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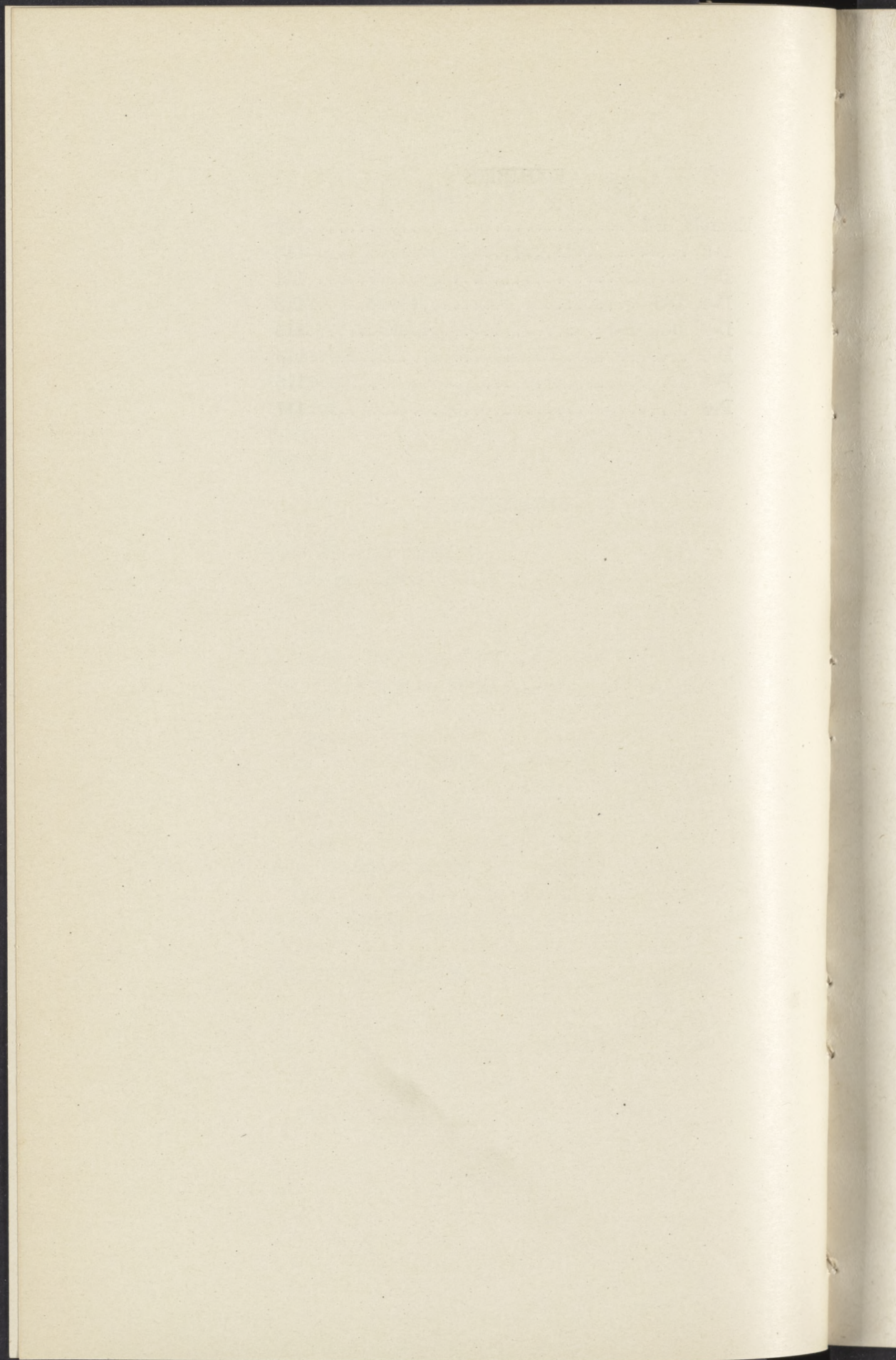
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New Jersey Supreme Court

Monmouth County

Dominic Precopio,

Plaintiff,

vs.

Insurance Company of the State
of Pennsylvania,

Defendant.

10

TESTIMONY.

Transcript of testimony taken in the above entitled cause before Jess, J., and Jury, at the Court House, Freehold, N. J., on Wednesday, March 3rd, and Thursday, March 4th, 1926.

Appearances:

Joseph T. Lieblich, Esq., for Defendant.

20

William L. Edwards, Esq. and John C. Giordano, Esq., for Plaintiff.

Mr. Edwards opens Plaintiff's case to Jury.

Mr. Lieblich opens Defendant's case to Jury.

PAUL MARTELL, a witness produced in behalf of the Plaintiff, being duly sworn, according to law, upon his oath, testifies as follows:

Direct Examination by Mr. Edwards:

Q. Paul, where do you live? A. 31 Monmouth Place, West End.

30

Paul Martell—direct

Q. Are you acquainted with Dominic Precopio?

A. Yes, sir.

Q. Were you acquainted with him on the twenty-fifth of last February? A. Yes, sir.

10 Mr. Edwards—Mr. Lieblich, I have called upon you to produce a letter dated February 25, 1925.

Mr. Lieblich—Anything I have, you can have it if you will tell me what it is.

Mr. Edwards—A letter addressed to the Insurance Company of the State of Pennsylvania February 25, 1925 signed Dominic Precopio.

Mr. Lieblich—The first letter I have is dated May 25, 1925.

20 Mr. Edwards—You haven't that letter then, is that the idea?

Mr. Lieblich—No, February?

Mr. Edwards—February 25, 1925, addressed to the Insurance Company of the State of Pennsylvania.

Q. Did you write the Insurance Company of the State of Pennsylvania on February 25, 1925?

30 Mr. Lieblich—I object, first, as to the form of the question. It is very leading.

By the Court—How would you suggest it be framed to ascertain whether a letter or communication was sent?

Mr. Lieblich—He is putting the answer in the witness' mouth. The question I would

Paul Martell—direct

propound, "did you have occasion to write a letter"—then it wouldn't be leading.

By the Court—I will over-rule the objection.

Mr. Lieblich—Your honor permit me an exception?

By the Court—Yes.

10

A. Yes, sir.

Q. Did you keep a copy of the letter? A. Yes, sir.

Q. At whose request did you write the letter?

A. At Dominic Precopio's wife.

Q. Did Dominic sign it? A. No, sir.

Q. Who did sign it? A. I signed it.

Q. For whom? A. For him.

Q. I show you a paper and ask you to look at it and tell us whether that is a correct copy of the letter that you sent? A. Yes, sir. 20

Q. And where did you mail it from? A. I didn't mail it, I gave it to the wife and she mailed it.

Q. You don't know whether she mailed it or not? A. I don't know whether she mailed it or not, I gave it to her and she went out.

Mr. Edwards—I will have to withdraw this witness for the time being.

Mr. Lieblich—I suppose you will put him on again so I can examine him. 30

Mr. Edwards—Yes.

Catherine Precopio—direct

CATHERINE PRECOPIO, a witness produced in behalf of the Plaintiff, being duly sworn, according to law, upon her oath, testifies as follows:

Frank A. Federici, sworn as Interpreter.

Direct Examination by Mr. Edwards:

- Q. Do you know Paul Martell? A. Yes, sir.
- 10 Q. Did Paul Martell ever give you anything to mail at any time? A. Yes, sir.
- Q. What did he give you, do you know? A. He gave me a letter to mail.
- Q. When? A. I don't remember the time when he gave it to me.
- Q. How long after he gave you the letter to mail, did you mail it? A. The same night that he gave me the letter.
- 20 Q. Did he ever give you any other letter but one? A. No, that is all, only one.
- Q. And where did you mail it?

Mr. Lieblich—I think, your honor, the interpreter should be instructed not to ask any other question than the question asked by counsel.

Interpreter—She did answer some location or name and I couldn't understand it.

- Q. At what place did you mail it?
- 30 By the Court—What does she say.
- A. Right near the house where I live.
- By the Court—In what town?
- A. Long Branch.
- Q. In the letter box? A. Sure.

Paul Martell—direct

- Q. You know a letter box when you see one?
A. Yes, sir.

Mr. Edwards—That is all. Do you want to cross examine her?

Mr. Lieblich—No.

10

PAUL MARTELL, recalled to witness stand.

Mr. Edwards:

- Q. What did you do with the letter you wrote?
A. I left it home.
Q. The letter that you wrote?

By the Court—He said he gave it to the wife of Precopio.

20

- A. One I gave to the woman and the other I had.
Q. Is that what you kept at home? A. That is the second copy.
Q. That is the second copy? A. Yes, sir.
Q. Was the letter you gave to Mrs. Precopio in an envelope? A. Yes, sir.
Q. Was the envelope addressed? A. Yes, sir.
Q. To whom? A. The insurance company.
Q. That is the exact copy, did I understand you to say? A. Yes, sir.

Mr. Edwards—I offer it in evidence.

Mr. Lieblich—May I cross-examine him on it? 30

By the Court—Yes.

Paul Martell—cross

Cross Examination by Mr. Lieblich:

Q. What relation are you to the Plaintiff? A. Nothing.

Q. I understand you to say you wrote the letter and gave that letter to Mrs. Precopio? A. Yes, sir.

10 Q. When you said "I gave it to the wife to mail" is that what you meant, Mrs. Precopio? A. Yes, sir.

Q. Were you living with them? A. No.

Q. Before you came here, did you talk this matter over with Mr. Edwards? A. No, sir.

Q. Did you talk the matter over with Mr. Giordano? A. No, sir.

Q. You didn't discuss it with anyone? A. No, sir.

20 Q. When did you last see this paper? A. About a week after I wrote it.

Q. Where was this? A. Home. Over to my house.

Q. In your home? A. Yes, sir.

Q. Was Mrs. Precopio in your house at the time you wrote it? A. Yes, sir.

Q. And was Mr. Precopio there? A. Not then.

Q. And where did you live with respect to this fire? A. Well, I live in the West End.

Q. Where was this fire? A. I was no place near the fire, I don't know where they lived.

30 Q. Did they visit you or what? A. Yes, sir, they came over to the house.

Q. She just came to your house? A. Yes, sir.

Q. What did she say to you? A. She told me her husband was in Freehold jail and she wanted to go see him. I told her I didn't have no car and she

Paul Martell—cross

said her husband had one and that I could drive it up. And when we got there he said there was a fire and I said "Is there insurance" and he said "yes" and I said "you should notify the company".

Q. You told him that? A. Yes, sir.

Q. How long was he in jail? A. Yes, sir.

Q. He wasn't in jail before the fire was he? A. No, sir.

Q. You did not see this paper—

10

Mr. Lieblich—I think you had better mark it for identification.

Mr. Edwards—No, it is a letter that is offered in evidence.

Q. You say you saw this paper which I hold in my hand about a week after the fire? A. Yes, sir.

20

Q. When did you next see it? A. I don't quite remember.

By the Court—Pardon me, did he say a week after the fire or a week after he had written it, which is true?

A. After I had written it.

Q. You haven't seen it since? A. Yes.

Q. Did you see it in court today? A. I see it now.

Q. You recognize it? A. Yes, sir.

30

Q. And that is in your handwriting? A. That is my handwriting.

Q. Did you write the other letter the same as this? A. Yes, sir.

Paul Martell—cross

Q. Was it on similar kind of paper? A. Did I write it with pen, you mean?

Q. Yes. A. I don't think so.

Q. How did you write the other one? A. I typewrote one.

Q. The other was typewritten? A. Yes, sir.

Q. You did typewriting? A. Yes, sir.

10 Q. You did, yourself? A. Yes, sir.

Q. Where? A. Home.

Q. So you say you wrote a typewritten letter and that typewritten letter you gave to Mrs. Precopio?

A. To the wife, yes, sir.

Mr. Lieblich—I shall object to the admission on the ground that it is not a copy of the original and furthermore no proper proof has been made of the actual mailing of this letter.

20

By the Court—Mr. Edwards, it now appears that the letter that was written was a typewritten letter. This still may be a copy. I think it is necessary to show if there was a carbon copy of that letter. I think it should clearly appear that this is an exact duplicate of that letter. Why didn't you make a copy on the typewriter?

A. I didn't think it was necessary.

30

Q. Why did you make the original letter in typewriting? A. I thought it was better sent to the company typewritten than handwriting.

Q. Are you an experienced typist? A. Yes, sir.

Q. You make carbon copies of letters? A. Yes, sir.

Paul Martell—cross

Q. You didn't make a carbon copy of this? A. No, sir, I didn't have any carbon.

Q. You didn't make a typewritten copy? A. No, sir.

Q. You are able to say from the examination of that letter now, as it refreshes your recollection, it was an exact copy of the typewritten letter that you sent? A. Yes, sir.

10

By the Court—And you have asked for production of that letter and defendants say they have no such copy?

Mr. Edwards—Yes, that is what we have done.

By the Court—I will over-rule the objection.

Mr. Lieblich—Your honor permit me an exception?

20

By the Court—Yes.

Mr. Edwards then read letter of February 25, 1925 to the jury.

Q. Paul, you just got out of high school, did you not? A. Yes, sir.

Q. Have you been employed anywhere else as stenographer? A. No, sir.

Q. Have you taken up stenography as a particular study or just in the ordinary studies at High School?

30

Mr. Lieblich—I object, it is purely irrelevant. Not material to this issue at all.

Mr. Edwards—It is only offered for the purpose of showing that this boy—

Paul Martell—cross

By the Court—I over-rule the objection.

Mr. Lieblich—Your honor permit me an exception?

By the Court—Yes.

Q. You were a student in high school? A. Yes, sir.

10 Q. Are you now, Paul? A. No, sir.

Q. When did you graduate, if you did graduate?
A. June class 1925.

Mr. Edwards—That is all.

Cross Examination by Mr. Lieblich:

Q. Who invited you to come to court this morning, Paul. A. Mr. Precopio.

Q. You weren't subpoenaed? A. No, sir.

20 Q. Didn't receive any subpoena fee? A. No, sir.

Q. What is your business, trade or avocation now, Paul? A. At present I am not doing anything.

Q. Have you been doing anything since you graduated from high school? A. No, sir.

Q. How much did Precopio promise to pay you for coming here this morning? A. He didn't promise me anything.

30 Q. You just come voluntarily because he asked you? A. He asked me and I come.

Q. You say you are no particular friend of his? A. No, sir.

Q. I show you this paper referring to Exhibit P-2 and ask you to examine it and tell me what

Paul Martell—cross

there is about it that causes you to refresh your recollection to the extent to say that is an exact copy of the typewritten letter which you say you typed? A. I know that is an exact copy because that is what I wrote, just exactly what I wrote on the other paper.

Q. The other paper you say you typewrote? A. Yes, sir. 10

Q. Did you make any mistake in spelling in the letter? A. I don't know.

Q. You might have? A. I might have.

Q. Did you make any erasures in the typewritten letter? A. No, sir.

Q. You didn't rub anything out at all? A. No, sir.

Q. You are positive of that? A. Positive.

Q. Where was it that you typewrote the letter?

A. In my house. 20

Q. And on what kind of a machine? A. Oliver.

Q. Do you do typewriting at home quite often?

A. Once in a while.

Q. You did it that time? A. Yes, sir.

Q. You typewrote your notes when you were attending school? A. Yes, sir.

Q. Did you have occasion at any time to make a carbon copy? A. I used to at school but not at home.

Q. You never brought any carbon paper home with you? A. No, sir, we are not allowed.

Q. Wasn't it just as easy to typewrite the second letter after you had the first one done instead of writing it out in long hand? A. It was just as easy, yes. 30

Paul Martell—cross

Q. Don't you think it would be a better copy?

A. Not to keep at home.

Q. You intended to keep it for yourself? A. I just intended to copy it in case it was needed. When Mr. Precopio came out he wanted it.

Q. Nobody asked you to make a copy? A. No, sir.

10 Q. How soon after you wrote it did you have occasion to deliver that paper, referring to Exhibit P-2? A. I don't remember.

Q. How long was Precopio in jail? Possibly that will help you. A. I don't know.

Q. You don't know when he came out of jail? A. No, sir.

Q. How long after the fire was it you wrote the typewritten letter which you say you handed to Mrs. Precopio? A. The fire was on the twenty-fourth and she came to me I think on the twenty-fifth.

20 Q. How many days after the twenty-fifth did you again see Mrs. Precopio or Mr. Precopio? A. I seen Mrs. Precopio but Mr. Precopio came after he got out, I don't know how many days it was.

Q. Was it a week? A. Possibly.

Q. Would you say more or less than a week? A. I don't know.

Q. What is your best recollection, Paul? A. What is the use in saying something when I don't know.

30 Q. We want you to try and have you assist us by telling us your best recollection, do you know the question, Paul? A. Not surely.

Q. You don't . I want to know how soon after you wrote the letter referring to Exhibit P-2, that is the paper you have in your hand, did you again

Paul Martell—cross

see Mr. or Mrs. Precopio? A. I can't tell, I don't remember.

Q. Would you say it was more or less than a week? A. I don't know if it was more or if it was less.

Q. Your memory is very good as to the copy? A. The copy I wrote myself.

Q. You saw him, didn't you? A. I saw him but I don't know when he came over to the House. 10

Q. What would you say, would you say it was a month? A. I don't know.

Q. After you wrote that paper, referring to Exhibit P-2, what did you do with it? A. Kept it at home.

Q. For how long? A. I don't know.

Q. What did you finally do with the paper? A. When he came over I gave it to him.

Q. When who came over? A. Mr. Precopio. 20

Q. You don't know how long that was? A. No, sir.

Q. What did he say when he came to you? A. When he came he said "did you write the letter" and I said "yes, I kept another copy of it" he said "let me see it" and he kept it.

Q. Did he ever pay for it? A. No, I don't write letters to get paid.

Q. You didn't address an envelope or anything, did you? A. Envelope?

Q. Yes. A. I addressed an envelope, too. 30

Q. What kind of an envelope? A. Plain white envelope.

Q. Did you put a stamp on it, too? A. Yes, sir, I had stamps home.

Paul Martell—cross

Q. To whom did you address the envelope? A. To the Fire Insurance Company of the State of Pennsylvania.

Q. Where did you get the address? A. She had the policy.

Q. She had the policy with her? A. Yes, sir.

Q. And she showed you the policy? A. Yes, sir.

10 Q. And you say you got the address from the policy? A. Yes, sir.

Q. Do you recall what you wrote on the envelope? A. Some place in Pennsylvania but I don't know the full address.

Q. You don't recall anything about that? A. Yes, sir.

Q. Still you sufficiently recall that letter to say that it is an exact copy of what you wrote? A. Yes, sir.

20

Foreman of the Jury—May I ask a question?

By the Court—Just a minute.

Q. You don't recall making any erasures in typewriting the letter? A. No, sir.

Q. You don't recall whether you made any mistakes in the typewritten letter? A. No, sir.

30 Q. That letter you hold in your hand, Exhibit P-2, may not be an exact copy of what you wrote?

A. It is an exact copy.

Q. It is? A. Yes, sir.

Q. That you are sure of? A. Yes, sir.

Q. You read it and recall very distinctly and vividly that this is an exact copy? A. Yes, sir.

Paul Martell—cross

Q. You don't know how soon after you wrote it that you met Precopio or his wife? A. No, sir.

Q. You don't recall whether you made any mistakes or erasures in your typewritten letter? A. No, sir.

Foreman of the Jury—When you made that copy did anyone compare it with the original? 10

A. No, sir, nobody was there to read it to.

Q. You can't say for certain whether it is an exact copy? A. I compared it myself, there was nobody else to compare it with. I went over it to see if I had everything in here.

Q. Side by side? A. Yes, sir.

Q. You made this copy immediately after making the original? A. Yes, sir.

Q. How did you come to sign Precopio's name? 20
A. He told me to sign his name when I came here to see him.

Q. Do I understand you to mean that after you typewrote the letter and you read it, Precopio told you to sign his name? A. He told me that the day I came here, to go home write the letter and send them out, I went home, wrote the letter and signed them and gave them to his wife.

Q. Did you write two letters? A. He told me when I was here to write the letter and sign my name. When I got home I wrote the letter and signed his name to it.

Q. What letters did you write? A. I typewrote 30
one and wrote the other.

Q. That is the letters you referred to? A. Yes, sir.

Dominic Precopio—direct

DOMINIC PRECOPIO, the plaintiff in the above entitled cause, being duly sworn, through Frank Federici, Court Interpreter, upon his oath, testified as follows:

Direct Examination by Mr. Edwards:

- 10 Q. What is your business? A. Gardner.
Q. Where do you live? A. Now?
Q. Yes. A. West Long Branch.
Q. Where did you live on the twenty-fourth of February last 1925? A. West Long Branch.
Q. Were you working then? A. Yes, sir.
Q. For whom? A. Gardner.
Q. Where were you on the day of February, twenty-fourth, 1925? Q. I was home on the twenty-fourth.
20 Q. All day? A. About half past four or five, I was working on a cellar too. I was home all day on the twenty-fourth.
Q. Did you go out on the twenty-fourth at all? A. No, sir.
Q. Did you have a fire at your house on the twenty-fourth? A. Yes, sir.
Q. About what time? I don't know, about eleven o'clock, half past eleven.
Q. How do you know it was eleven or half past eleven? A. I was at the house, I was at Peter
30 Bovist.
Q. When did you go there? A. About six o'clock, night.
Q. Who did you go with? With a truck.
Q. Who with? A. My wife and children.
Q. How many children. A. Five children.

Dominic Precopio—direct

Q. What time did you you leave Bovis' to come home A. Eleven o'clock.

Q. How far is Bovis' house from where your house was? A. About ten or fifteen minutes.

Q. How far, I didn't ask how long? A. About two miles.

Q. When yu left your house with your wife and family was there any fire then A. No, sir. 10

Q. You say you got back at eleven or half past eleven? A. Yes, sir.

Q. Had there been any fire there at that time, at eleven or half past A. Yes, sir.

Q. Was it burning at the time you got there? A. Yes, sir.

Q. What was burning? A. The house was burning and everything.

Q. What do you mean by everything? A. There was a fire there, the whole house and roof had give in. 20

Q. Was your furniture in the house? A. Yes, sir.

Q. What became of it? A. She got burned up.

Q. Did you save any of it at all? A. No, sir.

Q. Where did you go after the fire? A. I stood there at the house.

Q. How long did you stay there at the house?

A. I was there until the fire was put out.

Q. How long was it burning? A. About a half hour or so after I got there the fire was put out. 30

Q. Do you know Paul Martel? A. Yes.

Q. Did you see him the next day? A. No.

Q. Did you see Paul Martel the day after the fire? A. No, sir.

Dominic Precopio—direct

Q. Are you sure you didn't? A. Yes, sir.

Q. Did he visit you in the jail, when? A. Yes, the next day he came to see me in jail.

Q. Did you have a talk with him? A. Yes, sir.

Q. Who did he come with? A. My wife.

Q. Did you have talk with him? A. Yes, sir.

10 Q. What did you say to him? A. I told him to go home and write a letter to the Insurance Company for me and tell them the house had been under fire and the furniture was burned up.

Q. What did your furniture consist of that was burned up?

20 Mr. Lieblich—If it please the court, I object to the form of that question. That is too general. It presupposes the burning of the things which he may enumerate. I don't think the question is properly framed. It surely is a very leading question.

Mr. Edwards—I think it is properly framed because the witness has heretofore stated the furniture was completely destroyed. I could use that phraseology, completely destroyed. What is the difference between completely destroyed and burned up.

By the Court—I over-rule the objection.

Mr. Lieblich—Your Honor permit an exception.?

30 By the Court—Yes.

Question repeated.

A. Chairs, bureau, china closet, bed, there were three beds, rugs, tablees.

Dominic Precopio—direct

Mr. Lieblich—What tables?

A. There were two tables. Stoves.

Q. What kind of stoves? A. There was two stoves.

Q. What kind? A. One coal stove and one was kerosene stove.

Q. Any dishes? A. Yes, sir. 10

Q. Any silverware? A. Yes, sir.

Q. What did the silverware consist of? A. There was knives, forks, spoons.

Q. Any glassware? A. Yes, sure.

Q. What did it consist of? A. Glassware with drinking glasses and all the pieces.

Q. Where did eat, you and your family eat, in that house? A. In the kitchen.

Q. Did you have a dining room? A. Yes, sir.

Q. What did you have in the dining room, if anything? A. Everything in there. 20

Q. What? That doesn't tell us anything. A. We had chairs there and table and sofa, lounge.

Q. Dining room table was it? A. Yes, sir.

Q. Did you have a buffet there? A. Yes, small one.

Q. How many chairs did you have in the dining room? A. Six.

Q. How did you keep your food in there? A. I used to buy it wholesale and keep it there.

Q. In what? What did you keep your butter and things in, an ice box?

Mr Lieblich—Don't lead him. 30

A. I kept it in an ice box.

Dominic Precopio—direct

Q. You had an ice box then, did you? A. Yes, sir.

Q. Who made your clothes, who made your children's clothes?

Mr. Lieblich—That is, of course, predicated upon their being made.

10

Q. Did you have a sewing machine in there? A. Yes, sir.

Q. What kind? A. Singer.

Q. How many bedrooms did you have? A. Three.

Q. What did you have in the biggest bedroom, did you have any white enamel beds in there? A. Yes, sir.

20 Q. How many? A. Three.

Q. Did you have any mattress on them, what did you have on the beds to rest? A. Yes, the beds were completed, blankets, quilts, pillow cases.

Q. Have any washstands in there? A. Yes.

Mr. Lieblich—Did he say all that, Mr. Interpreter?

Interpreter—He said beds ready to use.

Q. Did you have any bureaus? A. One.

30 Q. Did you have any suits of clothes in there besides what you were wearing that day? A. Yes, sir.

Q. How many? A. Two suits of clothes in there.

Q. Did your wife have any suits of clothes in there? A. Yes, one.

Dominic Precopio—direct

Q. Any children have any clothes in there? A. Yes, sir.

Q. What did you have on the floors? A. I had rugs on the floor.

Q. Linoleum? A. I had a carpet rug.

Q. Where did you buy all these things, Precopio?
A. I bought them everywhere, lot of different places I bought them. 10

Q. You paid cash for them? A. Yes, sir, all paid cash.

Q. How long did you have the cooking stove in your home? A. Which stove do you mean?

Q. The coal stove? A. I had it about a year.

Q. What condition was it in? A. I was good.

Q. How much did you pay for it, do you remember? A. I remember I paid about seventy dollars.

Q. What condition was the kerosene stove in? 20
A. Good condition.

Q. Where did you buy it? A. At Long Branch.

Q. Do you remember how much you paid for that? A. I think about twenty three dollars.

Q. You had a kitchen table there, do you recall where you got it and how much you paid for it and how long you had it? A. I paid about fifteen dollars.

Q. Where did you get it? A. At Long Branch.

By the Court—Just a moment, I understand from counsel's opening that is the defense that it is seriously disputed, the value 30 of the property, the loss alleged, so there is no way of expediting this matter. Go ahead.

Dominic Precopio—direct

Q. You say you had a dozen kitchen chairs. By the way, what condition was that kitchen table at the time of the fire? A. The table was in good condition. In fact, everything was in good condition because my wife keeps everything up to date, clean.

10 Q. What did you pay for your dining room closet, if you recall? A. I don't remember but I think it was thirty-four or thirty-five dollars.

Q. Do you remember what you paid for the buffet? A. I can't remember what I paid for them.

Q. What condition was it in? A. Condition, very good.

Q. Describe it. Describe the buffet, will you, what kind of wood was it? A. This kind where the stenographer sits.

20 By the Court—We will take a five minute recess.

Q. What condition was it in? A. Very good.

Q. Do you recall what you paid for your glassware? A. No, sir, I do not.

Q. How much did you pay for your dining room table, do you remember? A. About fifteen, six or seven dollars.

30 Q. Do you know what you paid for your dining room chairs? A. Two dollars apiece.

Q. How many did you have? A. In all there were about seventeen or eighteen chairs.

Q. How much did you pay for your ice box? A. As near as I can recall twenty-five or twenty-six dollars.

Dominic Precopio—direct

Q. What did you pay for your Singer sewing machine? A. Ninety dollars.

Q. And your beds, how much did you pay for them? A. They cost me about three hundred dollars for all the beds.

Q. Complete, you mean? A. Yes, sir.

Q. How many beds did you have? A. Three.

Q. And when you say three hundred dollars, do you mean without blankets and pillows and mattresses or everything complete? A. Yes, sir. 10

Q. And sheets? A. Yes, sir.

Q. Did you have any quilts there with them?
A. Yes, sir.

Mr. Lieblich—That isn't in the three hundred is it, Mr. Edwards?

Mr. Edwards—Yes, that is.

Mr. Lieblich—Oh, is it in the three hundred? 20

Q. How much was your wardrobe worth? By that I mean, your clothes and your wife's clothes and your children's clothes?

Mr. Lieblich—I object, if it please the court, that wouldn't be a proper way of proving the loss or damage sustained or the cash value as provided by the policy.

By the Court—The policy provides for the cash value? 30

Q. Cash value?

By the Court—At the time of the loss.

Mr. Edwards—I submit, if your honor

Dominic Precopio—direct

please, in cases of this sort we are entitled to prove in the best fashion we can what these things are worth. Here is a man in humble circumstances—

10 By the Court—I think that is true, Mr. Edwards. It must be made clear to the witness what you are asking for is the cash value of the property at that time. Not what he paid for it or what it was worth to him.

Q. What did you pay for your wife's clothes and your clothes and your children's clothes that were destroyed by this fire?

Mr. Lieblich—If it please the court I raise the further objection that it is too vague and incomprehensible.

20 By the Court—Yes.

Q. You say you had two suits of clothes besides the suit you had on on the day in question? A. Yes, sir.

Q. Where did you buy these two suits of clothes? A. At Long Branch.

Q. What kind of clothes were they? A. One suit was just like the one I got on and the other a little lighter.

30 Q. How much did you pay for the suit like the one you have on? A. One suit I bought for forty-two dollars and the other fifty-five.

Q. What condition were they in at the time of the fire? A. Very good, they were new suits.

Q. Did your wife have any clothes other than what she was wearing on this day? A. Yes, sir.

Dominic Precopio—direct

Q. What did she have? A. She had one fur coat and two suits.

Q. Was the fur coat destroyed? A. Yes, sir.

Q. What kind of a fur coat was it? A. It was a black coat.

Q. When did you buy it? A. I don't remember when I bought it, it was when I came there.

Q. When was that? A. About three or four 10
years ago.

Q. How much did you pay for it, do you remember? A. About fifty dollars.

Q. What condition was it in at the time of the fire? A. It was very good. She only wear it once in awhile in the winter time.

Q. How many children did you say you had?
A. Five.

Q. How old is the oldest? A. Fifteen years,
oldest.

Q. Was he attending school at the time? A. 20
Yes, sir.

Q. Did he have any suits of clothes other than the one he was wearing on the day in question? A. Yes, sir, he had also two suits.

Q. Where did you buy those suits? A. Long Branch.

Q. What condition were they in, the two suits that were destroyed by the fire? A. One suit was new and the other was a little older.

Q. Do you remember what you paid for those suits? A. I cannot remember what I paid for all those things because I didn't make no memorandum.

Q. Can't you think for a moment where you 30
bought these two suits of clothes and about how much you paid for them? A. Different prices I

Dominic Precopio—direct

used to pay. I paid twelve, fifteen and as high as twenty dollars a suit for the body.

Q. Did the boy have any shoes that were destroyed? A. Yes, sir.

Q. What do you say then that the wardrobe containing all these clothes, that is your wife's clothes and your clothes and children's clothes were worth?

10

Mr. Lieblich—I object on the ground first he isn't qualified as an expert to testify as to value.

By the Court—I will over-rule the objection.

Mr. Lieblich—Your honor permit me an exception?

By the Court—Yes.

20 Question repeated. A. About two hundred dollars.

Q. You had a trunk, didn't you? A. Yes.

Q. Was it a big trunk or a small trunk? A. A big trunk.

Q. What was in it? A. It was full of linen that my aunt brought from Italy.

Q. Linen? A. Yes, sir.

Q. Do you know what it cost? A. Sure.

Q. How much did it cost?

30 Mr. Lieblich—I object on the ground, first, that it is too vague and indefinite, he has no idea what the articles were, or what the cash value was at the time of the fire. He said he received them from an aunt.

By the Court—He said he does. I don't

Dominic Precopio—direct

know how. The question was what did they cost, he was asked if he knew what they cost and he says he does.

Q. What did they cost? A. They were bought in Italy and they were paid for in Italian money, about three to four thousand lires.

Q. How much is that in American money? A. I don't know what it is. 10

Q. When were they bought?

By the Court—I would like to know whether he paid for them or not.

Q. Did you pay for them? A. Yes, sir.

Q. How much was the lire worth at that time?

A. I don't remember what it was worth.

By the Court—When was it? 20

A. 1915.

Mr. Lieblich—Maybe we can agree as to the value of the lire in 1915.

Q. Did anybody at any time ever request or direct you to get any certificate from any Justice of the Peace certifying to this fire in any manner?

A. No, sir.

Q. How many rooms did you have furnished? 30

A. Four rooms and a kitchen.

Q. Were they completely furnished? A. Yes, sir.

Dominic Precopio—direct

Mr. Edwards—I call upon the defendant's attorney to produce the statement in writing, under oath, the proof of loss.

Paper produced by Mr. Lieblich.

Q. Can you write? A. No, sir.

Q. You can write your name? A. Yes, sir.

10 Q. Did you write your name here? (Showing witness what purports to be proof of claim)?

A. Yes, sir.

Q. This is the proof of loss, proof of claim?

A. Yes, sir.

Mr. Edwards—I offer it in evidence.

20 Mr. Lieblich—I object to it if it is intended for the purpose of proving the amount of loss and damage which this party has sustained. Mark it for identification.

Mr. Edwards—I don't want it marked for identification. I am not offering it for that purpose, if your Honor please. I am offering it for the purpose of showing we have complied with the terms of the policy and filed our proof of claim when the same was demanded. I may call your Honor's attention—

30 Mr. Lieblich—There is no need to argue if you are offering it for that purpose I won't object to it.

Marked Exhibit P-3.

Q. Were you ever requested to file a proof of claim before that proof of claim was given by you? A. What is this paper?

Dominic Precopio—direct

Q. Proof of claim? A. Yes.

Q. When you were asked to produce to the company, it is a proof of claim, did you then comply with their request and offer it?

Mr. Lieblich—I object first, it is predicated upon a demand being made in writing. I think we ought to identify the demand first and then ask him, if, in compliance with that demand he done so and so. 10

By the Court—He said the insurance company asked him to do it.

Mr. Edwards—I didn't know it was in writing.

By the Court—Ask him.

Q. How did you get word to give the company a proof of claim, if you know? A. He took the insurance policy and he wrote to the company about it. 20

Q. Who wrote to the company? A. Paul.

Q. I mean after that. Did they ask you for a proof of loss. Are these the proofs of loss or proof of claim that you gave to the company or gave to your attorney to give to the company?

A. Yes.

Q. Have you ever been paid for your insurance?

Mr. Lieblich—We admit that he has never been paid on the claim. 30

Mr. Edwards—You admit he has never been paid anything on the insurance policy?

Dominic Precopio—direct

Mr. Lieblich—On the claim.

Q. Do you know how the fire started? A. No, sir, I do not know.

Q. Did you start it? A. No, sir.

Q. Do you know who did? A. No, sir.

10 Q. Did anybody at any time require you to exhibit, to show to any person designated by the plaintiff company, the remains of your goods that were burned?

Mr. Lieblich—Do you know what the question is Mr. Interpreter?

Interpreter—Yes, I do now.

Mr. Lieblich—What was the question you put to the witness?

20 Interpreter—Was any representative came and wanted to see what furniture was not burned.

Mr. Edwards—That isn't the question.

30 Q. The policy, reading from Exhibit P-1, among other things, reads "The insured, as often as required shall exhibit to any person designated by this company all that remains of the property heredin described?" Do you understand that? The insurance policy, among other things, states that the insured, that is Precopio, as often as required shall exhibit, that is show to, any person designated by the company, all that remains of the property herein described. Got that? Did anybody from the company at any time ever require him to show to or exhibit any of these goods that were burned?

Dominic Precopio—direct

Interpreter—That is before the fire?

Q. After the fire. Got it? Did anybody from the company ever ask you to show them or exhibit to them any of the goods that were burned?

A. There is nobody came there from the company. There was nothing there to show because everything was burned to ashes.

Q. Was there ever any disagreement between you and the company as to any amount due under the terms of this policy? 10

Mr. Lieblich—That calls for a legal conclusion because it is admitted they sent us a proof of loss wherein they made a claim for twelve hundred and some odd dollars, which we haven't paid, that, on its face would show there was a disagreement.

Mr. Edwards—That doesn't show that, and moreover my friend on the other side in opening his case to the jury very specifically requested the foreman of the jury to take down line 86, in which it is stated "in the event of disagreement as to the amount of loss the same as above provided shall be ascertained by two competent and disinterested appraisers." I want to show there never was any dispute as to the amount. 20

By the Court—I think perhaps that would meet the difficulty. That would be a legal conclusion for the jury to determine. 30

Mr. Edwards—How could it be? I challenge the defendant now to show there was any dispute. The fact they never wanted to pay or did pay, if you can call

Dominic Precopio—direct

that a dispute, I don't know what the term means.

Mr. Lieblich—Offer in evidence the letter of August 24th.

10 By the Court—I sustain the objection to the use of the word “disagreement” I will permit the question to be asked if there was any dispute between the plaintiff and defendant company.

Mr. Edwards—I bow with deference to your Honor's ruling. There is a difference between dispute and disagreement and the phraseology of the policy is “in the event of disagreement as to the amount***” and I have framed my question within that phraseology.

20 By the Court—Suppose he answers there was never any dispute that disposes of it from his point of view, if he says there was then there would be a further question from which the jury could determine whether there was or was not a disagreement.

Mr. Edwards—May I have an exception?
By the Court—Yes.

Q. Was there at any time any dispute between the company and the plaintiff as to the amount of money or damages that the plaintiff had sustained? A. No, sir.

30 Q. You paid did you a full premium? A. Yes, sir.

Q. Were you ever required by the company or anyone in its behalf to furnish verified plans and specifications of the fixtures or—

Dominic Precopio—direct

Mr. Lieblich—We will admit we made no demand to furnish verified plans or specifications of the building.

Mr. Edwards—Will you admit you never made any demands upon the plaintiff or anyone else requiring a Justice of the Peace to submit his certificate?

Mr. Lieblich—We are going to prove we did make it. 10

Q. Was any demands made upon you at any time prior to August 24th—

By the Court—Is this dealing with the Magistrate's certificate—

Mr. Edwards—I am dealing with the magistrate and the whole thing.

By the Court—As to the magistrate he has already said he wasn't asked for a certificate. 20

Q. Did anybody ever make demand upon you, prior, that is before August 24, 1925, to submit yourself to an examination? A. No, sir.

Mr. Edwards—That is all.

Mr. Lieblich—I call for the production of the letter dated Augnust 24, 1925.

Mr. Edwards—We haven't that letter.

Mr. Lieblich—Have you a copy of it?

Mr. Edwards—Yes.

Mr. Giordana—Addressed to whom? 30

Mr. Lieblich—Dominic Precopio, 178 Victor Avenue, Long Branch, New Jersey. You have a copy of it?

Dominic Precopio—cross

Mr. Edwards—Yes.

Mr. Lieblich—Will you consent to have it marked for identification?

Marked D-1 for identification.

10 Mr. Lieblich—In response to notice to produce heretofore served upon the plaintiff, plaintiff's attorney produces carbon copy of letter dated August 24, 1925, from the Insurance Company of the State of Pennsylvania, by Joseph T. Lieblich, Attorney, addressed to Mr. Dominic Precopio, at 178 Victor Avenue, Long Branch, New Jersey.

Cross Examination by Mr. Lieblich:

20 Q. Mr. Precopio, do you write English? A. No, sir.

Q. You write English? A. No.

Q. Do you read English? A. No.

Q. Do you write anything at all? A. No.

Q. Don't you write at all? A. No.

Q. Nothing at all. Can you write your name?

A. Name, all right.

Q. You can write your name? A. Yes.

30 Q. I show you this paper, indicating Post Office Department Registry receipt for article 148916 and ask you whether or not you have seen that paper before? A. No, sir.

Q. Your answer is "no, sir." Will you look at the back and tell me whose signature that is that appears thereon? A. Yes, sir.

Q. Whose signature is it? A. That is my name.

Q. You signed that? A. Yes.

Dominic Precopio—cross

Mr. Lieblich—I ask that it be marked for identification.

D-2 for identification.

Q. I show you this paper referring to exhibit D-2 for identification and ask you how did you come to sign it? A. I don't know what this is.

Q. Do you know how you came to sign that?

A. I do not.

Q. Did you ever have a letter carrier of the Post Office Department give you a letter and ask you to sign the card? A. Yes, sir.

Q. When you received the letter from the Post Office Department you signed that card (indicating D-2 for identification)? A. Yes, sir.

Q. Do you know who that letter was from?

A. Yes, the letter from the company.

Q. What did you do with the letter? A. The letter came after the trial was started.

Q. Which trial? You mean the criminal case?

A. No, this case.

Q. You mean after suit was started? A. I went to Mr. Giordano and after I seen Mr. Giordano the company sent this letter.

Q. What did you do with the letter, did you give it to Mr. Giordano? A. Yes, sir.

Q. Did you read the letter? A. I no read the letter because I can't read.

Q. I ask you to look at this paper and see if it looks like the paper you gave to Mr. Giordano, referring to Exhibit D-2 for identification? A. I don't know, I can't tell if this is the one or not.

Q. Whatever letter you received at the time you signed Exhibit D-2 for identification you gave Mr. Giordano? A. Yes, sir.

Dominic Precopio—cross

Q. You are sure it was a letter from the insurance company? A. Yes.

Mr. Lieblich—Mr. Giordano, I call for the production of the original letter.

Mr. Giordano—This is it.

10 Mr. Lieblich—That is a copy. I call for the production of a letter from me to John C. Giordano, Esquire, dated September 2, 1925.

Mr. Edwards—I don't think this is the proper time to call for it. We were served with notice the other day to produce a letter from the insurance company to the plaintiff. William L. Edwards to Joseph T. Lieblich.

20 Mr. Lieblich—Is that a fair statement to make when I didn't insist on notice to produce. I produced papers without a notice to produce.

Mr. Edwards—I haven't any doubt that if we have papers here you may have them.

Mr. Giordano—What is the date?

Mr. Lieblich—September 2, 1925.

Paper produced.

Mr. Lieblich—I ask that it be marked for identification.

Mr. Giordano—September first?

30 Mr. Lieblich—That isn't the one I want. September second is what I asked you for, Mr. Giordano.

Q. Mr. Precopio, while your counsel is looking for papers we will go ahead. Tell us what kind

Dominic Precopio—cross

of a house this was which you lived in at West Long Branch? A. Bungalow.

Q. How many rooms? A. Four rooms.

Q. How long were you married, Mr. Precopio?

A. Fifteen years.

Q. How long have you lived in the house where this fire occurred? A. About six or seven or eight months.

10

Q. When was the last time prior to the date of this fire that you bought any furniture? A. I don't remember.

Q. Would you say that you bought any within a year? A. I don't remember that.

Q. As a matter of fact, Mr. Precopio, you haven't bought any furniture since you were first married, have you? A. No, because I was married on the other side. I bought the furniture after I came to this country.

Q. When did you come to this country? A. 1920.

20

Q. And did you go to housekeeping in 1920?

A. No, sir.

Q. When did you go to housekeeping? A. In the same year, sometime later.

Q. Where did you go to housekeeping sometime in 1920? A. At Long Branch.

Q. Where? A. Wayne Street, Long Branch.

Q. What did you buy, some new or second hand furniture to start up? A. All new furniture.

Q. Where did you buy it? A. Long Branch.

Q. Where in Long Branch? A. From Steinbach's.

30

Q. Steinbach's? A. Yes.

Q. What did you buy in Steinbach's in 1920?

A. I bought beds and linens there.

Dominic Precopio—cross

Q. Is that the linen that came from Italy or other linen? A. What I meant by linens was with what I equipped the bed, that is mattress, pillow cases, bed spreads and so on.

Q. How many beds did you buy from Steinbach's in 1920? A. Two.

10 Q. What kind of beds were they? A. White beds.

Q. Iron beds? A. Yes, sir.

Q. Were they for the children or for you to sleep in? A. One for me and one for the children.

Q. When you say one for you, was that a medium bed, three-quarters or full sized bed? A. They were both full beds.

Q. Were they both alike? A. Yes, sir.

20 Q. What was the color of these iron beds? A. They were painted white.

Q. What enamel iron beds, is that right? A. Yes, sir.

Q. And how much did you pay for those beds? A. I bought several thing there and I can't remember just the exact price for the beds.

Q. What do you remember that you bought there that you paid for and how much? A. No, because what I bought there they totalled it up and I paid what it was for.

30 Q. What did you buy there beside the beds in 1920, Steinbach's I mean? A. I bought a table there, six chairs and other things which I needed in the house, I can't know the name of them.

Q. Can you think of anything else you bought in 1920 in Steinbach's besides two beds, six chairs, table and some linens, you say sheets, you mean

Dominic Precopio—cross

and pillow cases? A. What he means was the bed complete.

Q. All right two beds complete. A. I don't remember anything else that year.

Q. When was the next time you bought any furniture after this purchase from Steinbach's in 1920? A. I cannot remember what I bought there in that year or any other time, because when I bought things I needed then. When ever I had fifty or one hundred—

10

Mr. Lieblich—I move that that be stricken out as not responsive to the question.

By the Court—Repeat the question.

Question repeated.

A. I don't remember.

Q. When you bought this furniture from Steinbach's in 1920, did you have some friend of yours call for it and take it away? A. No, they sent it to me home.

20

Q. Where did they send it to? A. Wayne Street, where I was living at the time.

Q. Do you remember when it was that you rented the rooms in Wayne Street, Long Branch, in 1920? A. No, sir.

Q. Well, was snow on the ground at the time? A. I don't remember.

Q. Was it in the summer time? A. It was in winter time when I rented those rooms.

30

Q. Was it the early part of the year or latter part of 1920? A. I don't remember whether it was the beginning or last of the year.

Q. You mean you don't want to remember?

Dominic Precopio—cross

Mr. Edwards—I object to that.

Mr. Lieblich—I submit that is a proper question.

Mr. Edwards—I submit it is not.

By the Court—Objection overruled.

10 Question repeated. A. I cannot remember because I can't remember what happened four or five years ago.

Q. You don't remember what you did when you first went to housekeeping in this country?

A. No, I do not.

Q. How many children did you have when you went to housekeeping in 1920? A. Three.

Q. How old are your children now, Mr. Precopio? A. One 15, one is 8 going on nine, one three, one two, one seven months.

20 Q. When you went to housekeeping in 1920 how many children did you have?

By the Court—Three, he said.

Q. You have testified you had two tables in response to your counsel's examination, where did you get the tables and when? A. I bought two tables from Fineburg's.

Q. In Long Branch? A. Yes.

30 Q. When did you buy the two tables from Fineburg in Long Branch? A. I don't remember.

Q. Was it before the fire? A. Before the fire.

Q. How long before the fire, do you remember that? A. No.

Q. How long after 1920 when you first went to housekeeping? A. I don't remember whether it

Dominic Precopio—cross

was the same year or year after, I don't remember when I did buy things.

Q. In the first place you went to housekeeping in 1920 on what street? A. Wayne Street.

Q. Was it Green's Avenue? A. I call it Green Street.

Q. How long did you live in Green Street?

A. Two months. 10

Q. Where did you move from Green Street to where? A. Wall Street.

Q. When you lived in Green Street did you buy any other furniture except the two beds and the necessary articles for the use of those beds, table and six chairs? A. Yes, I bought dishes and I bought pots and pans and silverware, everything that was of necessity for the house.

Q. Did you buy a bureau when you lived on Green Street in 1920? A. I bought that afterwards. 20

Q. Did you buy a china closet when you lived on Green Street in 1920? A. No, sir, I bought that afterwards.

Q. Did you buy any stoves when you lived on Green Street in 1920? A. No, I didn't buy any because there was one there when we went in, furnished by the landlord.

Q. Did you buy a buffet when you lived on Green Street in 1920? A. No, sir, I could not afford to buy one at that time.

Q. Did you buy an ice box when you lived on Green Street in 1920? A. No, sir, there was one there when we got to the house. 30

Q. This place that you lived in on Green Street in 1920, how many rooms did you have?

A. There were six rooms, three upstairs and three downstairs.

Dominic Precopio—cross

Q. Did you have the whole six rooms furnished up? A. Not all furnished.

Q. Did you have any other items than those which you have testified to? A. I had another stove in there which I brought that with me when I came to this country.

10 Q. You kept that in storage until you went into housekeeping? A. I kept them in my uncle's house. Didn't have them in store.

Q. Was your uncle using them all this time? A. No, sir.

Q. Where did your uncle keep them? A. He kept those all in one room.

Q. Where did your uncle live, in Long Branch? A. Yes, sir.

Q. What is his name? A. Rocco Sestito.

Q. Is he in court now? A. Yes, sir.

20 Q. What relation, if any, is this young man (indicating Paul Martel). What relation is he to you? A. No, sir.

Question repeated. A. No related at all.

Q. Are you and his father friendly? A. He is a countryman of mine and that is all we are.

Q. At the time of the fire did you owe his father any money? A. No, sir.

Q. Had his father been endorser on a note of yours at the time of this fire?

30 Mr. Edwards—If your honor please, I don't mind him going some distance but I think that is incompetent, irrelevant and immaterial.

Mr. Lieblich—Does your honor want to hear me on it?

By the Court—If there is an objection, I will overrule the objection.

Dominic Precopio—cross

Mr. Edwards—Your honor allow me an exception?

By the Court—Yes.

A. No, sir.

Q. How long do you know this boy's father (indicating Paul Martel)?

Mr. Edwards—Again I object on the same grounds. 10

By the Court—Objection overruled.

Mr. Edwards—Allow me an exception.

By the Court—Yes.

A. I know him ever since I am ten years of age.

Q. What is his father's name, christian name, first name? A. Rocco.

Q. Now, with respect to this house you lived there two months in 1920? A. Yes, sir. 20

Q. Where did you move to? A. Wall Street.

Q. Did you move that furniture you had on Green Street to Wall Street? A. Yes, sir.

Q. And how long did you live in Wall Street? A. Two years.

Q. Did you buy any new furniture while you lived in Wall Street? A. Yes, I always bought furniture as I needed it.

Q. What did you buy in Wall Street, while you were living in Wall Street? A. I bought several things, I don't remember what I did buy. 30

Q. Can't you give this jury some idea of what you bought, Mr. Precopio? A. I cannot remember what I bought, for four years back.

Q. Are you sure you bought any furniture at

Dominic Precopio—cross

all when you lived there? A. I did buy some, I didn't have any and I bought it.

Q. What makes you so sure you did buy furniture while you were living on Wall Street during 1921 and 1922? A. I am sure I was short of furniture and I bought it as I needed it.

10 Q. What did you buy, if anything, can't you remember one thing? A. I bought everything. I bought an ice box and china closet and stove and sewing machine.

Q. What kind of a machine was it? A. Sewing machine.

Q. A Singer sewing machine I think you said, did you not? A. Yes, Singer sewing machine.

Q. Did that machine have a motor attachment on it to operate by electricity? A. No, we operated it by the feet.

20 Q. Do you remember from whom you bought it A. From the Singer Sewing Machine people.

Q. From an agency for sewing machines? A. Yes.

Q. In Long Branch? A. Yes.

Q. Did you pay for it in cash or by check?

Mr. Edwards—That is irrelevant, immaterial, what difference does it make?

By the Court—Objection overruled.

30 A. I paid for it in cash.

Q. Are you sure you didn't buy it paying so much down and so much a month?

Mr. Edwards—Wouldn't that be paying in cash?

Dominic Precopio—cross

By the Court—Yes.

Mr. Edwards—I object, it is irrelevant and immaterial.

A. I paid cash for it.

Q. Did you get a receipt? A. Yes, sir.

Q. Do you know the name of the party from whom you bought it? A. No, sir.

10

Q. Do you know where it was that you bought it, the street in Long Branch? A. I know the store, I do not know the name of the street.

Q. When was it, when you first moved into this house or after you had lived there a year?

A. The first year I moved there.

Q. Where did you buy the china closet? A. Fineburg's.

Q. In Long Branch? A. Yes, sir.

Q. That was when you first moved into this new place after moving from Green Avenue? A. Yes, sir.

20

Q. Did you pay for that in cash or by check?

A. I bought part of the furniture and paid so much down and so much a week afterward.

Q. So you bought some furniture on installments from Fineburg's, is that right? A. No, sir, I never remember now, I pay cash.

Q. What did you mean when you said a moment ago you bought some furniture of Fineburg and paid so much down and so much a month? A. Yes, some small articles I paid so much down and so much a week.

Q. So it was only when you bought small articles in 1921 or 1922 that you paid so much cash and so much a week? A. I don't remember

30

Dominic Precopio—cross

whether I paid cash for some of those things or I paid on time.

Q. When you bought the china closet did you buy anything else from Fineburg? A. I don't remember what I bought.

Q. Will you say you did buy anything else from Fineburg with the exception of the china closet? A. I bought several things and I don't
10 remember when and when I paid for, I don't remember that.

Q. What did you buy from Fineburg you paid all cash? A. What I bought there is all paid for and I don't know how I paid for it, whether on cash or on time or which.

Mr. Lieblich—I move that the answer be stricken out as not responsive and the witness be instructed to answer.
20

Mr. Edwards—I submit he very fully answered it.

By the Court—The motion to strike out will be denied.

Mr. Lieblich—Your honor permit me an exception.

By the Court—Yes.

Q. Where did you buy the ice box and when?

A. I don't know the name of the store.

Q. Where did you buy the stove and when?
30

A. Fineburg.

Q. What was the street you lived on after you moved from Green Avenue? A. Wall Street.

Q. You lived there for two years? A. Yes.

Q. Where did you move to after that? A. I don't know the name of the street, Oakwood Avenue.

Dominic Precopio—cross

Q. How long did you live on Oakwood Street?

A. I stood there a short time until I moved to the house where I live now, the present time.

Q. So that the chairs and the table and china closet, ice box, stove and machine you have moved no less than four times from one location to another, is that right? A. Three times.

Q. When you got this stove did you move it yourselves? A. It was moved twice by me, by me on truck and once by some others. 10

Q. Did you have a truck in 1920? A. No, sir.

Q. When did you have the truck? A. About a year or two years after I got here I bought the truck.

Q. During 1920 what was your business, trade or occupation, Mr. Precopio? A. I was a gardener.

Q. Form whom were you working? A. Morris May. 20

Q. In Long Branch? A. Yes.

Q. How much pay, if any, did you receive during 1920? A. I was getting one hundred and ten dollars a month and besides I used to have other places where I used to work extra, after quitting hours and I used to get paid for that.

Q. What were your working hours for Mr. May? A. Seven o'clock in the morning.

Q. Until what time in the evening? A. Four o'clock in the afternoon.

Q. Every day of the week? A. Yes. 30

Q. You worked for Mr. May during the year 1921? A. Yes, sir.

Q. Did you work for him during the year 1922? A. Yes, sir.

Q. Are you still working for Mr. May? A. Yes, sir.

Dominic Precopio—cross

Q. And do you work steady? A. I work for him for four years straight but I am not working for him at this time.

Q. Did you work for him during 1920 and up to and including February 24, 1925? A. I don't remember when I quit there, I have been working there four years straight.

10 Q. Do you mean four years from this time or four years before the fire? A. Yes, sir, before the fire.

Q. Did your salary increase from 1920 at any time up to and including February 24, 1925, for Mr. May? A. No, sir, the same wages.

Q. How did Mry May pay you, in cash or by check? A. He pay me cash.

Q. When you got the cash every week, did you put any of that in any bank? A. I used to spend the money for the house.

20 Q. You couldn't save very much? A. No, sir.

Q. You never had a bank account during the year 1920, up to and including February 24, 1925, inclusive? A. No, sir.

Q. You have testified that the young man, (indicating Paul Martel) came to see you at the jail while you were in jail? A. Yes, sir.

Q. Were you in jail on February 24, 1925? A. It was the night of the twenty-fourth I was in jail.

30 Q. So you went to jail after the fire? A. Yes, sir.

Q. How did you come to go to jail? A. They arrested me and I don't know what was for.

Q. Did they arrest you because of this fire?

Mr. Edwards—Objected to, he stated if your Honor please—

Dominic Precopio—cross

Mr. Lieblich—I don't want to go to the trouble of offering the record in evidence.

Mr. Edwards—You offer the proper record in evidence and we will be glad to admit it.

By the Court—Objection sustained.

Q. How long were you in jail? A. Four days 10

Q. Then you were bailed out? A. Yes, sir.

Q. This man's father (indicating Paul Martel) go your bail? A. No, sir.

Q. Was it a cash bail or real estate? A. I don't know.

Q. Who went your bail? A. Pete. Tomaine.

Q. Do you know how the young man (Martel) came to see you in jail? A. My wife went to Paul and ask him.

Mr. Lieblich—He can't say that. 20

Mr. Edwards — I submit if your honor please be asked how he knew and he is stating how. I submit he has a right to state whether it is hearsay or otherwise.

Mr. Lieblich—You know better than that, Mr. Edwards.

By the Court—He is entitled to make an explanation.

A. My wife went to his house and she asked him to take her to Freehold to see me, in her company.

Q. When they came to see you in jail, did you have the policy of insurance with you in jail? A. 30
No, sir.

Q. Where was the policy? A. My wife had it.

Q. Did you see the policy while you were in

Dominic Precopio—cross

jail? A. No, sir.

Q. Did anybody connected with the prosecutor's office ask you for the policy? A. No, sir.

Q. Did they ask you if you had any insurance on this place? A. Yes, sir.

Q. Who did you speak with in the prosecutor's office with respect to the insurance?

10

Mr. Edwards—If your Honor please, I am going to object to this and for this reason, it is not proper cross examination. If the defendant cares to make this witness his own witness in the matter, then, of course, I can have no objection. If not, then I submit it ought to be introduced in proper order of events. Your honor has discretion concerning the admission of testimony under cross examination. I grant you he is the plaintiff in this suit and I know the rule that the examination may be quite extensive but under the circumstances the plaintiff in this suit has come in and pleaded to certain things and I think it is distinctly up to them to show it not by innuendo but to show it directly by their own witnesses.

20

By the Court—The objection is sustained.

Mr. Lieblich—Your honor permit me an exception?

30

By the Court—Yes.

Q. Did you or did you not say to Assistant Fire Chief William H. Dennis that you had no insurance on or about the twenty-sixth day of February, 1925?

Dominic Precopio—cross

Mr. Edwards—I object to that on the ground that it is not cross examination.

By the Court—I overrule the objection. The question is allowed.

A. I didn't see nobody there.

Q. Do you know Assistant Fire Chief William H. Dennis of Long Branch? A. No, sir. 10

Q. After the fire did you speak to any policeman or member of the fire department within a day or two after the fire? A. No, sir, only the police I have talked to is the one that arrested me.

Q. Who arrested you? A. I don't know his name.

Q. Was his name Joseph Slocum? A. Yes.

Q. Did you speak to Slocum at the time of your arrest about insurance, whether you had insurance or not? A. They did talk to me but I only answered the questions which I understood. Lots of questions I could not understand and I did not answer. 20

Q. Do you remember whether or not in response to his question as to whether you had insurance you told him you didn't have any insurance on the property? A. I don't remember whether he asked me that or not.

Q. Will you say if he did ask you you did not say to him you didn't have any insurance? A. If he had asked me I would have told him I had it because I had insurance. 30

Q. After the young man came to see you in jail with your wife, what, if anything, did you say to him, referring to Paul Martel? A. I told him and the wife when they go home to write a

Dominic Precopio—cross

letter to the insurance company and tell them what had occurred.

Q. How did you come to tell them to write to the insurance company, did you read the policy or anything? A. No, I did not read the policy but I knew I had to notify the company on account of the fire.

10 Q. Where did you get this policy from in the first place, referring to Exhibit P-1? A. My wife had those policies, she had the policy.

Q. Is that all he said?

Interpreter—He said they kept all the policies and life insurance of the children and other papers and my wife kept them in the pocketbook and then every time she went out she always took that with her.

20 Q. So, referring to this policy of insurance, Exhibit P-1, your wife always carried that in her pocketbook when she went out? A. Yes, when we used to go out she used to take that with her in the pocketbook.

Q. Where did you obtain that paper from the first time, from the insurance company in Pennsylvania?

Interpreter—You mean at the time the insurance policy was issued?

30 By the Court—Yes.

A. There was an agent of the company that brought that paper to my house.

Q. Did you go to the agent and ask him to make you a policy? A. I went to him and asked

Dominic Precopio—cross

him I wanted to have the furniture insured so I took the policy and I got this paper.

Q. Who was this person whom you say you went to and wanted him to make the policy for you? A. I know him by sight.

Q. Don't you know who he is? A. I did know his name at the time but I will know him if I see him.

10

Q. Was he an Italian fellow? A. No, he was a Jew.

Q. Where did he live, Long Branch? A. Yes.

Q. Did you go to his place of business and order him to write the policy for you? A. Yes, sir.

Q. And when you paid the premium on this policy did you go to his office again and pay it and get a receipt?

By the Court—Is there any question as to agency or authorization of the agent. Does that arise in this case? 20

Mr. Lieblich—No, it is only to test his credibility with respect to this notice. That is what I am driving at now.

By the Court—All right.

Question repeated. A. He came to my house when I paid the premium on the policy.

Q. And he gave you a receipt? A. Yes, sir, I think it is on that policy.

Q. Is this what you mean by being a receipt from the agent indicating on the back of the policy in writing January 12, 1924, and signed Joseph Sestito? A. I think this is the one but I don't understand this paper, there was some mis- 30

Dominic Precopio—cross

take made by Joe Sestito and he brought it back with some corrections.

Q. Who was Joseph Sestito? A. I don't know, it was the man I think who was hired by the company to make investigation of these cases.

Q. How long do you know Joseph Sestito?

A. I have known him ever since I came to Long
10 Branch.

Q. Do you know where his office is or place of business? A. No, sir.

Q. Are you sure you didn't tell the young man (indicating Paul Martel) to notify Mr. Sestito or this Jew man that was the agent, of the fire?

A. No, I didn't tell him who, I told him to write to the company direct, they go away.

Q. Before you came—

20

By the Court—What did he say then?

A. At the time of this fire the agent was not at Long Branch so I could not go to him.

Q. Which agent do you mean, Sestito or the Jewish fellow? A. Both of them, neither one of them were there.

Q. Did you have the receipt which the man gave you when you paid the premium? A. I don't remember, and I don't remember whether I got a receipt for it or not.

30 Q. Didn't you keep the receipt for the policy in your wife's pocketbook? A. I don't remember whether she had the receipt with the policy or not.

Q. This pocketbook your wife used to keep the policy in, was it a big one or small one (indicating)? A. Bigger than that.

Q. How much longer would you say the pocket-

Dominic Precopio—cross

book was with respect to this paper which I think we will agree is about six inches long, how much longer? A. I don't know how much longer.

Q. Would it be another six inches longer? A. Yes, double that, twice as big.

Q. Was it a deep pocketbook too? A. Yes, sir.

Q. Whenever she went out she always took the pocketbook with her? A. Yes, sir. 10

Q. And what else did you keep in that pocketbook besides the insurance policy? A. She kept money there, she kept some children's insurance and other valuable papers.

Q. And you are sure you told Mr. Paul Martel to write to the company? A. Yes, sir.

Q. Did you tell him where to write to? A. No, I told him to look on the policy where to write to.

Q. Did your lawyer, Mr. Giordano, tell you after the receipt of the letter of August 24, 1925, which you say that you gave to him, what the company wanted in the letter? A. I did take the letter to him, I didn't read it because I can't read and he read it to me, he done the rest. 20

Q. Did he tell you the company was taking exception to the proof of loss?

Mr. Edwards—When, if your honor please? 30

Q. At the time you took this letter, referring to the letter of August 24, 1925, receipt card referring to Exhibit D-2 for identification? A. Yes, sir.

Q. And did he tell you that the insurance com-

Bella Altshuler—direct

pany demanded an examination under oath to be held at the office of Mr. Giordano on September 29, 1925? A. No, I don't remember that.

Q. Did he tell you the insurance company was demanding a certificate of a magistrate and so forth as set forth in the letter? A. No, sir, I don't remember.

10 Mr. Lieblich—Reserving my right to make a motion for a non-suit, I would like to call Miss Altshuler so she may be excused.

By the Court—By consent of counsel and the court the case of the plaintiff is interrupted at this time so that the witness can be excused. You will understand this is testimony on behalf of the defense.

20 BELLA ALTSHULER, a witness produced in behalf of the defendant, being duly sworn, according to law, upon her oath, testifies as follows:

Direct Examination by Mr. Lieblich:

Q. Miss Altshuler, what is your business, trade or occupation? A. Stenographer.

Q. By whom are you employed? A. Joseph T. Lieblich.

Q. That is me? A. Yes.

30 Q. How long have you been in my employ?
A. Five years.

Q. I show you this paper and ask you if you have seen this before? A. Yes.

Q. What is that? A. That is a copy of letter addressed to Dominic Precopio.

Q. Did you type the letter? A. I did.

Bella Altshuler—direct

Q. After the letter was typed was it signed?

A. It was.

Q. After the letter was typed and signed, what, if anything, did you do with it? A. After the letter was dictated to me, I transcribed it, put it in an envelope bearing the return address to Joseph T. Lieblich, put the required postage on it and took it to the Post Office for registry. 10

Q. What kind of an envelope was this, tell the jury so they will understand? A. Post Office envelope. They had envelopes, post office envelopes that had the return address of Joseph T. Lieblich, 136 Washington Street, Paterson, New Jersey.

Q. It is a Government stamped envelope? A. Yes.

Q. And in one corner it has the return address? A. In the left hand corner it has the return address. 20

Q. To whom was it addressed? A. Mr. Dominic Precopio, 178 Victor Avenue, Long Branch, New Jersey.

Q. After that letter was written and the envelope addressed, what, if anything, did you do with it? A. Put the required postage on it.

Q. Did you put the letter in the envelope?

A. I did.

Q. Where did you take it? A. Post Office sub-station for registry.

Q. What, if anything, did you receive from the U. S. Post Office sub-station? A. A receipt.

Q. Indicating registry receipt for article 14896? A. Yes. 30

Bella Altshuler—direct

Mr. Lieblich—I will offer the paper in evidence. If you don't mind we will offer the while thing as an exhibit.

By the Court—Finish your examination.

Mr. Lieblich—We will ask that it be marked as an exhibit.

Marked Exhibit D-3.

10

Q. After you received this paper, referring to Exhibit D-3 from the sub-station did you at any time subsequent to that receive anything from the post office with respect to this particular letter? A. I did.

Q. What, if anything? A. The red card.

Q. Indicating or referring to Exhibit D-2 for identification? A. Yes.

20

Mr. Lieblich—I will now offer Exhibit D-2 for identification in evidence.

Marked Exhibit D-2.

Q. This paper which I show you, can you tell us what that is? A. It is a demand—

Q. No, no, no, what is it? A. That is a copy of a letter.

Q. Of which letter? A. Copy of letter addressed to Dominic Precopio.

30 Q. Which was enclosed in the envelope that this receipt was for, indicating D-3 and is it also a copy of the letter enclosed in the envelope for which you subsequently received from the Post Office Exhibit D-2? A. Yes.

Q. Is that a true copy of the letter, if so, how did you make this letter. Referring to the letter

Bella Altshuler—direct

you hold in your hand? A. By the use of carbon.

Q. That is a carbon copy of an original letter?

A. Yes.

Q. At the time you made this carbon copy did you make any other carbon copies? A. I did.

Q. How many, if any? A. I made one original and two copies.

Q. Was the other copy on white paper or some other kind of paper? A. Yellow paper.

10

Mr. Lieblich—I now offer this in evidence. Marked D-4.

Mr. Lieblich—I call for the letter from Joseph T. Lieblich to George Giordano, dated September 2, 1925.

Mr. Edwards—I object to the introduction of this letter upon this ground. The policy, among other things, provides that the plaintiff herein insured is required from time to time to submit himself to an examination of anybody designated by the insurance company. Now, my friend on the other side knows that prior to August 24, 1925, suit was begun and after suit was begun and for the first time they didn't come and ask or require as the policy provides for an examination of the witness under oath by somebody designated by them, I submit they have no right and they have no right to prove they made such an application after suit was begun in the Supreme Court of this State. They had a right, I submit, at any time up to the time suit was begun in the courts of this state

20

30

Bella Altshuler—direct

10 but after suit was begun then all things under the policy was in the hands of the court and they had a right under the statute to examine the plaintiff according to the statute in such case made and provided, and not afterwards come in and make demands as they have here or attempt to make by this letter of August 24, 1925. For that reason I object to the testimony.

By the Court—Is that the only subject that the letter deals with?

Mr. Lieblich—If your Honor wants to hear me before ruling, I will be glad to argue.

20 By the Court—Your theory, Mr. Edwards, as I understand it is that when suit had been started by the plaintiff that then the only method of examination was that provided for by the practice act.

Mr. Edwards—Correct.

By the Court—That would suspend the provision in the contract itself?

Mr. Edwards—Absolutely.

(After argument by respective counsel.)

30 By the Court—Well, my present ruling is that I will admit the letter subject to a motion which counsel may make hereafter to strike out that part of the letter which refers to the examination of the plaintiff. My idea being, if counsel has any cases and can submit them to the court I will rule upon that question later. That is, I will decide whether the letter as a whole is to remain as evidence in the case.

Bella Altshuler—direct

Mr. Edwards—I hope your Honor will pardon me and not suspect I am taking two bites of the one cherry. It was my purpose to object further to it. I submit the defendant cannot, after suit was brought, write a letter and make certain allegations in that letter and use the evidence in the form of testimony. In other words, they can't make evidence and that is what they are doing by making certain allegations in that letter. For that reason I object to the letter in toto. 10

By the Court—I overrule the objection.

Mr. Edwards—Allow me an exception?

By the Court—Yes.

Mr. Lieblich—I will read this letter to the jury subsequently. I have some other exhibits to offer. Have you that letter of September 2, 1925, Mr. Giordano? 20

Mr. Edwards—Plaintiff produces letter dated September 2, 1925, from Joseph T. Lieblich, addressed to John C. Giordano, Esquire.

Mr. Lieblich—I offer it in evidence.

Mr. Edwards—For the same reasons I make the same objection.

By the Court—That is a letter from whom?

Mr. Lieblich—From myself to Mr. Giordano, the attorney of the plaintiff in this case. Does your Honor wish to see the letter? 30

By the Court—Yes.

Marked Exhibit D-5.

Mr. Lieblich—I call for the production

Bella Altshuler—cross

of the carbon copy of the letter enclosed in the letter of September 2, 1925.

Paper produced by plaintiff's counsel.

Mr. Lieblich—I now ask that it be marked in evidence.

Mr. Edwards—I object on the same ground.

10

Marked Exhibit D-1.

Q. Miss Altshuler, I show you this paper, referring to Exhibit D-1 and ask you whether or not you have seen that paper before? A. I have.

Q. When did you last see it, if you know? A. At the time I wrote it.

Q. And what, if anything, did you do with that paper (referring to Exhibit D-1)? A. It was sent to the attorney of Mr. Precopio.

20

Q. That was sent to Mr. Giordano, this letter of September second, referring to Exhibit D-2—

By the Court—Perhaps it will help the witness if she had this letter.

Q. Looking at Exhibit D-5 will you say whether or not Exhibit D-1 is the paper which was enclosed in the letter addressed to Mr. Giordano?

A. It was.

30-

Mr. Lieblich—That is all, you may cross examine her.

Cross Examination by Mr. Edwards:

Q. I show you a letter dated December third, 1925, and ask you if you ever saw that letter before? A. I did.

Bella Altshuler—cross

Q. Did you sign it or did Mr. Lieblich sign it?

Mr. Lieblich—Any of my letters, Mr. Edwards, show them to me, I will admit them. You don't need to prove my letters. I will admit that that is my letter.

Mr. Edwards—At this time I offer it in evidence.

Mr. Lieblich—I am willing to admit with respect to its offer. It may be material. I will admit this is my letter from my office under my signature. I don't want the lady to come back tomorrow. Whether it is evidential or not is a matter for your Honor to say.

10

By the Court—Counsel says it is evidential and you say it isn't.

Mr. Lieblich—With respect to the offering of the letter of December third, I object to the offer upon the ground that it is entirely immaterial and irrelevant to the cause at issue now before your Honor.

20

Mr. Edwards—As a matter of fact was not that letter written by you concerning the present case?

Mr. Lieblich—If it please the court, I have made an admission respecting this witness. The witness doesn't know what I have in my mind when I dictate letters.

Mr. Edwards—I am offering that, if your Honor please, for this purpose, to show that my friend on the other side—

30

By the Court—You needn't speak any further, I will overrule the objection and you may offer the letter.

Bella Altshuler—cross

Marked Exhibit P-4.

Mr. Lieblich—Your honor permit me an exception?

By the Court—Yes.

Mr. Edwards—Have you the letter there of September second and December fifth from Mr. Giordano to you?

10 Mr. Lieblich—I have, but I have a good many pencil notations on it. Where is your copy. I admit the receipt of the letter of September second signed Harriet M. Young, on the stationery of John C. Giordano, and that is a carbon copy of it.

Mr. Edwards—Which you will admit instead of the original. I am going to offer it.

Mr. Lieblich—If it is admissable by the court I am willing to have the copy go in.

20 By the Court—It is offered now, is it? Mr. Edwards did you offer it?

Mr. Edwards—I now offer this letter in evidence.

By the Court—Is there any objection?

30 Mr. Lieblich—Yes, first of all, I object to the offer upon the ground it is irrelevant and immaterial to this issue. It deals with respect to the voluntary non-suit in another case. It doesn't make any difference how many times a suit is started and discontinued, if the action be non-suited or discontinued anything that may have transpired with respect to the status of that matter would be, in no wise, binding on that case at this time. This letter doesn't deal with the present case. There isn't any-

Bella Altshuler—cross

thing in this letter to bind the defendant in any respect. It deals with a matter that was then pending and not determined. How that is material is beyond me.

By the Court—How is this relevant?

Mr. Edwards—Only to this extent. To show as we purpose proving that this suit was pending for the same identical pleadings as I said before, for the very same thing and is part of our proof. We purpose showing that we actually gave the defendant notice of our intention to permit him an examination of the witness by this letter of December fifth. That will follow. 10

By the Court—I suppose it is all in support of the theory you have urged.

Mr. Edwards—Yes, sir.

By the Court—For that purpose I will admit it. 20

Mr. Lieblich—Your Honor allow me an exception?

By the Court—Yes.

Marked Exhibit P-5.

Mr. Edwards—I offer the letter of December fifth in evidence.

Mr. Lieblich—I object, if it please the court, to the admission in evidence of the letter dated December fifth from Mr. Giordano to Joseph T. Lieblich upon the ground it is immaterial and irrelevant to the issue pending before this court. 30

Mr. Edwards—It is this very case.

Mr. Lieblich—And furthermore upon the ground that the demand or compliance by

Bella Altshuler—cross

the defendant with the statute referring to the practice act, dealing with examination before trial, is cumulative remedy and not a bar to the defendant to follow the provisions in the insurance policy with respect to the examination under oath.

10 By the Court—I suppose the letters might be relevant to the question of whether or not there was any misunderstanding between the parties or counsel for the parties with reference to what was intended by this demand for an examination.

Mr. Edwards—I am offering it in evidence, if you honor please.

Mr. Lieblich—I think in view of what your Honor said we have to have this situation clarified.

20 Mr. Edwards—I think I have stated fully my reason for offering these papers in evidence at this time. I don't want any misunderstanding about it.

30 By the Court—You have here in the first instance a letter from the attorney, from the defendant company, addressed to the plaintiff himself, in which certain demands were made. Counsel has contended that at least one or more parts of that letter is incompetent, immaterial, and irrelevant because suit having been instituted that the defendant then could have only recourse to the statute for the purpose of examination of the plaintiff. Now, as I have read these subsequent letters that passed between counsel and were manifestly an exchange of communications between counsel for the

Dominic Precopio—direct

parties, it would seem to me there was in these letters, in this interchange, a discussion of the examination of the plaintiff, and I say that it may be in view of counsel's objection to the evidential value of the first letter that they are contending that the examination was in contemplation of his examination under the statute, examination before trial. 10

Mr. Edwards—If the court please this is dated December fifth.

By the Court—I am only putting this upon the record to state my understanding and the reason for the ruling that I have made and I think that the letters offered including the last one are evidential upon that question.

Mr. Lieblich—Allow me an exception. 20

By the Court—Now, court will adjourn until tomorrow morning at ten o'clock.

Freehold, N. J., Thursday, March 4th,
1926. 10:00 o'clock A. M.

Same appearances as heretofore noted.

DOMINIC PRECOPIO, recalled.

Mr. Lieblich:

Q. Mr. Precopio, where were you on February 24, 1925, with respect to the evening of that date? 30

By the Court—An interpreter was required for this witness yesterday.

Mr. Lieblich—I think we will try him.

Dominic Precopio—direct

Q. Do you remember the day of the fire? A. Yes, sir.

Q. Where were you that evening at night, when it got dark? A. I go home.

Q. You understand me, don't you? A. Not much.

10 Q. Tell us where you were the evening of the fire, the night of the fire? A. Night of the fire?

Q. Yes. A. I was out.

Q. What time did you come home from work?

A. When?

Q. The day of the fire? A. I don't know.

Q. Did you work until six o'clock that day?

A. No, sir.

Q. The day of the fire? A. I no work six o'clock.

20 Q. How late did you work that day? A. I don't remember.

Q. You had an automobile did you not the day of this fire? A. Sure, I have automobile.

Q. What kind of an automobile was it? A. Truck.

Q. What kind of a truck? A. Dump body truck.

Q. Was it a Ford? A. Ford.

Q. Where did you keep that truck? A. Outside.

Q. Outside the house you lived in? A. Yes.

30 Q. Did you clean that truck that day with anything? A. I don't remember.

Q. Did you have any kerosene in the house the day of the fire? A. I don't remember.

Q. You remember after the fire the firemen and chief found five five gallon cans?

Dominic Precopio—direct

Mr. Edwards—If your Honor please, I object to this. It is not a proper question, not properly put. An insinuation of the worst sort.

Q. I will withdraw it. Did you have any five gallon cans in the house the day of the fire? Do you know what I mean by five gallon cans? A. No, sir. 10

Q. Did you have any gasoline in the house at all? A. No, sir.

Q. Did you have kerosene in the house at all? A. Yes, sir.

Q. Where did you keep the kerosene? A. In the side cellar.

Q. Did you have it in the cellar or— A. It had it in five—

Q. Five gallon cans? A. Two gallon cans, one gallon cans, I don't know. 20

Q. About how big, were they? A. Sometime I get five gallon kerosene, sometimes I get small can, about one gallon, two gallon can, because I have range, kerosene, I have stove, kerosene.

Q. Where did you keep this five gallon can in the cellar or upstairs? A. Side cellar up on little step.

Q. Was that on the step by the way you come into the cellar? A. Yes, sir.

Q. And how many five gallon cans did you have there, Precopio? A. I don't know how many, I no have no gallon. 30

Q. You don't remember how many? A. No, sir.

Q. What time did you leave the house? A. Half past four, five o'clock, I don't remember that time.

Dominic Precopio—direct

Q. You don't remember what time you came home from work that day? A. I don't know, half past four, five o'clock, six o'clock. I come home and eat my supper and out.

Q. What time did you get home that is what we want? A. I don't remember.

Q. What time did you go to work in the morning? A. I start to work at any time, seven o'clock.

10 Q. What time did you stop work? A. Well, I worked for me that time. I got truck, go work for me. I no have time no time to go and no time come back. I worked for me.

Q. You had no regular hours to go to work? A. No, sir.

Q. What time did you say you left the house in the evening? Q. Half past four, five o'clock, six o'clock, something like this.

20 Q. Where did you go? A. I go to house Peter Bovas.

Q. What did you do that night? A. Go party.

Q. Take your wife with you? A. Yes, sir.

Q. Take all the children with you? A. Take children with me.

Q. What time did you come home? A. Eleven o'clock I come home.

Q. How far is Peter Bovas' house from where you lived? A. I don't know, I think about two miles.

30

Mr. Edwards—He stated all that yesterday, your Honor.

Mr. Lieblich—That may be.

Dominic Precopio—direct

Q. Was anybody else there at Peter Bovas' house except your family and his family? A. Lot people there.

Q. How did you know your place was on fire? A. When I start eleven o'clock I start to go home, my house I go over there and have fire in my house.

Q. You didn't know about it until you got home?

A. No.

10

Q. Did you make an examination of the premises, of the house, when you came back, did you look around? A. Sure, look around, I see lot people there.

Q. Did it look as if the house had been blown apart or burned? A. I don't know.

Q. No explosion? A. I don't know.

Q. Would you say the house was not blown apart? A. I see the roof came down when I come over there.

Q. Were the walls up? A. I don't know.

20

Q. Didn't you look? A. What do you mean.

Q. You know four walls, sides of the house, were the sides of the house up? A. No, sir.

Q. They were all down? A. Yes sir.

Q. Everything down flat? A. Yes, sir.

Q. When you left that house did you put out all the lights?

Mr. Edwards—If your Honor please, there isn't any evidence to show there were any lights there at the time left the house. I object to it on the ground that it is predicated on something—

30

Mr. Lieblich—In the proof of loss he has

Dominic Precopio—direct

sworn the cause and origin is not known to him.

10 Mr. Edwards—You are predicating the question on something not here in evidence, not being asked by anybody. He is predicating it upon the assumption there were lights in the house when he left the house when as a matter of fact there isn't.

Mr. Lieblich—I will withdraw it.

Q. Mr. Precopio, when you left the house were there any lights burning? Q. I don't know what you mean.

Q. You know this is light, lamp, when you went out did you have any lamps burning? A. Burning?

20 Q. Yes. A. No, sir.

Q. What did you use, kerosene lamps A. Kerosene lamps.

Q. When you went out did you have all the lights out? Q. Yes, sir.

Q. Was the kerosene stove out? A. Sure.

Q. Nothing was burning at all? A. No.

Q. How do you think this fire started?

Mr. Edwards—Obected to.

30 A. I don't know.

Mr. Edwards—The gentlemen isn't here I submit—

Mr. Lieblich—He has already answered. He said he don't know.

Mr. Edwards—He hasn't answered what he

Dominic Precopio—direct

thought, however, he stated he didn't know.

Q. Did you make any examination at all after you got back to find out what happened, whether it was a fire, explosion and if so, how it happened? A. I don't know, I don't understand.

Mr. Lieblich—That is all.

10

Mr. Edwards:

Q. What did you do with that red card when you received it from the Post Office people A. I go in the post office and get letter there and as soon as I get the letter I go to Mr. Giordano and give it to him.

Q. What did you do with all the letters you got from the insurance company, give them to Mr. Giordano? A. I gave them to Mr. Giordano.

20

Q. That is because you cannot read? A. I no know how to read.

By the Court—Mr. Edwards, I understood the witness to say yesterday in the course of either his direct or cross examination that those or that letter was turned over to Mr. Giordano after the trial.

Mr. Edwards—But counsel for the defense corrected that, if your Honor, please, by saying after suit was brought.

30

By the Court—Does it appear what suit he reference to.

Q. No, This letter with the red card on it that you got from the post office and gave to Mr. Gior-

Dominic Precopio—direct

dano and marked D-4, you got that before or after the suit was brought?

10 Mr. Lieblich—If it please the court, I object on the ground that it is evidential from the letter itself being dated August 24, 1925 and according to the transcript which your Honor has here, this suit was instituted some-time in October.

By the Court—I understand that, but the witness said he received that after the trial, that was explained, it meant after suit there-fore council is asking that question at my suggestion. I over-rule the objection. I wish to find out what suit or trial he referred to, will you stipulate what it was?

20 Mr. Lieblich—There was an action institu-
ted against this company—

Mr. Edwards—Two actions.

30 Mr. Lieblich—Wait a minute, if I don't get it right, correct me. There was an action instituted against this company by summons tested July 24, 1925, wherein this defendant company entered a special appearance and after due notice to the other side this action was discontinued, by consent, without cost in favor of either party, said stipulation being on record in the Clerk's office, together with all the moving papers and affidavits. While this action was pending, referring to the summons tested July 24, 1925, another action was instituted against this company wherein the summon is tested the twenty-second day of August, 1925 and on due notice the matter

Alfred Fineburg—direct

was brought on for argument before Supreme Court Justice Lloyd, who made an order dismissing it. After dismissal the present action which we are now trying was instituted by summons tested October 15, 1925. I make the admission for the enlightenment of the court but I contend that it is irrelevant and immaterial to the action pending and that these cases in no wise bear upon the present action. 10

Mr. Edwards—Moreover the last suit mentioned was on stipulation, the order made by Justice Lloyd was on stipulation.

Mr. Lieblich—Oh, no, it was after argument.

Mr. Edwards—And not on stipulation A. No.

Q. Precopio, have you ever been convicted of crime in your life? 20

Mr. Lieblich—I object, it is self-serving declaration.

Mr. Edwards—You have made insinuations here.

By the Court—Objection sustained.

Mr. Edwards—That is all.

ALFRED FINEBURG, a witness produced in behalf of Plaintiff, being duly sworn, according to law, upon his oath, testifies as follows:

Direct Examination by Mr. Edwards: 30

Q. Fineburg, where do you live? A. 184 Westwood Avenue, Long Branch.

Alfred Fineburg—direct

Q. What is your business? A. Furniture.

Q. Do you know Precopio? A. He is one of our customers.

Q. How long have you known him? A. About three or four years.

Q. Did you ever sell him any goods? A. Yes, sir.

10 Q. What did you sell him? A. I sold him a stove.

Q. What kind of a stove? A. Cook stove.

Q. Was it a good, bad or indifferent cook stove?

A. It was a new stove.

Q. Do you recall what he paid for it? A. I think about seventy dollars and two dollars for pipe.

Q. What else did he buy? A. He bought a dining room table.

20 Q. Do you recall what he paid for it?

Mr. Lieblich—May we ask that the date be fixed, if possible?

By the Court—Yes.

Q. When did he buy the cook stove, do you recall? A. I aint sure, like 1922 or 1923.

Q. When did he buy the table that you have mentioned? A. About the same time.

30 Q. What else did he buy from you, Mr. Fineburg? A. China closet, floor covering, few other things, I can't just remember.

Q. What quality were they? A. They were all new stuff.

Q. Were they cheap stuff or real good stuff? A. Good stuff.

Alfred Fineburg—cross

Q. Do you recall what the buffet cost him? A. I don't just remember what it was.

By the Court—Is that the china closet?

A. China closet.

Q. Chin closet, was it? A. Yes.

Q. Do you recall how much the china closet cost?

A. I think it was about twenty-five dollars or something like that. 19

Q. How did he pay for these goods, Mr. Fineburg? A. I am not sure if he paid cash, I have no record and we don't keep record of cash sales.

Q. Do you recall anything else that he bought from you? A. He bought different things, see, and I don't just remember what he bought.

Mr. Edwards—Take the witness.

Cross Examination by Mr. Lieblich: 20

Q. When did you talk this over with the lawyers in this case? A. I didn't see the lawyers at all. I just got the subpoena the night before last.

Q. Where is the subpoena? A. I gave it to the lawyer.

Q. Which lawyer? A. Giordano.

Q. When did you give it to him? A. Yesterday.

Q. Were you here yesterday? A. Yes, sir.

Q. Didn't you talk this case over at all with Mr. Giordano? A. No, sir. 20

Q. Did you know what you were going to testify to when you came here? A. They wanted to know about the furniture, what they bought off us.

Q. Who wanted to know? A. The case here.

Alfred Fineburg—cross

Q. Who wanted to know? A. The lawyers.

Q. Which lawyers? A. From the insurance company and the other side.

Q. Who did you talk to from the insurance company? A. Nobody.

Q. So there was no lawyer from the insurance company that wanted to talk to you, was there, yes or
10 no.

Mr. Edwards—I object.

By the Court—He can answer the question.

A. No.

Q. So you were mistaken when you said that, were you not? A. Yes, sir.

Q. Which were the lawyers that did talk to you?

A. No lawyers talked to me.

20 Q. So then you were again mistaken when you said you talked to lawyers, that is right, isn't it? A. Yes.

Q. Did you ever discuss the case at all with Mr. Giordano, yes or no, Fineburg A. No.

Q. You answered more quickly when Mr. Edwards was examining you. Can't you answer me so quickly? Did you talk the case over with Mr. Precopio? A. No, sir.

Q. You didn't talk to nobody at all? A. No.

30 Q. How did you know what you were going to testify to here? A. I thought they just wanted me about the furniture, where he bought the stuff and how much he paid for it.

Q. So that is what you thought, you didn't discuss it with a soul? A. No, sir.

Q. Do you remember when it was that you sold

Alfred Fineburg—cross

Precopio this furniture? A. It was late in 1922 or 1923 and different times in between.

Q. Are you in business for yourself? A. I am with my father.

Q. Is there anyone else in that business with you and your father? A. I have another brother.

Q. Was he in business in 1921 and 1922 A. He was at another store. 10

Q. You have two stores? A. Yes.

Q. How old are you now? A. Twenty-five.

Q. Did your father ever sell Precopio any furniture? Yes or no. A. I can't remember.

Q. You don't remember that? A. No.

Q. But you do remember that you did sell him some? A. Yes sir.

Q. Did you do anything else besides sell furniture in the store? A. I delivered sometimes and sometimes I stayed in the store. 20

Q. Do you have very many customers coming in during the day? A. A lot of customers.

Q. You are pretty busy? A. Yes, sir.

Q. Have you been busy the last four or five years? A. Yes, sir.

Q. Did you go there and look up your records to find out whether you sold Precopio on time? A. Yes, sir.

Q. You did look it up? A. Yes, sir.

Q. How did you come to look it up? A. I tried to find out if he took any stuff on time.

Q. Who asked you to find that out? A. I looked that up for myself. 30

Q. Nobody asked you to look it up? A. No, sir.

Q. How did you know what you sold him, if any-

John Giordano—direct

thing? A. I could remember; some of it I delivered with a man.

Q. You remember that? A. Yes.

Q. That is about four or five years ago? A. Some of it I delivered in 1923.

Q. You deliver a good deal of stuff every day, don't you? A. I deliver some.

10 Q. You sell a good deal of stuff every day? A. Yes, sir.

Q. You mean to say you remember what you sold Precopio at that time, is that right? A. Yes, sir.

Mr. Lieblich—That is all.

JOHN . GIORDANO, a witness produced in behalf of the plaintiff, being duly sworn, according to law,
20 testifies as follows:

Direct Examination by Mr. Edwards:

Q. Mr. Giordano, you are an attorney at law of this State? A. I am.

Q. You have actual charge of this particular case? A. I have.

Q. I show you a letter marked Exhibit P-4 and ask you if you received that letter from Mr. Lieblich? A. I did.

30 Q. I show you a letter marked Exhibit P-6 and ask you if you received that letter from Mr. Lieblich? A. I mailed that letter to Mr. Lieblich.

Mr. Edwards—That is all.

Paul Martell—direct

Cross Examination by Mr. Liebllich:

Q. Mr. Giordano, I call for the production of the letter dated April 24th, letter demanding that you file proof of loss.

Mr. Edwards—I object to it, this is not cross examination.

By the Court—I sustain the objection.

Mr. Liebllich—I haven't any questions on 10 cross.

Mr. Edwards—That is our case, sir.

Mr. Liebllich—Before you closed I wanted to ask the youn man a few questions.

By the Court——Martel?

Mr. Liebllich—Yes.

PAUL MARTEL, recalled.

Mr. Liebllich:

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Q. Mr. Martel, I recall your testifying that Mr. Precopio in jail asked you to write to the Insurance company? A. Yes, sir.

Q. What did he tell you to write to them? A. He told me to write and notify them that his house was on fire and burned down.

Q. Did he tell you where to write? A. Write to the Insurance company.

Q. Where did you get the address from? A. From the Policy. 20

Q. Where is the policy, is this the paper, referring to Exhibit P-1? A. Yes, sir.

Q. Show me where you found it. Do you recall where you wrote to? A. Pennsylvania.

In Chambers

Q. Do you know what city? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. Look at Exhibit P-1 and tell me where you found the address to write to?

By the Court—The witness may, of course examine all of the paper.

10 Q. I want him to point out where he found it? Right here.

Q. Indicating? A. Home office 308-10 Walnut Street, Philadelphia.

Q. Indicating the back, is that right? A. All right.

Q. In whose handwriting is that, is that yours? A. No, sir.

20 Mr. Lieblich—May it please the court, I make a motion for non-suit.

By the Court—I will hear that in Chambers.

IN CHAMBERS

30 Mr. Lieblich—The first ground is the failure to comply with the policy in respect to notice. Secondly, the failure to appraise the loss and damage. Thirdly, there is no proof of any specific sum which the plaintiff has lost or the actual damage by reason of this fire and the defendants liability in a specific sum. At its best it is mere guesswork and if anything at all might be purely nominal damages.

In Chambers

By the Court—I shall speak on the grounds of the motion for a non suit as they were submitted by counsel. First, as to the alleged failure of the insured to give notice if the fire. It seems to me the evidence showing or at least, there being evidence from which the jury might find that a day after the fire a letter was written addressed 10 to the company with postage prepaid and mailed in a post office box at Long Branch. A presumption arises that the notice was mailed or given as quired. As to the second objection, that there was no appraisal of the property as required by the policy. The condition of the policy as to the appointment of appraisers is that the company shall not be liable beyond the actual cash value of the property at the time any loss or damage 20 ocured and provides that in no event shall it exceed the cost to the insured to repair; that said ascertainment may be made by the insured as hereinafter provided. And then further, the policy stipulates that in the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent appraisers one to be selected by the insurance company and another by the insured, and so forth. It seems to me that the right to the appraisal by the defendant is contingent upon a disagreement as to the amount of loss and I do not recall any evidence of any disagreement as 30 to the amount of loss. As to the objection that there is no proof, according to counsel

Joseph Sloeum—direct

for the defendant, of any specific amount of loss, I think there is in the Plaintiff's case evidence from which the jury would be warranted in fixing the amount of loss suffered by the insured. For these reasons the motion for a non suit is denied and exception will be noted for the defendant.

10 Mr. Lieblich—Mr. Edards, I offer in evidence your letter dated September 9, 1925.

Marked Exhibit D-6.

Mr. Lieblich—May I now, your Honor, have permission to read to the Jury Exhibit D-4 Exhibit D-5.

By the Court—Yes.

Mr. Lieblich then read Exhibits D-4 and D-5 to the Jury.

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JOSEPH SLOCUM, a witness produced in behalf of the defendant, being duly sworn, according to law, upon his oath, testifies as follows:

Direct Examination by Mr. Lieblich:

Q. Mr. Slocum, what is your business, trade or occupation? A. Motorcycle police officer at West Long Branch,

30 Q. Were you a police officer in West Long Branch on or about February 24, 1925? A. Yes, sir.

Q. In the discharge of your official duties was your attention in anywise attracted to Dominic Precopio on that day? A. In just what way?

Q. If it was in any way, tell the Jury? A. I was called. I couldn't tell you just the exact time

Joseph Sloeum—direct

for an explosion into a house owned by Dominic Precopio or rented by Dominic Precopio—

Mr. Edwards—I object to that and ask that it be stricken out. He has characterized something here as an explosion and it is evidence predicated upon hearsay, I ask it be stricken out and the Court instruct the jury to pay no attention to that statement. 10

By the Court—Oh, yes, he was called for an explosion. That is hearsay as to the explosion.

Q. Was the gentleman whose house was burning? (indicating Mr. Precopio? A. Yes, sir.

Q. When you got there what, if anything, did you find? A. The house was practically burned down when we got there, or you might say—what we found was the front door blown across the street. 20

Q. Did you say the house was burned down or blown down? A. The windows were all blown out and the house was on fire.

Q. Did you wait until the fire was put out? A. Yes, sir.

Q. Did you make any investigation of the place to find out if there was a fire and how it started?

A. We found a mattress that wasn't completely burned saturated with kerosene and we also found four or five gallon cans that contained kerosene in the back of the premises. 30

Q. Was there anything left in the cans at the time you found them? A. Very little, there was evidence of gasoline in three and kerosene in two.

Joseph Sloeum—direct

Q. What if anything, did you do with the cans?

A. We brought them to the Prosecutor's office at the time.

Q. Did you make any investigation, Officer Slocum, to find out if there was any furniture there at all, if so, what kind? A. The only thing that was left after the fire was the stove and iron beds.

10 Q. Was there any evidence of any furniture around? A. Trunk and bureau, something like that, a chair maybe.

Q. Did it look to you as if there had been a fire or more of an explosion where everything was blown around? A. Where the fire started there wasn't any stove near that room.

Mr. Lieblich—You may take the witness.

Mr. Edwards—No questions, Mr. Slocum.

20 Mr. Lieblich—Apparently, I think we shall have to rest. You don't want my statement, under oath, that we didn't receive a letter.

Mr. Edwards—How do you know that. I am going to admit that. If your office was in Philadelphia where this letter was directed to, we would like to know it.

30 Mr. Lieblich—we rest. At this time I want to make my motion for a direction of verdict. The defense has established very clearly and conclusively, I take it, by Exhibits D-4 and D-5 that prior to to the institution of the suit which is pending in this court at this time, and which we are now trying, the summons of which is tested October 15, 1925, that we made demand under date of August 24, 1925 for the compliance with the condition

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in the policy with respect, first, to the examination under oath; second, for the furnishing of a agistrate's certificate, both of which conditions have not been complied with. There has been some testimony injected into the case with respect to prior suits having been instituted. I maintain that no matter what number of suits have been instituted they are entirely irrelevant to the record in this case. The case before this court at this time is founded on a summons tested October 15, 1925 and this demand was made prior to this action and I feel, in view of that fact, that there has been no compliance with these conditions of the policy and that for that reason we are entitled to a direction of verdict.

By the Courtt—Your motion is denied. 20

Mr. Lieblich—Your Honor will permit me an exception.

Mr. Lieblich the closed defendant's case to the Jury.

Mr. Edwards then closed the plaintiff's case to the jury.

CHARGE OF THE COURT

Jess, J. Gentlemen of the Jurp: This is a suit on an insurance policy. It appears from the evidence that the plaintiff, ominic Precopio, obtained from the defendant, the Insurance Company of the State of Pennsylvania, a policy of insurance on his household goods and other personal property described in the policy itself. These goods, the per-

Charge

sonal property, were located in the plaintiff's home at 178 Victor Avenue, West Long Branch. The policy was issued as it appears on the face of it on the twentieth day of December, 1923, and it indemnified the plaintiff against loss by fire of the property insured by that policy to an amount not exceeding one thousand dollars. The plaintiff paid the stipulated premium and the policy of insurance constituted a valid contract between the parties, with their respective rights and liabilities fixed by the terms and conditions of the contract itself. It further appears that a fire occurred on February 24, 1925, on the premises at 178 Victor Avenue and in that fire the plaintiff claims to have suffered the loss of all the property covered by this policy of insurance. The defendant company has not paid this loss and the plaintiff brings this suit to enforce payment.

If the plaintiff is entitled to recover, he is entitled not necessarily to recover the full amount of insurance named in the policy. That is the maximum of the company's liability, but in no event, under the terms of the contract, is it liable for anything more than the actual cash value of the property at the time of the loss. What that loss was you would have to determine from the evidence. You cannot, of course, guess as to the value of the property but you must apply your good judgment, as men of experience, to the facts in the case as disclosed by the evidence and in that way arrive at the amount of your verdict, provided, of course, you first find that the plaintiff is entitled to a verdict.

Before coming to that question you must determine whether the defendant corporation is liable under its policy. A policy of insurance is a con-

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tract between the insurer and the insured. The policy involved in this suit is what is known as the standard form of fire insurance policy. The Legislature of this State has prescribed what that form shall be so that all policies of fire insurance issued upon property in the State of New Jersey are required to be in this so called Standard Form.

This policy, the one involved in this suit, contains covenants, conditions and stipulation required to be observed and performed by the assured, the observance of which is a pre-requisite to the right to recover. The defense in this case is that certain of these conditions were violated by the plaintiff; that, therefore, he is not entitled to recover under this policy. First, it is insisted that the plaintiff did not give the company the notice of his loss immediately after the fire as required by the contract of insurance. The evidence on the part of the plaintiff, is that on the day following the fire, the Plaintiff, Precopio, had an interview with a man who appears to have been a friend of the family, by the name of Martel, and that, at his direction, at the direction of Precopio, Martel wrote a letter addressed to the Insurance Company of the State of Pennsylvania as he says in an envelope containing the address which he says he found upon the policy itself, advising the company that there had been a fire, in which the property of the plaintiff has been destroyed, which property was covered by this policy. I do not recall just the contents of that letter but it is in evidence and you will have it before you in the consideration of this case. That letter is a copy—the letter you will have in evidence is alleged to be a copy of a letter which the plaintiff claims

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Charge

was mailed to the defendant corporation. Martel, who wrote the letter did not mail it but testified that he gave the letter in a sealed, I think, postage prepaid envelope, addressed to the company, to the wife of the plaintiff and her testimony was that she deposited that letter, so addressed, in a mail box in West Long Branch. The company denied having received any notice of this fire.

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If you believe that the original letter, a copy of which has been offered in evidence, was mailed as testified to n behalf of the plaintiff, in an envelope, properly stamped and addressed to the defendant corporation in Pennsylvania then that raises a presumption that the notice was received. That presumption, of course, may be rebutted by evidence that no such notice was received, but there is no evidence in the case that I can recall on behalf of the defendant corporation that the notice was not received. Therefore, as the matter stands the jury would be justified in finding that the presumption of notice, arising from the mailing of the letter, had not been rebutted and that the notice had been received.

20

The next defense is that the plaintiff failed to furnish a certificate as provided by the policy of a magistrate that he believed that the loss was honestly sustained. In referring to the provisions of the policy, gentlemen, I shall attempt to give you in substance my recollection of what those provisions are, but you have in evidence the policy of insurance itself and by reference to it you can see for yourself what these provisions are that are the basis of this suit.

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Charge

This stipulation in the policy as to the furnishing of a certain certificate by a magistrate nearest to the place of the fire is a very old provision in fire insurance policies and it is a condition of the contract which the assured is obliged to observe unless his observance of it is waived or excused by the insurer.

Two other grounds of defense I will discuss with that which I have just mentioned because I think under the circumstances of this case they may conveniently and properly be considered together. These two other grounds of defense are that the plaintiff did not submit to a personal examination, under oath, and that he did not submit books, vouchers, papers and so forth in response to the demand made upon him by the defendant company. The policy expressly provides that if required by the company the assured shall procure a certificate from the nearest magistrate of the character which I have mentioned and also that if required by the company he shall submit himself to an examination, under oath, by a person designated by the company and shall also submit books, vouchers and papers bearing upon the claim and loss.

In my view the question for you to decide from the evidence is whether the magistrate's certificate and examination of the person and papers of the assured were required by the company? The evidence bearing upon that point is that on August 24th, which appears to have been about seven months after the fire, the attorney for the defendant company wrote a letter to the plaintiff in which he said, substantially, that the proofs of loss were incomplete and that the company required the plain-

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tiff to submit the magistrate's certificate and to present himself and his papers for examination before the writer of the letter on a certain day therein named. The letter also stated that none of the conditions of the policy were to have been considered as having been waived by the company. That is another exhibit in the case—this letter to which I have referred—and which you will have before you from which you will gather the full terms of the letter itself.

Was this letter, and this is a question that I submit to the jury, was this letter, the exercising by the company of its rights to require the doing of the things that it called for under the provisions of the policy upon which the defendant relies. The evidence of the plaintiff is that he received this letter and that he turned it over to his attorney. He also stated that he was unable to read. It appears from the evidence in the case that at that time a suit was pending or that a suit had been instituted by the plaintiff on the policy involved here against the same defendant to recover for the loss, for which he seeks in this suit to recover. This letter as I have stated was dated, I think, August 24, 1925. This was several months after the statement of loss had been submitted. For, this other suit or these suits that I have just mentioned, of course, have nothing to do with this case. It makes no difference what happened in those suits and you are not concerned with that question. I only refer to them as a circumstance to be considered by the jury with the other circumstances in the case, in determining whether the letter of the attorney, written at the time it was and under the circumstances then exist-

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ing, was such a demand for the magistrate's certificate and for an examination of the plaintiff and his papers, such as is contemplated by the stipulation in the policy. The insured, under this stipulation is not required to tender himself for examination. He is only required to do so if requested by the company. That is, the company must take the initiative and the demand for such examination must be made with such clearness and distinctness that the insured shall be fully informed that the company insists upon having it and must appear, too, that the company itself is insisting upon having it.

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I leave it to the jury to say whether any steps were taken by the company with a view to having the plaintiff examined, whether any information was brought home to him or efforts made to that end. If efforts to obtain a magistrate's certificate and the examination were made by the company in good faith under the terms of the provisions in the policy, on right of action would arise until such examination was submitted to, unless the production of the certificate and examination were impliedly waived.

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Another defense is that there was failure to file the statement of loss. I understand that there is, in the case, evidence that this statement was filed within the time required by the policy.

A further defense is that there was no appraisal of the property after the fire, as required by the contract of insurance. Now, Gentlemen, the provision of the contract in that regard is that "if there shall be a disagreement between the insured and the insurer as to the amount of loss, then the question between them shall be submitted to ap-

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Charge

praisers" and that in that event, no right of action lies until such appraisal has been made, but there was such a disagreement between the parties to this contract as to the amount of loss.

10 It is further urged on behalf of the defense that the plaintiff cannot recover because of alleged false swearing and fraudulent statements. Now, false swearing and fraudulent statements would undoubtedly, if made, and the jury should be satisfied from the evidence that they were made, void the policy and defeat the right of the plaintiff to recover. But, let me say in that connection that mere mistakes in stating facts which do not appear to have been wilful misrepresentations will not defeat the action. This condition in the policy is available as a defense only when it appears from the evidence that the assured knowingly swore falsely or said or did that
20 which is claimed to be fraudulent.

It is next maintained by the defense that the plaintiff concealed or misrepresented material facts. Gentlemen, if there was and you find from the evidence such wilful concealment or misrepresentations of facts with intent to defraud the company, then the plaintiff could not recover, but a mere mistake in stating facts or honest error in valuation would not bar the plaintiff's right to recover. The defense' insistence is that the plaintiff has forfeited his right to recover on this insurance policy by the
30 failure to perform essential conditions of the contract.

In consideration of this case, gentlemen, I call your attention to the policy of the law, which is that policies of insurance, such as this, are liberally construed to uphold the contract between the parties

Charge

and conditions contained in them which create forfeiture are to be construed most strongly against the insurer. The burden is upon the plaintiff to establish his claim by the greater weight of the evidence. If in your judgment, based upon the consideration of all the evidence, he has borne that burden, then he is entitled to your verdict. If not your verdict should be in favor of the defendant. 10

I have a number of requests to charge submitted on behalf of the defendant. I charge request number one as follows: "The certificate or policy of fire insurance is a contract setting forth the agreement of the parties, the conditions precedent and subsequent and limiting the liability of the insurance company to any loss actually sustained through the burning of the property insured."

Second, "The burden is upon the plaintiff to prove by a fair preponderance of the evidence the due performance of the terms and conditions of the policy he is suing upon, or the waiver thereof, by an officer of the company." 20

Third, "A policy of insurance is a contract of indemnity and one of the utmost good faith and if you find that the plaintiff did not act fair and honestly by making a diligent effort to produce bills, vouchers etc., then this policy is void and you must find for the defendant."

Fourth (request number six) "The plaintiff in his proof of loss has sworn that he has no knowledge as to the cause and origin of the fire. If you should find, as a fact, that this statement is untrue, then the policy is void and you must find for the defendant. 30

Charge

Fifth, (request number seven) "Should you find, as a fact, that the cause and origin of the fire was known to the plaintiff and did originate by the act and procurement of the plaintiff or some person acting in his behalf or with his privity and consent, the policy is void and you must find for the defendant."

10 Sixth (request number eight) "Concealment is the designed intentional withholding of any fact material to the loss or damage which insured in honesty and good faith ought to communicate and if you find that the plaintiff did conceal any material fact and did not honestly and in good faith communicate to the defendants or its representative any information relative to the loss or damage, the property insured or the subject of insurance, then
20 the policy is void and you must find for the defendant."

Seventh (request number nine) "If you believe that the plaintiff in this case falsely and with intent to defraud the company, overvalued his property when he stated in the proof of loss that the value thereof was \$1209 and the loss and damage \$1209, then the policy is void and you must find for the defendant."

30 Eight (request number ten) "In determining the credibility, weight or value of the testimony of a witness, you may take into consideration the action and conduct of the witness, the manner and form in which the witness gave his or her testimony, the interest of the witness and the influences under which he or she is testifying."

Ninth (request number eleven) "The burden is upon the plaintiff to prove by a fair preponderance

Charge

of the evidence, the due performance of all the terms and conditions precedent and subsequent before any liability can attach to this defendant, by that I mean that there are certain covenants or conditions in the policy of insurance which must either be complied with or waived by the defendant before an action or suit at law can be maintained."

Tenth (request number fifteen) "There is some testimony about an examination before trial, this is under the practice act giving either party the right after issue joined, to make application to a Supreme Court Justice for an order to examine the adverse party. This has no bearing on the covenant in the policy in respect to an examination under oath, and if the company would have held their examination under oath, they would not be deprived of making an application to a Supreme Court Justice to proceed to an examination before trial."

10

20

Eleven (request number sixteen) "The correspondence between the attorney in December refers to an examination as provided by practice of the insurance company dated August 24, 1925." I add to that gentlemen. I do not charge you as a matter of fact that the correspondence referred to dealt with an examination as provided by the practice act. In other words, I leave that question for you gentlemen to determine from the evidence whether from this correspondence which you will have before you, between the attorneys, was dealing with the question of examination before trial as provided for by the practice act or whether it was dealing with an examination called for by the defendant's attorney in his letter of August 24, 1925.

30

Exceptions to Charge

There are several other request on behalf of the defendant which I have not charged because either I feel they have been covered in the instructions already given or I feel I should not charge them.

10 Now, gentlemen, you will take this case and give it, of course, your very careful consideration and I am sure I need hardly to say to you that in your decision you are not to be influenced by the fact that the plaintiff, as it appears, is a man of humble station in life or of foreign birth, or that the defendant is an insurance corporation. When parties in dispute come into court and submit questions between them to a jury of their fellow citizens, they, of course, expect to receive a verdict which is based entirely upon the merits of the case as disclosed by the evidence and in the light of the law that is applicable to the facts of the case. I am sure
20 that in that spirit you will consider this case.

Mr. Lieblich—We take exception to that part of the charge wherein the court said “The plaintiff paid the stipulated premium and the policy of insurance constituted a valid contract between the parties, with their respective rights and liabilities fixed by the terms and conditions of the contract itself.”

30 We take exception to that part of the charge wherein the court said “the evidence on the party of the plaintiff is that on the day following the fire, the plaintiff, Precopio, had an interview with a man who appears to have been a friend of the family, by the name of Martel, and that, at his direction, at the direction of Precopio, Martel wrote a letter addressed to the Insurance Company of the State of Pennsylvania as he says in an envelope contain-

Exceptions to Charge

ingthe address which he says he found upon the policy itself, advising the company that there had been a fire, in which the property of the plaintiff had been destroyed which property was covered by this policy."

We take exception to that part of the charge wherein the court said: "was this letter, and this is a question that I submit to the jury, was this letter, the exercising by the company of its right to require the doing of the things that it called for under the provisions of the policy upon which the defendant relies." 10

We take exception to that part of the charge wherein the court said: "That is, the company must take the initiative and the demand for such examination must be made with such clearness and distinctness that the insured shall be fully informed that the company insists upon having it and it must appear, too, that the company itself is insisting upon having it." 20

We take exception to that part of the charge wherein the court said: "If efforts to obtain a magistrate's certificate and the examination were made by the company in good faith under the terms of the provisions in the policy, no right of action would arise until such examination was submitted to, unless the production of the certificate and examination were impliedly waived."

We take exception to that part of the charge wherein the court said: "In the consideration of this case, gentlemen, I call your attention to the policy of the law which is that policies of insurance, such as this, are to be liberally construed to uphold the contract between the parties and conditions contain- 30

Exhibit P-1

ed in them which create forfeiture are to be construed most strongly against the insurer."

We take exception to the Court's refusal to charge requests numbered four, five, eleven, twelve, thirteen and fourteen.

EXHIBIT P-1

10

Standard Fire Insurance Policy of the States of New Jersey, Rhode Island, Connecticut, Virginia, Georgia and Oklahoma.

Expires December 20th, 1926.

Property 178 Victory Ave., W. Long Branch, New Jersey.

Amount \$1000. Premium \$6.00.

Dominic Precopio.

No. 572960.

20

Insurance Underwriters Policy of the Insurance Company of the State of Pennsylvania issued through the Insurance Underwriters Agency. J. S. Frelinghuysen, Manager. Office: 111 William Street, New York City.

Cash Capital \$1,000,000.

Heyman.

W. A. Eichhorn, 509 Essex Bldg., Newark, N. J. Phone 3504-5 Market.

No. 572960.

30

THE INSURANCE UNDERWRITERS

by this

Policy of Insurance

The Insurance Company of the State of Pennsylvania.

Amount \$1,0000. Rate .60. Premium \$6.00.

In Consideration of the Stipulations herein named and of Six and 00|100 Dollars Premium

Exhibit P-1

Does Insure Dominic Precopio, for the term of three years from the 20th day of December 1923, at noon to the 20th day of December, 1926, at noon against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding One Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to-wit: \$1000 on household furniture, fixtures, etc., while contained in the frame building, No. 650 Wall St., Long Branch, N. J. 10

Newark, Feb. 9th, 1924.

Transferred to covered similar property at No. 178 Victor Ave., West Long Branch, N. J.

This Policy is made and accepted to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of the agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached. 20

Provisions Required by Law to be Stated in 30

Exhibit P-1

this Policy. This Policy is in a stock corporation.

In Witness Whereof, this Company has executed and attested these presents; but this policy shall not be valid until countersigned by the duly authorized Agent of the Company at Newark, New Jersey.

10 Gustavus Remak, Jr., President.
Jno. J. P. Rodgers, Secretary.
J. S. Frelinghuysen, Manager.

Insurance Underwriters Agency.

Countersigned at Newark, New Jersey, this 20th day of December, 1923.

W. A. Eichhorn, Agent.

20 This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, 30 ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, re-

Exhibit P-1

build, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intentions so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss. 10

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal proper- 20 30

Exhibit P-1

- ty and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises,
- 10
- 20 benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building
- 30 herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days:

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authori-

Exhibit P-1

ty; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

10

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

20

30

If any application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no per-

Exhibit P-1

son, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

10 This policy shall be canceled at any time at the request of the insured; or by the company by giving five days notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retain the customary short rate; except that when this policy is canceled by
20 this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

30 If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only,

Exhibit P-1

cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not. 10

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions had schedules on all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of 20 30

Exhibit P-1

fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has
10 examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for ex-
20 amination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first
30 select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, 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; the parties thereto shall pay the appraiser respectively selected by them and shall

Exhibit P-1

bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of loss herein required have been received by this company, including an award by appraisers when appraisal has been required. 10

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon. 20

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment. 30

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any

Exhibit P-2

court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

10 Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

20 Insurance Underwriters Agency of the Insurance Company of the State of Pennsylvania. Home office, 308 & 310 Walnut Street, Philadelphia. Gustavus Remak, Jr., President; Waite Bliven, Vice-President; H. W. Stephenson, Vice-President; John J. P. Rodgers, Sec'y. & Treas.; Samuel P. Rodgers, Asst. Secretary. Joseph S. Frelinghuysen, Manager, 111 William Street, New York City.

EXHIBIT P-2

Feb. 25th, 1925.

30 Insurance Company of the State of Pa.,
308-310 Walnut Street,
Philadelphia, Pa.

Gentlemen:

I wish to tell you that the house where I live caught fire last night at 11 P. M. and all my furniture was burned to nothing. I don't know

Exhibit D-4

how it happened because I was not in last night. Please come and see because I have no place and no furniture. I stay with Mr. Peter Bova, 301 Poole Ave., Long Branch, New Jersey. I got insurance for \$1000.00 in your company and the insurance number is 572960.

Dominic Precopio.

10

EXHIBIT D-4

Aug. 24th, 1925.

Mr. Dominic Precopio,
178 Victor Ave.,
West Long Branch, N. J.

Dear Sir:

We are in receipt of a paper signed by you, purporting to be a proof of loss against the Insurance Company of the State of Pennsylvania, under an alleged certificate No. 572960 in connection with an alleged fire of February 24th, 1925, at Long Branch, N. J. I desire to advise you on behalf of the Insurance Company of the State of Pennsylvania that we hereby reject this paper as incomplete, incorrect and not based upon true facts and not in accordance with the terms, covenants and conditions of the alleged certificate above mentioned or the actual condition existing relating to the premises and alleged fire of Feb. 24th, 1925.

20

You will please take notice that you are hereby required to submit to an examination under oath, concerning the alleged loss and damage, as provided by lines 81 to 85 of the alleged certificate in your possession and the standard fire insurance policy of the State of New Jersey, by and before Joseph T. Lieblich, Esq., the person named by

30

Exhibit D-4

the said company for that purpose, at the office of John C. Giordano, 211 Broadway, Long Branch, N. J., on Tuesday, Sept. 29th, 1925, at 2 P. M., and that you will at the same time and place on such examination and for the purpose of it, produce all bills, invoices, vouchers or certified copies thereof and permit extracts and copies thereof to be made and upon the conclusion of the examination or examinations under oath, you will subscribe the same and that you also furnish us with a Magistrate's certificate, (not interested in the claim as a creditor nor in any wise related to you) living nearest the place of fire, stating that he has examined the circumstances and believes that you honestly sustained loss and damage in such amount as the said Magistrate shall certify.

20 It is further provided in the alleged certificate above mentioned that the company shall not be held to waive any of the provisions and conditions of the said alleged certificates, or any forfeiture thereof by any act, requirement or proceeding on its part, relating to examination under oath, Magistrate's certificate, etc., and I expressly notify you that in demanding the said examination under oath and requiring the production of bills, invoices, vouchers or certified copies thereof, Magistrate's certificate, etc., the company does not
30 intend to waive any of the provisions or conditions of the said alleged certificate or failure on your part to comply with the conditions or provisions thereof and the demands hereby made are for the purpose of ascertaining and determining the loss, if any, which you allege that you sus-

Exhibits D-5, D-3

tained, without admitting or denying any liability in the premises.

Yours very truly,
Insurance Co. of the State of Pa.,
By Joseph T. Lieblich,
Attorney.

JTL:A.

EXHIBIT D-5

10

Sept. 2nd, 1925.

John C. Giordano, Esq.,
Woolworth Bldg.,
Long Branch, N. J.

Dear Sir:—Re: Precopio vs. Ins. Co. of Pa.
Enclosed herewith please find copy of letter addressed to Mr. Precopio.

Will you kindly advise whether Tuesday, Sept. 29th, at 2 P. M., is agreeable to you for the purpose of conducting the examination under oath and if not, kindly give me one or two tentative dates so that we can fix a day which will be convenient for both of us.

Very truly yours,
Jos. T. Lieblich.

JTL:A.
Enc.

EXHIBIT D-3

Receipt for Registered Article No. 14896.
20 fee paid.

30

From Joseph T. Lieblich, Paterson, N. J.
Addressed to Dominic Precopio, West Long Branch, N. J.

Return receipt desired X.

Postmaster, per D.

Exhibits D-2, D-1, P-5

Postmark. (Station No. 14) Paterson, New Jersey, Aug. 24, 1925.

EXHIBIT D-2

Post Office Department—Official Business.
Registered article. No. 14896. Insured Parcel.
Return to J. T. Lieblich, Romaine, Bldg., Paterson, New Jersey.

10

Return Receipt

Registered Article No. 14896

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Dominic Precopio.

Date of delivery 9/1, 1925.

EXHIBIT D-1

20 Office copy of letter 8/24/25 and duplicate of Exhibit D-4.

EXHIBIT P-5

September 2nd, 1925.

Joseph T. Lieblich, Esq.,
Counsellor at Law,
136 Washington Street,
Paterson, N. J.

Dear Sir:

30 Mr. Giordano has taken a voluntary non-suit or discontinuance thereof and has notified the court accordingly, in the case of Dominic Precopio vs. the Insurance Company of the State of Pennsylvania.

Mr. Giordano wrote you on the 22nd ulto., stating that he and Mr. Edwards would consent to the setting aside of the service as aforesaid as affected August 5, 1925, on W. A. Eichhorn.

Exhibit D-6

As soon as Mr. Giordano returns from his vacation, which will be in about ten days, I will advise him of your letter of the 1st inst.

Yours very truly,

Hamitt M. Young, Secy.

EXHIBIT D-6

September 9, 1925. 10

Mr. Joseph T. Lieblich,
Counsellor at Law,
136 Washington Street,
Paterson, N. J.

My dear Mr. Lieblich:

Responding to the letter of August 24, 1925, addressed by you to Mr. Dominico Precopio in which, among other things, you refer to an "alleged" certificate No. 572960 in connection with an "alleged" fire of February 24, 1925, at Long Branch, and in which you notify Mr. Precopio that he is required to submit to an examination by you, under oath, concerning the "alleged" loss and damage as provided in lines 81 to 85 in the "alleged" certificate in his possession, I wish to state in behalf of Mr. Precopio and Mr. Giordano that since the case is now in Court, to be by the said Court decided, that it is not the purpose of Mr. Giordano to permit his client to be examined by you or anyone else by force or virtue of lines 81 to 85 of the "alleged" certificate. 20

When I was speaking with you here I was, of course, under the impression that you had given notice, under the Statute, to take testimony before some Supreme Court Commissioner, Examiner or Master. I did not suspect that it was your intention to attempt to force Precopio, at 30

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Exhibit P-4

this time, to comply with any conditions that would have held good prior to the institution of suit. Therefore, it is not Precopio's intention to submit to such an examination or in any manner comply with your letter of August 24, 1925.

10 I have taken up the matter with Mr. Giordano relative to your purpose of getting the Court to determine the question whether it is compulsory to serve process only upon the Secretary of State. Mr. Giordano states that he would be pleased to have the Court decide this point for your convenience, but he insists that he has a right of a voluntary non-suit at any time, and intends to insist upon his right in that respect.

Very truly yours,

Wm. L. Edwards, Cnl.

20 WLE:L.

EXHIBIT P-4

Dec. 3rd, 1925.

John C. Giordano, Esq.,
Long Branch, N. J.

Dear Sir:—Re: Precopio vs. Ins. Co.

30 I am desirous of having an examination before trial of the plaintiff in this cause. Will you please advise me whether you will have your client submit to such an examination or whether you will insist upon my making application to the Court for an order. Usually, we stipulate for an examination before trial without proceeding any further in the premises but since I have not had occasion to have any other matter with you, I would be pleased to have you advise me what your version will be with respect thereto.

Very truly yours,

Joseph T. Lieblich.

JTL:A.

Exhibit P-6

EXHIBIT P-6

December 5, 1925.

Mr. Joseph T. Lieblich,
Counsellor-at-Law,
136 Washington Street,
Paterson, N. J.

Dear Sir:

Enclosed herewith find original and copy of 10
notice of trial in the case of Precopio vs. Insurance
Company of the State of Penn.

Will you kindly acknowledge service of notice
and return same to me in the enclosed stamped
envelope?

In answer to your letter of the 3rd instant, re-
garding examination before trial, of course I will
be glad to accommodate you without making ap-
plication to the court for an order, so long as the
examination is conducted within the purview of
the statute.

20

Yours very truly,
J. C. Giordano.

G|K.
encs.

Notice of Appeal

Filed, Nov. 3, 1926.

NOTICE OF APPEAL

To: John C. Giordano & Wm. L. Edwards,
Esqs., Attorneys of Plaintiff.

Sirs:

10 Please take notice that the defendant, The In-
surance Company of the State of Pennsylvania,
hereby appeals from the whole of the verdict and
judgment in the above cause, to the New Jersey
Court of Errors and Appeals.

Yours, etc.,
Joseph T. Lieblich,
Attorney of Defendant.

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Grounds of Appeal

Filed Dec. 1. 1926

GROUNDS OF APPEAL

To: John C. Giordano, Esq., Attorney of Plaintiff-Appellee.

Sir:

Please take notice that the following are the Grounds of Appeals which defendant-appellant hereby assigns and upon which it will rely:

1. The Court erred in charging the jury:

In the consideration of this case, gentlemen, I call your attention to the policy of the law which is that policies of insurance such as this, are to be liberally construed to uphold the contract between the parties and conditions contained in them which create forfeiture are to be construed most strongly against the insurer.

2. The Court erred in charging the jury:

In my view the question for you to decide from the evidence is whether the Magistrate's certificate and examination of the person and papers of the assured were required by the company.

3. The Court erred in charging the jury:

Was this letter, and that is a question that I submit to the jury, was this letter, the exercising by the company of its right to require the doings of the things called for under the provisions of the policy upon which the defendant relies.

4. The Court erred in charging the jury:

It appears from the evidence in the case that at that time a suit was pending or that a suit had been instituted by the

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Grounds of Appeal

plaintiff on the policy involved here against the same defendant to recover for the loss for which he seeks in this suit to recover.

5. The Court erred in charging the jury:

Was such a demand for the Magistrate's certificate and for an examination of the plaintiff and his papers such as is contemplated by the stipulation in the policy.

- 10 6. The Court erred in charging the jury:

I leave it to the jury to say whether any steps were taken by the company with a view to having the plaintiff examined, whether any information was brought home to him or efforts made to that end. If efforts to obtain a Magistrate's certificate and the examination were made by the company in good faith under the terms of the provisions in the policy, no right of action would arise until such examination was submitted to unless the production of the certificate and examination were impliedly waived.

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7. The Court erred in admitting a witness not qualified to testify to value, viz:

What do you say then that the wardrobe containing all these clothes, that is, your wife's clothes and your clothes and the children's clothes were worth.

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8. The Court erred in admitting Exhibit P-4.
 9. The Court erred in admitting Exhibit P-5.
 10. The Court erred in his refusal to grant defendant's motion for a direction of verdict in favor of defendant.

Joseph T. Lieblich,
 Attorney of Defendant-Appellant.

Summons

Filed 10|22|25

SUMMONS

The State of New Jersey To:

The Insurance Company of the State of Pennsylvania:

You are summoned to answer the annexed complaint of Dominic Precopio (L. S.) in an action at law in the Supreme Court and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 15th day of October, Nineteen Hundred and Twenty-five. 20

Wm. L. Edwards, Attorney.

John C. Giordano, Attorney.

Edward J. Kelleher, Clerk.

Service of the within summons and complaint is hereby acknowledged this 15th day of October, 1925.

Joseph T. Lieblich,
Atty. of Defendant.

Complaint

COMPLAINT

Plaintiff, residing in the City of Long Branch, in the County of Monmouth and State of New Jersey, says that:—

1. On the twentieth day of December, Nineteen Hundred and Twenty-three, at Newark, in the County of Essex and state aforesaid, the said defendant caused to be made a certain policy of insurance, in writing, purporting thereby and containing there, in that in consideration of the payment of Six Dollars (\$6.00) premium, paid by the said plaintiff to the said defendant, the receipt whereof the said defendant thereby acknowledged, the said defendant undertook and promised the said plaintiff that it would insure the said plaintiff against loss or damage by fire to an amount not exceeding One Thousand Dollars (\$1000.) and would make good to the said plaintiff, or his legal representatives, any such loss or damage as should happen by fire, not exceeding the last named amount of One Thousand Dollars (\$1000.) **for the term of three years, from the said twentieth day of December, nineteen hundred and twenty-three, at noon, to the twentieth day of December, 1926, at noon, on and in respect of certain household goods and furniture of said plaintiff in said policy described as household furniture, fixtures and utensils and house furnishing goods useful and ornamental, including awnings, beds, bedding, carpets, rugs, curtains, linen, wearing apparel, trunks, bags, traveling equipments, umbrellas and canes, plate, plated ware, silverware, crockery, china and glassware, lamps, chandeliers and gas or electric light fixtures and apparatsu, stoves, ranges, printed books, music,**

Complaint

mirrors, pictures, painting, engravings and their frames, when not specifically insured (pictures, paintings and engravings at not exceeding cost price) piano-fortes and other musical instruments, including stools and covers, music boxes, billiard and pool tables and all appurtenances thereto, sewing machines, baby carriages, scientific instruments, cameras and supplies, plants, tools, awnings, ornaments, curiosities, phonographs, graphophones, toys, games and other articles of amusement and entertainment, gymnasium apparatus, bicycles, guns and other sporting implements, bronzes, statuary, and other works of art and objects of virtue, bric-a-brack, watches, diamonds, jewels and jewelry, fuel and family stores and provisions and other household effects, the property of the assured or of any member of the household, guests and servants, said loss or damage to be estimated according to the actual cash value of the property at the time of the same shall happen, when contained in or on the frame buildings and additions occupied as a dwelling (not to exceed two families) situated at No. 178 Victor Avenue, West Long Branch, N. J.; the said loss or damage by fire to be estimated according to the actual cash value of the said property at the time of said loss or damage by fire shall happen and to be paid by the said defendant within sixty days after due notice and proof of said loss or damage made to the said defendant, in conformity with the conditions of the said policy; and in the said policy sundry provisos, conditions, prohibitions and stipulations were and are contained and were and are thereto annexed; as by

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Complaint

the said policy reference being thereto had will more fully appear.

10 2. At the time of the making of said policy of insurance the said defendant, and at all times since and now, the said plaintiff was and is interested in the said property in the said policy mentioned and described as aforesaid, to a large amount, to wit, to the amount of One Thousand Dollars (\$1000.00), and thereby intended to be insured, after the making of the said policy and within the three years aforesaid, to wit, from the twenty-fourth day of February, nineteen hundred and twenty-five, was burned, consumed, and destroyed by fire, which did not happen by means of or during any invasion, insurrection, riot or civil war or commotion or military or usurped power, or by order of any civil authority or by theft or negligence of the insured to use reason-
20 able means to save and preserve the property at and after the fire or when the property was endangered by fire of neighboring premises by exposure of any kind, whereby the said plaintiff then sustained damage and loss to a large amount, to wit, to the amount of said Oen Thousand Dollars, so assured on the said property so burned and consumed as aforesaid.

30 3. The said property, in the said policy mentioned, and intended to be thereby assured, at the time of making the said policy, was not nor at any time since has been insured in any other office or company.

4. The said property, in the said policy mentioned, was duly described in the said plaintiff's application for insurance and in the said policy, and not otherwise than they really were, or, as

Summons

Filed 10|22|25

SUMMONS

The State of New Jersey To:

The Insurance Company of the State of Pennsylvania:

You are summoned to answer the annexed complaint of Dominic Precopio (L. S.) in an action at law in the Supreme Court and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 15th day of October, Nineteen Hundred and Twenty-five. 20

Wm. L. Edwards, Attorney.

John C. Giordano, Attorney.

Edward J. Kelleher, Clerk.

Service of the within summons and complaint is hereby acknowledged this 15th day of October, 1925.

Joseph T. Lieblich,

Atty. of Defendant.

Complaint

COMPLAINT

Plaintiff, residing in the City of Long Branch, in the County of Monmouth and State of New Jersey, says that:—

1. On the twentieth day of December, Nineteen Hundred and Twenty-three, at Newark, in the County of Essex and state aforesaid, the said
10 defendant caused to be made a certain policy of insurance, in writing, purporting thereby and containing there, in that in consideration of the payment of Six Dollars (\$6.00) premium, paid by the said plaintiff to the said defendant, the receipt whereof the said defendant thereby acknowledged, the said defendant undertook and promised the said plaintiff that it would insure the said plaintiff against loss or damage by fire to an amount
20 not exceeding One Thousand Dollars (\$1000.) and would make good to the said plaintiff, or his legal representatives, any such loss or damage as should happen by fire, not exceeding the last named amount of One Thousand Dollars (\$1000.)
30 **for the term of three years, from the said twentieth day of December, nineteen hundred and twenty-three, at noon, to the twentieth day of December, 1926, at noon, on and in respect of certain household goods and furniture of said plaintiff in said policy described as household furniture, fixtures and utensils and house furnishing goods useful and ornamental, including awnings, beds, bedding, carpets, rugs, curtains, linen, wearing apparel, trunks, bags, traveling equipments, umbrellas and canes, plate, plated ware, silverware, crockery, china and glassware, lamps, chandeliers and gas or electric light fixtures and apparatus, stoves, ranges, printed books, music,**

Complaint

mirrors, pictures, painting, engravings and their frames, when not specifically insured (pictures, paintings and engravings at not exceeding cost price) piano-fortes and other musical instruments, including stools and covers, music boxes, billiard and pool tables and all appurtenances thereto, sewing machines, baby carriages, scientific instruments, cameras and supplies, plants, tools, awnings, ornaments, curiosities, phonographs, graphophones, toys, games and other articles of amusement and entertainment, gymnasium apparatus, bicycles, guns and other sporting implements, bronzes, statuary, and other works of art and objects of virtue, bric-a-brack, watches, diamonds, jewels and jewelry, fuel and family stores and provisions and other household effects, the property of the assured or of any member of the household, guests and servants, said loss or damage to be estimated according to the actual cash value of the property at the time of the same shall happen, when contained in or on the frame buildings and additions accupied as a dwelling (not to exceed two families) situated at No. 178 Victor Avenue, West Long Branch, N. J.; the said loss or damage by fire to be estimated according to the actual cash value of the said property at the time of said loss or damage by fire shall happen and to be paid by the said defendant within sixty days after due notice and proof of said loss or damage made to the said defendant, in conformity with the conditions of the said policy; and in the said policy sundry provisos, conditions, prohibitions and stipulations were and are contained and were and are thereto annexed; as by

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Complaint

the said policy reference being thereto had will more fully appear.

10 2. At the time of the making of said policy of insurance the said defendant, and at all times since and now, the said plaintiff was and is interested in the said property in the said policy mentioned and described as aforesaid, to a large amount, to wit, to the amount of One Thousand Dollars (\$1000.00), and thereby intended to be insured, after the making of the said policy and within the three years aforesaid, to wit, from the
20 twenty-fourth day of February, nineteen hundred and twenty-five, was burned, consumed, and destroyed by fire, which did not happen by means of or during any invasion, insurrection, riot or civil war or commotion or military or usurped power, or by order of any civil authority or by theft or negligence of the insured to use reasonable means to save and preserve the property
30 at and after the fire or when the property was endangered by fire of neighboring premises by exposure of any kind, whereby the said plaintiff then sustained damage and loss to a large amount, to wit, to the amount of said One Thousand Dollars, so assured on the said property so burned and consumed as aforesaid.

30 3. The said property, in the said policy mentioned, and intended to be thereby assured, at the time of making the said policy, was not nor at any time since has been insured in any other office or company.

4. The said property, in the said policy mentioned, was duly described in the said plaintiff's application for insurance and in the said policy, and not otherwise than they really were, or, as

Complaint

to cause the said insurance to be effected upon a lower premium than should have been.

5. Plaintiff gave immediate notice in writing to the said defendant of said loss and damage to his said property; also plaintiff made due proof of the same to the said defendant, at the office of the said defendant in Philadelphia; and did make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and did within sixty days after the said fire render a statement to the defendant, signed and sworn to by the plaintiff, stating a knowledge and belief of the plaintiff as to the time and origin of the fire, as best he knew it, the interest of said plaintiff and of all others in the property, the cash value of each item thereof, and the amount of losses thereon, all incumbrances thereon, all in compliance with and according to the stipulations of the said policy, and as particular an account of the plaintiff's damages as the nature of the case would admit, signed by the said plaintiff and accompanied by his oath, declaring the said account to be true and just. 10 20

6. Plaintiff was ready to submit to an examination or examinations under oath, by any person appointed by the said defendant, and to subscribe to any such examination or examinations, as often as required by the plaintiff; and was ready to produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof, at such reasonable places as might be designated by the said defendant or its representatives. 30

7. Plaintiff in all other particulars complied with, performed and observed all other, the conditions, provisos, restrictions, prohibitions and stipulations of the said policy, and of the application thereof on his part to be complied with, performed and observed, according to the form and effect of the said policy and of the said application.

10 8. Although five months have elapsed since due notice and proof as aforesaid was given and made to the said defendant as aforesaid, of the said burning and destruction by fire of the said property and of the loss and damage as aforesaid, thereby occasioned to the said plaintiff, yet the said defendant has not paid or made good to the said plaintiff said loss and damage of One Thousand Dollars (\$1000.00), or any part thereof but
20 and unsatisfied to him, contrary to the force and effect of the said policy.

9. Defendant, although often requested, has not kept with the said plaintiff the agreement aforesaid, contained in the said policy made between the said defendant and the said plaintiff in that behalf as aforesaid, but that the said defendant hath broken the same, and to keep the same with the said plaintiff has hitherto wholly
30 refused and failed and still doth refuse.

Plaintiff demands as damages One Thousand Dollars (\$1000.) with interest from April 24th, 1925, and costs of suits.

Wm. L. Edwards,
and
John C. Giordano,
Attorneys for Plaintiff.

Filed 11/3/25

ANSWER

Defendant, a foreign corporation with an office in the City of Philadelphia, County of Philadelphia and State of Pennsylvania, answering the complaint, says:

1. It denies paragraphs one, two, four, five, six, seven, eight and nine except to admit that if the plaintiff is in possession of certificate No. 572960 of this defendant, issued at the Newark Agency by Special Agent William A. Eichhorn, this defendant craves oyer thereof and for certainty as to the terms, covenants and conditions thereof and therein, defendant refers thereto as if recited at length and it further admits that it has not made any payment to this plaintiff. 10

2. It has no knowledge or information sufficient to form a belief as to the allegations in paragraph three of the complaint and leaves plaintiff to his proof. 20

First Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged from the undamaged personal property, put it in the best possible order, making a complete inventory of the same, stating the quantity and cost of each article and the amount of loss thereon. 30

2. That this plaintiff has not complied with the covenant recited in paragraph one hereof nor

Answer

has the plaintiff at any as alleged in his complaint, given defendant immediate notice in writing, nor has he made a complete inventory of the alleged loss and damage, stating the quantity and cost of each article, the amount of loss thereon and forwarded same to the defendant as provided in paragraph one hereof, by reason wherefore, the alleged certificate set forth is null and void and no recovery can be had thereunder.

Second Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause fo action, such as is issued by this defendant, provides:

If fire occurs, the insured shall furnish a certificate of the Magistrate living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such Magistrate shall certify.

No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after all compliance by the insured with all the foregoing requirements.

2. That the defendant made due demand upon the plaintiff that he comply with the covenant recited in paragraph one hereof, compliance therewith being a condition precedent to bringing this action and that plaintiff has refused and failed to comply therewith, wherefore this action is prematurely brought and cannot be sustained.

Third Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

Answer

In case of disagreement as to the amount of loss, the same shall be ascertained by two competent and disinterested appraisers, etc.

No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements. 10

2. That the plaintiff has failed to comply with the covenants mentioned in paragraph one hereof, a compliance therewith being a condition precedent to the bringing of this action, wherefore the action is prematurely brought and cannot be sustained.

Fourth Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides: 20

If fire occur, the insured within sixty days after the fire shall render a statement to this company, signed and sworn to by the said insured, stating the knowledge and belief of said insured as to the time and origin of the fire, the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon, all encumbrances thereon, etc.

No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements. 30

Answer

2. That the defendant gave due notice to plaintiff to comply with the conditions and covenants of the certificate of insurance alleged in the complaint herein but the plaintiff has failed to comply therewith wherefore this action is prematurely brought and cannot be sustained.

Fifth Separate Defense

10 1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

The insured, as often as required, shall submit to examinations under oath by any person named by this company and shall subscribe the same.

20 No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements.

30 2. That the defendant made due demand upon the plaintiff to comply with the covenants recited in paragraph one hereof, as per copy of demand hereto attached, marked Exhibit "A" that the plaintiff has failed and refused to comply therewith and has failed to submit to examination as often as required, wherefore the certificate set forth in the complaint is null and void and no recovery can be had thereunder.

Sixth Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

The insured, as often as required, shall produce for examination all books of account, bills, invoices and other vouchers or

Answer

certified copies thereof if originals be lost, and shall permit extracts and copies thereof to be made.

No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements.

2. That the defendant made due demand upon the plaintiff that he comply with the covenants mentioned in paragraph one hereof; that the plaintiff has failed and refused to produce all books, records, bills, invoices, etc., or to permit an examination thereof or to permit copies and extracts thereof to be made, wherefore the certificate set forth in the complaint is null and void and no recovery can be had thereunder. 10

Seventh Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides: 20

The sum for which this company is liable pursuant to this policy, shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of loss has been received by this company in accordance with the terms of this policy, including an award by appraisers.

No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements. 30

2. That the defendant gave plaintiff notice and made due demand upon the plaintiff for a

Answer

compliance with the terms, covenants and conditions of the alleged certificate No. 572960 and the particular covenant set forth in the First, Second, Third, Fourth, Fifth and Sixth Separate Defenses, the plaintiff having failed to comply therewith wherefore this action is prematurely brought and cannot be sustained.

Eighth Separate Defense

- 10 1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

This entire policy shall be void in case of any fraud or false swearing by the assured, whether before or after the loss.

- 20 2. That after the alleged loss and before the institution of this suit, the plaintiff made and delivered to this defendant a false and fraudulent statement in which statement plaintiff falsely and fraudulently swore that the alleged insured property was of the value of \$1209 and had been damaged to the extent of \$1209 whereas in truth and fact, as the plaintiff well knew the alleged insured property was not of the alleged value of \$1209 or the loss and damage in the sum of \$1209 and that the statements so made by plaintiff were false and well known by plaintiff to be false and were made with intent to deceive, defraud and induce the defendant to pay a greater sum than plaintiff had actually lost or
30 suffered, wherefore this entire certificate is null and void.

Ninth Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

Answer

This entire policy shall be void in case of any fraud or false swearing by the assured, touching any matter relating to this insurance or the subject thereof, whether before or after the loss.

2. That the plaintiff has falsely stated and sworn in a certain paper purporting to be a proof of loss, that the cause and origin of the fire as referred to in the complaint; "origin unknown" and "the said fire did not originate by any act, design or procurement on my part nor on the part of anyone having any interest in the property insured, or in the said policy of insurance, nor in consequence of any fraud or evil practice done or suffered by me," whereas in truth and fact, the cause and origin of the fire was known to the plaintiff and the rest of the statements in quotation herein was known to the plaintiff and well knowing the same to be false and untrue and the statements made for the purpose of deceiving and defrauding this defendant, whereas the alleged certificate is null and void and no recovery can be had thereunder.

Tenth Separate Defense

1. The alleged certificate No. 572960 upon which plaintiff predicates his cause of action, such as is issued by this defendant, provides:

This entire policy shall be void if the insured has concealed or misrepresented in writing or otherwise, any material fact or circumstances concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein, or in case of any fraud or false swearing by the insured, touching any mat-

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Answer

ter relating to this insurance or the subject thereof, whether before or after the loss.

2. That the defendant made due demand upon the plaintiff to appear for examination under oath; that the plaintiff did not appear but on the contrary attempted to conceal certain facts and circumstances which the defendant might
10 have learned in the course of the examination under oath and particularly with respect to the cause and origin of the fire, the value of the property and the loss and damage thereon, all of which acts and conduct on the part of this plaintiff was contrary to the express intent of the terms, covenants and conditions of the alleged certificate No. 572960, wherefore this alleged certificate is null and void and no recovery can be had thereunder.

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Joseph T. Lieblich.
Attorney of Defendant

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Filed 11/12/25

REPLY

Plaintiff says that:

1. He denies the allegations set forth in first separate defense.

2. He admits that no suit or action on the policy in question shall be sustainable in any court of law or equity until after full compliance by the insured with all the requirements contained in the said policy of insurance; but denies remainder of the allegations set forth in the second separate defense. 10

3. He denies the second paragraph of the third separate defense.

4. He denies the second paragraph of the fourth separate defense.

5. He denies the second paragraph of the fifth separate defense. 20

6. He denies the second paragraph of the sixth separate defense.

7. He denies the allegations set forth in the seventh separate defense.

8. He denies the allegations set forth in the eighth separate defense.

9. He admits the first paragraph of the ninth separate defense. He denies the second paragraph of the ninth separate defense.

10. He admits the first paragraph of the tenth separate defense. He denies the second paragraph of the tenth separate defense. 30

John C. Giordano,
Wm. L. Edwards,
Attorneys of Plaintiff.

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Posteo

Filed 3/8/26

POSTEA

This case was tried before Hon. Frank B. Jess, Circuit Court Judge, with a jury at the Monmouth Circuit, on March the third, one thousand nine hundred and twenty-six.

10 The jury returned a verdict against the defendant and in favor of the plaintiff for eight hundred dollars.

Frank B. Jess,
C. C. J.

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New Jersey Court of Errors and Appeals

Dominic Precipio,
 Plaintiff-Appellee,
 vs.
 The Insurance Company of the
 State of Pennsylvania,
 Defendant-Appellant.

Brief of Defendant-Appellant

FACTS

Plaintiff in this case, while in possession of defendant's insurance policy, claims to have sustained a fire loss on February 24, 1925, and that on February 25, 1925, while he was in jail at Freehold, (P. 6-7-49) he instructed Paul Martell to notify this defendant that he had sustained loss by fire and has produced what purports to be a long-hand copy of a typewritten letter which plaintiff's wife is alleged to have mailed to the defendant, notifying them of the fire loss. The defendant without notice of all these facts and conditions, some time in August of 1925 first learned of this matter by reason of a summons and complaint tested July 24, 1925, being served upon an alleged Special Agent and entered a special appearance to this action and duly noticed this motion for argument before Part 3 of the Supreme Court, October Term 1925.

Plaintiff, conceiving the meritorious position of the defendant without notice and while the last

action was still pending and undetermined, instituted a second action by summons tested August 22, 1925, which action upon notice and motion was dismissed by an order made and entered in the premises on the 3rd day of October by Justice Lloyd.

The present action which is the basis of appeal, was instituted by a summons tested October 15, 1925, and which action is predicated upon the insurance policy for the recovery of an alleged fire loss whereas defendant contends that if there was a loss, it was caused by an explosion and not by fire.

It appears that prior to the institution of this action, to wit; August 24, 1925, defendant caused to be served upon the plaintiff, (Exhibit D-4) and a copy thereof to be served upon plaintiff's attorney, John C. Giordano, (Exhibit D-5). The receipt of Exhibit D-4 was acknowledged by plaintiff by registered Post Office receipt (Exhibit D-3) and the original letter (Exhibit D-2) addressed to the plaintiff or the copy thereof in the possession of the attorney, is acknowledged under date of September 9, 1925, by the attorney of the plaintiff. (Exhibit D-6.) The plaintiff having failed to comply with the demands incorporated in Exhibit D-4 and the jury, under what I deem erroneous instructions of the Court, returned a verdict against the defendant.

POINT 1.

THE COURT ERRED IN CHARGING THE JURY:

“In the consideration of this case, Gentlemen, I call your attention to the policy of the law which is that policies of insurance such as this, are to be liberally construed to uphold the contract between the parties and conditions contained in them which create forfeiture are to be construed most strongly against the insurer.”

The rule as laid down by the Trial Judge in his conclusion of the charge (P. 94-95) was highly prejudicial to defendant, especially in view of Court's charge (P. 89) where he charged:

“The policy involved in this suit is what is known as the standard form of fire insurance policy. The Legislature of this State has prescribed what that form shall be so that all policies of fire insurance issued upon property in the State of New Jersey are required to be in this so called Standard Form.”

consequently the policy being a standard fire policy, the rule laid down by the Trial Court in his charge is no longer the rule in this State.

“Where a policy of fire insurance is written in a standard form approved by governmental authority, the maxim, “Verba char-

taum fortius accipiuntur contra proferentem,' has no special applicability."

Mick vs. Royal Exchange Assurance Co.,
87 L. 607, 91 A. 102.

The doctrine has been affirmed by this Court in the pronouncement of Chancellor Walker when he says:

"The rule that policy construed most strongly against insurer does not specially apply where in standard form."

Del Guidici vs. Importers & Exporters
Ins. Co., 98 L. 435, 120 Atl. 5.

It must therefore be manifest to this Court that by reason of this erroneous charge on the part of the Trial Court to the jury, particularly by his concluding statement, the defendant has been deprived of a restriction upon the ordinary prejudice of juries against Insurance Companies by reason of the technical language employed in the insurance contract and the fact that the defendant in this case was insisting upon a technical defense, the failure of the Court to charge the law of this State was most harmful error to this defendant.

POINT 2.

THE COURT ERRED IN CHARGING THE JURY:

"In my view the question for you to decide from the evidence is whether the Mag-

istrate's certificate and examination of the person and papers of the assured were required by the company."

The above excerpt from the charge will be found on lines 25 to 30, page 91, and if the Court had correctly charged with respect to the interpretation to be given to this insurance policy, as cited in Point 1 of this Brief, by Exhibit D-4, the defendant had clearly and unequivocally made a demand for a compliance with the policy conditions with respect to the furnishing of a Magistrate's certificate.

An examination of Exhibit P-1, the insurance policy, discloses on page 108, line 3, the covenant to wit:

"And shall also, if required, furnish a certificate of a Magistrate, etc."

This covenant coupled with Exhibit D-4, the contents of which was well known to the plaintiff and his attorney, as is evidenced by Exhibit D-6, page 115, placed the burden upon the Court to enforce the contract as it is written. *Kupfersmith vs. Delaware Ins. Co.*, 84 L. 275, 86 Atl. 399) because:

It is firmly established and universally recognized that the judge is to construe and interpret the contracts and other written instruments of every description that are offered in evidence. Their construction and

interpretation are governed by the established rules of law of which knowledge on the part of the jury cannot be presumed."

Jones on Evidence, Vol. 1, Sec. 172, cases cited:

Queen City Fire Ins. Co. vs. First Natl. Bank, 120 N. W. 545.

and it appearing that Exhibit P-1 provided for a Magistrate's certificate, if required, and it appearing by Exhibit D-4 that the defendant did require the filing of a Magistrate's certificate, the burden rested upon this Court to determine this question, for:

"The construction and effect of a written instrument is a matter of law, to be determined by the court, and not by the jury."

Sommer, et als., vs. Com'l. Casualty Ins. Co., 89 L. 693, 99 Atl. 342.

and it appears to me that this was not a jury question as to whether the Magistrate certificate and examination of the person were required by the company. If the Court had charged the jury that it was a question for them to decide whether or not the assured was compelled to comply with the demand at the time of its receipt, it might present a different question and one which was not so clearly prejudicial to defendant's interest but here the Court submitted to the jury for determination a legal proposition which should have been decided by the Trial Judge.

By reason of this harmful error in the charge of the Court, this verdict should be set aside.

POINT 3.**THE COURT ERRED IN CHARGING THE JURY:**

“Was this letter, and that is a question that I submit to the jury, was this letter, the exercising by the company of its right to require the doings of the things called for under the provisions of the policy upon which the defendant relies.”

The erroneous charge will be found on line 15, page 92.

If the doctrine laid down by the Court in Queen City Fire Insurance Company and in Sommer vs. Com'l. Casualty Ins. Co., (cited in Point 2) is the rule in this State, and it appearing that this defendant is a corporation and must act by its agents and servants, then the writing of the letter (Exhibit D-4) was:

“The exercising by the company of its right to require the doings of the things called for under the provisions of the policy.”

As the rule is well settled in this state that there is a legal presumption of authority in an attorney acting on behalf of his client and the letter being signed in the name of the defendant by its attorney constitutes to all intents and purposes an act of the defendant, then the Court erred in submitting the proposition to the jury:

“Was this letter and that is a question that I submit to the jury, was this letter the exercising by the company of its right to require—etc.”

J. Dixon speaking for this Court, citing with approval *Goddard vs. Foster*, 17 Wallace, 123, says:

“The rule of law that the interpretation of written instruments is a question of law for the court is applied in full force to agreements to be deducted from the correspondence of the parties, and the fact that the language of the letter containing the offer or acceptance is doubtful does not relieve the court of this duty or make the question one of fact for the jury.”

Halsey vs. Adams, 63 L. 336.

and the same rule is followed in the Federal Court:

“As a general rule, the interpretation or construction of written instruments which are drawn in language as plain as not to require the aid of extrinsic evidence, is a question for the Court and it is error to submit such a question to the jury.”

Hamilton vs. L. L. & G. Ins. Co., 136 U. S. 255.

It being on its face an act of the company and no proof being offered in this case of any lack of authority and it being an act for the benefit of the

defendant, it must be manifest that this was harmful error to the defendant and for this reason a new trial should be granted.

POINT 4.

COURT ERRED IN CHARGING THE JURY:

“It appears from the evidence in the case that at that time a suit was pending or that a suit had been instituted by the plaintiff on the policy involved here against the same defendant to recover for the loss for which he seeks in this suit to recover.”

The above charge will be found on page 92, lines 21 to 25.

I direct this Court attention to the record (p. 74-75) wherein I deemed it necessary, in order that the Trial Judge may properly understand the point, to disclose to the Court what had transpired prior to the institution of this action but I maintained that it was immaterial and irrelevant to this issue how many actions had been instituted or whether any action had been instituted at all. In order that there may be no confusion, an examination of the records in the office of the Clerk of Supreme Court will disclose that this plaintiff brought two other actions against this defendant but that the same is immaterial and irrelevant and has absolutely no bearing upon this action and it was harmful error to this defendant for this jury to have been charged and to learn that other ac-

tions had been instituted by this plaintiff against the defendant, particularly in view of the technical defense interposed in this action. Surely this Court will admit that this defendant is not to be penalized by reason of an error made by plaintiff or his attorney in failing to maintain actions which they had instituted and it was most harmful error for the Court to have charged the jury with respect to the fact that there had been a suit or one pending.

By reason of this erroneous charge and its prejudicial influence upon the jury, the judgment should be reversed.

POINT 5.

THE COURT ERRED IN CHARGING THE JURY:

“Was such a demand for the Magistrate’s certificate and for an examination of the plaintiff and his papers such as is contemplated by the stipulation in the policy.”

This harmful charge will be found on top of page 93.

If the doctrine laid down by this Court in the *Halsey vs. Adams*, supra, placed the burden upon the Trial Judge in view of the decision in *Roumage vs. Ins. Co.*, 13 L. 111, to take this question away from the jury because the policy of insurance provided for the Magistrate’s certificate and provides for an examination under oath. (Exhibit P-1, lines 15-20, P. 108) and the defendant by

its demand (Exhibit D-4, P. 111) having made a demand, the question was then squarely up to the Trial Judge whether such a demand was not as contemplated by the stipulations in the policy and it was harmful error to the defendant for the Court to charge the jury in this language and to submit the question in the language used by the Court, which error would warrant a reversal.

POINT 6.

THE COURT ERRED IN CHARGING THE JURY:

“I leave it to the jury to say whether any steps were taken by the company with a view to having the plaintiff examined, whether any information was brought home to him or efforts made to that end. If efforts to obtain a Magistrate’s certificate and the examination were made by the company in good faith under the terms of the provisions in the policy, no right of action would arise until such examination was submitted to unless the production of the certificate and examination were impliedly waived.”

The above charge will be found on page 93, lines 15-25.

I submit in view of Exhibit D-4 and of the policy conditions which I have heretofore cited, together with Exhibit D-6, that this plaintiff had due notice and information was brought home to him

to obtain a Magistrate's certificate and submit to the examination and from what could the jury in this case decide:

“The production of the certificate and examination were impliedly waived.”

Waiver has been defined time and again as:

“The relinquishment of a known right.”

Is there any evidence in this case of relinquishment by the defendant of any right? As a matter of fact, it must appear conclusively to the Court that this defendant had no knowledge or notice of any claim with respect to this fire, until they were actually in Court and where is the evidence in this case which would warrant the jury in determining that these demands were impliedly waived and by what officer, agent or conduct.

I submit that by reason of this error, this verdict should be set aside.

POINT 7.

COURT ERRED IN PERMITTING A WITNESS, NOT QUALIFIED, TO TESTIFY TO VALUE.

An examination of the testimony of the plaintiff in this case does not disclose that the plaintiff at any time qualified as an expert on value. Notwithstanding the same, it will be observed on page

26, line 5, the Court permitted the plaintiff, over objection, to testify to the following question:

“What do you say then that the wardrobe containing all these clothes, that is, your wife’s clothes and your clothes and the children’s clothes were worth.”

The rule as laid down in this State is as follows:

“The indisputable rule of law governing the admission of expert testimony is that the person called upon to give such testimony must first establish that he has such special knowledge of the subject in controversy between the parties that qualified him to give an opinion.”

Electric Park Co. vs. Psychos, 83 L. 265.

While I recognize the rule that there is considerable discretion vested in the Trial Judge with respect to the admission of expert testimony and the qualification of the witness along this line, there is nothing in the testimony at any point to show any qualification on the part of the owner as competent to give expert testimony and at its best, a statement of this kind would be a pure self-serving declaration; which harmful error on the part of the Trial Judge in permitting testimony was prejudicial to the interest of the defendant, sufficient to warrant a reversal.

POINT 8.

**COURT ERRED IN ADMITTING EXHIBIT
P-4.**

This letter is dated December 3rd and will be found on page 116.

An examination of the same will disclose it has absolutely nothing to do with the merits of the case nor could it be offered upon the theory of admission of liability or as an admission of a waiver or for any other purpose and its effect was simply to becloud the issue in the case and to confuse the jury in view of the defendant having made the demand for the examination under oath in accordance with policy conditions and now pleading the failure to comply as a valid defense.

It is to be observed that Exhibit D-4 refers purely to a matter of practice and was a matter solely between the attorneys and no way effected the client's interest and while this Court can draw a distinction between an examination under oath under the insurance policy and an examination before trial as required by statute, in the mind of the jury, apparently, they were one and the same thing and while the practice has now been changed with respect to examinations before trial, I doubt very much whether a Justice of this Court would refuse an examination before trial to a party to the litigation even if it were an Insurance Company who prior thereto had conducted an examination under oath by virtue of policy conditions.

The letter (Exhibit D-4) being entirely immaterial and irrelevant to the issue and no way bearing upon the merits of the case, the admission in evidence and submission to the jury was harmful error to the defendant warranting a reversal of this judgment.

POINT 9.

COURT ERRED IN ADMITTING EXHIBIT P-5.

An examination of Exhibit P-5, page 114, will disclose that the same was irrelevant and immaterial to the issue involved in this case and had no bearing upon the same except to becloud the issue which was to be decided by the jury and to bring before the jury that this Insurance Company by technicalities had succeeded in forestalling or delaying two actions already instituted against them and was offered for the purpose of prejudicing the jury against the defendant.

By reason of the premises, the verdict should be set aside.

POINT 10.

COURT ERRED IN HIS REFUSAL TO GRANT DEFENDANT'S MOTION FOR DIRECTION OF VERDICT IN FAVOR OF DEFENDANT.

A motion for direction of verdict was predicated upon two grounds (P. 86-88):

1. The defense has established very clearly and conclusively that prior to the institution of this action, the summons of which is tested Oct. 15, 1925, defendant had made demand that the plaintiff submit to examination under oath.

2. That the plaintiff had made demand for the furnishing of a Magistrate's certificate.

and there being a failure of compliance was sufficient to warrant the Court in directing a verdict.

If we examine this case, the evidence discloses the demand made by the defendant (Exhibit P-4) under date of August 24, 1925; that the plaintiff in this case received the same is evidenced by the fact that the same was sent under registered cover as article No. 14896 (Exhibit D-3). Exhibit D-2 is the Post Office registry receipt No. 14896 signed for by the plaintiff. The testimony on page 35 and 55 discloses that upon receipt of the letter, he delivered the same to his attorney, Mr. Jordano. Exhibit D-6 discloses the receipt by the attorney and counsel of plaintiff and knowledge on their part (P. 55) of the contents of the letter of August 24, 1925, and I want to call this Court's particular attention to the fact that this demand for examination under oath and the time and place for the same was fixed after a conversation between the attorneys which is evidenced by the second paragraph of Exhibit D-6, P. 115. Apparently counsel for the plaintiff misconstrued the term "examination under oath" to be an examination before trial. In view of this clear and explicit

testimony and the fact that the plaintiff had notice brought home of the demand by defendant to comply with policy conditions; that his attorney was in possession of a copy of Exhibit D-4 and no excuse for the failure to comply therewith except: "I wish to state in behalf of Mr. Precipio and Mr. Giordano that since the case is now in Court to be by the Court decided, that it is not the purpose of Mr. Giordano to permit his client to be examined, etc."

It is to be observed that this covenant in the insurance policy with respect to the examination under oath has been held to be a condition precedent to maintaining an action.

Harris vs. Phoenix Ins. Co., 35 Conn., 310.

Firemen's Fund Ins. Co. vs. Sims, 115 Ga., 939.

Chaplin vs. Commonwealth Ins. Co., 110 U. S. 81.

consequently the plaintiff could not have maintained his action in view of the evidence in the case. (Exhibit D-4, P. 111) This action was predicated upon a summons tested October 15th. The demand was made preceding the institution thereof and in conformity with the decision in State Insurance Company vs. Maachen, 38 L. 565, thus the burden as I see it was absolutely upon the plaintiff to comply therewith and there is no proof of a compliance or an attempted compliance to have permitted the question to go to the jury and the Court erred in failing to grant motion for a directed verdict.

The furnishing of a magistrate's certificate when required has been held to be a condition precedent to maintaining an action on the contract.

Roumage vs. Mechanics Fire Ins. Co., 13 N. J. L. 110.

Basch vs. Humbolt Mut. F. Ins. Co., 35 N. J. L., 429.

Merchants Fire Ins. Co. vs. Gibbs, 56 L. 679.

and in the absence of any proof of a compliance with Exhibit D-4, the burden was upon the Court to grant the motion and by reason of this error, defendant is entitled to a reversal.

Respectfully submitted,

JOSEPH T. LIEBLICH,
Attorney and of Counsel with
defendant-appellant.

New Jersey Court of Errors and Appeal

DOMINIC PRECOPIO,

Plaintiff-Appellee,

vs.

THE INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Defendant-Appellant.

**Action At Law
On Appeal**

STATEMENT OF FACTS

This is on appeal from a judgment of a jury rendered in the Supreme Court of Monmouth County. There are ten grounds of appeal assigned as error. Six of these grounds are predicated on errors alleged to have been committed by the court in its charge to the jury, two on the admission of testimony and the last on a refusal of the court to grant a motion for a direction of a verdict in favor of the defendant.

On December 20, 1923, defendant company caused to be issued to plaintiff a policy of insurance for a term of three years, for which plaintiff then paid to the defendant a premium of Six Dollars. (See p. 32 and Exhibit P 1.) The policy, covering household goods and personal property, insured the plaintiff against loss or damage by fire to an amount not exceeding \$1,000.00. Before the expiration of the policy, and on February 24, 1925, the property insured was totally destroyed by fire. "Everything

was burned to ashes." (See p. 31.) The day after the fire, plaintiff, who could neither read nor write, requested a boy by the name of Paul Martell, who had just graduated from high school (see p. 10), to notify the defendant company of the loss and damage to plaintiff's property. Young Martell states, without guile, and in a clear, straightforward, boyish fashion, just what he wrote to the company and how he came to write it—at the request of plaintiff and his wife (see p. 3)—why he wrote the original on a typewriter—because he had no carbon paper at home and because he often wrote out copies in long hand. (See p. 11.) He was positive that Exhibit P 2 was a true copy of what he wrote to the defendant company at the request of the plaintiff and his wife, apprising the defendant company of the fire in question. Not only that, but when defendant's counsel asked young Martell where he got the address to write to the company, he tells him that he got his information from the policy. (See pp. 13 and 14.) He then handed the letter for mailing to the plaintiff's wife who states that she immediately mailed the same and also where she mailed it. (See p. 4.) No evidence was offered to contradict any of these statements, nor was there any evidence offered to show that the defendant did not receive the letter in question. The well-known presumption, then, arises that the company did receive the letter in question. Despite these uncontradicted facts, defendant's counsel, in the statement of facts contained in his brief, alleges that "the defendant without notice of all these facts and conditions, some time in August of 1925, first learned of this matter by reason of a summons and complaint, tested July 24, 1925, being served upon an alleged special agent." That there was a fire in plaintiff's home that destroyed the goods insured and that the fire did occur on February 24, 1925, is not disputed by the defendant,

despite the fact that the statement of facts in defendant's brief makes the further loose allegation that "defendant contends that if there was a loss, it was caused by an explosion and not by fire." This last quoted statement, like the first above quoted statement, is far from the facts as witness the following:

BY MR. LIEBLICH:

"Q. Did it look as if the house had been blown apart or burned?

A. I don't know.

Q. No explosion?

A. I don't know.

Q. Would you say the house was not blown apart?

A. I see the roof came down when I come over there.

Q. Were the walls up?

A. I don't know.

Q. Didn't you look?

A. What do you mean?

Q. You know four walls, sides of the house, were the sides of the house up?

A. No, sir.

Q. They were all down?

A. Yes, sir.

Q. Everything down flat?

A. Yes, sir."

(See p. 71, lines 1-25.)

Joseph Slocum, a witness produced by the defendant, and who was a motor police officer at West Long Branch at that time, on direct examination by Mr. Lieblich, was asked:

"Q. In the discharge of your official duties, was your attention in any wise attracted to Dominic Precopio on that day? (February 24, 1925.)

A. In just what way?

Q. If it was in any way, tell the jury.

A. I was called. I couldn't tell you just the exact time, for an explosion into a house owned by Dominic Precopio or rented by Dominic Precopio.

"MR. EDWARDS: I object to that and ask that it be stricken out. He has characterized something here as an explosion and it is predicated on hearsay and I ask it to be stricken out and the court instruct the jury to pay no attention to that statement.

"BY THE COURT: Oh, yes, he was called for an explosion. That is hearsay as to the explosion." (See p. 84, lines 30-35 and p. 85, lines 1-12.)

Farther on, this officer, who arrived on the scene of the fire after the house was "practically burned down," as he said, was asked by defendant's attorney:

"Q. When you got there, what, if anything, did you find?

A. The house was practically burned down when we got there, or you might say—what we found was the front door blown across the street.

Q. Did you say the house was burned down or blown down?

A. The windows were all blown out and the house was on fire.

Q. Did you wait until the fire was put out?

A. Yes, sir."

(See p. 85.)

Such evidence is what defendant's counsel, in his statement of facts, "contends" is sufficient to show "that if there was a loss, it was caused by an explosion and not by fire."

Until August 24, 1925, or until six months after the fire and one month to the day after suit was brought, on July 24, 1925, nothing was done by the defendant company to adjust the loss or to do anything else, although it is admitted that the defendant did receive a statement in writing under oath of the proof of loss (see p. 28), and this before suit was started on July 24, 1925. While this action, started on July 24, 1925, was still pending, and on August 24, 1925, defendant's counsel wrote plaintiff a letter (marked Exhibit D 4). He writes that the company was in receipt of a paper "purporting" to be proof of loss under an "alleged" certificate in connection with an "alleged" fire on February 24, 1925. It notifies plaintiff that the defendant company rejected this "alleged" paper as incorrect and not based upon true facts and not in accordance with the terms, covenants and conditions of the "alleged" certificate, or the actual condition existing relating to the premises and "alleged" fire. It further notifies plaintiff to submit himself for examination under oath concerning the "alleged" loss and damage, as provided by lines 81-85 in the "alleged" certificate. It will here be noted that despite this demand, counsel for plaintiff in error says of it under the eighth point that,

"It is to be observed that Exhibit D 4 refers purely to a matter of practice and was a matter solely between the attorneys and no way

affected the client's interest, and while the court can draw a distinction between an examination under oath under the insurance policy and an examination before trial as required by statute, in the mind of the jury, apparently, they were one and the same thing."

It seems apparent that counsel for plaintiff, in error, also considered it one and the same thing!

It is clear, then, that the defendant company never notified the plaintiff that it had named Mr. Lieblich or any other person to examine the plaintiff under oath and have the plaintiff subscribe to the same as required by the terms of its policy (p. 108, lines 15-25), which reads as follows:

"The insured, as often as required, shall exhibit to any person DESIGNATED by this company, all that remains of any property herein described, and submit to examinations under oath by any person NAMED BY THIS COMPANY, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made."

Yet, the letter of August 24, 1925 (Exhibit D 4), demands of the plaintiff that he submit himself to an examination as provided by lines 81-85 of the policy, before Joseph T. Lieblich, Esq., the "person named by said company for that purpose." And this despite the fact that the defendant company had not only failed to notify the plaintiff that it had named Lieblich or anyone else, but had at that

time been served with process and the case was then completely under the jurisdiction and control of the Supreme Court of this state. Naturally, this brought forth from counsel for the plaintiff, the letter marked Exhibit D 6 which, among other things, states:

“I did not suspect that it was your intention to force Precopio (the plaintiff) at this time, to comply with any conditions that would have held good prior to the institution of suit. Therefore, it is not Precopio’s intention to submit to such an examination or in any manner comply with your letter of August 24, 1925.”

It will also be noted that the letter of August 24, 1925 (Exhibit D 4), calls upon the plaintiff not only to submit himself to an examination and produce all bills, invoices, vouchers or certified copies thereof, etc., by one who has never, as required under the terms of the policy, been “designated” or “named” by the defendant company, but it also requires the plaintiff to furnish a certificate of the magistrate or notary public, and this all over the head of counsel for the plaintiff while the action was then pending in the Supreme Court of this state.

POINT I.

THERE WAS NO ERROR IN THE COURT'S CHARGE THAT THE CONTRACT OF INSURANCE WAS TO BE LIBERALLY CONSTRUED TO UPHOLD THE CONTRACT BETWEEN THE PARTIES, NOR WAS THERE ANY ERROR IN THE ASSERTION BY THE COURT THAT THE CONDITIONS CONTAINED IN SUCH A CONTRACT OF INSURANCE WHICH CREATE FORFEITURE ARE TO BE CONSTRUED MOST STRONGLY AGAINST THE INSURER AS CONTENDED IN THE FIRST GROUND FOR REVERSAL.

Such is the recognized rule of law in this state to-day.

CARSON vs. JERSEY CITY INSURANCE CO.,
43 Law 300.

HAMPTON vs. HARTFORD INSURANCE CO.,
65 Law 265.

SNYDER vs. INSURANCE CO., 59 Law 544.

The last three cases are cited with approval in the case of Mick vs. Royal Exchange Assurance Co., 87 Law 607, and Justice Parker, speaking for a majority of the Court of Errors and Appeals, says in that connection:

“We do not overlook the wording of the forfeiture clause, nor the rule relied on by plaintiff, that forfeitures are not favored, and will not be enforced unless they come within the strict words of the policy. * * * We do not deem our present decision to be a departure from that rule.”

“The question is whether, in a case where forfeiture is invoked for the most meritorious cause on which it can be rested, viz., fraud, which the law abhors, and that fraud has been committed by an agent vested with the most complete and ample powers by a principal who is entirely passive and looks to the agent for the performance of every act relating to settlement of loss, the maxim *qui facit per alium facit per se* shall be applied, or the court shall declare the clause futile for not having added to the phrase, ‘fraud or false swearing by the insured,’ the words ‘or his agent.’”

Of course, in such a case, the maxim “*verba chartarum fortius accipiuntur contra proferentem*” should have no special applicability nor should it have any special applicability in a case such as that of *Del Guidici vs. Importers and Exporters Insurance Co. of New York*, 98 Law 435, another case relied upon by plaintiff in error. The last mentioned case showed an incumbrance on property insured although the policy provided that it should be void if the subject of the insurance be or become incumbered. Since the property was incumbered and since the State of New Jersey has enacted that fire insurance policies shall conform in all particulars as to contract, provisions, agreements and conditions, with a certain standard and that no other or different provisions * * * shall in any manner be made a part of such policy, etc., the maxim above quoted has no special application. It ought not to have been because the State of New Jersey attempts, by the enactment of the insurance law, to insert clauses in insurance policies over which the insurer has no control. So, it is apparent that the *Mick* case and the *Del Guidici* case are not at all analagous to the case sub judice. The trial court did not say or inti-

mate that the maxim had any special applicability to the policy in question. The trial court, in that connection, merely stated the law as a general proposition. If there was any evidence that the plaintiff had committed fraud, either actively or passively, in obtaining the policy of insurance or had done anything or neglected to do anything required by the terms of the policy, and the court had then so charged the jury as complained of on this point, without any other qualification, there might be some room for argument. Such was not the fact, however. No such evidence was produced. Therefore, it is clear and becomes clearer from what the court said immediately before and after the words complained about, that the court had no intention of having the maxim "*verba chartarum fortius accipiuntur contra proferentem*" apply specially in this case. There was no forfeiture claimed unless it can be said that the defendant claimed a forfeiture of the policy because of its dilatory, unwarranted and unreasonable delay in improperly demanding of the plaintiff to have him furnish it with the data required in the letter marked Exhibit D 4 on August 24, 1925, six months after the fire in question occurred. We use the word "improperly" because the company itself, as required under the terms of the policy (p. 108, lines 15-25), never did "designate" any person to require the insured to exhibit any property described in the policy or submit to examination under oath. Nor did it "name" any person as required by the policy, to have the defendant appear before and subscribe his name or require the plaintiff to obtain certificates of magistrates, etc., unless it can be said that Exhibit D 4, written by Mr. Lieblich, was such a notice from the company. It was merely an assumption upon the part of Lieblich. His office as an attorney at law in handling the case did not warrant him in assuming the duties

of an agent of the company to carry out the terms and conditions of the policy except to the extent of his duties as an attorney at law. This rule is well settled.

“The authority of an attorney at law in matters not immediately connected with litigation is much more circumscribed than in the conduct of litigated causes.”

Strauss vs. Raab, 3 N. J., Adv. R. 84-87.

The attorney at law was not the alter ego of his principal for that purpose. Therefore, he had no right to expect plaintiff to comply with his request of August 24, 1925 (Exhibit D 4). Especially is this so when the case was then pending in the Supreme Court of this State. Such an effort upon his part was an attempt pure and simple to not only place himself in the stead of the defendant company who was required to give plaintiff notice of its designation or naming a person to hear the testimony and subscribe thereto (p. 108, lines 15-25), a thing not at all in keeping with his authority to defend the action then pending, but it was also an attempt to usurp the duties of the Supreme Court who had complete cognizance of all of the facts when the case was in court as this case was at the time.

“The authority to hear and to determine a cause includes jurisdiction to try and decide all the questions involved in the controversy; and if a court legally obtains jurisdiction of the parties and subject matter, it may, and as a general rule will, proceed to a COMPLETE determination of the matter in controversy.”

(15 C. J. 810.)

Says the Ordinary in the case of *Dunham vs. Marsh*, 52 Eq. 261,

“It follows, as a necessary incident to the exercise of this jurisdiction that the court shall possess the power to determine who the parties in interest are, and, AS AN INCIDENT TO THE EXERCISE OF THAT POWER, TO SOLVE ANY QUESTION WHICH MUST NECESSARILY BE DECIDED IN REACHING THAT END.” Quoting *Denn vs. Bolten*, 7 Halst. 206; *Johnston vs. Jones*, 7 H. C. Gr. 216; *Mechanics National Bank vs. Barnett*, 5 Stew. Eq. 239; *Union Water Co. vs. Kean*, 52 Eq. 831.

The rule is well settled, too, that such a demand

“must be specific and distinct, must be made within a reasonable time, and a reasonable place must be fixed. The insurer can not require the insured to appear at its office for examination.”

13 A. & E. Encyc. of Law, 2nd Ed., p. 358.

The case of *State Insurance Co. vs. Mackens*, 38 Law 564, among other things, holds that,

“A letter to the attorney of the insured asking that he make out a statement and have it sworn to by the insured is not a demand for examination under oath.” Quoting *Dougherty vs. Insurance Co.*, 67 Mo. App. 526.

Moreover, in the argument of defendant's attorney under Point 8, it will be noticed that he refers to Exhibit D 4 as

“purely a matter of practice and was a matter solely between the attorneys and no way affected the client’s interest.”

Thus, there can be no answer to the statement that the defendant never did call upon the plaintiff to be examined; never did “name” or “designate” any person as required by the policy to conduct such an examination or produce magistrate’s certificate. It shows clearly that defendant’s attorney himself was confused about the matter, if anyone was, and therefore the court, under the circumstances, properly permitted the evidence and made it a jury question.

It is, therefore, respectfully submitted that the court did not err in charging the jury, as complained of in the first point.

Points II, III, IV, V and VI may, it seems to us, be reasonably argued together.

POINTS II - VI

THE COURT WAS CORRECT IN PERMITTING THE JURY TO DETERMINE WHETHER THE MAGISTRATE’S CERTIFICATE AND EXAMINATION OF THE PERSON AND PAPERS OF THE ASSURED WERE REQUIRED BY THE COMPANY.

Did the company require these things? Certainly it was a question for the jury to determine if for no other reason than that counsel for plaintiff in error himself, in one breath (see Point 6 of plaintiff in error’s brief) contends that a demand was made for a magistrate’s certificate and in another breath (see Point 8 of plaintiff in error’s brief) admits that it was a question of practice and a matter solely between the attorneys,

“and no way affects the client’s interest and while this court can draw a distinction between an examination under oath under the insurance policy and an examination before trial as required by statute, in the mind of the jury, apparently, they were one and the same thing.”

The attorney for the defendant in error, Mr. Giordano, so considered that the so-called demand was not to produce under the terms of the contract of insurance as witness letter marked Exhibit P 6 at p. 117 where he writes to the attorney for plaintiff in error:

“In answer to your letter of the 3rd inst., regarding the examination before trial, of course I will be glad to accommodate you without making application to the court for an order, so long as the examination is conducted within the purview of the statute.”

The above letter was in answer to letter marked Exhibit P 4, written by Mr. Lieblich, who writes that:

“I am desirous of having an examination before trial of the plaintiff in this cause.”

It is submitted, therefore, that if ever there was a fact for the jury to determine, this was one, and the trial court very carefully presented the matter to the jury in the following language:

“Two other grounds of defense I will discuss with that which I have just mentioned because I think under the circumstances of this case they may be conveniently and properly considered together. These two other grounds of defense are that the plaintiff did not submit to

a personal examination under oath and that he did not submit books, vouchers, papers and so forth, in respect to the demand made upon him by the defendant company. The policy expressly provides that if required by the company the assured shall procure a certificate from the nearest magistrate of the character which I have mentioned, and also that if required by the company, he shall submit himself to an examination, under oath, by a person designated by the company and shall also submit books, vouchers and papers bearing upon the claim and loss."

"In my view the question for you to decide from the evidence is whether the magistrate's certificate and the examination of the person and papers of the assured were required by the company? The evidence bearing upon that point is that on August 24, which appears to have been about seven months after the fire, the attorney for the defendant company wrote a letter to the plaintiff in which he said, substantially, that the proofs of loss were incomplete and that the company required the plaintiff to submit the magistrate's certificate and to present himself and his papers for examination before the writer of the letter on a certain day therein named. The letter also stated that none of the conditions of the policy were to have been considered as having been waived by the company. That is another exhibit in the case—this letter to which I have referred—and which you will have before you, from which you will gather the full terms of the letter itself."

"Was this letter, and this is the question that I submit to the jury, was this letter the exercising by the company of its right to require

the doing of the things that it called for under the provisions of the policy upon which the defendant relies. The evidence of the plaintiff is that he received this letter and turned it over to his attorney. He also stated that he was unable to read. It appears from the evidence in the case that at that time a suit was pending or that a suit had been instituted by the plaintiff on the policy involved here against the same defendant to recover for the loss for which he seeks in this suit to recover. * * * This was several months after the statement of loss had been submitted."

This, we submit is a clear, concise statement of the facts at issue. They were facts for the jury to determine and not for the court to determine.

As held in the case of Summer, et al, vs. Commercial Insurance Co., 89 Law 693, the court among other things, says that,

"The construction and effect of a written instrument depends upon extrinsic facts, as to which there is a dispute, its construction is a mixed question of law and fact, and presents a jury question under proper instructions from the court." See also 9, Cyc. 592.

This disposes of Points II, III, IV, V, and VI.

POINT VII

THE COURT DID NOT PERMIT A WITNESS WHO WAS NOT QUALIFIED TO TESTIFY AS TO THE VALUE OF THE GOODS DESTROYED BY FIRE.

In the first place, plaintiff, who is quite illiterate, but who has paid for all of the goods that were destroyed, was asked:

“Q. What did your furniture consist of that was burned up?”

The answer was: chairs, bureaus, china closet, three beds, rugs, tables, stove, dishes, silverware, glassware, dining room furniture, etc. (See pages 18, 19 and 20.) He was then asked when and where these several articles were purchased, the condition they were in at the time of the fire (see pages 21-23), and then asked the worth of them. He was then asked the cash value of the articles in question (see p. 21), then the court says:

“I think that is true, Mr. Edwards. It must be made clear to the witness that what you are asking is the cash value of the property at that time, not what he paid for it or what it was worth to him.”

This was clearly done. That the court had a discretion in the matter can not and is not questioned. The plaintiff was not qualified as an expert witness, it is true. Nor was he interrogated as such. There was also produced and sworn Alfred Fineberg, a man in the furniture business who sold to the plaintiff some of the articles destroyed by the fire in question. He was asked:

“Q. Were they cheap stuff or real good stuff?”

A. Good stuff.”

He testifies to the worth of the goods and we submit that the question of loss is too well settled to further argue that point. The court was justified in permitting the evidence to go to the jury and as reasonable men, they found from that evidence that the goods burned and destroyed were worth \$800.00. The defendant company insured them for not more than \$1,000.00. They had been seen by the defendant company's agent at the time the insurance was effected (see pages 52-53), and it is, therefore, respectfully submitted, that the court was in all respects justified in permitting this evidence to go to the jury.

While we consider that the other points are completely answered, we nevertheless again, and finally, advert to the tenth point raised by counsel for plaintiff in error which is on the question of the refusal of the trial court to direct a verdict. We submit that the defendant company never made a demand upon the plaintiff to furnish it with a magistrate's certificate. Before it could have done so, it was required under the terms of the policy that the company “name” or “designate” a person to look after the matter. It never did “name” or “designate” anyone. Counsel for plaintiff in error practically admits that point in one portion of his brief (see point 8) where he refers to the only thing that could be called a demand, namely, the letter marked Exhibit D 4, which he there admits was a matter solely between the counsel thereto and no way affects the client's interest. This has been heretofore pointed out and the attorney's stand in the matter has likewise been pointed out. Therefore, when the plaintiff in error says, as he does in his tenth point, that the defense

has established very clearly that the plaintiff had made a demand for the furnishing of a magistrate's certificate, it is apparent that the statement is not in keeping with the facts disclosed in the case for the reasons set forth in Point II.

For the reasons aforesaid, we contend that the verdict of the jury should be affirmed.

Respectfully submitted,

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