We all have differences. There's no two contractors of the City of Trenton figure the same way.

Q. But that is almost twice as much?

A. That would be my privilege to get that much if there was a contract.

Q. You said the floors were warped up?

A. Yes, to a certain extent right to the doors.

Q. Was that because of the fire or the general condition of the house?

A. I would say it would be the condition of the water. You could see where the water soaked; the flooring was water-soaked and the underpinning was washed out —

Q. That could have been because the water from the roof was leaking through?

A. The roof would be leaking after the fire.

Q. I mean before the fire?

A. I never examined the building before the fire.

Q. Your estimate would be to construct a new building?

A. No, to put the building back in shape, but I told the owner at the time the building inspector wouldn't stand for it. I thought the corner posts would have to be taken out clean down to the sill. I thought it would be condemned.

Q. What made you think it would be condemned?

A. Because of the condition of the building after the fire.

Q. Wasn't it condemned before the fire?

A. I don't know whether it was or not.

Q. You don't know?

A. No.

Q. Of course, you don't know whether this \$5,-100.00 was to put the building back in the same shape it was in prior to the fire?

A. I can't say what kind of shape the building was in before the fire. I never saw it.

10

COMPLAINANTS REST.

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BENJAMIN F. ROBINSON, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination. 20

By Mr. Lavine:

Q. Mr. Robinson, where do you live?

A. Newark.

Q. You were appointed by the Standard Fire to act as their appraiser?

A. Yes.

Q. Do you remember the date when you came to Trenton to make the appraisal? 30

A. I do not.

Q. Do you remember going to Jefferson Street, 196, to make an appraisal?

A. I do.

Q. What condition was the building in?

A. There had been a fire there, and the building

was in a disreputable condition, not from the fire, but from ordinary wear and tear and so forth.

Q. What are you by occupation?

A. General contractor and builder.

Q. How long have you been in that business?

A. Thirty-five years or more.

Q. Do you make many appraisals?

A. I have.

Q. Now, tell us about the building itself?

- 10 A. I was appointed to act as appraiser by the representative of the Standard Fire Insurance Company, and after meeting my co-appraiser and signing the appraisal papers, we agreed upon a Mr. Fred Parker of Trenton, and then we two appraisers, with another young gentleman whom I understood was my co-appraiser's partner, went over to the building to estimate the loss, and there was such a wide difference in our figures that we could not agree, and therefore decided to call in Mr.
- 20 Parker; but, as I remember, he was not in town that day, so we had to come again. As to the condition of the building, there was only a slight fire in the building in one corner of it, burning a portion of an extension roof and burning a very small portion of the second floor. There was, of course, some smoke, but not a great deal; and it could have smoked until doomsday and I don't think it would have made the building any more untenable, because the second floor was not tenantable. The
- 30 paper on the walls of the second floor had been patched like Joseph's coat, and it was of many colors; some was newspapers, some was bill posters, some was several kinds of wall paper, and the floors had been patched by nailing pieces of soap boxes, or some similar boxes, on them. The hinges of all the doors were held fast by straps used as hinges;

other places they were shut with a hook similar to a stable. The first floor apparently had been occupied as a store of some kind, but they had, of course, moved out. The floors were warped in some places, but I don't consider there was enough water used by the fire department to have done much warping. I think this fire was put out mostly by chemicals. There apparently was very little water used in the building. I think the fire department used discretion and used chemicals instead of a lot of water. 10  
There were some cracks in the walls which my co-appraiser claimed came from the fire, but, as has been stated on the stand, they could have come from other reasons, and mostly likely did. There was a cement extension, a cement construction in the rear, which was badly cracked. My co-appraiser claimed that this was from the fire, but the evidence showed it was not, because it had been pointed before the fire had ever occurred, and had again separated.

20

Mr. Ciereszko: This is objected to. He testified he didn't know by what the damage was caused. He should testify what was the actual damage; that's all.

The Court: Objection overruled.

By the Court:

Q. By pointed you mean plastered up, I suppose? 30

A. Yes.

Q. There was some cement or mortar in the cracks?

A. Yes. This was done in many places on the plaster walls on the inside, and there had been patches put on very unevenly by an unskilled work-

man in many places in the rooms. There was, of course, some glass broken, apparently most of it before the fire, because it had been replaced by pieces of tin and pieces of pasteboard where the fire had broken it; that was still out and the glass lying there. The house was very old, I should judge in the neighborhood of a hundred years—I am just guessing—and the life of that house, the building, would appear to have been about over; that was my  
10 reason for saying there was no real value. Our appraisal paper states we must determine the actual cash value of the property at the time the loss or damage occurs, and my first argument to my co-appraiser was that there was not any real cash value to that building. I told him if my bank or his bank sent me there to appraise that building, or a building and loan, I would value the land as a valuable property, but the building of no value.

20 By Mr. Lavine:

Q. Are you through?

A. I think so.

Q. You made an estimate at the time the ——

A. I made some figures at the time I went there with my co-appraiser, which was the first time I had ever seen the property.

Q. You had never seen it?

A. I had never seen it before the fire.

30 Q. What were they?

A. \$644.00 to replace the loss, but I told him that the conditions were such that if we spent \$644.00 we would certainly improve the building, because in doing that we were painting and papering places which needed papering anyway, and some places where it was burned off in the rear of that store.

Q. What was the actual damage in the building, caused by the fire?

A. The award that was made and signed by the umpire and myself was \$300.00. I first protested to that. I told him I thought \$250.00 was very liberal. He said no, three hundred was what he would make the award, after making some figures. After taking my figures as to how I arrived at the \$644.00 and listening to what the other party had said about the thirty-three hundred, he told him that was all out of the question. He told him the property wasn't worth \$3,200.00; that the building wasn't, and he couldn't expect anything like that; and then the amount was filled in, I forget whether by myself or Mr. Parker, and my co-appraiser was asked to sign it and he refused, and I said I refused because I thought the amount was too large; and we wanted him to sign it. I said, "Somebody will have to sign it to make an award, so I signed it and Mr. Parker signed it for the \$300.00 for the amount of the actual loss and three thousand as the actual cash value, which I protested was too much; but the other man wouldn't sign it; so that's the reason I signed it, to make the award. Later on we left the building. I started toward the Standard Insurance office. I don't know where Mr. Parker went; he was in his car. Neither do I know where my co-appraiser and his partner went. They were all together. His partner told him not to sign it, and his partner did most of the talking, although he was not appointed as an appraiser. That was the young man who testified here on the stand. And I got to within about a block of the Standard Fire Insurance Company's office to turn this paper of mine in when my co-appraiser and his partner drove up in a car and said, "Well, what are we going to

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do about it?" I said, "I thought we were all through." He said, "Well, we have been talking it over, and if that is the best you can do we think we had better sign it." I said, "I think that is the wise thing to do, because I think the award is a very liberal one." And so they signed it on the street about a block north of the insurance company's office; I think it is North Clinton Street. Then they wanted me to see how they could get paid for their services. I said, "I don't know anything about that; that is something I can't tell you about, but if you want to go with me to Mr. Crozer's office I will put the matter up —"

Mr. Ciereszko: That is objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

20 A. I said, "If you will come with me to Mr. Crozer's office I will tell him about it and perhaps he, as a representative of the company, may have some way of holding up the payment until you are paid." They thought that was very kind of me and we three then proceeded. I walked down to the office and they rode, and we went into the office to Mr. Crozer, but Mr. Crozer had gone for the day and there was no one there but his secretary, so I told her that these gentlemen wanted to talk to Mr. Crozer about securing their payment, and I said, "You can tell Mr. Crozer about it when he comes in, and if he wants to ask me anything more about it, he can call me up or write me." That was the last I had heard of it until a short time ago, or some months ago; some weeks ago I received a letter from Mr. Crozer stating that this was going to be taken

in court, and yesterday he called me on the phone and asked me to be sure to be here today. I am here.

Cross-examination.

By Mr. Ciereszko:

Q. How many times have you appraised property 10  
for the Standard Fire Company before?

A. I don't think but once before.

Q. This was the second one?

A. I think so, as far as I can remember.

Q. Do you remember the date of the appraisal?

A. No; the date is stated, I think, on the appraisal  
paper. I haven't that, because that was handed in  
to the insurance company.

Q. Do you remember the date of the fire?

A. No, I don't; that also was stated on one of 20  
the appraisal papers.

Q. You saw the condition of the building on the  
date of the fire? The first time you saw it on the  
date of the fire, wasn't it?

A. No, sir; I saw it sometime after the date of  
the fire. I don't know just how many days; it may  
have been weeks; I don't remember.

Q. You saw the first time the building on the  
date of the appraisal. Is that so?

A. Yes.

30

Q. How many rooms did that building consist?

A. I don't remember exactly; I think three or  
four, as I remember, upstairs. One may not be  
called a room. And I think there was a sort of a  
double store and one room, perhaps two, in back  
of it, and this shed which was apparently not used.

Q. Do you remember how many stories were in that building?

A. It would be called a story and a half building.

Q. There were three numbers on the building, 196, 198 and 200 Jefferson Street?

A. I don't think I noticed that.

Q. Didn't you notice 196 and 198, some years ago had been erected —

A. I noticed some patching had been done; I  
10 wouldn't say when.

Q. Did you notice a new floor in the building?

A. All the floor had not been put down at the same time, but I can assure you that what I saw did not look very new.

Q. Did you see new beams across these —

A. I did not; the beams must have been between the floors.

Q. How many rooms have been consumed by fire?

A. None. The whole house is intact, and you can  
20 go upstairs and downstairs, and in every room, and the plaster is still on the walls, except here and there some broken places. In that back portion of the store some beams are burned, but it is not enough to frighten you like some of those who were on the stand would undertake to do.

Q. Did you see the roof of the building?

A. I did.

Q. What is the condition of the roof?

A. The roof was not at all bad, but in need of  
30 repairs, but the fire had not damaged it very much.

Q. But the fire made a hole through the roof?

A. Yes, the extension roof; a little bit of it is burned off entirely.

Q. Do you know where the fire originated?

A. It would appear to be in the back part of the store.

Q. On the ground floor?

A. I didn't go over it very carefully.

Q. The fire got to the first floor—to the roof and damaged it; that damaged the building?

A. Yes, sir, one little corner of it. The floor in the second story is one hundred per cent as good as before the fire, and if the building is there today it could easily be seen.

Q. Have you estimated how many windows were in the building? 10

A. No, I didn't count them.

Q. But they all were broken; have you seen that?

A. They weren't all broken.

Q. In appraising the damage to the property you have to count the damage you have to appraise?

A. Yes.

Q. I mean the damage you have to replace?

A. Yes, sir, the number of doors which had to be replaced were one or two which were battered, and the lights of glass, I don't remember how many 20 there were, but we counted all those and we took into consideration those that had been replaced by pieces of tin and by pieces of cardboard, and in one or two places an old coat was shoved in, or something or other.

Q. Do you know when those pieces of cardboard were put in?

A. No, I don't know; perhaps two or three years ago. They looked as if they had been there a good while. 30

Q. But you are not sure when?

A. I am not sure when, no, sir.

Q. You testified that the plaster has been damaged with water. Do you remember that plaster?

A. I think I said some of the plaster was down from the fire. If I didn't I should have said so.

Q. Do you know in how many rooms the plaster was down?

A. In the store; in a section of the store, and in the room over the store. That is the major portion of the plaster.

Q. Did you notice the condition of the ceiling on the first floor?

A. I did.

Q. You did?

10

A. I did.

Q. Did the fire make a hole through the ceiling?

A. Yes, sir, I told you the fire burned one little corner of the ceiling.

Q. Do you know how many rooms there were in the building?

A. I think I told you before I didn't count them, and I undertook to enumerate them. I will do so again if it is necessary.

Q. How long are you a builder?

20 A. Thirty-five years, I told the other counsel, or more.

Q. Have you experience during the time you are a builder to repair these jobs for \$300.00?

A. Will you please ask that question again?

Q. Have you experience as a builder, that you would repair these jobs for \$300.00?

30 A. No, I didn't say I would repair it for \$300.00. I said I would repair it for \$644.00. I have repaired many building, and like to get fire losses, because I can make money at them, but if we had repaired this for \$644.00 we would have improved it, because we would have done some things about that were so much needed to be done before the fire.

Q. How do you make more on fire losses, by testifying for the companies that repair the buildings?

A. Repair? Whenever I can get a job of that kind to repair I am doing it, and like to get them.

Q. You estimated that damage for \$600.00?

A. \$644.00.

Q. But you don't know how many rooms needed repair?

A. Yes, I know how many rooms needed repair, and I figured on all that did need repairing, but I didn't figure on remodeling the entire building, nor papering the entire building, because the smoke that was in there didn't damage it. In fact, I am sitting looking at this room, and some of the rooms were 10 not as black as this room here, although the paper in those rooms was falling off and had been patched by paper, even down to newspapers and other things.

Q. But you don't know when that was done?

A. No, I wasn't around.

---

FRED R. PARKER, a witness produced on behalf of the defendants, being duly sworn, testifies as follows: 20

Direct examination.

By Mr. Lavine:

Q. Where do you reside, Mr. Parker?

A. Trenton.

Q. What business are you engaged in?

A. Contractor and builder.

Q. How long have you been in business?

A. About thirty years.

Q. Have you made many appraisals?

A. Yes, sir.

Q. Do you recall making an appraisal on Jefferson Street in August?

A. Yes, sir.

Q. With Mr. Robinson and Mr. Midura?

A. Yes.

Q. What amount did you calculate to be the damage from the fire?

A. I took the sound value as \$3,000.00 and the loss as three hundred.

Q. You were called as umpire in stating this award, were you not?

10 A. Yes, sir.

Q. Do you remember the amount submitted by Mr. Robinson to be the amount of damage caused by the fire?

A. I think his amount was about \$250.00 and I made it three hundred.

Cross-examination.

20 By Mr. Ciereszko:

Q. Did you appraise the damage to each room separately?

A. We went over it, Mr. Robinson and the other gentleman, and checked up around in the different rooms.

Q. Did you estimate the damage and figure out how much loss was in each room?

A. Yes, sir.

30 Q. Did you hear Mr. Robinson say that he figured the damage in each room?

A. We had a list going over the entire house, the whole house, and itemized it down as we went over it.

Q. Have you a copy of those notes?

A. No.

Q. Did you hear the dispute between Mr. Robinson and Mr. Midura on the damage to the store?

A. Yes, we were all there together.

Q. Do you remember what figure Mr. Robinson gave?

A. We made the list up, the three of us, when we were there. Mr. Robinson was \$250.00 and I made it three hundred.

Q. That means for the total loss?

A. Yes.

10

Q. But I mean to separate appraisals, if you took room by room?

A. No.

Q. Did you know how many windows were broken there?

A. I don't recall now.

Q. How many doors were damaged?

A. I don't recall.

Q. You are a builder for a long time now?

A. Yes.

20

Q. Where did the fire originally occur, to your judgment?

A. I think in the one-story building in the rear.

Q. Did you see the condition of the roof?

A. Yes, sir.

Q. How much would that cost to replace that roof?

A. How much?

Q. Yes.

A. I wouldn't think it would cost a great deal, because I don't believe the hole burned through the roof was more than eighteen inches or two feet square.

30

Q. Did you see the condition of the attic?

A. No.

Q. You don't know what was the attic. Did you see the condition of the second floor?

A. Yes.

Q. How many rooms were burned in the second floor?

A. There was a little of the floor and a little of the plaster in the ceiling and some papering.

Q. In how many rooms?

A. In the one.

Q. What was the condition of the other rooms?

A. Just wanted papering.

10 Q. Do you know how many rooms were in the second floor?

A. Why, I think there were —

Q. The ground floor?

A. I think there were two stores and the small room—about four.

Q. Have you noticed that out of two stores was made one large store the numbers 196 and 198?

A. It was all one room. I think there was a beam and two posts under it.

20 Q. You saw new beams in that building?

A. I don't know whether they were new or not.

Q. But they were not just as old as the building?

A. Yes, the building was.

Q. You don't know whether the building had been repaired about six or seven years ago?

A. You can see by the floor there has been some repairs around.

Q. Did you hear Mr. Midura's figures as to the damage to the building?

30 A. Did I hear him figure?

Q. Yes.

A. No.

Q. He didn't say what was the loss, in his judgment?

A. We made the list and he thought it was too low. And that's all there was to it.

- Q. That's all?  
A. That is all that was said, and he went out.  
Q. Did he give you any figures?  
A. No.  
Q. Did he tell you what was the value of the building before the fire?  
A. No.  
Q. Did Mr. Robinson tell you what was the value of the building before the fire?  
A. No. 10  
Q. Did Mr. Robinson say what was the cost of the loss on the building?  
A. No.  
Q. How did you make an appraisal, then?  
A. We went around to each room and made a damage loss of the paper and the floors and the studding and some of the joists were burned, and the roof.

Mr. Lavine: I will call Mr. Crozer. 20

The Court: What do you want to show by him?

Mr. Lavine: That it is the policy of the Standard Company to offer money in excess of the actual loss in order to keep cases out of court.

The Court: Is that all?

Mr. Lavine: That is all. 30

The Court: I will overrule that offer.

DEFENDANTS REST.

SOPHIE STOY, a witness produced on behalf of the complainants, being duly sworn, testifies in rebuttal as follows:

Direct examination.

By Mr. Ciereszko:

10      Q. Mrs. Stoy, where did you live in June, 1929?

The Court: Strike it out.

Q. You occupied the building 196 to 200 Jefferson Street?

A. Yes, I lived 196, 198 and 200.

Q. Did you have paper in the windows instead of glass?

20      A. I have two years and everything all right.

Q. Answer the question. Did you have paper in the windows instead of glass?

A. I got everything good, not break, because I live over there two years and a half.

Q. What was the condition of the paper on the walls?

A. I got new paper, new wall, everything good, got eleven family. I live in good; everything all right.

30      Cross-examination.

By Mr. Lavine:

Q. What two and a half years did you live there?

A. 196, 198, 200 Jefferson.

Q. What two and a half years?

A. What?

Q. You said you lived there two and a half years?

A. Yes.

Q. What were those years?

A. I moved about seven weeks before the fire, see?  
That is too small for me; my husband buy a house.

By the Court:

Q. You moved out about seven months before the fire? 10

A. No.

Q. When did you move?

A. Spruce Street.

Q. When did you move out of this house?

A. About seven or eight weeks before the fire.

Q. Seven or eight weeks before the fire?

A. Yes.

20

By Mr. Lavine:

Q. What were the rooms used for upstairs?

A. Five rooms.

Q. What were they used for?

A. I use two rooms upstairs.

Q. What were they used for? What did you do with the rooms?

A. I got eleven children; eleven family.

Q. Eleven families? 30

A. Yes.

Q. All living in the one house?

A. Five rooms upstairs and two downstairs.

Mr. Ciereszko: The witness means eleven in the family.

A. Sure.

Q. What did you use the rooms for, sleeping rooms, eating rooms?

A. Four sleeping rooms upstairs.

Q. What did you have downstairs?

The Court: Why waste time this way?

Mr. Lavine: I will withdraw the question.

10

BOTH SIDES REST.

ARGUMENT.

EXHIBIT C1.

20 Phones:  
Office 4927  
5765  
7-2979-M

RYBA & CURRY  
General Contractors  
222 East Hanover Street  
Trenton, N. J.

7/17/29

Mr. Olkowski ( Jefferson & Harmon St  
30 Trenton N. J.)

We have gone over the entire Building and have estimated the following items.

Clearing the condemned wood work and block walls	\$250.00
Carpenter labor and cost of replacing 13 windows	286.00

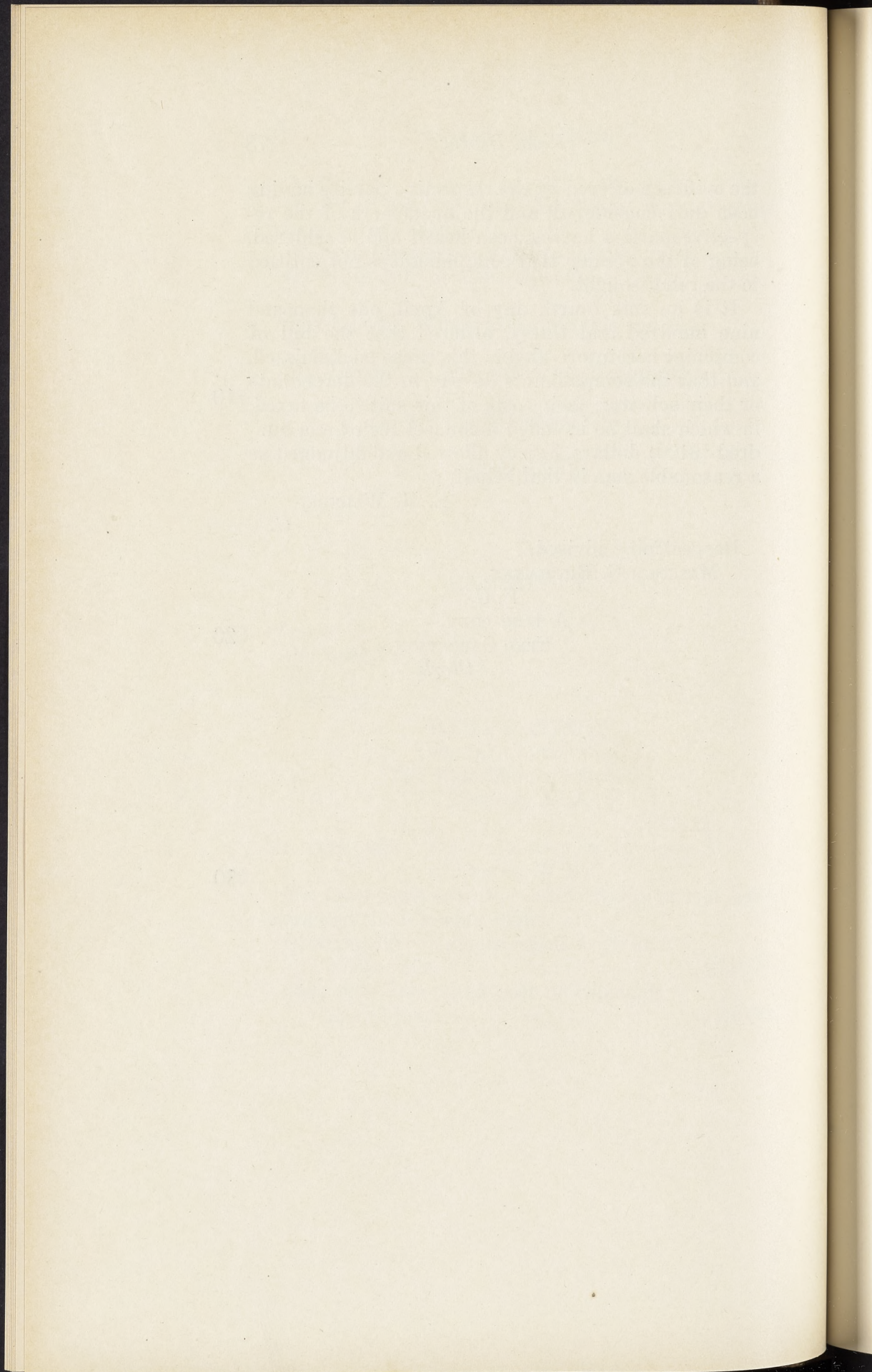
the evidence offered by the respective parties having been duly considered, and the arguments of the respective parties having been heard and considered, being of the opinion that complainant is not entitled to the relief sought.

It is on this fourth day of April, one thousand nine hundred and thirty, ordered that the bill of complaint heretofore filed in this cause be dismissed, and that the complainants do pay to the defendants or their solicitor, their costs of this suit to be taxed, in which shall be included a counsel fee of one hundred (\$100) dollars, hereby allowed and adjudged as a reasonable sum in that behalf. 10

E. R. WALKER,  
*C.*

Respectfully advised,  
MALCOLM G. BUCHANAN,

*V. C.*  
A true copy, 20  
FRED GARRETSON,  
*Clerk.*



All Rough Carpenter Labor Roof — Floors—&—Outside work	960.00	
Replacing 7 new doors Labor & Hard- ware	140.00	
Finished Carpenter work on millwork e-t-c	86.00	
Lumber	875.00	
Millwork —Base— Mldgs. trim.	60.00	
Plaster— 338 yds. @ 150	428.75	
Painting must be done on exterior and exterior	310.00	10
Clearing off loose plaster and replacing lath needed	140.60	
Building of block building destroyed entirely	370.00	
Roof covering	186.00	
Papering required	140.00	
Permits & Overhead Truck e-t-c	125.00	
	<hr/>	
Total cost	\$4,357.00	20
	<hr/>	
Profit	435.00	
Bid	\$4,792.00	
	<hr/>	

We propose to do this job for the sum above  
Time of completion can be aranged for about 8  
weeks.

Yours very truly,

Stanley Ryba.

RYBA AND CURRY 30

## EXHIBIT C2.

## AGREEMENT FOR APPRAISAL

This agreement by and between Theodore Olkowski, Hattie Olkowski of the first part, and the insurance company, or companies, whose names are signed hereto, each for itself and not jointly, of the second part:

10 WITNESSETH: that whereas the party of the first part claims to have sustained a loss by fire occurring on the 2nd day of July 1929, to and upon the following described property, to wit: On the two story frame building and additions thereto occupied as store and dwelling situate nos. 196, 198 and 200 Jefferson Street, City of Trenton, New Jersey and

20 WHEREAS, a disagreement has arisen between the parties hereto, as to the amount of such loss, and

WHEREAS, it is provided by the policy (or policies) of said party (or parties) of the second part, held by said party of the first, that in the event of disagreement as to the amount of loss the same shall, as in said policy (or policies) provided be ascertained by appraisers.

30 THEREFORE THIS AGREEMENT WITNESSETH; that in conformity to the terms and conditions of the policy (or policies) of the party (or parties) of the second part, B. F. Robinson of Newark, N. J. and Stanley Midura of Trenton, New Jersey have been selected, and are hereby appointed appraisers, to estimate and appraise, in accordance with the terms and conditions of said policy (or policies), the sound value of said property and the

amount of loss or damage directly caused by said fire to and upon the same.

The said appraisers shall first select a competent and disinterested umpire, as provided by said policy (or policies); the said two appraisers together shall then estimate and appraise the loss, in conformity to the conditions of said policy (or policies), stating separately sound value and damage, and, failing to agree, shall submit there differences to the umpire; and the award in writing of any two shall determine the amount of such loss. Such loss or damage shall be ascertained or estimated according to the actual cash value of said property at the time of the occurrence of said fire, 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, but such appraisalment does not in any respect waive any of the provisions or conditions of said policy (or policies) of insurance, or any forfeiture thereof, or the proof of such loss and damage required by the policy (or policies) of insurance thereon.

10

20

Witness our hands (in duplicate) at Trenton, N. J. this 20th day of August 1929

(Hattie Olkowska

(

Theodore Olkowski

Witness

William M. Crozer

5

30

( Atlas Fire Insur. Co.

( By Wm. M. Crozer, Adjuster

(

(

( Standard Fire Ins. Co. N. J.

( By Wm. M. Crozer, Adjuster

Witness: Margaret A. Magee

AGREEMENT  
for  
SUBMISSION TO APPRAISERS

Assured .....  
 .....  
 .....  
 10 Location .....  
 .....  
 .....  
 Agency .....  
 .....  
 .....  
 .....  
 Date of Fire .....

20

DECLARATION OF APPRAISERS.

STATE OF New Jersey }  
 COUNTY OF Mercer } ss.

30 We the undersigned, do solemnly swear that we will act with strict impartiality in making an appraisal and estimate of the sound value and loss and damage upon the property hereinbefore mentioned, in accordance with the foregoing appointment, and that we will make a true, just and conscientious award of the same, according to the best of our knowledge, skill and judgement. We are not related to the assured, either as creditors or other-

wise, and are not interested in said property or the insurance thereon.

B. F. Robinson  
Stanley Midura  
Appraisers

Subscribed and sworn to before me this 22nd day of August A. D. 1929

William M. Crozer  
Notary Public.

10

SELECTION OF UMPIRE.

We, the undersigned, hereby select and appoint Fred P. Parker to act as umpire to settle matters of difference that shall exist between us, if any, by reason of and in compliance with the foregoing agreement and appointment.

Witness our hands this 22nd day of August A. D. 1929.

20

B. F. Robinson  
Stanley Midura

QUALIFICATION OF UMPIRE.

STATE OF New Jersey }  
COUNTY OF Mercer } ss.

5

I, the undersigned, hereby accept the appointment of umpire, as provided in the foregoing agreement, and solemnly swear that I will act with strict impartiality in all matters of difference that shall be submitted to me in connection with this appointment, and I will make a true, just and conscientious award, according to the best of my knowledge, skill and

30

judgement. I am not related to any of the parties to this agreement, nor interested as a creditor or otherwise in said property or insurance.

Fred R. Parker

Subscribed and sworn to before me this 24th day of August 1929.

William M. Crozer,  
Notary Public.

10

AWARD.

We, the undersigned, pursuant to the within appointment DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned us, agreeably to the foregoing stipulations, and have appraised and determined and do hereby award as the sound value of said property on the 2nd day of July 1929, and the actual damage there-  
20 to by the fire on that day, the following sums, to wit:

	Sound Value	Loss and Damage
1st Item As described.....	3000.00	300.00
2nd Item .....		
3rd Item .....		
4th Item .....		
5th Item .....		
6th Item .....		

30 Total Sound Value and Total  
 Loss and Damage                      3000 00                      300 00  
 Witness our hands this 24th day of August 1929.

B. F. Robinson  
Stanley Midura  
Appraisers  
Fred R. Parker  
Umpire

MEMORANDUM.

(Filed April 1, 1930.)

(Not to be printed at all.)  
76/146

IN CHANCERY OF NEW JERSEY.

10

Between

THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his  
wife,

*Complainants,*  
and

THE STANDARD FIRE IN-  
SURANCE COMPANY, a  
corporation of New  
Jersey, and the ATLAS  
ASSURANCE COMPANY,  
LIMITED, of London,  
England,

*Defendants.*

Memorandum. 20  
(Not to be printed at  
all.)

30

ON FINAL HEARING.

BUCHANAN, V. C.:

The defendants' bill is filed to set aside an award of arbitrators fixing a fire insurance loss, and alleging fraud and mistake. The proofs fail to show any

fraud or mistake or other ground for setting aside the award. The bill will be dismissed with costs and counsel fee.

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FINAL DECREE.

10

(Filed April 4, 1930.)

IN CHANCERY OF NEW JERSEY.

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Between

THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his  
wife,

20

*Complainants,*  
and

THE STANDARD FIRE IN-  
SURANCE COMPANY, a  
corporation of New  
Jersey and ATLAS AS-  
SURANCE COMPANY,  
LIMITED, of London,  
England,

*Defendants.*

30

On Bill, Etc.  
Order Dismissing  
Bill, and for Pay-  
ment of Counsel  
Fee.

---

This cause duly coming to be heard in the presence of Benjamin Ciereszko, solicitor for complainants, and Louis B. Lavine, solicitor for defendants, and the pleadings having been read and considered and

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

Between

THEODORE OLKOWSKI and HATTIE OLKOWSKI,  
*Complainants-Appellants,*

and

THE STANDARD FIRE INSURANCE COMPANY, a corpora-  
tion of New Jersey, and the ATLAS ASSURANCE  
COMPANY, LIMITED, of London, England,  
*Defendants-Appellees.*

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BRIEF OF THE COMPLAINANTS-  
APPELLANTS.

---

FACTS.

The complainants-appellants were the owners of certain houses situated in the City of Trenton, New Jersey, known and designated as Nos. 196, 198 and 200 Jefferson Street. On July 30, 1927, Theodore Olkowski, one of the complainants, insured the said premises with the Standard Fire Insurance Com-

2      *Brief of the Complainants-Appellants*

pany of New Jersey, one of the defendants herein, in the sum of three thousand (\$3,000.00) dollars for three (3) years, which policy was in the standard form of New Jersey. On May 3, 1929, Hattie Olkowski, the other complainant-appellant, insured the said premises with the Atlas Assurance Company of London, England, the other defendant herein, in the sum of two thousand (\$2,000.00) dollars for three (3) years, which policy also was in the standard form of New Jersey.

On July 2, 1929, and while both of the said fire insurance policies were in force, a fire occurred and destroyed a part of the premises covered by the said insurance policies. The complainants-appellants notified the said defendant companies, and thereafter a dispute arose as to the sound value of the building and the loss and damage by fire.

The said policies contained provisions by which the parties, in case of dispute, were bound to submit to appraisal agreement in order to determine the sound value of the building and loss and damage by fire, and accordingly on August 20, 1929, the said parties signed an appraisal agreement, which agreement appears in the State of the Case, on pages 66-67. The complainants-appellants appointed one Stanley Midura, a Trenton builder, for their appraiser; the defendant companies appointed Benjamin F. Robinson, a builder of the City of Newark, for their appraiser; and these appraisers selected one Fred R. Parker, also of Trenton, New Jersey, for umpire.

On August 24, 1929, the said appraisers and umpire signed a paper which purported to be an award

fixing the sound value of the building at the sum of \$3,000 and the loss and damage by fire at the sum of \$300.

On October 30, 1929, the complainants filed their bill in Chancery to set aside the said award on the grounds of bias and misconduct on the part of the appraisers and the umpire, and because of their refusal to appraise the sound value of the building and to estimate all of the loss caused by the fire, and on the ground that the purported award was grossly inadequate. Thereafter issue was duly joined and the case was referred to Honorable Malcolm G. Buchanan, one of the Vice-Chancellors of New Jersey, and on March 27, 1930, the said Vice-Chancellor after hearing the evidence advised a decree dismissing complainants' bill, and from the decree of dismissal entered on the advice of the said Vice-Chancellor the complainants take this appeal.

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ARGUMENT.

1. The award should be set aside on the ground that Benjamin F. Robinson, one of the appraisers, failed to appraise the sound value of the building before the fire.

2. The appraisal was not a fair and just appraisal in estimating the sound value of the building and

loss and damage in accordance with the agreement between the parties.

3. The award did not embody the real judgment of the appraisers and umpire.

4. The award was grossly inadequate and unjust.

POINT 1.

The award should be set aside on the ground that Benjamin F. Robinson, one of the appraisers, failed to appraise the sound value of the building before the fire.

The building was in a fair condition before the fire occurred. Stanley Ryba estimated the value of the building before the fire at \$5,500 (Case, page 24, lines 10-15). This witness also testified that the building was in a fair condition and that it was rented for \$65 per month (Case, page 21, lines 1-4).

Stanley Midura, one of the appraisers, fixed the sound value of the building at \$5,500 or \$5,600 (Case, page 31, lines 30-35).

Frank Gule, one of the witnesses who was well acquainted with the premises, testified that the probable life of the building would have been from 20 to 30 years or more (Case, page 28, lines 33-36). He further testified that the building was in a fairly good condition before the fire (Case, page 29).

The appraiser, Benjamin F. Robinson, saw the building for the first time on the day of the ap

praisal which was about eight (8) weeks after the fire, and because of the condition of the building at this time he refused to appraise its value at one dollar before the fire. His testimony on this point was as follows:

“The house was very old, I should judge in the neighborhood of a hundred years—I am just guessing—and the life of that house, the building, would appear to have been about over; that was my reason for saying there was no real value. Our appraisal paper states we must determine the actual cash value of the property at the time the loss or damage occurs, and my first argument to my co-appraiser was that there was not any real cash value to that building. I told him if my bank or his bank sent me there to appraise that building, or a building and loan, I would value the land as a valuable property, but the building of no value” (Case, page 50, lines 6-20).

The situation here is similar to the case passed upon by the Court in *Collins Carriage Company v. German-American Insurance Company*, 86 N. J. E. 53, in which the Court said:

“The two appraisers and umpire accordingly signed an award which certified the loss and damage and also certified that \$48,375.85 was the sound value without Mr. Farley having made any effort whatever to ascertain the sound value and without his having given any consideration to that subject \* \* \* the situation

thus presented discloses an award signed by the two appraisers certifying to a sound value ascertained by them, whereas one of them did not, in fact, either appraise or ascertain, or undertake to appraise or ascertain the sound value, but on the contrary gave no consideration to that subject.”

POINT 2.

**The appraisal was not a fair and just appraisal in estimating the sound value of the building and loss and damage in accordance with the agreement between the parties.**

In arriving at his determination the umpire to whom appraisers submit their differences should consider the estimates of both appraisers (*New York Mutual v. Manchester Insurance Company*, 87 N. Y. S. 1075).

The appraisers did not submit any figures to the umpire as to the sound value of the building:

“Q. Did he (Midura) tell you what was the value of the building before the fire?

A. No.

Q. Did Mr. Robinson tell you what was the value of the building before the fire?

A. No.”

There was no appraisal of the sound value of the building before the fire, or if there was any such ap-

appraisal it was not communicated to the umpire and as such should be set aside.

*Collins Carriage Company v. German-American Insurance Company*, 86 N. J. E. 53;

*Dennis, et al. v. Standard Fire Ins. Co.*, 90 N. J. E. 419.

Mr. Midura, one of the appraisers, did not communicate the amount of the loss to the umpire (Case, page 60, lines 28-36).

The umpire, without obtaining information from either appraisers as to the sound value of the building and the loss and damage by fire, arbitrarily fixed figures for the sound value and damage without exercise of judgment.

In the following cases the award was set aside because the misconduct on the part of the appraisers and umpire and because the award was not made in accordance with the appraisal agreement:

*American Fire Ins. Co. of New York v. Bell*, 75 S. W. 319;

*Blaetz, et al. v. National Fire Ins. Co.*, 293 S. W. 504;

*Redner v. New York Fire Ins. Co.*, 99 N. W. 886;

*J. E. Davis Mfg. Co. v. Firemen's Fund Ins. Co.*, 210 Fed. 653; and

*Aetna Ins. Co. v. Hefferlian*, 260 Fed. 695.

## POINT 3.

**The award did not embody the real judgment of the appraisers and umpire.**

In the case of *Collins Carriage Company v. German-American Insurance Company*, 86 N. J. E. 53, the Court said: "There is one essential element which obviously must enter into any award to give it inherent vitality. It must be a real award; it must correctly embody the real judgment of the parties who make it. If the award which is returned does not embody their real judgment on the matters submitted for their award, this Court should relieve against its operation as an award." Mr. Midura, one of the appraisers, signed the award under the impression that the loss was appraised at \$3,200 or \$3,300 (Case, page 32, line 28). Mr. Robinson, the other appraiser, signed just to make the award on paper. His testimony as to the circumstances surrounding the signing of the award clearly indicates the unfairness of the award and also that the award was not made after an impartial appraisal but merely for the sake of making an award without considering the matters which were left for their consideration under the appraisal agreement. In this connection, Robinson testified as follows:

"The award that was made and signed by the umpire and myself was \$300.00. I first protested to that. I told him I thought \$250.00 was very liberal. He said no, three hundred

was what he would make the award, after making some figures. After taking my figures as to how I arrived at the \$644.00 and listening to what the other party had said about the thirty-three hundred, he told him that was all out of the question. He told him the property wasn't worth \$3,200.00; that the building wasn't, and he couldn't expect anything like that; and then the amount was filled in, I forget whether by myself or Mr. Parker, and my co-appraiser was asked to sign it and he refused, and I said I refused because I thought the amount was too large; and we wanted him to sign it. I said, 'Somebody will have to sign it to make an award,' so I signed it and Mr. Parker signed it for the \$300.00 for the amount of the actual loss and three thousand as the actual cash value, which I protested was too much; but the other man wouldn't sign it; so that's the reason I signed it, to make the award'' (Case, 51, lines 3-25).

POINT 4.

**The award was grossly inadequate and unjust.**

The award of \$300.00 for the damage to the building is grossly inadequate in view of the testimony of witnesses of complainants whose estimates of the amount of damage ranged from \$3,300.00 to \$4,950.00. These estimates were made by builders in the course of competitive bids, and were made after

a thorough examination of the property, such as is necessary when giving an estimate for work to be done.

Dimty Hasonak, one of the builders, appraised the loss at \$3,300.00 (Case, page 42, lines 32-35).

Stanley Midura, one of the builders who was also one of the appraisers after figuring for two days, estimated the loss between \$3,300.00 and \$3,700.00 (Case, page 31, lines 26-28).

Stanley Ryba, a builder, estimated the loss at \$4,792.00. The items of damage were itemized, and the estimate made after a thorough examination of the premises. The estimate of Ryba & Curry, of which company Mr. Ryba was a member, was offered in evidence as Exhibit C1 (Case, pages 64-65).

Ernest E. Schmid, another builder, estimated the loss at \$4,950.00 (Case, page 45).

As against this testimony, the only testimony of the actual loss produced by the defendant was that of Mr. Robinson, one of the appraisers, and Mr. Parker, the umpire. Neither of these witnesses saw the building before the fire, and they offered no evidence of the specific items of damage making up the award.

In July, 1927, the defendant, The Standard Fire Insurance Company insured the building for \$3,000.00 and in May, 1929, the other defendant, The Atlas Assurance Company insured the building for \$2,000.00. The building was tenantable and renting for \$65.00 a month prior to the fire, and was in fair condition. After the fire it was in such condition as to be damaged practically beyond repair.

It is, therefore, contended that the award was

grossly inadequate such that the Court will presume bias.

*Perry v. Greenwich Insurance Company*, 49 S. E. 889. In this case the jury appraised the loss of \$750.00 and the appraisal at \$73.50. The Court held that it was gross inadequacy from which fraud and bias may be presumed to justify the Court to set aside the award and the award was accordingly set aside.

*Husted, et al. v. Patrons' Mutual Fire Ins. Co., of Michigan*, 193 N. W. 813. In this case the appraisers estimated the loss to the building and personal property at \$12,155.00 and the arbitration board awarded \$2,800.00. The Court set aside the award on the ground of gross inadequacy.

*Shepard v. Springfield Fire Ins. Co.*, 104 A. 18. Estimate of loss in this case was \$9,400.00. An award of \$4,970.00 was set aside on the ground of gross inadequacy.

*Bradshaw, et al. v. Agricultural Ins. Co.*, 32 N. E. 1055. Loss in this case was \$2,750.00 and an award of \$1,760.00 was set aside as grossly inadequate. For like reasons the award was set aside in the following cases:

*Blaetz, et al. v. National Fire Ins. Co.*, 293 S. W. 504;

*Mrs. A. K. Ross & Co. v. German Alliance Ins. Co.*, 119 P. 366;

*Continental Ins. Co. v. Garrett*, 125 Fed. 589.

CONCLUSION.

It is respectfully submitted that the decree of the Chancellor should be reversed, and that the complainants should be granted the relief prayed for in their bill of complaint.

Respectfully submitted,

BENJAMIN CIERESZKO,  
*Solicitor of Appellants.*  
AUGUSTINE V. GRIBBIN,  
*Of Counsel.*

NEW JERSEY  
Court of Errors and Appeals

Between THEODORE OLKOWSKI and  
HATTIE OLKOWSKI, his wife,  
*Complainants-Appellants,*  
*and*  
THE STANDARD FIRE INSURANCE COMPANY, a corporation of New Jersey, and ATLAS ASSURANCE COMPANY, LIMITED, of London, England,  
*Defendants-Respondents.*

On Appeal from  
Court of  
Chancery.

**BRIEF OF DEFENDANTS-  
RESPONDENTS**

THE FACTS ARE SUBSTANTIALLY AS  
STATED IN THE BRIEF OF APPELLANTS.

The appellant sought to set aside the award on the ground of fraud and misconduct on the part of the appraisers and umpire. The learned Vice-Chancellor in dismissing the bill found, as a matter of fact, that the proofs failed to show any fraud or mistake or other ground for setting aside the award. We submit that such finding of fact by the Trial Court should not be disturbed. Suffice it to say that nowhere in the testimony is there an indication of fraud.

The general doctrine that a court of equity will uphold an award in the absence of fraud, mistake, misconduct,

undue influence or corruption, is so well established as to hardly require a citation of authorities.

Mr. Justice Trenchard in the case of *Melton Brothers vs. The Philadelphia Fire and Marine Insurance Company*, 144 Atl. page 726, said:

“At the outset it is to be noted that, while the person selected by the appraisers under the appraisal agreement in question is referred to as an umpire, he is not strictly such, but is rather a third appraiser.”

*Dennis vs. Standard Fire Insurance Company*, 90 N. J. E. 419.

“Every reasonable intendment and presumption comes to the support of an award in arbitration proceedings. The attacking party has the burden of establishing the invalidity of the award by clear proof, for an award will not be lightly set aside.”

*Caledonian Insurance Company vs. The North Dutch Reformed Church*, 96 N. J. E. 342;  
*McQuaid Market House Company vs. Home Insurance Company*, 147 Minn. 254.

“Upon the whole case we consider that none of the matters urged justified the court in setting aside the award, in view of the rule which is that, where the insured has sustained a loss and an award is made by an umpire and one of the appraisers duly appointed pursuant to the appraisal agreement, the court will not weigh the technicalities of the method of arriving at the award and making the appraisal, when the appraisers and umpire were competent and disinterested, and no injustice or fraud has been committed.”

*Caledonian Insurance Company vs. The North Dutch Reformed Church*, 96 N. J. E. 342.

## POINT I

The appellant contends that Benjamin F. Robinson, one of the appraisers, failed to appraise the sound value of the building before the fire.

A reading of Mr. Robinson's testimony (Case, p. 47-57), clearly indicates that Mr. Robinson made an exhaustive study of the building in calculating the sound value of the building before the fire. At the time of his examination of the building, after the fire, the building was in such condition that he was able to tell the condition of the building before the fire. He testified (Case, p. 54, lines 19-22).

"the whole house is intact, and you can go upstairs and downstairs, and in every room and the plaster is still on the walls except here and there some broken places."

The instant case is unlike the case of *Collins Carriage Co. vs. German American Insurance Company*, cited by the appellant, because Mr. Robinson, as disclosed by his testimony, did give serious consideration to the subject of the sound value of the property before the fire, and while (Case p. 50, line 13),

"my first argument to my co-appraiser was that there was not any real cash value to that building," due to the age and condition of the building, upon conference with his co-appraiser and Mr. Parker, the umpire, they determined a sound value of the \$3,000. The determination of the sound value and the determination of the award was made after a discussion of the views of the two appraisers, and the umpire, and was the result of their joint deliberations and a merging of their, at first, conflicting opinions.

Vice-Chancellor Backes in *Dennis vs. Standard Fire Insurance Company*, 90 N. J. E. 419, at page 421, said:

"It was hardly to be expected that the appraisers would agree in all matters."

Mr. Benjamin F. Robinson, appraiser for the defendants-respondents (Case, page 51, 3-6):

“A. The award that was made and signed by the umpire and myself was \$300.00. I first protested to that. I told him I thought \$250.00 was very liberal.”

Mr. Robinson, continuing (Case, page 50, lines 30-36):

“A. \$644.00 to replace the loss, but I told him that the conditions were such that if we spent \$644.00 we would certainly improve the building, because in doing that we were painting and papering places which needed papering anyway, and some places where it was burned off in the rear of that store.”

Mr. Fred R. Parker (Case, page 59, lines 1-10):

“Q. Did you hear the dispute between Mr. Robinson and Mr. Midura on the damage to the store?”

A. Yes, we were all there together.

Q. Do you remember what figure Mr. Robinson gave?”

A. We made the list up, the three of us, when we were there. Mr. Robinson was \$250.00 and I made it three hundred.

Q. That means for the total loss?”

A. Yes.”

The situation here is easily distinguishable from the case passed upon by Vice-Chancellor Leaming, in *Collins Carriage Company vs. German-American Insurance Company*, 86 N. J. E. 53.

In that the umpire in the Collins case refused to appraise the loss, because the sound value had not been established to his satisfaction by the production of the order ticket; whereas in the case *sub-judice*, Mr. Robinson debated at great length with Mr. Fred Parker, the umpire, and Mr. Midura, with regard to the sound value

of the property, and he came to the conclusion that the building itself was worth very little, whereas the land is to be valued as a valuable property.

Vice-Chancellor Backes in the case of *Dennis vs. Standard Fire Insurance Company*, 90 N. J. E. 419, at p. 424, said, in citing the case of *Collins Carriage Company vs. German-American Insurance Company*:

"This error of judgment is not, however, to be seized upon as a ground for vitiating the award as a whole. At least, not in this court upon an appeal for equitable relief. In all other respects the appraisers and umpire acted strictly within their respective capacities, and with absolute fairness towards the parties."

## POINT II

ARGUMENT MADE UNDER POINT II. OF COMPLAINANTS-APPELLANTS' BRIEF THAT THE APPRAISAL WAS NOT A FAIR AND JUST APPRAISAL, IN ESTIMATING THE SOUND VALUE OF THE BUILDING, AND LOSS AND DAMAGE IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE PARTIES, CANNOT BE SHOWN IN THE ABSENCE OF FRAUD, AND THEREFORE SHOULD NOT BE CONSIDERED ON APPEAL.

The rule of the law is well settled

"that where arbitrators keep within the terms of the reference, and there is no fraud, mistake, misconduct, undue influence or corruption, the award is conclusive on the parties, since it is the decision of a tribunal of their own choosing."

Vice-Chancellor Church, in the case of *Larky vs. The Home Insurance Company*, 101 N. J. E. 491, at p. 493, citing the case of *Richardson vs. Lanning*, 26 N. J. L. 130:

"Where arbitrators keep within the terms of the reference, and there is no fraud, mistake, misconduct, undue influence or corruption, the award is conclusive on the parties, since it is the decision of a tribunal of their own choosing."

Vice-Chancellor Church, in the same case in citing *Hewitt vs. Lehigh Railroad Company*, 97 N. J. E., approved the following statement:

"In the absence of misconduct or want of good faith in an arbitrator, the fact that the award seems too high or too low is not ground for judicial interference."

Citing *Caledonian Insurance Company vs. North Dutch Reformed Church*, 96 N. J. E. 342:

"Where no fraud is alleged or proved against the umpire and one of the appraisers who made the award, the court will not remove the umpire or set aside the award, and where the insured has sustained a loss, and an award has been made by an umpire, duly appointed, and one of the appraisers, in accordance with the terms of the policy, the court will not weigh the technicalities of the method of arriving at the award and making the appraisal, when the appraisers and umpire were admittedly competent and no injustice or fraud has been committed."

The argument that the umpire, without obtaining information from either appraisers as to the sound value of the building and the loss and damage by fire, arbitrarily fixed figures for the sound value and damage without exercise of judgment, is contrary to the view expressed by Vice-Chancellor Backes, in *Dennis vs. Standard Fire Insurance Company*, *supra* 90 at p. 422:

"Here the umpire is required to act with the appraisers in matters of difference. He is a third appraiser. The three are to collaborate, each using and contributing his own good judgment. If they disagree there is a mistrial; if the three are of

one mind, or if any two of them are in accord as to sound value and loss, the award is a finality. Manifestly, it would have been an abuse of authority had the umpire arbitrarily confined himself within the limits of the appraisers' estimates."

In the instant case the testimony is barren of even a claim of fraud. The most that complainant has even hoped to show by the testimony is that several witnesses would have charged more to fix the place than the amount of the award, and the reading of their testimony indicates that it is very questionable as to how much of their estimate included repairs because of the fire and how much included repairs due to the previous deterioration in the condition of the building before the fire. The testimony shows that the appraisers and umpire had an opportunity to, and did, examine the building and saw the condition thereof, after the fire, and were in a position to judge what work was necessary because of the fire and what work would have been necessary to put the building in good condition, because of the condition of the building which existed prior to the fire.

### POINT III

ARGUMENT MADE UNDER POINT III OF COMPLAINANTS-APPELLANTS' BRIEF THAT THE AWARD DID NOT EMBODY THE REAL JUDGMENT OF THE APPRAISERS AND UMPIRE, IS NOT JUSTIFIED FROM THE FACTS OF THE CASE.

The testimony shown on the hearing disclosed the fact "that Mr. Robinson estimated the loss arising out of the fire to amount to \$250.00. The figures estimated by Mr. Parker, the umpire, was in excess of the figure assessed by Mr. Robinson. In order to make an award they compromised upon the figure of \$300.00."

Stanley Midura, the appraiser for the complainants-appellants, also understood what he was to do, and this

is clearly evident from the testimony (Case, page 37, lines 12-19):

“Q. Did you read the award?

A. I have read it inside, but not on the outside. My partner has read it and understood it more than I have.

Q. Did he explain it to you?

A. He has explained it to me.

Q. And you knew what it was all about?

A. I did.”

(Case, page 38, lines 15-32):

“Q. Did they tell you for how much they appraised the loss to the building?

A. They told me that there was \$300.00 of damage, and I told them the cleaning of the debris would be that alone.

Q. Who told you that first?

A. They have talked between themselves; they have not questioned us at all.

Q. Did you see in the paper the sum of \$300.00 before you signed that?

A. I haven't seen it.

Q. Did you see in the paper \$3,000.00 as the value of the building before the fire?

A. It was worth more.

Q. Answer the question? Did you see in that award \$300.00 that it was worth before the fire?

A. I haven't seen it, but I thought that was the damage appraised.

The evidence at the hearing showed that Mr. Midura knew the amount of the award to be \$300.00 and wished to secure the consent of the owner (Olkowski), and in his testimony it was shown that after the appraisers left the building he went to the owner and secured his consent to the signing of the award.

The mere fact that Mr. Robinson was at first of the opinion that the award should have been \$250 instead of \$300 as contended for by Mr. Parker is immaterial, in

that he did, by the award, concur in the judgment of Mr. Parker and made the award \$300. Certainly the complainants cannot now complain that Mr. Robinson awarded more than what, in his first judgment, he considered a liberal allowance.

#### POINT IV

ARGUMENT MADE UNDER POINT IV. OF THE COMPLAINANTS-APPELLANTS' BRIEF THAT THE AWARD WAS GROSSLY INADEQUATE AND UNJUST, SHOULD NOT BE CONSIDERED ON APPEAL.

"The law casts upon the complainants-appellants the burden of proving misconduct or want of good faith in the appraisers, in order to have the award set aside on the grounds of inadequacy."

Mr. Justice Kays, speaking for the Court of Errors and Appeals in the case of *Caledonian Insurance Company vs. The North Dutch Reformed Church*, 96 N. J. E. 343, which was affirmed on appeal, at page 345, said:

"The court cannot weigh the experience and competency of an umpire lawfully appointed by the court and under the policy of insurance, as was Mr. Cook. The insurance company cannot complain that its appraiser was not sufficiently consulted, if the award appears to be an award of the umpire, upon questions which were in dispute between the appraisers, as appears in this case. We can see no reason for the separation and the itemizing of the damage to the church and Sunday school, as the policy covered both, and was not apportioned as between the two. An award made as this was made will not be set aside unless there is clear proof of injustice done to the complainant. The evidence in this case, as we view it, fails to disclose, as has already been stated, any actual fraud, and also fails to disclose any injustice to the complainant."

With reference to the argument of the appellant under Point IV, that Dimty Hasonak, Stanley Ryba and Ernest E. Schmid estimated the loss at a greater sum than what was awarded, we would repeat here what we have said under Point II, that a reading of their testimony indicates that their estimates included other work than what was necessary by reason of the fire alone.

### CONCLUSION

The defendants-respondents respectfully urges that the lower court did not err in advising a decree dismissing complainants-appellants' bill, and, therefore,

The final decree of the Court of Chancery should be affirmed.

Respectfully submitted,

HUSTON DIXON & LOUIS B. LEVINE,  
*Solicitors and Counsel for Defendants-Respondents.*

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