INDEX.

	PAGE
Summons	1
Complaint	2
Affidavit of Merits	12
Stipulation Extending Time to Answer	13
Answer	14
Stipulation Extending Time to Reply	19
Notice of Motion to Strike Out Answer and Affidavits	20
Affidavit of LeRoy Faust Lyon	21
Affidavit of A. P. Stockwell	36
Affidavit of Thomas J. Ridley	47
Affidavit of Ray W. Hendricks	50
Affidavit of Bernard J. Reilly	52
Affidavit of Herbert C. Cleary	55
Answering Affidavits:	
Affidavit of Isidor Greenspan	57
Affidavit of Derben W. Bartholomew	64
Affidavit of John W. Covert	69
Affidavit of Joseph A. Kelly and Francis J. Boniewski	74
Affidavit of Walter J. Snedeker	76
Order Denying Motion to Strike Out Answer	77
Reply	78
Stipulation re Taking of Testimony	81
Depositions of Ray W. Hendricks	83
Notice of Trial	107
Notice of Demand for Admissions	108
Answer to Demand for Admissions	111

PAGE

Stipulation re Record ---------- 113
Certificate of Authority of Affiliated Underwriters ---------- 114
Certificate of Authority of Individual Underwriters ---------- 116
Certificate of Authority of Metropolitan Inter-Insurers ---------- 118
Article Ten of the New York Insurance Act with Reference to Riciprocal Insurance --- 120
Reciprocal Underwriters' Agreement ------- 143
Findings and Postea ---------- 157
Notice and Grounds of Appeal ---------- 161
Case ---------- 163

TESTIMONY.

Plaintiff's Witnesses:

Thomas J. Ridley—

Direct ----------166, 170
Cross ----------168, 173

Bernard J. Reilly—

Direct ---------- 175
Cross ---------- 178

Recalled—

Direct ---------- 186

John W. Covert—

Direct ---------- 180

Recalled—

Direct ---------- 271

PAGE

Cross 283
Re-direct 285

Herbert C. Cleary—

Direct 191
Cross 193

Clarence Simpson—

Direct 194
Cross 194

Defendants' Witnesses:

George H. Spooner—

Direct 199
Cross 201

Isidor Greenspan—

Direct 216
Cross 240
Re-direct 267

Recalled—

Direct 368, 374, 382

Walter J. Snedeker—

Direct 269

Derben W. Bartholomew—

Direct 287
Cross 289

James A. Kelly—

Direct 291

In Rebuttal.

Plaintiff's Witnesses:

LeRoy Faust Lyon— PAGE

Direct ---- 299
Cross ---- 322

Recalled—
Direct ---- 372, 376
Cross ---- 374, 381
Re-direct ---- 381

Louis Senn—
Direct ---- 350
Cross ---- 358

James B. Johnson—
Direct ---- 363
Cross ---- 367

EXHIBITS

		Admitted Page	Printed Page
Plaintiff's:			
P-1.	Agreement between "Automatic" Sprinkler Corporation of America and Greenspan Bros. Co.	175	391
P-2.	Flat License Plate of Automatic Sprinkler Co. of America	177	396
P-3.	Half Round License Plate of Automatic Sprinkler Co. of America	177	397
P-4.	Depositions of Ray W. Hendricks	186	83
P-5.	Letter dated March 5, 1929 from John E. Toolan to Automatic Sprinkler Corporation	197	398
P-6.	Letter dated April 23, 1929, from John E. Toolan to Miller & Chevalier, Esqrs.	197	399
P-7.	Letter dated January 3, 1929, addressed to Greenspan Bros. and signed "A. P. Stockwell, Division Manager"	241	400
P-8.	Letter dated December 18, 1928, addressed to Greenspan Bros. and signed "A. P. Stockwell, Division Manager"	267	404
P-9.	Letter dated January 19, 1929, on Boynton Brothers & Company Stationery signed by John Covert	284	408
Defendants':			
D-1.	Letter dated September 27, 1927, addressed to Greenspan Brothers, and signed by "A. P. Stockwell, Division Manager"	225	410

		Admitted Page	Printed Page
D-2.	Letter dated February 2nd, 1928, addressed to Greenspan Bros., and signed by "A. P. Stockwell, Division Manager"	225	414
D-3.	Letter dated June 25, 1928, addressed to Greenspan Bros., etc.	225	416
D-4.	Letter dated October 30, 1928, addressed to Greenspan Brothers	225	418
D-5.	Letter dated October 30, 1928, addressed to Greenspan Brothers, Page 2	225	420
D-6.	Letter dated November 1, 1928, addressed to Greenspan Brothers, and signed by "A. P. Stockwell, Division Manager"	225	422
D-7.	Letter dated December 11, 1928, addressed to Greenspan Bros. and signed by "Engineering Department, E. D. Sewall, Asst. Manager"	225	426
D-8.	Letter dated January 16, 1928, addressed to Greenspan Bros. and signed by "A. P. Stockwell, Division Manager"	225	428
D-9.	Letter dated January 30, 1929, addressed to Greenspan Brothers, and signed by "A. P. Stockwell, Division Manager"	226	431
D-10.	Letter dated March 6th, 1929, addressed to Greenspan Bros. and signed by "Ernest W. Brown Inc., Robert E. Adams, Vice-President"	226	433

	Admitted Page	Printed Page
D-11. Letter dated March 9, 1929, addressed to Greenspan Brothers Company, and signed "Automatic" Sprinkler Corp. of America, G. E. Crampton, Assistant Treasurer	240	435
D-12. Contract between Globe Automatic Sprinkler Company Incorporated and Greenspan Bros. Co.	375	437

Summons.

(Filed June 3, 1929.)

THE STATE OF NEW JERSEY.

To

GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey:

You are summoned to answer the annexed complaint of "Automatic" Sprinkler Corporation, in any action-at-law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court at Trenton, New Jersey, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

Witness, Honorable WILLIAM S. GUMMERE, Chief Justice of the Supreme Court at Trenton, New Jersey, this 22nd day of May, 1929.

FRED L. BLOODGOOD,
Clerk.

POTTER & BERRY,
Attorneys.

Complaint.

(Filed June 3, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.

Action-at-law.

Plaintiff, "Automatic" Sprinkler Corporation of America, a corporation organized and existing under and by virtue of the laws of the State of Delaware and haing its principal place of business at #910 Engineer's National Bank Building, Cleveland, Ohio, complaining, says that:

1. On the 5th day of January, 1928, in the City of Cleveland, Ohio, an agreement or contract in writing was entered into by and between the plaintiff "Automatic" Sprinkler Corporation of America, the Sypho-Chemical Sprinkler Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and Greenspan Brothers Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, defendant herein, a copy of which written agree-

ment is hereunto annexed and made a part hereof and marked "Schedule A", by the terms of which agreement the plaintiff, as the licensee of certain fire extinguishment apparatus of the Sypho-Chemical Sprinkler Corporation, licensor, agreed to install said equipment in said premises known as #224 Washington Street, Perth Amboy, New Jersey, and to maintain and have said licensor inspect said apparatus during a period or term of ten years for the defendant Greenspan Brothers Company and, in consideration of said installation and maintenance of said fire extinguishment equipment the defendant, Greenspan Brothers Company, termed in said agreement the "subscriber", agreed to pay to the plaintiff the sum of Eight Hundred Eighty-five ($885.00) Dollars upon the licensing of said equipment by the licensor Sypho-Chemical Sprinkler Corporation or upon the date when the defendant first became entitled to insurance rate credit by reason of said equipment, which payment of Eight Hundred Eighty-five ($885.00) Dollars was likewise for the first year's service, and the defendant further agreed to pay during the rest of the term of ten years, yearly in advance, the sum of Eight Hundred Eighty-five ($885.00) Dollars for said equipment and service.

2. Plaintiff, in pursuance of and in strict accordance with said agreement, did install said fire extinguishment apparatus and equipment at an expense to it of Four Thousand Two Hundred Thirty Dollars and Eighty-two cents ($4,230.82), and did service the same and the licensor did license and the subscriber did become entitled to an insurance rate credit by reason of said service,

and plaintiff did in every manner and respect comply with the terms and conditions of said contract on its part and has duly performed all duties and fully complied with all of the terms and conditions of said contract on its part until March 5th, 1929. All conditions precedent to performance on the part of the defendant with respect to the said contract have been fulfilled.

3. On the day last aforesaid defendant, by its officers, agents or servants, repudiated said agreement entered into by it with the plaintiff and wrongfully charged plaintiff with failure to carry out the terms of said contract on its part and demanded that plaintiff remove said equipment within ten days, contrary to the express intent and terms of said agreement and threatened to remove said equipment or apparatus of the plaintiff's and in other ways declared said agreement to be null, void and of no effect and defendant has not performed and, although requested, still refuses to perform said contract on its part and has made no payment pursuant to said contract although payment is due but repudiates said contract as aforesaid.

4. There is due and to grow due to plaintiff on said agreement repudiated by defendant as aforesaid the sum of Eight Thousand Eight Hundred and Fifty ($8,850.00) Dollars, all of which is now due and owing to plaintiff by virtue of defendant's repudiation of said contract.

Plaintiff demands Fifteen Thousand ($15,000.00) Dollars damages.

POTTER & BERRY,
Attorneys of Plaintiff.

Complaint.

SCHEDULE "A"

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA

Executive Offices 910-28 B. of L. E. Bank Bldg. Cleveland, Ohio

Offices in all Principal Cities

Manufacturing and Installing

Approved Devices for the Automatic Control of Fire

CONTRACT FOR SYPHO FIRE EXTINGUISHMENT SERVICE

This Agreement, made by and between "Automatic" Sprinkler Corporation of America, a corporation of the above address, hereinafter called Licensee, Sypho-Chemical Sprinkler Corporation, a corporation of the same address, hereinafter called Licensor, and Greenspan Brothers Company of Perth Amboy, County of Middlesex, State of New Jersey, hereinafter called the Subscriber, for themselves, their successors, executors, administrators and assigns respectively, for Sypho Fire Extinguishment Service, Witnesseth that

1. Licensee shall install on the premises described under "A" on the reverse side hereof, and thereafter maintain as hereinafter provided, an Automatic Sypho Fire Extinguishment Equipment including a Sypho Chemical mixing tank. Sypho expansion chamber, "Automatic sprinkler heads, fire alarm, pipe, fittings and hangers, all as pronounced standard and approved by Underwriters' Laboratories; and, upon completion, Licensor will inspect the same and, if it approves, will license same for use hereunder for the term hereof by attaching its license plate thereto, and will thereafter, during such term, inspect the same at least three times annually.

2. Subscriber shall pay to Licensee in advance, upon the licensing of the equipment by Licensor, or upon the date when Subscriber first becomes entitled to insurance rate credit by reason of said Service, the sum of ($885.00) eight hundred and eighty-five dollars Dollars for the first year's Service and shall thereafter, during the term thereof pay yearly, in advance, the sum of ($885.00) eight hundred and eighty-five dollars Dollars for said Service.

3. The term hereof shall be ten (10) years from the due date of the first payment and thereafter until terminated by one year's prior written notice by any party to the other, but Subscriber may, should he vacate said premises after making five annual payments, terminate the term hereof at any time during said ten (10) years if not then in default hereunder, by giving sixty (60) days' prior written notice of his intention to terminate, enabling Licensee to remove said equipment and by paying Licensee a sum equal to 50% of the second yearly payment.

4. All equipment shall remain the property of Licensee, who may, at all reasonable times, enter any part of the premises and at the end of the term hereof or upon any default by Subscriber, and in addition to any of its other rights and remedies, remove the equipment without any liability for damages by reason thereof.

5. Subscriber shall furnish, defraying the expenses thereof, all necessary facilities, including space, light and heat, for the proper installation of the equipment; shall maintain the chemical-mixing tank thereof at a temperature not less

than 50 degrees F. and, whenever the fluid contents be wholly or partially discharged by fire or other cause, Subscriber shall, by the quickest method, immediately notify Licensee thereof, and if the same was without Licensee's or Licensor's fault, shall pay Licensee not to exceed $75.00 for each recharging.

6. Unless Licensor's written consent is first obtained, this contract shall not be assigned, nor shall any of the equipment or the use thereof be changed, nor shall there be such change in the use or occupancy of said premises as, in Licensor's opinion, will in case of fire cause more than three sprinklers to function.

7. Licensee shall maintain the equipment and make repairs and replacements thereto from time to time and in a manner satisfactory to Licensor, but any repairs, replacements, alterations or maintenance caused by improper or negligent use or by changes or alterations within said premises shall be at Subscriber's expense. Installation of additional equipment caused by additions to, extensions of or changes in said premises increasing the protected area, shall be paid for by Subscriber at Licensee's prevailing charges therefor.

8. The liability of Subscriber hereunder shall not cease because of any default on Subscriber's part, or because of the exercise by Licensee or Licensor of any of their respective rights as a consequence of such default, including the removal of the equipment from the premises, or because of any damage to the equipment or premises not caused by the fault of Licensee or Licensor.

9. Neither Licensee nor Licensor shall be under any obligation other than herein expressly stated, and in no event shall their aggregate liability for damages, whatever the cause, be greater than $100.00, unless at the time of the execution hereof the parties agree in writing upon a greater liability in consideration of an additional sum to be paid by Subscriber.

10. Neither Licensee nor Licensor shall be bound hereunder until the execution and delivery hereof by both, and no change in the terms hereof shall bind either unless approved in writing by an executive officer of each.

Submitted by Le Roy F. Lyon, Contracting Agent.
Jan. 4, 1928.

In Witness Whereof the parties hereto have made this contract at the City of Cleveland, Ohio, this 6 day of Jan., 1928.

"Automatic" Sprinkler Corporation of America

By J. J. Harrington
Asst. Treas.

Greenspan Brothers Company

By Isadore Greenspan
Subscriber, Treas.

Sypho-Chemical Sprinkler Corporation

By E. Salisbury
Treas.

Greenspan Bros. Co.
224 Washington St.
Perth Amboy, N. J.

It is mutually agreed by the parties whose signatures appear on this proposal for Sypho-Chemical Service, that all engineering work may be executed prior to August 1st, 1928, but materials for the equipment of this above-named property shall not be delivered until after August 1st, 1928.

"A"

DESCRIPTION OF PROPERTY REFERRED IN PARAGRAPH ONE.

Street and No., 226 Washington Street.
City, Perth Amboy.
County, Middlesex.
State, New Jersey.

	STORIES			
	Sub-Basement	Basement	1st	2nd
Ceiling area		6750	6750	6750
Ceiling height	normal		9 ft.	to 12 ft.
Ceiling material	open	joist	w. s.	in office
Ceiling construction	open	joist		
Decks, area	none			
Benches or tables, area	none			
Contents?	food	products		
Occupied by Subscriber?	yes			
How heated?	steam			

	3rd	4th	5th	6th	7th	8th	Total
Ceiling area	6750						2700
Ceiling height							
Ceiling material							
Ceiling construction							
Decks, area							
Benches or tables, area							
Contents?							
Occupied by Subscriber?							
How heated?							

Extension to main building open joist; ceiling with small attic—total area 2920

Roof is _____

Hip, Gable, Flat, Pitch, Saw-Tooth, Monitor flat and pitch on extension height of roof from attic floor, at high point and at low point _____

Attic open or closed _____

No attic _____

Occupancy of attic _____

Give character of business and of all buildings within twenty feet of property to be protected _____

Wholesale grocery _____

Summons and Complaint duly served May 27, 1929, personally on Isadore Greenspan, he being the Statutory Agent of Greenspan Brothers Company, a corporation of the State of New Jersey, defendant herein, by leaving a copy thereof with the said Isadore Greenspan, at its office, 226 Washington Street, Perth Amboy, New Jersey.

WILLIAM S. HANNAH,
Sheriff,
By EDWARD J. PETERSON,
Special Deputy Sheriff.

I hereby deputize and appoint EDWARD J. PETERSON Special Deputy to serve the within process.

Witness my hand and seal this 27th day of May A. D., 1929.

WILLIAM S. HANNAH,
Sheriff of Middlesex County, N. J.

Complaint.

STATE OF NEW JERSEY,
County of Middlesex } ss.:

EDWARD J. PETERSON, Special Deputy Sheriff of said County of Middlesex, being duly sworn according to law on his oath saith, that on the 27 day of May A. D., 1929, he served the within Summons and Complaint, personally on Isadore Greenspan, he being the Statutory Agent of Greenspan Brothers Company, a corporation of the State of New Jersey, defendant herein, by leaving a copy thereof with the said Isadore Greenspan, at its office, 226 Washington Street, Perth Amboy, New Jersey.

EDWARD J. PETERSON.

Sworn and subscribed before me
this 27 day of May, A. D., 1929.

TILLYE G. FRANKEL,
Notary Public,
N. J.

Affidavit of Merits.

(Filed May 31, 1929.)

NEW JERSEY SUPREME COURT,
MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.
} Action-at-law.

STATE OF NEW JERSEY }
County of Middlesex } ss.:

ISADORE GREENSPAN, of full age, being duly sworn according to law upon his oath, deposes and says:

(1) I am the Treasurer of Greenspan Brothers Company, the defendant in the above entitled cause. I am familiar with the transaction specifically mentioned in the complaint and with the defenses thereto.

(2) I believe that Greenspan Brothers Company has a just and legal defense to the action on the merits of the case.

ISADORE GREENSPAN,
Treas.

Sworn and subscribed to before me this 29th day of May, 1929.

HUYLER E. ROMOND,
Notary Public of N. J.

Stipulation Extending Time to Answer.

(Filed June 11, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff,* *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

It is on this 8th day of June, 1929, hereby stipulated and agreed by and between Potter & Berry, Esquires, attorneys for the plaintiff, and John E. Toolan, Esquire, attorney for the defendant in the above entitled cause, that the defendant's time to answer or make any motion addressed to the complaint filed in the said action be, and the same is hereby extended until and including June 24, 1929.

POTTER & BERRY,
Attorneys for Plaintiff.

JOHN E. TOOLAN,
Attorney for Defendant.

Answer.

(Filed June 17, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.
} Action-at-law.

Defendant herein in answer to the complaint filed by the plaintiff says that:

(1) Paragraph one is denied.

(2) Paragraph two is denied.

(3) Paragraph three is denied.

(4) Paragraph four is denied.

FIRST SEPARATE DEFENSE.

Plaintiff agreed to install for defendant a certain Automatic Sypho Fire Extinguishment Equipment, including a Sypho chemical mixing tank, Sypho expansion chamber, "Automatic" sprinkler heads, fire alarm, pipe, fittings and hangers, all as pronounced standard and approved by Underwriters' Laboratories. Plaintiff

failed and neglected to install the equipment aforesaid as required or to install equipment that was pronounced standard and that was approved by the Underwriters' Laboratories.

SECOND SEPARATE DEFENSE.

Defendant was under no obligation to pay to plaintiff any money whatsoever unless and until certain fire extinguisher equipment was duly licensed by the licensor, to wit: Sypho Chemical Sprinkler Corporation, which said license was to be granted after said licensor had inspected said equipment after installation and if said equipment and installation was approved, said licensor was to attach its license plate approving said equipment and its installation and formally licensing said fire extinguisher system. Plaintiff failed and neglected to obtain any license from the licensor, Sypho Chemical Sprinkler Corporation, or to have said equipment and installation inspected and approved or to have said licensor attach its license plate to said fire extinguisher system, indicating that said system was inspected, approved, and duly licensed by the licensor.

THIRD SEPARATE DEFENSE.

Said contract between plaintiff and defendant provided that subscriber (the defendant herein) shall pay to the licensee (the plaintiff herein) in advance "upon the date when subscriber first becomes entitled to insurance rate credit by reason of said service, the sum of eight hundred and eighty-five dollars". Defendant herein never became entitled to any insurance rate credit by reason of the installation of said fire extinguisher

system and consequently never became indebted to the plaintiff for any sum of money whatsoever.

FOURTH SEPARATE DEFENSE.

Said contract between plaintiff and defendant provided that subscriber (the defendant herein) shall pay to the licensee (the plaintiff herein) in advance "upon the date when subscriber first becomes entitled to insurance rate credit by reason of said service, the sum of eight hundred and eighty-five dollars". Defendant herein never became entitled to any insurance rate credit from any insurance company authorized to do business within the State of New Jersey or from any insurance company with whom defendant might make a legal contract for insurance within the State of New Jersey.

FIFTH SEPARATE DEFENSE.

Defendant herein was induced to make and execute said contract by the fraudulent representations of the plaintiff, its servants and agents, to wit: that the fire extinguisher apparatus being sold by plaintiff was approved by the Schedule Rating Bureau of New Jersey; that upon installation of said fire extinguisher system the Schedule Rating Bureau of New Jersey would fix new insurance rates upon defendant's buildings and contents thereof, which said new insurance rates would be fifty per cent. less than the rates then being paid by the defendant. Whereas, in truth and fact, the fire extinguisher system then and there being sold by plaintiff, its servants and agents, was not approved by the Schedule Rating Bureau of New Jersey and upon installation of said system the Schedule Rating Bureau of New

Jersey would not and did not publish any new schedule of rates for defendant's buildings and contents thereof and defendant would not be and in fact was not able to obtain insurance at a premium or rate of fifty per cent. of what defendant was paying prior to the installation of said sprinkler system; all of which said facts were known to the plaintiff and unknown to the defendant. Plaintiff nevertheless made said false representations with the knowledge of their falsity and for the purpose of inducing defendant to sign an agreement for the installation of said sprinkler system and in fact did as a result of said false representations induce defendant to sign said agreement, which said agreement defendant would not have signed except for the statements and representations made by plaintiff, its servants and agents.

SIXTH SEPARATE DEFENSE.

Plaintiff, its servants and agents, represented and stated to the defendant that the phrase "Underwriters' Laboratories", as used in paragraph number one of said contract, meant and was equivalent to and synonymous with the phrase "Schedule Rating Bureau of New Jersey" and that all fire extinguisher equipment installed by plaintiff would be approved and pronounced standard by the Underwriters' Laboratories and Schedule Rating Bureau of New Jersey and that thereupon defendant would become and be entitled to a reduction of fifty per cent. in its insurance premiums on its buildings and the contents thereof where said sprinkler system was installed. Whereas, in truth and fact, the phrase "Underwriters' Laboratories" was not equivalent to or

synonymous with "Schedule Rating Bureau of New Jersey" and said fire extinguisher system and equipment was not approved and pronounced standard by the Schedule Rating Bureau of New Jersey, and unless and until the fire extinguisher system is approved and pronounced standard by said Schedule Rating Bureau of New Jersey, no reduction can be obtained in insurance rates or premiums on any building or content thereof where such extinguisher system is installed, all of which facts were known to the plaintiff but unknown to the defendant. All of said statements and representations were made by the plaintiff for the purpose of inducing the defendant to make an agreement for the installation of said sprinkler system and defendant, relying on said false statements and representations, did actually make said agreement but would not have made and signed said agreement if defendant had known that said statements and representations of the plaintiff were false and untrue.

SEVENTH SEPARATE DEFENSE.

Defendant is not indebted to the plaintiff.

EIGHTH SEPARATE DEFENSE.

Said contract made between plaintiff and defendant is illegal and void and contravenes and is contrary to public policy in that said contract would require defendant to make an illegal contract for insurance with an insurance company or agency forbidden by law of the State of New Jersey to do any insurance business within the State of New Jersey.

JOHN E. TOOLAN,
Attorney of the Defendant.

Stipulation Extending Time to Reply.

(Filed July 6, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff,* *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

It is hereby, on this 3rd day of July, 1929, stipulated and agreed by and between Messrs. Potter & Berry, attorneys of the plaintiff, and John E. Toolan, Esquire, attorney for the defendant in the above entitled cause, that the plaintiff's time to reply to the answer filed herein, or make any motion addressed to said answer be, and the same hereby is extended until and including July 17, 1929.

POTTER & BERRY,
Attorneys for Plaintiff.

JOHN E. TOOLAN,
Attorney for Defendant.

Notice of Motion to Strike Out Answer.

(Filed July 18, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.
} Action-at-law.

To the defendant, GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, and/or its attorney, JOHN E. TOOLAN, ESQ.:

Sirs:

Please take notice, that on Tuesday, July 16, 1929, at 2:15 o'clock in the afternoon (daylight saving time) at the Chambers of CLARENCE E. CASE, ESQ., Justice of the New Jersey Supreme Court, we shall make a motion to strike out the answer filed by the defendant in the above entitled cause, and to enter summary judgment for the plaintiff, on the following grounds:

1. That said answer is insufficient in law and states no defense to the action.

Affidavit of Le Roy Faust Lyon.

2. That said answer is sham, false and frivolous and interposed solely for the purpose of delay.

And please take further notice that at the time of making said motion, we shall read and offer certain affidavits, copies of which are annexed to this notice of motion and made part hereof.

POTTER & BERRY,
Attorneys for Plaintiff.

Affidavit of Le Roy Faust Lyon.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant*.	Action-at-law.

STATE OF NEW JERSEY }
County of Essex } ss.:

LE ROY FAUST LYON, of full age, being duly sworn according to law, on his oath deposes and says:

1. That he is employed by "Automatic" Sprinkler Corporation of America, plaintiff here-

in, and by Sypho Chemical Sprinkler Corporation, both corporations of the State of Delaware, in the capacity of contracting engineer and agent of said companies; that he has been employed by said companies since September, 1926.

2. That since July, 1927, he has been connected with the New York office of said companies, with offices located at #1 Park Avenue, New York City.

3. That his duties are to survey and estimate for the companies in connection with proposed installation of fire extinguishment equipment and to negotiate sales with prospective customers for said companies and in connection with said duties, deponent inspects equipment of customers as installed.

4. That deponent, as agent for "Automatic" Sprinkler Corporation of America and Sypho Chemical Sprinkler Corporation, carried on negotiations with Greenspan Brothers Company, a New Jersey Corporation, defendant herein, for the installation of an "Automatic" Sypho fire extinguishment equipment and the service of the same in premises of the said Greenspan Brothers Company, defendant herein, at Perth Amboy, New Jersey, as a result of which negotiations a certain contract for installation and service of the Sypho fire extinguishment equipment was entered into by and between "Automatic" Sprinkler Corporation of America, Sypho Chemical Sprinkler Corporation and Greenspan Brothers Company on January 6, 1928. Deponent has seen the complaint in the above entitled action and a true copy

of said agreement hereinbefore referred to is attached to said complaint.

5. Deponent carried on said negotiations with Greenspan Brothers Company with one Isadore Greenspan, an officer and agent of the defendant corporation. Said negotiations began on or about the 1st of September, 1927, at which time deponent went to Perth Amboy and discussed the installation and service of Sypho fire extinguishment equipment. Deponent subsequently, on numerous occasions, from on or about September 1, 1927, to January, 1928, went to Perth Amboy with reference to the installation and service of said fire extinguishment equipment. On the occasion of the first visit hereinbefore referred to, deponent spoke with the said Isadore Greenspan alone in the office of said Greenspan Brothers Company, telling him at that time that said "Automatic" Sprinkler Corporation of America and Sypho Chemical Sprinkler Corporation were the manufacturers of various types of fire extinguishment equipment; and that said corporations did sell and install any one of a number of fire extinguishment equipment, or, did install and lease the Sypho fire extinguishment service. After deponent had introduced himself, said Isadore Greenspan told deponent that he was familiar with various type of permanently installed equipment for fire extinguishment, but that the Greenspan Brothers Company were not the owners of the premises in which they were doing business, which was a large warehouse, but that he would be interested in procuring some form of sprinkler equipment that would effect a reduction in his insurance rate; that because the Greenspan

Brothers Company did not own the building in which they were doing business, they did not wish to invest money in the purchase of a permanent sprinkler system, the expense of which they had previously gone into and for which they had obtained estimates from another sprinkler company which is a competitor of deponent's corporation. Deponent then explained in detail to the said Isadore Greenspan the nature of the lease arrangement whereby the "Automatic" Sprinkler Corporation of America and the Sypho Chemical Sprinkler Corporation did install and lease and license a Sypho fire extinguishment service. Inasmuch as the said Isadore Greenspan was mainly interested in a reduction of his insurance rate, he immediately made question in this lease and deponent at that time explained to him the entire situation, so far as insurance companies were concerned, briefly as follows: That the Sypho fire extinguishment service had not been accepted by the Schedule Rating Bureau office in New Jersey; that the Schedule Rating Bureau office in New Jersey was a board of underwriters for stock fire insurance companies, writing insurance on property located in the State of New Jersey; that the said Sypho fire extinguishment service had been accepted by similar boards in practically all other states of the United States, and that the same companies, in writing fire risks in other states, allowed a reduction of almost fifty per cent. (50%) in cases where Sypho fire extinguishment service was installed; that the Schedule Rating Bureau applied only to stock fire insurance companies and that there were other strong companies or organizations of a mutual or reciprocal nature, which had approved of

Sypho fire extinguishment equipment, which would allow a substantial reduction of insurance rate if said fire extinguishment service were installed. Said Isadore Greenspan then asked how he could secure a reduction in his insurance premium and wanted to know if deponent had any particular organization in mind that would effect such reduction. Deponent explained to the said Isadore Greenspan that since none of the so-called old line companies (meaning thereby stock companies) allowed any substantial reduction in insurance rates on any property located in the State of New Jersey, unless the risk was approved by the Schedule Rating Bureau of New Jersey and therefore would not allow him any substantial reduction for the use of Sypho system even though those same companies did allow a substantial reduction of rate for installation of a Sypho fire extinguishment equipment in many other states, it would be necessary in order to get any substantial insurance credit from the use of the Sypho system to take his insurance away from the old line companies and place it with a mutual company or reciprocal exchange; that the mutual exchange organizations had approved of the Sypho fire extinguishment service through an organization known as the Underwriters Laboratories, which organization exists for the purpose of testing out all types of fire extinguishment equipment. Deponent had with him at the time a copy of the lease agreement entered into subsequently by said Greenspan Brothers Company with "Automatic" Sprinkler Corporation of America and Sypho Chemical Sprinkler Corporation, which is a printed form used in all similar transactions, and pointed out to the said Isadore

Greenspan the fact that the said Underwriters Laboratories had approved of the devices of the Sypho fire extinguishment service. Deponent further explained that the Schedule Rating Bureau of New Jersey would probably allow some slight reduction, although not as great a reduction as that of a mutual company or reciprocal exchange. The said Isadore Greenspan thereupon asked deponent whether "Automatic" had previously installed Sypho systems in the State of New Jersey and that insurance organizations had granted any substantial rate on account of said installation, and deponent stated that "Automatic" had installed Sypho system on the premises of one Henry Soodsma & Co., of Paterson, New Jersey, and then suggested to the said Greenspan that he make inquiry of said company whether the system was satisfactory and whether they had obtained satisfactory reduction in insurance rate. In response to the said Isadore Greenspan's inquiry, deponent stated that in that particular instance the insurance reduction rate had been granted by Ernest W. Brown, the representative of a reciprocal insurance exchange. Pursuant to the further request of the said Greenspan, deponent communicated with a representative of Ernest W. Brown, and in accordance with the arrangements then made by deponent, deponent went with A. P. Stockwell, Division Manager of Ernest W. Brown, on September 23, 1927, to the office of the said Greenspan Brothers Company. This meeting was held at about three o'clock in the afternoon and there were present: A. P. Stockwell, deponent, James B. Johnson and Isadore Greenspan. At the beginning of the meeting, deponent introduced Mr. Stockwell and Mr.

Johnson to Mr. Greenspan. Deponent again briefly repeated what was said at the prior interview hereinabove described, namely:—that Sypho system was not as yet approved by the Schedule Rating Bureau and, therefore, so great a reduction in an insurance rate would not be effected with old line insurance companies as would be effected through a mutual company or reciprocal exchange; that the Sypho Chemical system had been introduced on other risks in New Jersey and that the New York Reciprocal Exchange and Individual Underwriters, represented by Ernest W. Brown, had allowed a substantial reduction in insurance rate because of the said installation of said system, and that Mr. Stockwell would explain the insurance plan of the reciprocal exchanges to Mr. Greenspan. Mr. Stockwell then did so at some length. One of the features explained to Mr. Greenspan was that an assessment might be placed against anyone who took out insurance under such a plan. Mr. Greenspan was somewhat displeased at this feature and a long discussion ensued in which it was explained to Mr. Greenspan that no assessment had ever been made against people insured in Individual Underwriters or New York Reciprocal Underwriters, although these associations had been in existence for at least forty years and had gone through such disasters as the San Francisco Fire and the Baltimore Fire; that these associations were writing over a billion dollars insurance all over the United States; that they settled their losses promptly and that they insure only organizations having a good credit rating; and that they insured some of the most important businesses, including L. Bamberger & Co. in New Jersey. It was fur-

ther explained that their risks were never localized to any one particular section of the country but were spread over a wide area, and that all of this taken together enabled them to write insurance at a rate lower than the old line companies. Mr. Greenspan said that he was very much interested and would consider the matter, and he asked Mr. Stockwell to confirm what he had said by a letter. Deponent saw Mr. Greenspan thereafter on several occasions during which he said he was turning the matter over in his mind but had not yet come to any final conclusion. Finally, on the 4th of January, 1928, deponent went to Mr. Greenspan's office in Perth Amboy. Deponent asked Mr. Greenspan if he had made up his mind. He, at first, demurred. His previous objection in prior meetings, subsequent however to that last meeting described in which Mr. Stockwell and Mr. Johnson were present, had been that he did not wish to place all his insurance with one company. He said, however, on January 4, 1928, that he had heard from other subscribers to whom he had written with reference to Ernest W. Brown and that the report he had gotten from them was good and he finally decided to accept the contract with deponent's company and he signed said contract in deponent's presence on that date.

6. Sometime early in December, 1928, deponent went to Perth Amboy and again saw Mr. Isadore Greenspan at his place of business in Perth Amboy, at which time he wanted to know whether the Sypho Chemical system could be extended to cover a new building which had been erected on his premises. Deponent told Mr. Greenspan at this meeting that it would be imprac-

ticable from a fire protection standpoint to enlarge on the system that was in the process of then being installed, under the contract entered into as hereinbefore set forth, and that the new building would require a separate system. Deponent likewise informed Mr. Greenspan that in the new building baffle boards would have to be placed alongside of the trusses. Mr. Greenspan informed deponent that he did not want to go to the additional expense of equipping his new Truscon Building with a separate Sypho Chemical system and negotiations on this point ceased.

7. Deponent's next negotiations with Greenspan Brothers Company occurred on Friday, January 11, 1929, when deponent was informed by his office that Greenspan Brothers Company wished an estimate on a water sprinkler system for their complete plant, including both the old warehouse, where the Sypho Chemical system had been installed, and the new warehouse and the garage. Deponent, on January 15, 1929, went to Perth Amboy and called again at Greenspan Brothers Company to find out why this request was made. Mr. Greenspan told deponent at this interview that Boynton Brothers, insurance brokers of Perth Amboy, had informed him that his insurance with Ernest W. Brown, Inc., was not wholly safe; and that if he would install a water sprinkler system that old line insurance companies would give him a substantial reduction in insurance rates such as he had with Ernest W. Brown, Inc., with the Sypho Chemical system, and that therefore he wanted to know what "Automatic" Corporation's figures would be for an "Automatic" water sprinkler equipment. Mr. Green-

span explained to deponent that in making this request, he was making it for Boynton Brothers, insurance brokers, who were anxious to sell him old line insurance on his plant. Mr. Greenspan expressed some concern to deponent, at this meeting, over insurance with Ernest W. Brown, Inc., and deponent assured him that he had both ample fire protection equipment with the Sypho Chemical system and good insurance with Ernest W. Brown, Inc. Mr. Greenspan said, however, that he had been told that Ernest W. Brown, Inc., insurance was illegal and that Boynton Brothers had assured him that therefore it was no good. Deponent spent over two hours with Mr. Greenspan at this interview and at the conclusion, Mr. Greenspan seemed to be inclined to let matters stand as they were, although deponent left with the understanding that he was going to look into the matter of losses suffered by those assured with Ernest W. Brown, Inc., in order to satisfy himself that they satisfactorily settled their losses. Deponent, on returning to New York City on the same day, got in touch with Mr. Stockwell, of Ernest W. Brown, Inc., and advised him of what had taken place. On January 16, 1929, deponent was informed by Mr. Adams, of Ernest W. Brown, Inc., that the subscriber's agreement had been entered into by Mr. Isadore Greenspan and that everything was all right so far as Greenspan Brothers Company was concerned.

8. Subsequent thereto, deponent had referred to him a letter received in the Cleveland office of the "Automatic" Sprinkler Corporation of America, a copy of which is as follows:

Affidavit of Le Roy Faust Lyon.

"Boynton Brothers & Company
Insurance
200 Jefferson Street
Perth Amboy, New Jersey

January 19, 1929.

'Automatic' Sprinkler Corp. of America,
Cleveland, Ohio.

Gentlemen:

Attention: Mr. J. J. Harrington.

You will recall that we were of assistance to your Mr. Ruebsamen in securing contract for the installation of sprinkler system at the Buffalo Plant of the General Ice Cream Corp.

We are now engaged in a similar proposition for one of our assured at Perth Amboy but we are not securing satisfactory service from your New York representatives.

Sometime ago one of your representatives in co-operation with some reciprocal insurance organization persuaded Greenspan Brothers & Company to use your Sypho Chemical Sprinkler System. Our assured permitted you to make this installation with the understanding that there was going to be a very substantial reduction in his fire insurance rates and as a matter of fact would result in a reduction of over 50%. The work was completed and the Schedule Rating Office of New Jersey asked to publish fire insurance rates. They refused to allow anything but a very small credit (in the neighborhood of a few per cent.) which was about what they

would allow for the better type of chemical extinguishers.

It was at this point that we were called in and our recommendation was accepted by the assured that we have you remove your Sypho Chemical System as unsatisfactory and that we give you the opportunity of figuring on the installation of a standard water supply equipment.

We asked your New York office to let us have the figures at which they would construct this new system and we requested that they have their representative call upon us. The meeting was arranged for either Friday, January 11 or Monday, January 14. Your representative did not call, so we communicated again with your New York office on Tuesday and asked that your representative telephone us. Again we heard nothing. We followed your New York office up again on Wednesday, Thursday, Friday and this morning. We could get no one with authority to telephone us and we can secure from no one in your office any information as to whether your representative is figuring on the contract or not.

Because of the happy relations that have existed between us in the past we do not desire to take any arbitrary action in connection with the old chemical system that will hurt you, but on the other hand we are going to see that a proper system is installed in our assured's building and we are preparing to secure bids from other sprinkler companies for this purpose.

Very truly yours,

BOYNTON BROTHERS & COMPANY."

Affidavit of Le Roy Faust Lyon.

On January 22, 1929, deponent, in behalf of the "Automatic" Sprinkler Corporation of America, submitted a bid to Boynton Brothers for water sprinkler system. After this, on March 5, 1929, a letter was received by the "Automatic" Sprinkler Corporation of America, which was referred to deponent, from John E. Toolan, a copy of which is as follows:

"JOHN E. TOOLAN
COUNSELLOR AT LAW
FIRST NATIONAL BANK BLDG.
PERTH AMBOY, N. J.

March 5, 1929.

Dear Sirs:

Greenspan Brothers Company has referred to this office for our attention a certain agreement entered into with them by your company.

We have been informed that the sprinkler system does not conform with the representations and warranties made by your company. In view of this situation we must advise you to remove the machinery and fixtures which you have installed in their building. Unless this is done within ten days, we will undertake to remove the same at your risk and expense.

Will you please give this matter your immediate attention and advise us what you propose to do?

Yours truly,

J. E. TOOLAN"

Upon receipt of this letter deponent again, on March 9, 1929, called on Mr. Greenspan at his place of business to find out whether Mr. Greenspan had actually authorized anyone to breach his contract with the "Automatic" Sprinkler Corporation of America. Mr. Greenspan told deponent at this interview that he had turned the whole proposition over to Boynton Brothers and that they had requested their attorney, Mr. John E. Toolan, to write the letter hereinbefore set forth. At the interview, Mr. Greenspan showed deponent a proposal which was drawn up by Boynton Brothers in which they proposed to equip the plant of Greenspan Brothers Company in the old and new building, throughout, with a dry pipe system at a stipulated price of $5,900.00, $1,200.00 to be paid on completion of the work and the balance in deferred payment. In the said proposal, Boynton Brothers guaranteed rates at 19¢ and 26¢, respectively, on the building and contents. Mr. Greenspan likewise informed deponent that the owners of the building in which Greenspan Brothers Company's business was situated, were willing to defray part of the expenses of installing a water sprinkler system to the amount of $3,500.00. Mr. Greenspan further told deponent at this interview that the proposition of Boynton Brothers was far more attractive because it gave him very low insurance rates and at the same time allowed him to place his insurance with old line companies; and he wanted to know why deponent had not figured water equipment for his buildings in the first place, to which deponent replied by telling him that he had expressly said in the beginning of negotiations that he did not wish to make a permanent improvement because

he did not own the premises; and that he had received bids prior to his beginning negotiations with deponent all of which showed him that the proposition was too expensive a one, so that he did not even wish to consider it. Mr. Greenspan closed the interview by saying that he did not know what would be the outcome of his decision, but that he was assured by Boynton Brothers that they would do everything in their power to make "Automatic" Sprinkler Corporation of America remove their Sypho equipment. On this information, deponent returned to New York City and the matter was immediately placed in the hands of attorneys for the "Automatic" Sprinkler Corporation of America.

LE ROY FAUST LYON

Sworn and subscribed to
before me this 10th day of
July, 1929.

ARTHUR J. CONNELLY
Attorney at Law
of New Jersey.

Affidavit of A. P. Stockwell.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant*.	Action-at-law.

STATE OF NEW YORK }
County of New York } SS.:

A. P. STOCKWELL, of full age, being duly sworn, according to law, on his oath deposes and says:

1. That he is Division Manager of Ernest W. Brown, Inc., which has its principal place of business at #1 Park Avenue, New York City. Said Ernest W. Brown, Inc. represents several inter-insurance associations or reciprocal exchanges such as "Individual Underwriters", "New York Reciprocal Underwriters", "Fireproof-Sprinklered Underwriters" and "Affiliated Underwriters". These organizations are not incorporated but provide mutual insurance to the members, all of whom stand their proportionate share in any loss by way of risk insured that may accrue to any member. There is re-insurance in Lloyds.

The result gives insurance at approximately cost.

2. Sometime in the early part of September, 1927, deponent was informed by Mr. LeRoy Lyon, of the "Automatic" Sprinkler Corporation of America, that Mr. Isadore Greenspan of Greenspan Brothers Company of Perth Amboy wished to see deponent with reference to the nature of insurance protection offered by reciprocal exchanges and, accordingly, on September 23, 1927, deponent, together with said LeRoy Lyon and James B. Johnson, went to Perth Amboy to the office of Greenspan Brothers Company where Mr. Lyon introduced deponent and Mr. Johnson to Mr. Greenspan. This meeting occurred around three o'clock in the afternoon at the office of Greenspan Brothers Company in Perth Amboy, and there were present, beside deponent, Mr. James B. Johnson, and Mr. LeRoy Lyon and Mr. Greenspan. The conversation at this meeting began by Mr. Lyon's stating to Mr. Greenspan that as he (Mr. Lyon) had told him (Mr. Greenspan) before, the Sypho Chemical system for fire prevention was not as yet approved by the Schedule Rating Bureau and that, accordingly, in New Jersey no great reduction in insurance rate could be effected through the old line or stock insurance companies, although these same companies did give a greatly reduced rate in other States where organizations which have a similar function as the Schedule Rating Bureau in those States have allowed substantial reduction of insurance rate because of the installation of a Sypho Chemical system. Mr. Lyon further told Mr. Greenspan that the Underwriters Laboratories, which is a cor-

poration organized and maintained by the National Board of Fire Underwriters, for the purpose of testing various types of fire preventive equipment, had approved of the Sypho Chemical system and that for this reason in practically every State in the Union, with the exception of New Jersey and perhaps one or two other States, the old line companies allowed about a fifty per cent. (50%) reduction in fire insurance rate; that in New Jersey, so far, the Schedule Rating Bureau had refused to act; but that mutual companies or reciprocal exchanges would extend the same reduction in insurance rate in New Jersey as they did elsewhere, regardless of whatever action was taken by the Schedule Rating Bureau. Deponent was then asked to describe the nature of insurance protection which one would obtain from the reciprocal exchanges and deponent did so in detail, telling the said Isadore Greenspan that under this plan, a number of individuals or corporations entered into a contract to keep all the members of the association whole and free from loss from the risk insured; that a certain amount of money was paid by each member every year and that after the matter of losses and expenses had been determined every year, a certain saving on what was paid in by each member was returned to him, the aim of the reciprocal exchanges being to furnish insurance protection at cost. It was further explained that should any exceedingly heavy losses occur, that under the plan an assessment could be made as against each member to cover this. This feature was quite displeasing to Mr. Greenspan and deponent explained to him that no assessment had ever been made against members of the Individual Underwriters or New York

Reciprocal Underwriters and that these associations had been in existence for at least forty years and had gone through the San Francisco fire and the Baltimore fire; that furthermore they were writing over a billion dollars' worth of insurance all over the United States; that they had a reputation for settling their losses promptly; that they insured only organizations which had a good credit rating and spread their risks widely; that the value and safety of their plan was attested by the fact that the best businesses in every State, including L. Bamberger & Company in New Jersey, belonged to this insurance plan. Mr. Greenspan said that he would consider the matter and the conference ended with that in mind. Mr. Greenspan was apparently interested. On September 27, 1927, deponent wrote Mr. Greenspan recapitulating what had been said at the time of the meeting on September 23rd, which letter was as follows:

"September 27, 1927.

GREENSPAN BROTHERS,
Perth Amboy, New Jersey.

Attention Mr. I. Greenspan.

My dear Mr. Greenspan:

As agreed during my call September 23rd, I am writing to confirm the essentials of my statements in reference to this form of insurance and also to outline a proposition for your fire insurance that will indicate to you how our operating methods work out in practice.

If I am correct in my understanding that the rate for your building is 40¢ and the rate for contents 60¢, the proposition for your

building and contents insurance would work out about as follows:

Present Conditions

Building $125,000 @ 40¢	$ 500.00
Contents $300,000 @ 60¢	1800.00
Present Annual Premium	$2300.00

With Sypho Chemical Sprinkler Protection at Individual Underwriters

Building $125,000 @ 20¢	$250.00
Less average savings 70%	175.00
Annual net cost	$ 75.00

At Affiliated Underwriters

Contents $200,000 @ 30¢	$600.00
Less estimated savings 50%	300.00
Annual net cost	$300.00

Sprinklered Risk Underwriters

Contents $100,000 @ 30¢	$300.00
Less estimated savings 50%	150.00
Annual net cost	$150.00

Total Premium	$1150.00	
Total Savings	625.00	
Total Net Cost	$ 525.00	$525.00
Total Savings from Sypho Chemical Sprinklers & Reciprocal Insurance		$1775.00

Of the $625.00 savings mentioned above, 25%, or $156.25 would be paid to you in cash each year. The remaining 75%, or $468.75 would be held to your credit until a reserve fund had accumulated equal to $5750.00 which is five times your own premium on an annual basis. Upon completion of this reserve, the full savings would be paid to you in cash each year. The interest income from this surplus would be credited to you, and if for any reason business relations were terminated all money standing to your credit would be returned.

It is in order to consider that you effect savings of about 54% from the time you start with us, as the amount held to your credit is an asset, earns interest and would be paid to you in full on termination of this insurance at any time.

You will note that we have indicated $100.00 Contents insurance at Sprinklered Risk Underwriters. This is a Chicago organization operating on sprinklered risks exclusively by the reciprocal plan which I have suggested for $100,000 of the Contents insurance on account of the limit at this office being $125,000 at Individual Underwriters on Buildings and $200,000 at Affiliated Underwriters on Contents. I might mention that we frequently advise other similar organizations in cases like this for amounts we cannot handle with a view of producing the best results for the owner.

If I am correct in my understanding that you do not have standard watchman service with hourly rounds and records of same by

a watchman at night, and rounds every two hours with records of same on Sundays and Holidays, we would require such watchmen service if we were to be asked to carry all of the insurance or in lieu of such standard watchman service an extension of the electric alarm of the sprinkler system to the nearest fire department station.

You may not understand that this Sypho Chemical sprinkler system in this way serves as an excellent automatic alarm system which we consider fully as efficient as standard watchman service.

I am enclosing copy of bulletin explaining why inter-insurance as conducted by this office produces such low costs, also a bulletin describing operating methods in detail. In addition I am sending a classified list of wholesale grocery concerns we insure.

This office has been in successful operation nearly fifty years and is now insuring nearly one thousand millions of business. We are effecting savings for our policy-holders at the rate of about one and one-half million a year.

Without question this is the strongest and lowest cost indemnity available for the selected risks of concerns of established financial integrity we specialize in. I would suggest that you confer with some of our subscribers that you are acquainted with by way of verification.

We have greater reserves per thousand of outstanding insurance than the twenty-five largest old line companies which is actually equivalent to several times reserves of Stock

Companies on account of our reserves being at risk on properties with average loss ratios of less than 20% of the average losses of Board Companies.

While there is a limited contingent liability feature of ten times a subscriber's own annual premium, this is of practically no importance whatever as our risks are so widely distributed it is inconceivable that enough of them could be involved in any conflagration to exhaust the reserves which would be necessary before the contingent liability feature could be brought into effect.

The re-insurance we have with Lloyd's, London, that I explained to you is important in this connection although this Lloyd's re-insurance was put in effect with a view of keeping our returns uniform in years of extraordinary losses and not with a view of strengthening the indemnity.

Very truly yours,

A. P. Stockwell (signed)
Division Manager
A. P. Stockwell

C Automatic Sprinkler Company, 1 Park Ave., NY

APS.AS
ENC. Bull. 2 & 3."

At no time at said meeting was it suggested that the Underwriters Laboratories and the Schedule Rating Bureau of New Jersey were the same, but in fact it was quite clearly pointed out to the said Isadore Greenspan that the Schedule Rating Bur-

eau of New Jersey would do little toward reducing the insurance rate credit; that on the other hand, the mutual companies or reciprocal exchanges that were not affected by the Schedule Rating Bureau's action would give a reduction and that that was the purpose of discussing reciprocal insurance. There can be no doubt that Mr. Greenspan understood this.

3. After writing said letter of September 27, 1927, deponent heard nothing further in the matter until February 2, 1928, when he wrote to Mr. Greenspan with reference to taking up insurance when his policy expired. Again on June 25, 1928, deponent wrote to Mr. Greenspan, informing him that Ernest W. Brown, Inc., had a new organization that might interest him. On October 6, 1928 plans of Greenspan Brothers Company were formally approved by the Engineering Department of deponent's company. On October 25, 1928, deponent again went to Perth Amboy and discussed the matter of insurance with Mr. Isadore Greenspan. At that time, Mr. Greenspan agreed to give Ernest W. Brown, Inc. all of his insurance. Deponent learned on this occasion that the sprinkler buildings were insured for $125,000.00, the contents of the buildings for $300,000.00, the contents of a new steel building for $100,000.00. Deponent told Mr. Greenspan that if a steel wall were put between the new steel building and the adjacent building, he would handle all. Mr. Greenspan wanted also to secure use and occupancy insurance on $300,000.00 gross. On December 18, 1928, deponent telephoned Mr. Greenspan that he would be down on the following Friday, December 21, 1928, on which date deponent again went down to Perth Amboy, where

he saw Mr. Greenspan and secured an order for $200,000.00 of insurance on stock and $5,000.00 on furniture and fixtures, the binders to be effective as of January 2, 1929. On January 16, 1929, $70,000.00 additional insurance was placed on stock and $225,000.00 use and occupancy was placed. Greenspan Brothers Company executed the subscribed agreement for this insurance on January 16, 1929. On or about March 12, 1929, a letter was received from Greenspan Brothers Company which was the only letter that was ever written to the office of Ernest W. Brown, Inc. in the course of these negotiations by Greenspan Brothers Company, a copy of which is as follows:

"Greenspan Bros. Co.
224-226 Washington Street
Perth Amboy, N. J.

March 11, 1929.

Ernest W. Brown, Inc.,
1 Park Avenue,
New York City.

Attn. Mr. Adams.

Gentlemen:

After going into the matter of appointing Ernest W. Brown attorney and manager for our insurance, upon investigating this matter with the Department of Insurance of the State of New Jersey we have decided not to appoint Mr. Brown as our attorney and manager and are returning Binders from Individual Underwriters, Metropolitan Inter-Insurers and Affiliated Underwriters.

We are also giving you thirty days' notice of our intention of cancelling contract for insurance that we made with E. W. Brown, Inc.

Affidavit of A. P. Stockwell.

This letter is to act as a notice to you of our cancelling any agreements made with Ernest W. Brown, Inc.

Respectfully yours,

GREENSPAN BROS. CO.
Per ISADORE GREENSPAN

IG/CM''

4. Deponent was in touch with Mr. Greenspan with reference to the cancellation of this insurance and was informed that the Sypho Chemical system was out and that a water system was to be installed. Deponent informed Mr. Greenspan that Ernest W. Brown, Inc. could do even better with a water sprinkler system than it could with a Sypho Chemical system in the way of rates and Mr. Greenspan, on March 12, 1929, informed deponent that he would cover a substantial portion of Greenspan Brothers Company's insurance by becoming a subscriber in a reciprocal exchange through Ernest W. Brown in the event that a water sprinkler was put in.

A. P. STOCKWELL

Sworn and subscribed to
before me this 9th day
of July, 1929.

JNO. J. MCCARTHY
Notary Public
(SEAL) Bronx Co. Clerk's No. 41
Bronx Co. Register's No. 3054
N. Y. County Clerk's No. 336
N. Y. County Register's No. O-227
Commission Expires March 30, 1930
County Clerk's Certificate N. Y. County
No. 2732 attached dated July 10, 1929

Affidavit of Thomas J. Ridley.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

STATE OF NEW YORK,
County of New York, } ss.:

THOMAS J. RIDLEY, of full age, being duly sworn according to law, on his oath deposes and says:

1. That he is a construction foreman in the employ of the "Automatic" Sprinkler Corporation of America, plaintiff herein, and the Sypho Chemical Sprinkler Corporation; that he has been so employed for the past twelve years.

2. That his duties are to install sprinkler systems and sypho chemical systems and various other types of fire preventive equipments for the "Automatic" Sprinkler Corporation of America and the Sypho Chemical Sprinkler Corporation. This is done from plans which are submitted to the deponent by deponent's employers which likewise furnishes the materials.

Affidavit of Thomas J. Ridley.

3. From October 10, 1928, to December 11, 1928, deponent was engaged in installation of an automatic sypho fire extinguishment equipment which consisted of sypho chemical mixing tank, sypho expansion chamber, automatic sprinkler heads, fire alarm, pipe, fittings, hangers, in premises known as 226 Washington Street, Perth Amboy, New Jersey. Premises were a large warehouse occupied by Greenspan Brothers Company. Deponent had personal supervision of this installation. He was assisted by P. Adcock, helper, Nathan Silverman, fitter, and Norman Lukens, helper, all employees of the plaintiff corporation.

4. Deponent installed in the Greenspan job a sypho chemical mixing tank, which is an all-steel tank, 6′ long by 30″ inside dimensions, cylindrical in shape and having a capacity of 200 gallons, more or less. This tank, when the equipment is in operation, contains a soda solution. Deponent likewise installed a sypho expansion chamber, which is a small tank, cylindrical in shape, about 1′ by 2′ 6″ in dimensions, containing calcium chloride solution when the equipment is in operation. Deponent likewise installed 591 "Automatic" sprinkler heads. An "Automatic" sprinkler head is a patented device, "Automatic" being a trade name. Deponent likewise installed two fire alarms, one an electric alarm, which ran from battery, and the second being a water motor alarm, the electric alarm being located in side of building and water motor alarm being located on outside of building. Deponent likewise, in connection with installation of foregoing, put in the necessary pipes, fittings, and hangers, to complete equipment in accordance with the plans.

Affidavit of Thomas J. Ridley.

At the completion of the work of installation, deponent filled said sypho chemical mixing tank with a proper amount of soda solution and the syphons with a proper amount of sulphuric acid and likewise filled said piping system and the expansion chamber with a proper amount of calcium chloride solution and put said equipment in working order and tested same.

The work was completed on December 11, 1928. On December 5, 1928, deponent filled said tanks and put the equipment into operation as aforesaid with the aid of his helper, Adcock. There was present on this day B. J. Reilly, an inspector of the Sypho Chemical Sprinkler Corporation, and at the conclusion of the test made by the deponent, Mr. Reilly further inspected and tested said equipment. Mr. Reilly then made certain suggestions as to the further completion of the work, which suggestions deponent carried out, and on December 7, 1928, Mr. Reilly again came to the Greenspan plant and again inspected said sypho chemical equipment and passed the same as satisfactory and, accordingly, license plate #799 was affixed to the equipment and the same was duly licensed by the Sypho Chemical Sprinkler Corporation. Deponent spent the remainder of the time, from December 7, 1928, to December 11, 1928, in cleaning up his work, packing up his tools and shipping out.

At the time deponent left the plant of Greenspan Brothers Company on December 11, 1928, the sypho chemical sprinkler equipment which he had installed was fully completed and in complete operative condition.

THOS. J. RIDLEY.

Affidavit of Ray W. Hendricks.

Subscribed and sworn to at New York before me this 25th day of June, 1929.

HERMAN PEPERNIK,
Notary Public. (SEAL)
New York County Clerk's No. 226; Reg. No. 0-214.
Term expires March 30, 1930.
County Clerk's Certificate N. Y. County No. 33,900, attached dated July 10, 1929.

Affidavit of Ray W. Hendricks.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.
} Action-at-law.

STATE OF ILLINOIS, }
County of Cook, } ss.:

RAY W. HENDRICKS, of full age, being duly sworn according to law, on his oath deposes and says:

Affidavit of Ray W. Hendricks.

1. That he is an hydraulic engineer in the employ of Underwriters' Laboratories and has been so employed for a period of twenty-one years.

2. That said Underwriters' Laboratories is a corporation incorporated in 1901, with its place of business at #207 East Ohio Street, Chicago, Illinois. Said Underwriters' Laboratories was and is organized and maintained by the National Board of Fire Underwriters for the purpose of testing various types of fire preventive equipment, in order to evaluate the same for the purposes of insurance.

3. Deponent has read the affidavit of Thomas J. Ridley, made in the above entitled cause, and the fire preventive extinguishment known as "Automatic" Sypho fire equipment extinguishment, the various parts whereof are described in the said affidavit of Thomas J. Ridley in paragraph 4 of his affidavit, has been tested by the Underwriters' Laboratories and the same was approved on December 19, 1916, as is shown by the records of the Underwriters' Laboratories.

RAY W. HENDRICKS.

Sworn and subscribed to before me this 6th day of July, 1929.

(SEAL) LEO J. GEIMER,
Notary Public.
County Clerk's certificate Cook County attached dated July 6, 1929.

Affidavit of Bernard J. Reilly.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.
} Action-at-law.

STATE OF NEW YORK,
County of New York, } ss.:

BERNARD J. REILLY, of full age, being duly sworn according to law, on his oath deposes and says:

1. That he is employed by the "Automatic" Sprinkler Corporation of America, and by the Sypho Chemical Sprinkler Corporation, both corporations of the State of Delaware, in the capacity of Chief Inspector, and has been so employed for the past nine years.

2. In his capacity as Chief Inspector for said corporations, it is his duty to visit, test and inspect for approval, plants where new fire extinguishment equipment of the several varieties manufactured and installed by said corporations have been installed and likewise to visit various plants where the Sypho Chemical System is leased,

to inspect the same and see that said equipment is in good working order and in operative condition.

3. On December 5, 1928, the deponent, under instructions from the office, #1 Park Avenue, New York City, went to premises known as 226 Washington Street, Perth Amboy, New Jersey, at which premises is a large warehouse occupied by Greenspan Brothers Company. On the occasion of this visit the deponent met a Mr. Thomas Ridley, a construction foreman of the "Automatic" Sprinkler Corporation of America, and his helper, a man named Adcock. Mr. Ridley and his crew had just completed the installation of Automatic fire extinguishment equipment on the premises which includes a Sypho mixing tank, Sypho expansion chamber, Automatic sprinkler heads, two fire alarm systems, together with pipe, fittings and hangers. On the occasion of the deponent's visit to Greenspan Brothers Company Warehouse on December 5, 1928, he inspected and operated said equipment as hereinbefore described and made certain suggestions to Mr. Ridley for minor corrections,—for example—deponent suggested that a 165° head be removed and one 212° head be installed in place of same in boiler room, also to relocate heater in tank house and minor repairs to the expansion chamber. On December 7, 1928, the deponent again visited said warehouse of Greenspan Brothers Company at Perth Amboy, New Jersey, premises hereinbefore referred to and again inspected said equipment and found that the changes suggested on the occasion of his previous visit on December 5th had been complied with and that said equipment, upon

being again tested by him, was in complete operative condition. Accordingly the deponent affixed license plate #799 to the dome of the chemical mixing tank, thereby approving said apparatus and duly licensing same for the Sypho Chemical Sprinkler Corporation.

BERNARD J. REILLY.

Subscribed and sworn to at New York
before me this 26th day of June, 1929.

(SEAL) HERMAN PEPERNIK,
Notary Public, N. Y. Co. Clerk's
No. 226, Reg. No. O-214.
Term expires March 30, 1930.

Affidavit of Herbert C. Cleary.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff,* *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

HERBERT C. CLEARY, of full age, being duly sworn, according to law, on his oath deposes and says:

1. That he is an inspector for the "Automatic" Sprinkler Corporation of America and the Sypho Chemical Sprinkler Corporation, both corporations of the State of Delaware, that he has been so employed for the past two years.

2. That his duties as inspector for said corporations is to visit various plants where fire extinguishment equipment of the various types and sold by said corporations have been duly installed, and likewise to visit the various plants where automatic Sypho chemical equipment had been leased in order to see that the same are in proper operative condition.

Affidavit of Herbert C. Cleary.

3. That in accordance with instructions of the office of the corporation at One Park Avenue, New York City, deponent visited the plant of Greenspan Brothers Company at 224-226 Washington Street, Perth Amboy, New Jersey, on or about the first of April, 1929, to inspect the automatic Sypho chemical equipment installed in said premises in accordance with the provision of the lease contract which had been entered into by and between the Sypho Chemical Sprinkler Corporation and Greenspan Brothers Company.

On the occasion of this visit deponent went to the office of the Greenspan Brothers Company where he was told by a gentleman in the office to go on up to the warehouse. Deponent went to the warehouse and began to inspect said Sypho chemical equipment when Isadore Greenspan came to deponent hurriedly and told him that he did not wish this equipment inspected; that the Sypho chemical sprinkler equipment was not approved by the insurance people, that he did not want the system at all; that the system was coming out in two weeks; that he had already signed a new contract for a water system and he would not let deponent go further through warehouse. Deponent thereupon left plant and returned to New York.

HERBERT C. CLEARY.

Subscribed and sworn to at
New York before me this
24 day of June, 1929.

HERMAN PEPERNIK
Notary Public
(SEAL) N. Y. Co. Clerk's No. 226
Reg. No. O-214
Term expires March 30, 1930

Affidavit of Isidor Greenspan.

(Not filed but presented at argument.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law On Notice to Strike Out Answer.

STATE OF NEW JERSY, }
County of Middlesex, } ss.:

ISIDOR GREENSPAN, of full age, being duly sworn according to law upon his oath deposes and says:

(1) I am the Treasurer of Greenspan Brothers Company and am the person with whom representatives of the Automatic Sprinkler Corporation of America negotiated for the installation of a certain Sypho Chemical Sprinkler System in the warehouses of Greenspan Brothers Company at 218-226 Washington Street, Perth Amboy, New Jersey.

(2) It is true that Mr. LeRoy Faust Lyon, as a representative of the Automatic Sprinkler Corporation, negotiated with me for the installation

of the Sypho Chemical System. It is also true that I desired to install a sprinkler system "that would effect a reduction in my insurance rate." Naturally the only purpose of installing a sprinkler system is to obtain a reduction in insurance rates. It is also true that Greenspan Brothers Company are not the owners of the building in which they do business. For this reason Mr. Lyon suggested that the advisable thing to do was to install a sprinkler system that we could have installed on a leased basis rather than purchase the system outright. It is absolutely untrue, however, as stated in Mr. Lyon's affidavit, that Mr. Lyon explained to me that the Sypho extinguisher service had not been approved or accepted by the Schedule Rating Bureau of New Jersey, nor did he tell me that if I installed the Sypho system that I could not obtain insurance in or through any insurance company authorized to do business in the State of New Jersey. Mr. Lyon approached me as any other salesman would approach me, namely, to sell his product. He represented and stated that he had the very proposition that I needed in view of the fact that I was not the owner of the building, namely, a sprinkler system that I could have installed on a leased basis; that this system immediately on installation would permit me to write insurance at approximately fifty per cent. less than I had heretofore paid. In our discussion frequent reference was made to the "Underwriters" and the fact that the system was approved by the "Underwriters". The contract which I signed provided that the Sypho Sprinkler apparatus was pronounced standard and approved by Underwriters Laboratories. Naturally I was given the

impression by Mr. Lyon, through statements made by him in the course of his sales talk; that the Sypho Chemical System was a standard and approved system; a system that was recognized by the authorities in the State of New Jersey that fixes and determines the insurance rate on various buildings. The term "Underwriters" I took to be synonymous with this Board or body. When I saw the phrase "Underwriters Laboratories" in the contract, I continued to assume that this was the board or body that fixes rates in the State of New Jersey. The fact is Mr. Lyon and I often spoke about the "Underwriters" and the fact that the "Underwriters" had pronounced this system as standard and would consequently allow a reduction of approximately fifty per cent. in my insurance rate.

(3) It is absolutely untrue, as stated in Mr. Lyon's affidavit, that he told me that the old line (meaning thereby stock companies) would not allow any substantial reduction in insurance rates on any property in the State of New Jersey in which the Sypho Chemical System was installed. On the contrary he withheld all this information from me until about sometime in January, 1929. The fact is he told me repeatedly that the Sypho Chemical System was standard and approved by the authorities in New Jersey who fix insurance rates; that immediately upon its installation I would obtain a reduction of approximately fifty per cent. in my insurance rate.

(4) He also told me that he could save me substantially more than fifty per cent. by writing my insurance through a New York firm whom he would introduce to me. Mr. Lyon brought to my

office Mr. A. P. Stockwell, representing a firm in New York known as Ernest W. Brown. Mr. Lyon told me that Mr. Brown's firm, represented by Mr. Stockwell, would be able to obtain for me not only a saving of approximately fifty per cent. on my former premiums, but an additional saving of approximately seventy per cent. In other words, if I wrote the insurance through Mr. Brown's firm I could obtain insurance at a cost of approximately 15% of what I had formerly paid. This great saving, of course, interested me and I finally determined to install the system. Consequently on January 4, 1928, I signed a contract for the installation of the sprinkler system.

(5) It is untrue as stated in the affidavit of Mr. Lyon that I ever wrote to anybody or inquired of anybody respecting the Sypho Chemical System or respecting any saving in rates as a result of its installation. The only information I had respecting the system was that given to me by Mr. Lyon in his various sales talks.

(6) The first information I ever had that the Sypho Chemical System was not a standard system and was not approved by the New Jersey Schedule Rating Bureau, which I am informed is the authority in New Jersey that fixes fire insurance rates, was some time about the middle or latter part of January, 1929. At or about this time Mr. Bartholomew of Boynton Brothers & Company asked me if his firm could not obtain renewal insurance. I told him that they could not because his firm could not give me as good a price as an insurance broker in New York with whom I had a connection. I told him that my information was that his firm could only allow a

reduction of approximately fifty per cent. from my former rates; whereas I was getting a greater reduction than this. Boynton Brothers then asked me to permit them to obtain a rate for me and stated that I would be under no obligation for the service. They stated they were positive they could obtain as good a rate as any one else. At the time of this conversation neither the representatives of Boynton Brothers nor deponent knew that the system was not standard and approved by the New Jersey Schedule Rating Bureau. However, some short time later, after Boynton Brothers had asked to have rates fixed on our warehouses, they learned through the New Jersey Schedule Rating Bureau that the Sypho Chemical System that I had installed was not approved or regarded as standard by the New Jersey Schedule Rating Bureau nor could I obtain any substantial reduction in my insurance premium. The only reduction I could obtain would be a few cents reduction in the rate which was the same reduction allowed for small hand fire extinguishers. This information, when communicated to me by Boynton Brothers & Company, was a great shock and surprise. I told them I could not understand why they could not obtain a reduced rate for me when Mr. Brown, the New York broker, could give me such a reduced rate. Boynton Brothers & Company then asked me who the firm was and I told them. Subsequently they advised me that Mr. Brown's firm represented certain reciprocal insurance companies that were not authorized to do business in the State of New Jersey; that in fact it was a misdemeanor for any representative or agent of a reciprocal insurance company to solicit insur-

ance in this State and further that if I should have a fire loss and there was any dispute about the loss, it would be necessary for me to go outside of the State of New Jersey to bring suit. I told them that I did not understand any of these matters when I signed the contract for the installation of the sprinkler system and I was not yet ready to admit that they were true. I stated that I would send for one of the representatives of the sprinkler system and also for a representative of the insurance company and discuss the matter with them. Shortly thereafter I spoke with Mr. Lyon. This was sometime in January; I cannot recollect exactly when. I asked him if it was true that the Sypho Chemical System was not approved by the New Jersey Schedule Rating Bureau and he admitted that it was not approved or regarded as standard. I asked him if it was possible to obtain a reduction in rate from the New Jersey Schedule Rating Bureau if the system was not regarded as standard. He admitted that no reduction could be obtained if the system was not approved. I next asked him whether it was true that the reciprocal insurance companies represented by Mr. Brown's office as broker were authorized to do business in the State of New Jersey and he stated that they were not. I then told him that he had misrepresented the entire proposition to me and that I had not known any of these facts when I signed the contract and if I had known any of these facts, I would not have signed. It was at this time, and not before as stated in Mr. Lyon's affidavit, that I obtained information respecting these various matters. Since I learned the true situation I made arrangements to have a system installed that would be

approved by the New Jersey Schedule Rating Office so that I might obtain insurance at a reduced premium from the insurance companies authorized to do business in the State of New Jersey.

(7) The first time that I saw Mr. Stockwell, the representative of the Brown agency in New York, after I obtained the information above mentioned, I asked him whether or not the companies represented by the Brown agency were authorized to do business in this State. He told me that they were not. I asked him whether or not in the event of a fire loss I could bring suit in the State of New Jersey and he told me that I could not. I then told him that I certainly would not do business with any company who was not authorized to do business in this State and whom I could not sue in the New Jersey Courts in the event of dispute over the adjustment of the fire loss. Mr. Stockwell, at the time he solicited the insurance, did not tell me any of these facts. If he had, I certainly would never have written any insurance with him.

ISIDOR GREENSPAN.

Sworn and subscribed to before me this 15th day of July, 1929.

JAMES P. HANEY,
Attorney at Law of N. J.

Affidavit of Derben W. Bartholomew.

(Not filed but present at argument.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.

Action-at-law
On Notice to Strike Out Answer.

STATE OF NEW JERSEY,
County of Middlesex, } ss.:

DERBEN W. BARTHOLOMEW, of full age, being duly sworn, according to law, upon his oath, deposes and says:

I am an employee of Boynton Brothers & Company, duly licensed insurance agents of the State of New Jersey.

I know David J. Kaufman, of Perth Amboy, New Jersey, the owner of certain premises situate at 226 Washington Street, Perth Amboy, New Jersey, and occupied as a warehouse under lease, by Greenspan Brothers Co. I know Mr. Isidor Greenspan of that firm. I personally handled the casualty accounts of both Mr. Kaufman and Greenspan Brothers Co. for our firm.

In the early part of December, 1928, I learned

from David J. Kaufman that the fire insurance on his building occupied by Greenspan Brothers Co. would not be renewed after January 1st, 1929. Mr. Kaufman stated that Greenspan Brothers Co., the tenants, were installing a sprinkler system in his property and that he had authorized them to write the fire insurance for him in consideration whereof he was to pay Greenspan Brothers Co. the same premium he had formerly paid to Boynton Brothers & Company. Any saving effected by Greenspan Brothers Co., by virtue of the installation of the sprinkler system, was to inure to their benefit.

About the middle of December, I went to the office of Greenspan Brothers Co. respecting fidelity applications for several employees that they wished to have bonded. On this occasion I spoke to Mr. Isidor Greenspan and stated that I had heard our firm was going to lose the insurance on the building about the first of the year and that he was arranging to place it elsewhere. I asked Mr. Greenspan why he would not permit us to place the insurance for Potts & Kaufman as well as his own. He informed me that some insurance company in New York City, who specialized in placing sprinkler risks was going to place the insurance at a great saving in premium. He stated that at that time the rate of fire insurance was approximately $1.20, and that when the extinguisher system was installated, the rate would be about 60¢, and that the company in New York would charge only 30¢, also that on this 30¢ rate, he would have a further saving by reason of a dividend. I asked him the name of the company who was going to give him this insurance and he gave me a list indicating various

New Jersey State Library

reciprocal fire insurance agencies operating at #1 Park Avenue, New York City, and one company in Chicago.

I am primarily a casualty insurance man and do not claim to be an authority on fire insurance. When I came back to the office after this discussion with Mr. Greenspan, I informed Mr. John W. Covert, the manager of our fire insurance department, that Mr. Greenspan was placing all his insurance and the insurance of Potts & Kaufman in various reciprocal insurance companies. Mr. Covert informed me that reciprocal companies were not authorized to do business in the State of New Jersey and that it was contrary to the law of this State for a representative of a reciprocal company to solicit insurance in the State of New Jersey. I thereupon communicated with Mr. David J. Kaufman and explained that Mr. Greenspan was contemplating the placing of his fire insurance in a reciprocal organization that was not authorized to do business in this State. I also informed Mr. Kaufman that in view of the fact that he had a mortgage on his premises held by a savings bank that it was very unlikely that the bank would accept reciprocal fire insurance to protect their mortgage because in the event of any dispute in the adjustment of fire loss, it would be necessary for suit to be brought outside of the State of New Jersey.

I then arranged an appointment between Mr. Kaufman and Mr. Greenspan, at which time I was also present. This appointment was on the 17th day of December, 1928. On this occasion I informed Mr. Greenspan that reciprocal organizations were not authorized to do business in the State of New Jersey, and that by placing his in-

surance in a reciprocal company he could not obtain any recourse from the insurance department in the event of any difficulty in his insurance and that if there was any dispute over a fire loss it would be impossible for him to bring suit against the reciprocal company in the State of New Jersey.

Mr. Greenspan was very much surprised to hear these facts and doubted their accuracy. He evidently thought I was condemning the reciprocal company because I wanted to sell him insurance in one of the old line stock companies represented by our office. He told me that he would get in touch with the representative of the reciprocal company and determine whether or not the statement I made were true.

Sometime in the latter part of December, 1928, or early in January, 1929, we learned that the New Jersey Schedule Rating Bureau would allow very little, if any, reduction in the premium by reason of the installation of the sprinkler system installed by the Automatic Sprinkler Company. This sprinkler system was not approved or rated as standard by the New Jersey Schedule Rating Bureau, and consequently no insurance company, authorized to do business in the State of New Jersey, would allow any reduction in rate of premium. When these facts were communicated to Mr. Greenspan, he was greatly surprised and chagrined and stated that the only reason he has signed the contract for the installation of the system was because it was represented to him and he understood that he would get a reduction of approximately 50% from the premiums that he had heretofore been paying. Mr. Greenspan stated that the contract provided that

the sprinkler system was approved by the underwriters and that in discussing the matter with the representative of the sprinkler company he frequently referred to the underwriters and Mr. Greenspan understood this to mean the body or board in New Jersey that had authority and jurisdiction to fix fire insurance rates. Mr. Greenspan stated that he would never have signed the contract or disburse $900.00 a year for the installation of the sprinkler system if he had known that he could not get insurance in New Jersey companies at a reduced rate of approximately fifty per cent. The sprinkler system was sold to him on the theory that he could obtain such a reduction with any of the New Jersey companies and that by insuring in certain reciprocal companies he could obtain a reduction even greater than that allowed by the stock companies.

DERBEN W. BARTHOLOMEW.

Sworn and subscribed to before
me this 13 day of July, 1929.

JOHN E. TOOLAN,
of N. J.

Affidavit of John W. Covert.

(Not filed but presented at argument.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law On Motion to Strike Out Answer.

STATE OF NEW JERSEY, }
County of Middlesex, } SS.:

JOHN W. COVERT, of full age, being duly sworn according to law upon his oath, deposes and says:

(1) I am the manager of the Fire Insurance Department for Boynton Brothers & Company, licensed insurance brokers in the State of New Jersey, with offices in the City of Perth Amboy, New Jersey.

(2) On or about December 17, 1928, Mr. D. W. Bartholomew of the office of the corporation of Boynton Brothers & Company, approached me in regard to securing rates for Messrs. Greenspan Brothers, as they had had installed on their premises a sprinkler system known as the Sypho

Chemical System, and were of the opinion that they were entitled to a reduction in fire insurance rates of at least the equivalent of fifty per cent.

(3) I approached the Schedule Rating Office of New Jersey about January 3, 1929, and was informed by them that the Sypho Chemical System installed by the Automatic Sprinkler Corporation of America was one that they did not consider to be the equal of a sprinkler system with water supply, and that therefore they could not accept the risk as a properly sprinkled one, but could only allow credit in the rate that would be the equivalent of what they would allow for proper supply of hand chemical extinguishers. This reduction was about 2½%.

(4) On or about January 5, 1929, I advised Mr. Isidor Greenspan that the Schedule Rating Office of New Jersey would allow him a reduction of only about 2½% and would not allow a 50% reduction as Mr. Greenspan had expected and represented that he would obtain. Mr. Greenspan was unable to understand that he could not get a reduction fom the New Jersey authorities that controlled the making of rates. He then stated that through the office of one Ernest W. Brown in New York he could obtain not only the promised reduction of 50% from his former rates but in addition to this 50%, he would be allowed another reduction of substantial size. He was then informed through Mr. Derben W. Bartholomew of our office that the operation of reciprocal insurance companies was not permitted in the State of New Jersey. In order to be sure about

my statement in this regard I communicated with the Department of Banking and Insurance of the State of New Jersey and was informed that there was no provision made in the laws of the State of New Jersey for the licensing of so-called reciprocal exchanges or insurance companies and, therefore, their operation in the State of New Jersey was illegal.

(5) My attention was directed to Chapter 221 of the Laws of 1928, which provides as follows:

> "1. Section eighty-eight of the act to which this act is amendatory be and the same is hereby amended so as to read as follows:
>
> "88. No person or firm nor any company organized under the laws of this State or of any other State or foreign country, himself, itself or themselves, or by his, its or their brokers, agents, solicitors, surveyors, canvassers or other representatives of whatever designation, nor any such broker, agent, solicitor, surveyor, canvasser or other representative, shall solicit, negotiate or effect any contract of insurance of any kind, including all kinds of insurance described in this act, or sign, deliver or transmit, by mail or otherwise, any policy, certificate of membership or certificate of renewal thereof, or receive any premium, commission, fee or other payment thereon, on any property or thing, or on the life, health or safety of any person, or maintain or operate any office in this State for the transaction of the business of insurance, or in any manner, directly or indirectly, transact the business

of insurance of any kind whatsoever, within this State, unless such company, person or firm, shall be authorized to do the same under the provisions of the laws of this State. Any person, firm or company violating any of the provisions of this section shall be guilty of a misdemeanor.

"2. This act shall take effect immediately."

(6) When these facts were presented to Mr. Greenspan, he authorized me to notify the Automatic Sprinkler Corporation of America, whose office was at No. 1 Park Avenue, New York City, that the Sypho Chemical System was not satisfactory in that it did not entitle them to any reduction in rates through any insurance company authorized to do business in the State of New Jersey; that, therefore, Mr. Greenspan wanted the system removed because it had been represented to him that he would obtain a reduction of approximately 50% in the rates that he was then paying, through insurance companies authorized to do business in this State.

(7) Mr. Greenspan felt that in view of the fact that the Automatic Sprinkler Corporation of America had installed this system that he would afford them an opportunity to recuperate any loss that they had sustained by bidding on another system that was approved by the Schedule Rating Bureau of New Jersey and that would entitle them to a reduction in rates. On the authority of Mr. Greenspan I asked that a representative of the Automatic Sprinkler Corporation of America be sent down to discuss the sit-

uation with me. No attention was paid to my request and consequently on January 19, 1929, I addressed a letter to the Automatic Sprinkler Corporation which is set forth in full in their moving papers. On January 22, 1929, I received a letter from the Automatic Sprinkler Corporation outlining their cost for a water system. This cost was greatly in excess of other bids received, and therefore, they were not given the contract.

JOHN W. COVERT.

Sworn and subscribed to before me this 15th day of July, 1929.

HUYLER E. ROMOND,
Notary Public of New Jersey.

Affidavit of Joseph A. Kelly and Francis J. Boniewski.

(Not filed but presented at argument.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.

Action-at-law
On Motion to Strike Out Answer.

STATE OF NEW JERSEY,
County of Middlesex, } ss.:

JOSEPH A. KELLY and FRANCIS J. BONIEWSKI, of full age, being duly sworn according to law upon their respective oaths, depose and say:

(1) We are in the employ of Kelly & McAlinden Company as plumbers and steam fitters.

(2) On April 9, 1929, we examined the Sypho Chemical Sprinkler System installed by the Automatic Sprinkler Corporation of America in the premises of Greenspan Brothers Company at Nos. 218-226 Washington Street, Perth Amboy, New Jersey, for the purpose of determining whether or not any license was attached to said

sprinkler system or any part of the premises by the Sypho Chemical Sprinkler Corporation. We made a thorough and complete examination of the entire system and the premises where said system was installed and were unable to find any plate or license of any description indicating that said sprinkler system had been licensed by the Sypho Chemical Sprinkler Corporation.

JOSEPH A. KELLY.

Sworn and subscribed to before me this 15th day of July, 1929.

HUYLER E. ROMOND,
Notary Public of N. J.

Affidavit of Walter J. Snedeker.

(Not filed but presented at argument.)

NEW JERSEY SUPREME COURT,
MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.

Action-at-law
On Notice to Strike Out Answer.

STATE OF NEW JERSEY, }
County of Middlesex, } ss.:

WALTER J. SNEDEKER, of full age, being duly sworn according to law upon his oath deposes and says:

(1) I am the Chief of the License Division in the New Jersey Department of Banking and Insurance and I am familiar with the business and affairs of said Department.

(2) The Individual Underwriters, Metropolitan Inter-Insurers, and Affiliated Underwriters are not authorized to do business in this State under the laws of the State of New Jersey. No license or authority was ever issued by this Department for said Companies to conduct business in the State of New Jersey.

WALTER J. SNEDEKER.

Sworn and subscribed to before me this 15th day of July, 1929.

PHINNIE C. HARTMANN,
Notary Public of New Jersey.

Order Denying Motion to Strike Out Answer.

(Filed Sept. 17, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

Application having been made to strike out the answer filed by the defendant in the above entitled cause and I having considered the affidavits submitted by the respective parties and the argument of counsel, and sufficient reason appearing therefor;

It is thereupon on this 16th day of September, One Thousand Nine Hundred and Twenty-nine, ordered that the application of plaintiff to strike out defendant's answer be and the same hereby is denied, without cost to either party.

CLARENCE E. CASE,
Justice of the Supreme Court.

The above order is hereby approved as to form.

POTTER & BERRY,
Attorneys of Plaintiff.

Reply.

(Filed July 23, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

Plaintiff denies each and every allegation in the answer and joins issue on said answer.

REPLY TO THE FIRST SEPARATE DEFENSE.

Replying to the first separate defense, plaintiff denies each and every allegation in said first separate defense.

REPLY TO THE SECOND SEPARATE DEFENSE.

Plaintiff denies each and every allegation in the second separate defense of said answer. Plaintiff further alleges that said contract, which forms the subject matter of this suit, contains a provision that the consideration to be paid by the defendant should be paid when the equipment was licensed or, in the alternative, when the defendant became entitled to insurance rate credit by

reason of said service, and that, therefore, the licensing of said equipment is immaterial providing the defendant became entitled to an insurance rate credit by reason of the installation of plaintiff's equipment, which insurance rate credit defendant did become entitled to.

REPLY TO THE THIRD SEPARATE DEFENSE.

Plaintiff denies the allegations contained in the third separate defense and joins issue with the defendant thereon. Said contract entered into by the parties to this action, which contract forms the subject matter of this action, contains a provision that the consideration, which this action is to recover from the defendant, was to be paid when the said equipment installed by the plaintiff was licensed or, in the alternative, when the said defendant became entitled to insurance rate credit by reason of said service; and it is immaterial whether defendant became entitled to any insurance rate credit, provided said fire protection equipment installed by the plaintiff was licensed by the licensor, which said license was given by said licensor and license plate attached.

REPLY TO THE FOURTH SEPARATE DEFENSE.

Replying to the fourth separate defense, plaintiff denies that the defendant never became entitled to any insurance rate credit from any insurance company authorized to do business within the State, or from any insurance company with whom defendant might make a legal contract for insurance in the State of New Jersey, and joins issue with the defendant on said fourth separate defense.

Reply.

REPLY TO THE FIFTH SEPARATE DEFENSE.

Plaintiff denies each and every allegation contained in said fifth separate defense and joins issue on said fifth separate defense. Plaintiff further reserves the right, at or before the trial, to strike out said fifth separate defense as insufficient in law.

REPLY TO THE SIXTH SEPARATE DEFENSE.

Plaintiff denies each and every allegation contained in the sixth separate defense and joins issue with the defendant on said sixth separate defense. Plaintiff further reserves the right, at or before the trial, to strike out the said sixth separate defense as insufficient in law.

REPLY TO THE SEVENTH SEPARATE DEFENSE.

Plaintiff denies the seventh separate defense and joins issue with the defendant thereon.

REPLY TO THE EIGHTH SEPARATE DEFENSE.

Replying to the eighth separate defense, plaintiff denies each and every allegation contained in said eighth separate defense and joins issue with the defendant on said eighth separate defense. Plaintiff reserves the right, at or before the trial, to strike out the said eighth separate defense as insufficient in law.

POTTER & BERRY,
Attorneys of Plaintiff.

Stipulation re Taking of Testimony.

(Filed October 4, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

It is hereby stipulated by and between Messrs. Potter and Berry, attorneys of the plaintiff, and John E. Toolan, Esquire, attorney of the defendant in the above entitled cause, that without order of the Court the oral testimony of Ray W. Hendricks, of Chicago, Illinois, be taken in Chicago, at 11 o'clock in the forenoon, on Monday, the 7th day of October, 1929, at the office of Barthell & Rundall, at No. 208 S. La Salle St., Chicago, Illinois, before EDWARD E. BARTHELL, JR., sitting as Special Master or Officer, said oral testimony as given to be taken down and reported by Kathryn Broderick, a stenographer, who shall make two transcripts of such testimony to be subscribed and sworn to before the officer designated to take such testimony; one transcript of such testimony subscribed and sworn to, to be delivered to each party pursuant to the statute in that

case made and provided, and said testimony to be offered at the trial of the above entitled cause, pursuant to the statute.

Dated: September 26th, 1929.

POTTER & BERRY,
Attorneys of Plaintiff.

JOHN E. TOOLAN,
Attorney of Defendant.

Deposition of Ray W. Hendricks.

(Filed December 17, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant*.	Action-at-law.

Transcript of the testimony taken pursuant to stipulation in the foregoing causes, before Edward E. Barthell, Jr., a Special Master, at his office at 208 S. La Salle Street, Chicago, Illinois, on October 7, 1929, at 11:00 o'clock A. M.

APPEARANCES:

For the Plaintiff:

POTTER & BERRY,
ARTHUR N. COLTON,

For the Defendant:

SANDERS, CHILDS, BOBB & WESTCOTT,
WILLIAM A. BRADFORD.

Deposition of Ray W. Hendricks.

STIPULATION.

It is hereby stipulated by and between Messrs. Potter and Berry, Attorneys of the plaintiff, and John E. Toolan, Esquire, Attorney of the defendant in the above entitled cause, that without order of the Court the oral testimony of Ray W. Hendricks, of Chicago, Illinois, be taken in Chicago, at 11 o'clock in the forenoon, on Monday, the 7th day of October, 1929, at the office of Barthell & Rundall, at No. 208 S. La Salle Street, Chicago, Illinois, before Edward E. Barthell, Jr., sitting as Special Master or officer, said oral testimony as given to be taken down and reported by Kathryn Broderick, a stenographer, who shall make two transcripts of such testimony subscribed and sworn to, to be delivered to each party pursuant to the statute in that case made and provided, and said testimony to be offered at the trial of the above entitled cause, pursuant to the statute.

Dated, September 26th, 1929.

POTTER & BERRY,
Attorneys of Plaintiff.

JOHN E. TOOLAN,
Attorney of Defendant.

RAY W. HENDRICKS, a witness called on behalf of the plaintiff, being duly sworn according to law, on his oath testifies as follows:

Direct Examination by Mr. Colton:

Q. What is your full name? A. Ray W. Hendricks.

Deposition of Ray W. Hendricks.

Q. What is your occupation? A. I am engineer in charge of the hydraulic department of the Underwriters' Laboratories.

Q. How long have you been employed by the Underwriters' Laboratoies? A. Twenty-one years.

Q. What, in general, is the nature of your duties? A. Well, I have charge of all of the work of the hydraulic department, including the general planning of the work of the department, and a review of reports issued by the department, also handling a certain amount of correspondence that is conducted by the department for the Laboratories.

Q. What is the Underwriters' Laboratories? A. Underwriters' Laboratories is an organization, working under the direction of the National Board of Fire Underwriters, established for service and not profit, and engaged in the examination and testing of devices and materials having a bearing on life and fire hazards—accident and fire prevention work.

Q. What does the Laboratories do after it tests a fire preventive device? Does it give approval or not? A. Following the investigation a report is, as a rule, rendered to one or more of several supervising bodies, known as councils. In the case of the device in question, or system in question—

Q. Well, I'll come to that in a moment. If you approve a fire preventive system, in what form is your approval given? A. Following concurrence by the council to which the report is sent, our approvals are promulgated—our findings are promulgated by means of cards, or card subscribers'

index, and by means of published lists, of which there are a number of different lists.

Q. You keep a record of these cards in the Laboratories? A. Yes, sir, a complete file.

Q. Are those—under whose charge are those records kept? A. Well, those are—the work of the card system is really handled by what we call our editorial department at the present time.

Q. Do you have any form of supervision over those records? A. Well, to this extent—that a report contains at its close a recommendation for action, and that recommendation is the wording which appears on the card, after the recommendation for action is concurred in by the particular council to which that report has been sent.

Q. Now, did the Underwriters' Laboratories ever test a fire preventive equipment known as the Sypho-Chemical System? A. Yes.

Q. When was that test made, if you recall? A. Well, it was the—I think the bulk of the work was done back in 1916.

Q. Did you have anything to do with that test? A. I did.

Q. Did you take any part in the making of that test, or the supervision of the test? A. I had some part in the actual test work, and general supervision of the test work.

Mr. Colton: That is all.

Mr. Bradford: I would like for the record to show an objection at this time on behalf of the defendant. We object to any testimony of this witness relative to the testing of the apparatus referred to in 1916, as being entirely too remote to have any bearing upon questions involved in this case. I would

like further grounds for the objection. It does not appear that the Underwriters' Laboratories with which this witness is connected is the same Underwriters' Laboratories as are referred to in the copy of the contract attached to the declaration in this case.

Mr. Colton: How long have you been connected, you say, with the Underwriters' Laboratories?

A. Twenty-one years.

Q. Are you generally familiar with the various underwriters, the various bodies for underwriting, or the various bodies for testing fire preventive equipment in this country? A. Was your question underwriting and testing—just what was that question?

(Question read.)

A. I am, yes, sir.

Q. Do you know whether there is more than one such body in this country known as the Underwriters' Laboratories? A. There is only one Underwriters' Laboratories.

Q. Only one Underwriters' Laboratories? A. Known by that name.

Mr. Bradford: I suppose that answer means known to the witness by that name.

Q. Well, do you know of your own knowledge whether there is any other similar body known by the name of Underwriters' Laboratories? A. There is none.

Q. You have stated that in 1916 a Sypho-Chemical System was tested by the Underwriters' Laboratories. What was the result of that test?

In other words, was the system approved or disapproved? A. The system was approved, although we don't call it approved. We call it listed as standard.

Q. In what form was that—was that approval evidenced by one of these cards of which you spoke a moment ago? A. It was.

Q. Have you that card in your possession? A. I have.

Mr. Bradford: I would like it understood that the general objection which I made will apply to each question and to each answer.

Mr. Colton: It will apply to all testimony.

Mr. Colton: I offer in evidence this original card evidencing approval of the Underwriters' Laboratories of a Sypho-Chemical Sprinkler System.

Mr. Bradford: I object to the form of the question stating what it evidences. I think the card should speak for itself.

Mr. Colton: Well, what is this card, Mr. Hendricks?

A. This is the card which was issued for our card subscribers' indexes immediately following the endorsement of the recommendation contained in our report on the Sypho-Chemical System by our fire council.

Mr. Colton: I offer this card in evidence. I have your consent, Mr. Bradbury, to read it into the record?

Mr. Bradford: Bradford. Yes.

Whereupon said card was read into the record by Mr. Colton as follows:

Deposition of Ray W. Hendricks.

"Guide No. 3120. December 19, 1916.
Laboratories' File Ex. 432

Feb 3 1920

Sypho Chemical Sprinkler Corporation,
Submitter,
123 William St., New York, N. Y.
Sypho Chemical Sprinkler System.

Two hundred gallon automatic stationary chemical fire extinguishing system involving the use of a distribution system of 2 to ¾ inch piping with automatic sprinkler and filled with calcium chloride solution, an expansion chamber above the highest sprinklers and a chemical engine containing 200 gallons of bicarbonate of soda solution and sulphuric acid admixed by the operation of syphons started by the lowering of the solution levels in the expansion tank when the sprinklers open. Provided with approved automatic sprinklers that have been tested and found to properly resist the chemicals contained in the system. Designed for use in cases where not more than three sprinklers are expected to control the fire with 200 gallons of chemical solution. Maintained under a comprehensive service of periodic inspection and expert supervision by the Submitter.

Inspection Departments having jurisdiction to be consulted before installation.

STANDARD—Fire.
INSPECTION SERVICE.

See description of Inspection Service on card filed back of guide card.

This card is issued by Underwriters' Laboratories.

Q. What is the expansion chamber referred to on this card? A. The expansion chamber is a tank-like affair which is mounted at the upper level of the system, a lowering of the solution in which causes the system to come into operation.

Q. Have you any chart or plan describing or showing the system, which was the Sypho Chemical System, which was approved? A. I have some drawings here which, I believe, are identical with drawings which appeared in our report, showing the essential features of the system as we examined and tested and reported on it.

Mr. Colton: I offer that plan in evidence.

Mr. Bradford: I would like to renew our objection as to this exhibit. Same objection to the general line of testimony.

Mr. Colton: That is on the grounds that the time is too remote; that is your general objection?

Mr. Bradford: And whether this is the Laboratories that is referred to in the contract.

Whereupon Mr. Colton offered said plan, which is hereto attached, as Plaintiff's Exhibit A.

Q. Will you turn to page 2 of this plan? Will you point out the expansion chamber on that plan? Is it numbered there? A. Well, there are two numbers. Number six, I would say, identifies the expansion chamber.

Q. Is the chemical engine referred to or marked in any way on this plan? A. That is number one on page 2.

Q. Is that known by any other name? A. We would commonly refer to it as the extinguisher tank, or chemical tank.

Q. Is it ever called a chemical mixing tank? A. It is.

Mr. Bradford: I object to the leading form of the question.

Q. Will you turn to page 4 of the plan. What are the devices indicated by number four on that plan, at page 4? A. Number four evidently refers to what we call the branch line piping, or the piping of the distribution system. Although the arrow, perhaps, points to a sprinkler.

Q. What is number three? A. I guess number three is intended to refer to the distribution piping. Then number four indicates the sprinkler.

Q. What is an automatic sprinkler? A. An automatic sprinkler is a device which is installed on sprinkler piping, having a fusible element which is supposed to fuse in the event of a fire, or increase of temperature, to the point where the fusible material fuses, the opening of the sprinkler permitting the issuance of water from the piping on which the device is installed.

Q. I show you an affidavit made by you in this action on July 6, 1929, together with an affidavit of Thomas J. Ridley, also made in this action, and referred to by you in your affidavit. Now, in Mr. Ridley's affidavit which you corroborated in your affidavit, paragraph four states: "Deponent installed in the Greenspan job a Sypho Chemical tank." Now, will you point out if you can, on this plan, the Sypho Chemical mixing tank referred to therein, and corroborated by you as part of the apparatus approved? A. It is shown here on page 2. Number one might be taken to mean the mixing tank.

Mr. Bradford: I object to that and move that it be stricken on the grounds that there is no means of identifying the tank concerning which the witness is testifying, with the one which is installed under this contract.

Q. Mr. Hendricks, in your affidavit of July 6th, you stated that you had read the affidavit of Thomas J. Ridley, and that the various parts of the fire preventive extinguisher known as Automatic Sypho Fire Equipment described therein had been tested by the Underwriters' Laboratories. Now, Mr. Ridley's affidavit, to which you referred, described a Sypho Chemical mixing tank. What is the Sypho Chemical mixing tank?

Mr. Bradford: I object to the question on the same ground as before recited. Also object to the reference to these affidavits or any testimony regarding them. Those affidavits are a part of the record in this case. They speak for themselves and counsel is attempting to cross-examine the witness regarding these affidavits. That examination is improper. These affidavits are not in evidence in this case.

Mr. Colton: Well, I offer the affidavits in evidence.

Mr. Bradford: We object on the ground that they are not competent. Here is a witness to testify to what he knows regarding the transaction.

Mr. Colton: Regarding the transaction?

Mr. Bradford: Regarding the matter concerning which he is testifying, so there is no occasion for using the affidavits; otherwise the deposition of the witness would not have

been necessary. We object to the introduction of the affidavit, by Ridley, as not being competent evidence.

Mr. Colton: Mr. Hendricks, will you describe in your own words what constitutes the Sypho Chemical system approved by the Underwriters' Laboratories on December 19, 1916?

Mr. Bradford: We object that there is no evidence that it was approved by the Underwriters' Laboratories at that time.

Witness: Shall I answer?

Mr. Colton: Yes.

A. The system, somewhat briefly described, consists essentially of a chemical tank to which is attached a syphon dome and in which are located acid syphons, a riser leading out of the chemical tank, cross mains, and branch line piping attached to the riser, the riser terminating at its top in an expansion chamber. Also connected to the system are alarm devices, one being electrical, and the other known as mechanical alarm device or water motor and gong. Mounted on the branch line piping are automatic sprinklers. That is rather brief, but I think a complete statement of the essential parts of the system.

Q. How does the system operate? A. That involves quite a—

Mr. Bradford: I object to the question, assuming that the witness knows how the system operates at this time. This investigation was made some time in 1916; he is testifying as to the system now.

Q. How did the system which you approved in 1916 operate? A. That involves telling how it is charged in the first place before it can operate. Do you want me to tell that?

Q. Yes. A. The system is charged by putting in the chemical tank approximately 200 gallons of bicarbonate of soda solution, and by pumping into the riser and distribution pipe system calcium chloride, until the system is practically filled with the calcium chloride solution. The charging of the system also involves the placing of sulphuric acid in the acid syphons in what is known as the syphon dome, attached to the chemical tank.

Q. How is the syphon dome designated on that plan on page two? Is it designated? A. It is designated by the letter X. Following the complete charging of the system, operation would result from a lowering of a solution level in the expansion chamber, this lowering of the level usually resulting from the opening of one or more of the automatic sprinklers mounted on the branch line piping, the solution level being lowered by virtue of the solution flowing out of the open sprinklers—that is, calcium chloride solution. The lowering of the solution level in the expansion chamber tends to cause a vacuum in the upper part of the chamber, and this creates a pull on what is known as the suction line, communicating with the upper part of the expansion chamber, and the acid syphons. The first effect of the pull is to bring into operation what is known as the starting syphon, the acid being caused to syphon over into the bicarbonate of soda solution contained in the chemical tank.

Q. Is that action shown on this plan? A. Shown on page 3. The co-mingling of the sulphuric acid

of the starting charge and the bicarbonate of soda solution in the extinguisher tank causes the generation of carbon dioxide gas which brings up pressure in the chemical engine tank, and in the syphon dome, this pressure finally causing the syphoning over of what is known as the follow-up charge into the bicarbonate of soda solution. The pressure generated by the development of carbon dioxide gas performs, as one of its principal functions, the forcing of the bicarbonate of soda solution up into the riser, and into the distribution piping, forcing it out of this piping where sprinklers are opened and the calcium chloride which may be in the piping, ahead of it. I guess that's the story.

Q. Mr. Hendricks, who maintains the Underwriters' Laboratories? A. It is maintained by the National Board of Fire Underwriters.

Q. If you know, what is the exact relationship between the Underwriters' Laboratories and the National Board of Underwriters? A. National Board of Fire Underwriters?

Q. Yes. A. The National Board of Fire Underwriters established and maintains the Underwriters' Laboratories.

Q. And what is the National Board of Fire Underwriters? A. The National Board of Fire Underwriters is an organization composed of the principal stock fire insurance organizations doing business in the United States.

Mr. Bradford: We object to the question and answer on the ground that it is immaterial and not tending to prove the issues in this case.

Q. Do you know by name any of the stock fire insurance companies which maintain the National Board of Fire Underwriters?

Mr. Bradford: I object to that.

A. I do, some of them, probably not all of them.
Q. Would you name some? A. Home Insurance Company, Springfield Fire and Marine, Hartford Fire, Aetna. Do you know the full name of the Aetna? I believe it's the Aetna Fire Insurance Co.

Q. Do you know to what extent—

Mr. Bradford: I object to that. Just a moment. If he is through with his answer, I want to move to exclude it from the record on the ground that it is incompetent, irrelevant and immaterial.

Q. Do you know to what extent, if any, the insurance companies which you have just named are governed by the findings of the Underwriters' Laboratories, or what action, if any, they take upon those findings?

Mr. Bradford: We object to that question on the same ground as the last objection.

A. It is my understanding that stock fire insurance companies are guided to some extent by the findings of the Laboratories.

Q. You do not know to what extent? A. I do not know to what extent.

Q. You have stated that on December 19, 1916 the Underwriters' Laboratories approved the Sypho Chemical System which you have de-

scribed. Do you know whether such approval has ever been revoked? A. I do. It has not.

Q. On this card I see the expression "inspection service". What does that mean? A. That relates to the form of follow-up service which the Laboratories has in connection with the production of the various parts going to make up the Sypho system.

Q. What is that follow-up service, if you know? A. Do you mean in general? Or in particular?

Q. Is it one of the requirements of your approval that such service be given? A. It is.

Q. What service does your approval require? A. In this case the inspection service. The form of our follow-up service known as the inspection service. We have other forms of service.

Q. Just what does that inspection service include, Mr. Hendricks? A. You mean in the case of the Sypho system?

Q. Yes, the Sypho System. Does it mean inspection service that you make or someone else makes? A. It means inspection carried out at the plant by the Underwriters' Laboratories.

Q. At what plant? A. At the plant where the system is fabricated; where the principal parts are manufactured. In this case, the plant of Ohio Automatic Sprinkler Company at Youngstown.

Q. Has such inspection been carried out? A. It has.

Q. Over what period has that inspection been carried out by the Underwriters' Laboratories? A. Ever since the time when the system was first listed as standard by the Laboratories, since the date of the first listing.

Q. Up to what time? A. Up to the present time.

Mr. Colton: That is all.

Cross-examination by Mr. Bradford:

Q. Have you made that inspection, Mr. Hendricks? A. Personally? No.

Q. Then the only way you know whether that inspection has been made is from what someone has told you? A. I know that the inspections have been made because our inspector reports on the form which he fills out as the result of his inspection, showing the features covered by his inspection.

Q. Then you are basing your testimony as to this inspection service entirely upon reports made by someone else? A. Not entirely, because to some extent I have been personally responsible for and have actually done some of the work covered by the inspection service.

Q. How recently were you at the plant where they manufacture the Sypho Chemical Sprinkler System? A. I was at the plant on September 26th and 27th of this year.

Q. Of 1929? A. 1929.

Q. How soon after equipment of this kind is approved by the Underwriters' Laboratories do you issue cards such as the one which has been offered in evidence? A. The card is really the evidence of approval or listing. The card usually is in the hands of the subscribers within ten days or two weeks from the time that council action is taken on the report recommending issuance of the card.

Q. Then the date on the card indicates the date of approval by the Laboratories? A. Yes, sir.

Q. What is the full name of the Underwriters' Laboratories concerning which you testified? A. Underwriters' Laboratories, Incorporated.

Q. Incorporated is a part of the name, is it? A. I believe so.

Q. In what State is it incorporated? A. State of Illinois.

Mr. Bradford: We again move to strike out all of the testimony in chief of this witness, on the ground that his testimony has been regarding the Underwriters' Laboratories, Incorporated, whereas the contract in this case refers to Underwriters' Laboratories.

Q. Are you familiar with the organization known as the Schedule Rating Bureau? A. To some extent.

Q. Do you know by whom that is operated and maintained? Just do you know?

Mr. Colton: I object to this question on the ground that it is irrelevant, incompetent and immaterial and is not covered by the direct examination.

Q. By whom is it operated and maintained? A. You are speaking of the Schedule Rating Bureau? By the stock fire insurance organizations doing business in that state.

Q. Does that Bureau maintain any laboratory or laboratories for the purpose of inspecting and approving or disapproving of devices of this kind?

Mr. Colton: I object to this whole line of testimony.

A. Well, I will have to answer you by going into considerable detail.

Q. No, I think you can answer that simply

enough, witness. Do they, or do they not, maintain laboratories? A. They do not maintain laboratories, no. Not to my knowledge. I would say certainly they do not maintain laboratories.

Q. You can't be sure of that? A. Well, I couldn't say positively.

Q. Will you please look at this card which has been read into the record and tell us what the rubber stamp date of February 3, 1920, indicates? A. That indicates the date on which the card was issued superseding this card.

Mr. Colton: Preceding?

A. Superseding this card.

Q. Well, then, subsequent to December 19, 1916, another card was issued by the Underwriters' Laboratories, Incorporated? A. That's true.

Q. Which superseded this card? A. That's true.

Mr. Bradford: I think that is all.

Re-Direct Examination by Mr. Colton:

Q. Have you in your possession the card which superseded this card? A. No, I think not. I have a subsequent—a later card than the one which immediately followed that card.

Q. Well, is that card available? A. It is, by the same process we went through of getting this one. I haven't it here.

Q. Do you know why this card was superseded in February, 1920? A. I don't at the moment. It may have been due to change of address.

Mr. Bradford: We object to any supposition that the witness doesn't know. He can't testify.

A. The only way I could answer that would be by detailed comparison of the two cards.

Q. Could you get the other card? A. I could get the other card.

Q. I am afraid we will have to have it. Could you get it by telephone?

(Here a recess was declared for luncheon, and to enable the witness to get the card in question.)

2:30 P. M.

Re-Direct Examination by Mr. Colton continued as follows:

Q. Mr. Hendricks, you testified that the card dated December 19, 1916, had been superseded. Do you know whether the fact that that card was superseded had anything to do with the approval originally given, and whether it modified the approval? A. It did not modify the approval in any way.

Q. Do you know whether the—has the approval been continuous since 1916? A. It has.

Q. Up to the present time? A. It has.

Q. How many cards have been issued since the original card dated December, 1916? A. Three.

Q. What is the date of the last card? A. July 1, 1926.

Q. That is the last card that has been issued? A. It is.

Q. Is that card now a part of your files, and is the approval shown by that card at present in force? A. It is.

Q. Have you that original card in your possession? A. I have.

Mr. Colton: I offer that card in evidence.

Mr. Bradford: We object to the introduction of the card on the ground that there is no showing that it relates to the equipment which was covered by the contract, or installed under the contract involved in this suit.

Mr. Colton: You agree that if the card does go in as evidence, it may go in in the form of a stenographic copy of this card?

Mr. Bradford: I understand this is the card which must remain in the files of the Underwriters' Laboratories, and therefore the card may be copied in the record.

Whereupon the card was copied into the record as follows:

"Guide No. 100 X19.

July 1, 1926—Laboratories' File Ex432

Sypho Chemical Sprinkler Corporation,
Submitter,
910-28 B. of L. E. Bank Bldg., Cleveland,
Ohio.

Extinguishers—soda-acid.

Sypho chemical sprinkler system. Two-hundred gallon automatic stationary chemical fire extinguisher system involving the use of distribution system of 2 to ¾-in. piping, filled with a calcium chloride solution; an expansion chamber above the highest sprinklers and a chemical engine containing 200 gal. of bi-carbonate of soda solution and sulphuric acid admixed by the operation of syphons started by the lowering of the so-

lution level in the expansion tank when the sprinklers open. Provided with automatic sprinklers that have been tested and found to resist properly the chemicals contained in the system. Designed for use in cases where not more than three sprinklers are expected to control the fire with 200 gal. of chemical solution. Maintained under a comprehensive service of periodic inspection and expert supervision by the submitter (Classification A).

STANDARD—Fire and Accident.
INSPECTION SERVICE.

See description of Inspection Service on reverse side of this card.

This card replaces Ex432 dated Dec. 15, 1925.

[OVER]

Underwriters' Laboratories
Incorporated 1901.

Established and Maintained by the National Board of Fire Underwriters

For Service—Not Profit

207 East Ohio Street, Chicago

DESCRIPTION OF INSPECTION SERVICE

Inspection Service for Stationary Fire Extinguishers includes: Inspections at factory of materials used and workmanship of construction in each equipment; checking of design and dimensions of unassembled parts, and checking of all essential details with standard of samples originally submitted."

Q. Mr. Hendricks, will you compare that card with the card dated December 19, 1916, regarding which you testified this morning? Will you tell me from your examination of the card dated July 1, 1926, whether the testimony which you gave this morning involving a description of the Sypho Chemical System approved by the Underwriters' Laboratories is a description of the system approved by the Underwriters' Laboratories as described on this card dated July 1, 1926? A. It is, substantially.

Q. So that all the testimony you gave involving a description of the system is applicable to the system described on that card dated July 1, 1926? A. I think so.

Q. Are you sure of that? You can tell by reading the card. A. I don't recall any material respect in which it differs from what is specified here.

Q. Well, unless you can be sure of it I will have to ask the lady to read back the testimony. Can you tell by reading that card in full? A. Let me have the question again.

(Question read.) A. Yes.

Mr. Colton: That is all.

Mr. Bradford: I don't think I care to ask anything more.

Mr. Colton: Mr. Bradford, may I ask the witness one more question before we leave?

Mr. Bradford: Why, yes.

Q. Mr. Hendricks, on the stationery which you customarily use for your laboratories, how do you designate it? A. Well, I think there have been changes in the form of the stationery from time to time. At times it has been "Underwriters'

Laboratories, Incorporated'' and at other times simply ''Underwriters' Laboratories''. On this envelope—

Q. Well, how is it designated on that envelope? A. On this envelope it is ''Underwriters' Laboratories''. Nothing is said about incorporated.

Mr. Colton: That is all.

RAY W. HENDRICKS.
Signature of Witness.

By stipulation between the parties, two original Exhibits A were submitted, one to be attached to each copy of the deposition.

STATE OF ILLINOIS,
County of Cook, } ss.:

I, KATHRYN BRODERICK, hereby swear that the foregoing is a true and correct transcript of the proceedings and testimony described in the foregoing pages numbered 1 to 25, inclusive.

KATHRYN BRODERICK. (L. S.)

Subscribed and sworn to before me this 11th day of October, A. D. 1929.

ALICE H. BROUGH,
Notary Public.
(SEAL)

CERTIFICATE.

I hereby certify that the foregoing testimony was taken pursuant to stipulation made in the cause therein mentioned before me as Special Master at my office at 208 S. La Salle Street, Chicago, Illinois, on Monday, October 7, 1929, at 11:00 o'clock A. M. in the presence of Arthur N. Colton, representing Potter & Berry, for the Plaintiff, and William A. Bradford, of Sanders, Childs, Bobb & Westcott, for the Defendant.

EDWARD E. BARTHELL, JR.,
Special Master.

Notice of Trial.

(Filed Aug. 8, 1929.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

Sir:—Please to take notice, that the trial of the issue joined in this cause will be moved before said Court, in the presence of such Judge or Justice thereof, as shall then be holding said Court, on the third Tuesday of September A. D. 1929, at the Court House, in New Brunswick in and for the County of Middlesex at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated, July 24th, A. D. 1929.

POTTER & BERRY,
Attorneys of Plaintiff.

To JOHN E. TOOLAN, ESQ.,
Attorney of Defendant.

Summons in the above entitled matter was issued May 22, 1929.

Notice of Demand for Admissions.

(Not Filed.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant*.	Action-at-law.

To: JOHN E. TOOLAN, *attorney of the defendant*, or to whom it may concern:

Please take notice, that the plaintiff demands of you, within five (5) days after the service of this notice upon you, written admissions to the following:

1. That the contract annexed to the complaint in this matter between "Automatic" Sprinkler Corporation of America, licensee, Sypho-Chemical Sprinkler Corporation, licensor, and Greenspan Brothers Company, which forms the subject matter of this action, was duly executed.

2. That the signature of J. J. Harrington, Assistant Treasurer of the "Automatic" Sprinkler Corporation of America, appearing on the orig-

inal of said contract mentioned in paragraph 1 hereof, is genuine.

3. That the signature of E. Salisbury, Treasured of the Sypho-Chemical Corporation, is genuine.

4. That the signature of Isadore Greenspan to said agreement hereinbefore referred to in paragraph 1 is genuine; and that said Greenspan Brothers Company, by Isadore Greenspan, duly executed said agreement hereinbefore referred to.

5. That the fire preventive extinguishment equipment installed by "Automatic" Sprinkler Corporation of America in the plant of Greenspan Brothers Company in Perth Amboy, New Jersey, is a type of fire preventive equipment tested and approved by the Underwriters Laboratories on December 19, 1916.

6. That the Sypho-Chemical Sprinkler Corporation, licensor in the above mentioned contract, duly licensed the fire preventive equipment installed by the plaintiff in the defendant's premises as is alleged in the complaint.

7. That the Schedule Rating Office of New Jersey, allowed to Greenspan Brothers Company at least a reduction of 2½% in its insurance rating as a result of the installation of plaintiff's fire preventive equipment, pursuant to the contract hereinbefore referred to.

8. That by means of reciprocal exchanges through Ernest W. Brown, Inc., defendant was al-

lowed a reduction of over 50% in its insurance rating because of the installation of plaintiff's equipment pursuant to the contract hereinbefore referred to.

9. That defendant has made no payment pursuant to the terms of the contract which forms the subject matter of this suit hereinbefore referred to.

And take further notice, that unless the foregoing admissions are received within the time allowed by law, the same shall be proved at defendant's expense.

Attorneys of Plaintiff.

Answer to Demand for Admissions.

(Not Filed.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

To POTTER AND BERRY, ESQS., *Attorneys of the above-named Plaintiff*, or TO WHOM IT MAY CONCERN:

Please Take Notice that defendant submits the following answers to the demand heretofore made by you for certain admissions:

(1) Defendant admits the due execution of said contract insofar as Greenspan Brothers Company is concerned. Defendant has no knowledge respecting the execution of said contract by any other parties thereto.

(2) Defendant has no knowledge respecting this matter.

(3) Defendant has no knowledge respecting this matter.

(4) Defendant admits that the signature of Isadore Greenspan to said agreement is genuine and that said Greenspan Brothers Company by Isadore Greenspan duly executed the agreement, a copy of which is attached to the bill of complaint.

(5) Defendant has no knowledge respecting this matter.

(6) Defendant denies that the Sypho-Chemical Sprinkler Corporation licensed the equipment installed in defendant's property.

(7) The Schedule Rating Office of New Jersey would allow Greenspan Brothers Company no reduction whatsoever on account of the installation of plaintiff's fire preventive equipment.

(8) Defendant admits that through Ernest W. Brown, Inc., he obtained through certain reciprocal exchanges a reduction of 50% in insurance rate after the installation of plaintiff's equipment.

(9) Defendant has made no payment pursuant to the terms of the contract set forth in the bill of complaint.

Dated: August 9, 1929.

JOHN E. TOOLAN
Attorney of the Defendant.

Stipulation re Record.

(Filed Sept. 5, 1930.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant.*	Action-at-law.

It is hereby stipulated by and between Messrs. Potter and Berry, attorneys of the plaintiff, and John E. Toolan, Esq., attorney for the defendant, that the record in the above entitled case, which was tried before the Honorable PETER F. DALY, at New Brunswick, New Jersey, on the 7th, 8th and 9th of January, 1930, be augmented to include Article Ten of the New York Insurance Act, together with an exemplified copy of the records in the Department of Banking and Insurance of New York State, showing that Individual Underwriters, Metropolitan Inter-Insurers, and Affiliated Underwriters, reciprocal insurance organizations, were duly licensed and authorized to do business by the Department of Banking and Insurance of the State of New York, under and pursuant to the laws of the State of New York.

Dated: April 11, 1930.

POTTER & BERRY,
Attorneys of Plaintiff.

JOHN E. TOOLAN,
Attorney for Defendant.

Certificate of Authority of Affiliated Underwriters.

UNITED STATES OF AMERICA

STATE OF NEW YORK

By

EDWARD J. FLYNN

Secretary of State and Custodian of the Great Seal Thereof.

IT IS HEREBY CERTIFIED, That ALBERT CONWAY was, on the day of the date of the annexed certificate, Superintendent of Insurance of the State of New York and duly authorized to grant the same; that the same is in due form and executed by the proper officer; that the seal affixed to said certificate is the seal of the Insurance Department of the State of New York; that the signature thereto of the said Superintendent of Insurance is in his proper handwriting and is genuine; and that full faith and credit may and ought to be given to his official acts.

IN TESTIMONY WHEREOF, The Great Seal of the State is hereunto affixed.

WITNESS my hand at the City of Albany, the second day of April, in the year of our Lord one thousand nine hundred and thirty.

FRANK S. SHARP,
Deputy-Secretary of State.

(SEAL)

Certificate of Authority of Affiliated Underwriters.

STATE OF NEW YORK

INSURANCE DEPARTMENT

ALBANY

ALBERT CONWAY
Superintendent of Insurance

I, ALBERT CONWAY, Superintendent of Insurance of the State of New York, DO HEREBY CERTIFY that the AFFILIATED UNDERWRITERS, located in the City of New York, is an association of underwriters as defined by Article X of the Insurance Law of this State; that the said association has complied with the provisions of said law and has continuously been authorized since December 31, 1910, to issue policies and transact the business of Fire Insurance in this State under the provisions of the above mentioned Article.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of this Department at the City of Albany, this 2nd day of April, 1930.

ALBERT CONWAY,
Superintendent of Insurance.

(SEAL)

Certificate of Authority of Individual Underwriters.

UNITED STATES OF AMERICA

STATE OF NEW YORK

By

EDWARD J. FLYNN

Secretary of State and Custodian of the Great Seal Thereof.

IT IS HEREBY CERTIFIED, That ALBERT CONWAY was, on the day of the date of the annexed certificate, Superintendent of Insurance of the State of New York and duly authorized to grant the same; that the same is in due form and executed by the proper officer; that the seal affixed to said certificate is the seal of the Insurance Department of the State of New York; that the signature thereto of the said Superintendent of Insurance is in his proper handwriting and is genuine; and that full faith and credit may and ought to be given to his official acts.

IN TESTIMONY WHEREOF, The Great Seal of the State is hereunto affixed.

WITNESS my hand at the City of Albany, the second day of April, in the year of our Lord one thousand nine hundred and thirty.

FRANK S. SHARP,
Deputy-Secretary of State.

(SEAL)

Certificate of Authority of Individual Underwriters.

STATE OF NEW YORK

INSURANCE DEPARTMENT

ALBANY

ALBERT CONWAY
Superintendent of Insurance

I, ALBERT CONWAY, Superintendent of Insurance of the State of New York, DO HEREBY CERTIFY that the INDIVIDUAL UNDERWRITERS, located in the City of New York, is an association of underwriters as defined by Article X of the Insurance Law of this State; that the said association has complied with the provisions of said law and has continuously been authorized since December 31, 1910, to issue policies and transact the business of Fire Insurance in this State under the provisions of the above mentioned Article.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of this Department at the City of Albany, this 2nd day of April, 1930.

ALBERT CONWAY,
Superintendent of Insurance.

(SEAL)

Certificate of Authority of Metropolitan Inter-Insurers.

UNITED STATES OF AMERICA

STATE OF NEW YORK

By

EDWARD J. FLYNN

Secretary of State and Custodian of the Great Seal Thereof.

IT IS HEREBY CERTIFIED, That ALBERT CONWAY was, on the day of the date of the annexed certificate, Superintendent of Insurance of the State of New York and duly authorized to grant the same; that the same is in due form and executed by the proper officer; that the seal affixed to said certificate is the seal of the Insurance Department of the State of New York; that the signature thereto of the said Superintendent of Insurance is in his proper handwriting and is genuine; and that full faith and credit may and ought to be given to his official acts.

IN TESTIMONY WHEREOF, The Great Seal of the State is hereunto affixed.

WITNESS my hand at the City of Albany, the second day of April, in the year of our Lord one thousand nine hundred and thirty.

FRANK S. SHARP,
Deputy-Secretary of State.

(SEAL)

Certificate of Authority of Metropolitan Inter-Insurers.

STATE OF NEW YORK

INSURANCE DEPARTMENT

ALBANY

ALBERT CONWAY
Superintendent of Insurance

I, ALBERT CONWAY, Superintendent of Insurance of the State of New York, DO HEREBY CERTIFY that the METROPOLITAN INTER-INSURERS, located in the City of New York, is an association of underwriters as defined by Article X of the Insurance Law of this State; that the said association has complied with the provisions of said law and has continuously been authorized since December 31, 1910, to issue policies and transact the business of Fire Insurance in this State under the provisions of the above mentioned Article.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of this Department at the City of Albany, this 2nd day of April, 1930.

ALBERT CONWAY,
Superintendent of Insurance.

(SEAL)

Article Ten of the New York Insurance Act With Reference to Reciprocal Insurance.

ARTICLE 10.*

LLOYDS AND INTER-INSURERS.

Section 300. Application of article.
301. Application, examination and certificate of authority.
302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section.
303. Application of other sections of this chapter.
304. General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven.
305. Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states.

§ 300. Application of article. Notwithstanding the provisions of section fifty-four of this chapter, persons, partnerships or associations which, on October first, eighteen hundred and ninety-two, were lawfully and actually engaged in the business of insurance as Lloyds or inter-insurers or individual underwriters may, after January first, nineteen hundred and eleven, continue to do the business of insurance in this state, provided that such persons, partnerships or asso-

* This is a new article, the first four sections being added by L. 1910, ch. 638. Former article 10. "Town Insurance Companies Organized and Existing Under and Pursuant to Laws of 1857, Chapter 739" was repealed by L. 1910, ch. 328. Sections 304 and 305 were added by L. 1911, ch. 502.

ciations shall comply with the provisions of this article, but not otherwise; and such persons, partnerships and associations as may comply with and be licensed according to sections three hundred and four and three hundred and five of this article may do such insurance business as is therein permitted. Any persons, partnerships or associations which, after January first, nineteen hundred and eleven, shall in this state engage in the business of insurance as Lloyds or inter-insurers, or represent or advertise that they are so engaged, without having been authorized so to do in accordance with the provisions of this article, and any agent, sub-agent, or representative of any such persons, partnerships, or associations not so authorized to do such business in this state, who shall after January first, nineteen hundred and eleven, in any way represent any such unauthorized persons, partnerships or associations, directly or indirectly, in engaging or attempting to engage in the business of insurance in this state, shall be guilty of a misdemeanor.

New. Added by L. 1910, ch. 638, and amended to read as above by L. 1911, ch. 502.

§ 301. Application, examination and certificate of authority. Not later than August first, nineteen hundred and ten, any persons, partnerships or associations claiming that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two, shall file with the superintendent of insurance, on blanks furnished by him for that purpose, (a) an application for a certificate authorizing the continuance of such business after January first, nineteen hun-

dred and eleven, which application shall specify the kinds of insurance intended to be written after the last mentioned day; (b) a verified statement of the condition of such Lloyds or inter-insurers as of the first day of July, nineteen hundred and ten; (c) an agreement, executed and duly acknowledged by each and every individual underwriter or inter-insurer or his attorney-in-fact duly authorized thereto, providing in substance that personal service of a summons or other legal process in an action against any such Lloyds or inter-insurers, if made upon a person specified in such agreement and resident in the state of New York, shall be equivalent to the personal service within this state of such summons or other process on each and every of such individual underwriters or inter-insurers; and (d) such other matters as the superintendent of insurance may prescribe. Thereafter, and not later than December first, nineteen hundred and ten, the financial condition of and the methods of doing business by the persons, partnerships and associations so applying, shall be examined as provided in section thirty-nine of this chapter. Thereafter, the superintendent of insurance shall grant to such persons, partnerships and associations as shall have complied with the provisions of this article a certificate of authority to conduct the business of insurance in this state on and after January first, nineteen hundred and eleven, which certificate shall be revocable or subject to suspension, if any of such persons, partnerships or associations fail to comply with any or all of the requirements of this chapter applicable thereto, or upon the happening of any event which on January first, nineteen hundred and eleven, would prohibit such persons,

partnerships or associations from transacting business in this state as set forth in section three hundred and two. Such certificate shall indicate the kinds of insurance which may be written by such persons, partnerships or associations, provided that the same are not other than those now or which may hereafter be specified in sections one hundred and ten and one hundred and fifty of this chapter.

New. Added by L. 1910, ch. 638.

§ 302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section. No such persons, partnerships or associations who claim that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two, shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers, (a) unless there shall be on file in the office of the superintendent of insurance a copy of the original articles of association, copartnership agreement or inter-insurance contract, together with all amendments thereto, accompanied by an affidavit, verified by an attorney-in-fact, to the effect that it is a true copy, and stating where the principal office of such persons, partnerships or associations so doing such business is located, the kinds of insurance in which it is engaged, or in which it lawfully claims the right to engage, the name under which business is done and the names and post office addresses of all the underwriters, inter-insurers and attorneys-in-fact so doing business as Lloyds or inter-insurers, which affidavit shall be so verified not

earlier than December fifteenth, nineteen hundred and ten; or (b) which shall change the name under which business is done, without first obtaining the written approval of the superintendent of insurance; or (c) which shall establish branches under other or different names or titles; or (d) which shall have a name so similar to that of any other Lloyds or insurance corporation as in the opinion of the superintendent of insurance is calculated to deceive, and any existing Lloyds having such a name may be required to change same by the superintendent of insurance; or (e) which does not maintain at all times, in addition to all outstanding claims and other liabilities, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sums without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy; or (f) which shall not have its assets invested as prescribed by section sixteen of this chapter; or (g) unless each of the underwriters shall be worth in his own right not less than twenty thousand dollars above all liabilities, such facts to be determined by the superintendent of insurance, and in determining same he may take the signed reports of commercial agencies having upwards of one hundred thousand subscribers. No such persons, partnerships or associations shall change the location of their principal office for the transaction of business without first filing with the superintendent of insurance the affidavit of an attorney-in-fact stating where such office is to be located, and in no event shall such office be located outside the state of New York. Every change in the underwriters, inter-insurers or attorneys-in-fact, made after

the filing of the affidavit previously mentioned in this article, shall be reported to the superintendent of insurance by a written verified statement of an attorney-in-fact within twenty days after the same has been made, which affidavit shall be accompanied by an agreement, executed and duly acknowledged, and binding the new underwriter or underwriters, inter-insurer or inter-insurers to the original agreement between all the underwriters or inter-insurers required to be filed by section three hundred and one of this chapter, with regard to the service of process. The underwriters' liability shall not be included in the statements or reports of such persons, partnerships or associations either as an asset or a liability and any deposit made by an underwriter with any such persons, partnerships or associations, if treated as an asset in any statement or report, shall also be charged as a liability.

New. Added by L. 1910, ch. 638, and amended to read as above by L. 1911, ch. 502.

§ 303. Application of other sections* to this chapter. After January first, nineteen hundred and eleven, sections six, seven, nine, sixteen, twenty, twenty-one, twenty-two, thirty-six, thirty-nine, forty, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty-three, sixty-three and one hundred and eighteen of this chapter are hereby, to the extent that they are now or hereafter may become applicable to corporations authorized to engage in the business of insurance in this state and specified in sections one hundred and ten and one hundred and fifty of this chapter, made specifically applicable to any persons, part-

* So in original.

nerships or associations to which this article is applicable, provided that, where any of such sections imposes a duty on or prohibits an Act by or in any way refers to the officers or directors of any such corporation, such sections, when read in connection with this article, shall be deemed to mean respectively the duly authorized attorney-in-fact or attorneys-in-fact or the executive, underwriting or managing committee, of such persons, partnerships or associations, and provided, further, that where any of such sections refers to a corporation, the same, when read in connection with this article, shall be deemed to mean the persons, partnerships or associations to which this article is applicable.

New. Added by L. 1910, ch. 638.

§ 304. General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven. On and after July first, nineteen hundred and eleven, twenty-five or more persons, partnerships or corporations which have the requisite authority by their charters may engage in the business of such insurance as is specified in sections one hundred and ten and one hundred and fifty of this chapter as Lloyds or inter-insurers upon receiving a certificate of authority from the superintendent of insurance so to do. The application for such certificate of authority shall be signed by the attorney or attorneys-in-fact of those persons desiring such certificate and must be accompanied by a declaration which must set forth, (a) the name under which the business is to be conducted, which name shall not be so similar to any existing Lloyds, inter-insurance association or corpora-

tion as, in the opinion of the superintendent of insurance, is calculated to deceive; (b) the exact location of the principal office at which the business is to be conducted, which office must be in the State of New York; (c) the kinds of insurance intended to be written, which must be only of those permitted by this section; (d) an exact copy of the articles of association, co-partnership agreement or inter-insurance contract made between such underwriters or inter-insurers; (e) the names and addresses of all the underwriters or inter-insurers so proposing to engage in such business; (f) the designation and appointment of one or more attorneys-in-fact who shall be residents of this state, with full names and addresses, upon whom a summons or other legal process can be served; (g) that a fund of at least two hundred thousand dollars has been contributed by the subscribers as a guaranty fund for policy holders and is in the possession of the attorney or attorneys-in-fact for such subscribers and is either in cash or invested in such securities as are specified in section sixteen of this chapter. Such declaration must be signed and sworn to by all of the persons, and the proper officers of the corporation so proposing to engage in the business of insurance pursuant to this section. After such documents specified shall be filed, the superintendent of insurance shall cause an examination of such Lloyds or inter-insurance association to be made, and, if he is satisfied that all of the facts alleged in the declaration are true and that the articles of association, co-partnership agreement or inter-insurance contract is of such a character that the rights of the policyholders will be protected thereunder, he shall issue a certificate of

authority for such Lloyds or inter-insurance association to do such business of insurance in this state as is specified in the declaration, which certificate shall be issued to such Lloyds or inter-insurance association, under the name chosen and approved, authorizing the underwriters or inter-insurers thereof to do the business permitted. Any such Lloyds and inter-insurance associations as may be thus authorized to do business in this state (1) shall at all times keep and maintain a fund of an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on the policies in force, calculated on the gross sums, without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (2) shall not change the name under which business is done without first obtaining the written approval of the superintendent of insurance; (3) shall not establish branches under other or different names or titles; (4) shall have its assets either in cash or invested as prescribed by section sixteen of this chapter; (5) shall notify the superintendent of insurance of any change in the location of its principal office for the transaction of business, which office shall always be in the state of New York, which said notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys-in-fact; (6) shall notify the superintendent of insurance of any change in its underwriters or inter-insurers, which notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys-in-fact; (7) shall not amend or change its articles of association, co-partnership agreement or inter-insur-

ance contract without the approval of the superintendent of insurance, and a true copy of any amendment or change permitted shall be verified by an attorney-in-fact of such Lloyds or inter-insurance associations and be filed with the superintendent of insurance; (8) shall notify the superintendent of insurance of any change in its attorney or attorneys-in-fact by filing with the superintendent of insurance an instrument revoking the designation or appointment of any attorney or attorneys-in-fact who are no longer to act for such underwriters or inter-insurers, and designating and appointing one or more attorneys-in-fact, residents of this state, with full names and addresses, who shall thereafter be the attorney or attorneys-in-fact for such underwriters or inter-insurers, such instrument to be signed and sworn to by each and every of the underwriters or inter-insurers who shall then be doing business under such authority. After any Lloyds or inter-insurance association is authorized to do business in this state, pursuant to this section, it may be joined by other and additional underwriters or inter-insurers, but in that event such underwriters or inter-insurers who may thereafter join such authorized Lloyds or inter-insurance association shall be held to be bound by the documents on file with the superintendent of insurance concerning such Lloyds or inter-insurance association in the same manner as though they had personally signed the same, and the attorney or attorneys-in-fact then authorized by the underwriters of such Lloyds or inter-insurance association to act for them shall thereafter and subject to the provisions of this section be the attorney or attorneys-in-fact for such additional underwriters, and

service of a summons or other legal process on an attorney-in-fact for the underwriters of such Lloyds or inter-insurance association whose appointment is in force and so filed with the superintendent of insurance shall be equivalent to the personal service of such process on each and every of such underwriters and inter-insurers within this state. The funds required by this section to be held by any Lloyds or inter-insurance association and all other undistributed funds held by it shall be liable primarily for the payment of any losses incurred under its policies, and any judgments recovered under any such policies against the underwriters thereon may be satisfied from such funds without regard to the extent of the various underwriters' interests therein, and such funds shall not be subject to the claims of general creditors of any of the underwriters of such Lloyds or inter-insurance association, other than policyholder creditors whose claims have arisen under their policies, until all policies under which any such underwriter is obligated have been terminated, and in that event the claims of such general creditors shall not be paid from such fund or be a lien upon any part thereof beyond an amount which when paid will leave intact and in the possession of such Lloyds or inter-insurance association an amount equal to the full unearned premiums on all policies in force and in addition the sum of two hundred thousand dollars as provided herein. Any clause in any policy issued by any such Lloyds or inter-insurance association which shall contain any provision inconsistent with this section shall be void.

New. Added by L. 1911, ch. 502.

Article Ten of the New York Insurance Act.

§ 305. Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states. On and after July first, nineteen hundred and eleven, the superintendent of insurance may in his discretion issue a certificate of authority to a Lloyds or inter-insurance association domiciled in another state to do such insurance business in this state, for permission to do which application is made, and as may be authorized by the articles of association, partnership agreement or inter-insurance contract under which such Lloyds or inter-insurance association is operating, providing, however, that in no event shall authority be given to any such Lloyds or inter-insurance association to do other kinds of insurance business than those specified in sections one hundred and ten and one hundred and fifty of this chapter. The application for such certificate shall specify the kinds of business such Lloyds or inter-insurance association desires authority to transact within this state; it must be signed by the attorney or attorneys-in-fact for such Lloyds or inter-insurance association and must be filed with the superintendent of insurance together with, (a) a certificate from the insurance department of its home state that it has and maintains at all times an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on all policies in force, calculated on the gross sums, without any deduction on any account charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (b) a true copy of the articles of association, partnership agreement, or inter-insurance contract of such Lloyds or inter-insurance associa-

tion, verified by its attorney or attorneys-in-fact; (c) an agreement excuted by an attorney or attorneys-in-fact for such Lloyds or inter-insurance association in such form as the superintendent of insurance may prescribe that it will not do any business in this state which a domestic Lloyds or inter-insurance association cannot do; (d) a declaration and agreement duly executed and acknowledged by each of the underwriters of such Lloyds or inter-insurance association, appointing the superintendent of insurance the true and lawful attorney for such Lloyds or inter-insurance association and the underwriters thereof in and for this state, upon whom all legal process in any action or proceeding against the said Lloyds or inter-insurance association or the underwriters thereof may be served and that any service upon him shall be equivalent to the personal service within this state of such process on each and every of such underwriters or inter-insurers. If any such Lloyds or inter-insurance association is authorized to do business in this state, and, after such authorization, other underwriters or inter-insurers desire to join in issuing policies of insurance in this state with the underwriters or inter-insurers who have filed such declaration and agreement, they are authorized to so join upon filing similar declarations and agreements with the superintendent of insurance. The certificate of authority of any such Lloyds or inter-insurance association shall be revoked by the superintendent of insurance if at any time it appears that any underwriters or inter-insurers are issuing policies of insurance within this state, under apparent authority of such certificate without filing such declaration and agreement as aforesaid, or

if such Lloyds or inter-insurance association does not maintain at all times the funds specified in this section, or has violated its agreement, or the law, or is found to be in such a condition that the further transaction of business by it will be hazardous to its policyholders or its creditors or to the public.

New. Added by L. 1911, ch. 502.

INSURANCE LAW—SUPPLEMENT.

ARTICLE 10.

LLOYDS AND INTER-INSURERS.

§ 302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section. * * *

Every change in the underwriters, inter-insurers or attorneys-in-fact, made after the filing of the affidavit previously mentioned in this article, shall be reported to the superintendent of insurance by a written verified statement of an attorney-in-fact within twenty days after the same has been made, which affidavit shall be accompanied by an agreement, executed and duly acknowledged, and binding the new underwriter or underwriters, inter-insurer or inter-insurers to the original agreement between all the underwriters or inter-insurers required to be filed by section three hundred and one of this chapter, with regard to the service of process. *Such inter-insurers may, with the approval of the superintendent of insurance, amend their inter-insurance contract or agreement so as to include any of the*

kinds of insurance specified in sections one hundred and ten and one hundred and fifty of this chapter, provided such inter-insurers shall comply with all of the provisions of section three hundred and four of this chapter relating to assets, and the establishment and maintenance of the guaranty fund and reserves required by said section. The underwriters' liability shall not be included in the statements or reports of such persons, partnerships or associations either as an asset or a liability and any deposit made by an underwriter with any such persons, partnerships or associations, if treated as an asset in any statement or report, shall also be charged as a liability.

Amended by L. 1920, ch. 416. Amendment affected latter part of section, making new paragraph. Matter in italics (ours) new.

§ 304. General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven. * * * (g) that a fund of at least two hundred thousand dollars, *if such Lloyds or inter-insurance association intends to transact the business of either fire or ocean marine insurance, or a fund of at least four hundred thousand dollars, if such Lloyds or inter-insurance association intends to transact the business of both fire and ocean marine insurance,* has been contributed by the subscribers as a guaranty fund for policyholders and is in the possession of the attorney or attorneys-in-fact for such subscribers and is either in cash or invested in such securities as are specified in section sixteen of this chapter. Such declaration must be signed and sworn to by all of the persons,

and the proper officers of the corporations so proposing to engage in the business of insurance pursuant to this section. After such documents specified shall be filed, the superintendent of insurance shall cause an examination of such Lloyds or inter-insurance association to be made, and, if he is satisfied that all of the facts alleged in the declaration are true and that the articles of association, co-partnership agreement or inter-insurance contract is of such a character that the rights of the policyholders will be protected thereunder, he shall issue a certificate of authority for such Lloyds or inter-insurance association to do such business of insurance in this state as is specified in the declaration, which certificate shall be issued to such Lloyds or inter-insurance association, under the name chosen and approved, authorizing the underwriters or inter-insurers thereof to do the business permitted. Any such Lloyds and inter-insurance associations as may be thus authorized to do business in this state (1) shall at all times keep and maintain a fund of an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on the policies in force, calculated on the gross sums, without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars *if such Lloyds or inter-insurance association is authorized to transact the business of either fire or ocean marine insurance or the sum of four hundred thousand dollars if such Lloyds or inter-insurance association is authorized to transact the business of fire and ocean marine insurance;* (2) shall not change the name under which business is done without first

obtaining the written approval of the superintendent of insurance; * * * as provided herein, *if such Lloyds or inter-insurance association is authorized to transact the business of either fire or ocean marine insurance, or the sum of four hundred thousand dollars, as provided herein, if such Lloyds or inter-insurance association is authorized to transact the business of both fire and ocean marine insurance.* Any clause in any policy issued by any such Lloyds or inter-insurance association which shall contain any provision inconsistent with this section shall be void.

This section, in so far as it requires a guaranty fund of four hundred thousand dollars to be established and maintained by a Lloyds or inter-insurance association transacting the business of both fire and ocean marine insurance, shall not apply to any such Lloyds or inter-insurance association organized prior to April first, nineteen hundred and nineteen, but such Lloyds or inter-insurance association, upon complying with all the other provisions of this section, may continue to transact both fire and ocean marine insurance business upon maintaining a guaranty fund of two hundred thousand dollars.

Amended by L. 1919, ch. 385, in effect May 5, 1919. Amendment affected first part of section in subd. (g) and subd. (l), and last part in fourth line from end; also added paragraph at end of section. New matter in italic (ours).

§ 305. Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states. The superintendent of insurance may in his discretion issue a certificate of authority to a Lloyds or inter-insurance association

domiciled in another state to do such insurance business in this state, for permission to do which application is made, and as may be authorized by the articles of association, partnership agreement or inter-insurance contract under which such Lloyds or inter-insurance association is operating, providing, however, that in no event shall authority be given to any such Lloyds or inter-insurance association to do other kinds of insurance business than those specified in sections one hundred and ten and one hundred and fifty of this chapter. The application for such certificate shall specify the kinds of business such Lloyds or inter-insurance association desires authority to transact within this state; it must be signed by the attorney or attorneys-in-fact for such Lloyds or inter-insurance association and must be filed with the superintendent of insurance together with, (a) a certificate from the insurance department of its home state that it has and maintains at all times an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on all policies in force, calculated on the gross sums, without any deduction on any account charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars *in case such Lloyds or inter-insurance association has power under its articles of association, partnership agreement or inter-insurance contract to transact either a fire or ocean marine insurance business,* or the sum of four hundred thousand dollars *in case such Lloyds or inter-insurance association has power under its articles of association, partnership agreement or inter-insurance contract to transact both a fire and ocean marine insurance business;* (b) a true

copy of the articles of association, partnership agreement or inter-insurance contract of such Lloyds or inter-insurance association, verified by its attorney or attorneys-in-fact; (c) an agreement executed by an attorney or attorneys-in-fact for such Lloyds or inter-insurance association in such form as the superintendent of insurance may prescribe that it will not do any business in this state which a domestic Lloyds or inter-insurance association cannot do; (d) a declaration and agreement duly executed and acknowledged by each of the underwriters of such Lloyds or inter-insurance association, appointing the superintendent of insurance the true and lawful attorney for such Lloyds or inter-insurance association and the underwriters thereof in and for this state, upon whom all legal process in any action or proceeding against the said Lloyds or inter-insurance association or the underwriters thereof may be served and that any service upon him shall be equivalent to the personal service within this state of such process on each and every of such underwriters or inter-insurers. If any such Lloyds or inter-insurance association is authorized to do business in this state, and, after such authorization, other underwriters or inter-insurers desire to join in issuing policies of insurance in this state numbering five hundred or more inter-insurers, any such declaration and agreement, they are authorized to so join upon filing similar declarations and agreements with the superintendent of insurance. *In the case, however, of inter-insurance associations numbering five hundred or more inter-insurers, any such declaration and agreement may be executed by the attorney-in-fact who shall file with the superintendent of insurance a*

statement duly verified that all inter-insurers have executed a power of attorney authorizing such attorney-in-fact to execute such declaration and agreement and shall also file with the superintendent of insurance a specimen copy of the power of attorney used by such inter-insurers which authorizes such attorney-in-fact to execute such declaration and agreement, and such appointment shall be binding upon all subscribers. The superintendent of insurance may, in his discretion, require the attorney-in-fact so filing such declaration and agreement, designating and appointing the state superintendent of insurance as the person upon whom legal process may be served, to permit an inspection, by the said superintendent of the original powers of attorney from the individual subscribers authorizing the attorney-in-fact to so designate the said superintendent of insurance as the person on whom process may be served, and in a proper case he may require that the said original powers of attorney or duplicate originals thereof be produced for his inspection at any time at the office of the attorney-in-fact. The certificate of authority of any such Lloyds or inter-insurance association shall be revoked by the superintendent of insurance if at any time it appears that any underwriters or inter-insurers are issuing policies of insurance within this state, under apparent authority of such certificate without filing such declaration and agreement as aforesaid, or if such Lloyds or inter-insurance association does not maintain at all times the funds specified in this section, or has violated its agreement, or the law, or is found to be in such a condition that the further transaction of business by it will be hazardous to its policyholders or its creditors or to the public.

Article Ten of the New York Insurance Act.

Amended by L. 1919, ch. 386; L. 1920, ch. 417; in effect May 3, 1920. Matter in italics (ours) new. Omission:

"On and after July first, nineteen hundred and eleven."

§ 306. (Conversion of Lloyds or inter-insurance association into stock insurance corporation.) Any Lloyds or inter-insurance association, doing business under the provisions of article ten of this chapter, may be converted into a stock insurance corporation in the manner herein prescribed, provided that the provisions of this chapter relative to the capital stock and surplus of a domestic insurance corporation transacting the same kind of business as such Lloyds or inter-insurance association, shall apply to the corporation so organized. Upon filing in the office of the superintendent of insurance the consent in writing of each underwriter or inter-insurer in such association, to the conversion of the association into a stock insurance corporation together with a declaration and copy of the proposed charter, which shall comply in all respects with the provisions of section one hundred and ten or of section one hundred and fifty of this chapter, as the case may be, and upon filing proof of publication of notice of intention to form a corporation, made as required by the section under which they propose to become incorporated, the subscribers to such consent and declaration shall become a stock insurance corporation under the name and with the powers set forth in such declaration and charter. Such corporation may thereupon open books for subscription to its capital stock and keep the same open until the full amount specified

in the charter is subscribed. Subscriptions to the capital stock of such corporation may be made, in whole or in part, by such underwriters or inter-insurers, either in person or by their attorney-in-fact duly authorized so to do, and their subscriptions may be paid in to the extent of the surplus and guaranty fund of such association by a transfer thereof to such corporation, the rate of payment for each one hundred dollars per value of the stock of such corporation to be determined by the board of directors. The amount of such surplus and guaranty fund as of the date of such transfer shall be determined by the superintendent of insurance after an examination of the affairs of such Lloyds or inter-insurance association as hereinafter provided. Every such underwriter or inter-insurer shall be entitled in the subscription to the capital stock of such corporation over and above the amount subscribed and to be paid in as aforesaid, to a priority in subscribing thereto, for ten days after the opening of the books of subscription, in proportion to his interest in such association at the date of opening books for subscription but at the rate of payment fixed by the board of directors. At the expiration of such ten days the board of directors may sell and dispose of the capital stock which shall not have been taken or subscribed, as aforesaid, but at the same rate of payment. When the capital stock shall have been fully subscribed, the directors shall notify the superintendent of that fact, and thereupon the superintendent shall make or cause to be made an examination of the affairs of the said Lloyds or inter-insurance association, and, if he shall find that the proceedings for the change to a stock insurance corporation have been regularly

taken in conformity with this section, and that the capital stock has been fully subscribed and the amount thereof paid in, in cash, or in such securities as stock insurance corporations are entitled to hold under the provisions of this chapter for capital investments, or is held, in whole or in part, as surplus or as a guaranty fund, or both, by said Lloyds or inter-insurance association, subject to transfer to such corporation under the terms of such subscription to its capital stock, then such transfer shall be made under the supervision of the superintendent and he shall thereupon certify that such examination of the affairs of such corporation has been made, and that the proceedings have been regularly taken, the capital stock paid in, and the said corporation organized as a stock insurance corporation, and that it is authorized to transact business as a stock insurance corporation under the provisions of this chapter. Thereupon the remaining assets of such Lloyds or inter-insurance association, including underwriters' subscription notes, if any, shall be forthwith transferred to it, whereupon such Lloyds or inter-insurance association shall cease to have power to make contracts of insurance. Such corporation shall thereupon succeed to all the obligations and liabilities of such Lloyds or inter-insurance association, and shall be held liable to pay and discharge all such debts and liabilities in the same manner as if they had been incurred or contracted by it, but the underwriters or inter-insurers of such Lloyds or inter-insurance corporation, shall continue subject to all the liabilities, claims and demands which shall then exist, or which may thereafter accrue against them, or any of them, by reason of any obligations incurred by them or in their behalf, as such underwriters

or inter-insurers* before the date of such certificate. When all such last-mentioned obligations shall have been paid, discharged or terminated, and the superintendent of insurance, after an examination, shall have so certified, the said underwriters' subscription notes, or such thereof as shall not have been paid for the purpose of discharging any of the obligations of such Lloyds or inter-insurance association, shall be forthwith returned to the respective makers thereof or to their legal representatives, whereupon the powers of the attorney-in-fact shall cease and determine and thereafter the underwriters or members of such Lloyds or inter-insurance association shall have no further power to transact the business of insurance under the certificate of authority theretofore issued to them by virtue of this article as underwriters or inter-insurers in such Lloyds or inter-insurance association.

New. Added by L. 1919, ch. 381, in effect May 5, 1919.

Reciprocal Underwriter's Agreement.

AFFILIATED UNDERWRITERS
(OF NEW YORK)

UNDERWRITER'S AGREEMENT
as executed by
GREENSPAN BROTHERS CO.

Executive Office
ONE PARK AVENUE
New York City

Cancelled
List No.
Date, March 20, 1929.

* So in original.

Reciprocal Underwriter's Agreement.

AFFILIATED UNDERWRITERS

(Organized 1891)

UNDERWRITER'S AGREEMENT

WHEREAS, in the year 1891 there was established in New York City an insurance office denominated New York Fire Lloyds, and WHEREAS, in June 1922, Ernest W. Brown was appointed Attorney-in-fact for the Underwriters at said New York Fire Lloyds, and WHEREAS, in July 1922, said Underwriters in special meeting did change the denomination of said office from New York Fire Lloyds to Affiliated Underwriters, and WHEREAS, in August 1922, Ernest W. Brown Inc. was appointed Attorney-in-fact for said Underwriters, we now in order to continue the business of insurance under the title and name of Affiliated Underwriters and to facilitate the management of said office deem it expedient to adopt the amendments to the original Articles of Agreement herein contained.

NOW THEREFORE, by these presents, we, the undersigned, hereby appoint Ernest W. Brown Inc. our Attorney-in-fact to act for us in carrying out the terms of this Agreement, and to sign contracts of insurance in its name on our behalf for an amount which shall not exceed, in the aggregate, on any single risk as of this or any future date, one and one-half times the amount of one annual premium as computed for all insurance granted to us by the Underwriters at Affiliated Underwriters and in force as of such date.

The said Attorney shall, while acting in the

capacity of Attorney-in-fact for us as aforesaid, have power, for us and in our name, to insure property and any insurable interest therein against any and all lawful risks of destruction, injury, prevention or suspension of the use or occupation thereof, or other loss or damage caused by fire, lightning, windstorm, or accidental discharge of water due to breakage or leakage of sprinklers or other apparatus or fixtures installed in or on the property insured for use in extinguishing fire, and any other hazard which may be insured against by a legally authorized fire insurance organization; provided that policies covering against hazards other than those herein specified shall not be issued without further and specific authority by vote of the Advisory Committee.

Any personal pronoun used hereinafter to refer to the Attorney shall apply regardless of whether the Attorney-in-fact is a corporation, firm, or one or more individuals.

FURTHER POWERS AND DUTIES OF ATTORNEY.

FIRST: Further Powers: The Attorney-in-fact shall have power to:

(a) Make contracts of insurance subject to such terms as he shall deem proper, and collect and receive the premiums therefor.

(b) Change and modify the terms of any such contracts so issued and annul and cancel the same.

(c) Pay to each member of the Advisory Committee as fees, not exceeding one dollar yearly for each Underwriter, as hereinafter provided; and in addition the expenses of each incurred by

reason of attending meetings, not exceeding one dollar yearly for each Underwriter.

(d) Deduct from any moneys which may be received by him, before transfer thereof to us or to the Advisory Committee, his compensation as hereinafter provided.

(e) Pay our proportion of all losses sustained and of all expenses, taxes and other operating costs incurred.

(f) Enforce payment, by suit in his own name, or otherwise, of any deficiency should at any time our credit balance be or become insufficient for the payment of losses and expenses for which we may be or become liable; it is understood, however, that it shall be our duty to immediately make good any such deficiency upon request of the Attorney.

(g) Transfer his office from time to time to any other place or places in the State of New York.

(h) Adjust and settle any loss in all respects as he shall deem proper, receive proofs of loss and receive and give all notices.

(i) Defend any suit brought, or any proceedings at law or equity taken upon any contract or agreement in which we may be liable as an Underwriter, appear for us by counsel selected by him, and in our name compromise, adjust and settle any and all such suits and proceedings; and in the event of similar suits or proceedings being brought against other Underwriters upon said contract and agreement, enter into such arrangements as shall in his judgment be expedient

with a view to preventing a multiplicity of suits and costs.

(j) Accept, or appoint himself or any other person to accept, service of process in any action, suit or proceeding arising out of such contracts, agreements or other transactions.

(k) Institute, prosecute, compromise and settle any suit or other legal proceeding and do and perform, for us and in our name, every other act and thing, and execute any and all papers in relation to any transaction made by him by virtue hereof, or by direction of the Advisory Committee, which we could do or execute personally, hereby ratifying all that he may lawfully so do or cause to be done.

(l) Depute in writing any or all the powers hereby conferred upon him, at any time and from time to time, to one or more Deputies and/or Assistant Deputies nominated by him, provided that a majority of the Advisory Committee shall first approve of the person or persons nominated, and shall signify their approval by countersigning such instrument of authority. The powers of any Deputy or Assistant Deputy shall be subject to revocation by a majority of the Advisory Committee or by the Attorney at any time by notice in writing. Each Deputy and Assistant Deputy shall deliver to the Advisory Committee a bond in such form and amount as shall be approved by the Committee.

SECOND: Duties: The Attorney shall:

(m) Keep a list of all active Underwriters as of 12 o'clock noon each day, which list shall be

known as the "Record of Active Underwriters", and whenever requested send us a list of said active Underwriters.

(n) Keep a separate record in our name of all financial transactions in which we are involved in pursuance hereof, such record to contain an "Account Current" which shall include our Operating Reserve as hereinafter provided and shall show or current credit balance, if any, as of the end of each month.

(o) In January of each year render to us a statement showing a summary of collective transactions of all Underwriters for the preceding calendar year, and also a statement of our separate account made up as of the end of each such year.

(p) Reduce to writing all agreements to insure in pursuance hereof and subscribe thereto, which subscription may be by one signature of his own name as acting in the capacity of Attorney-in-fact for all of the Underwriters liable thereunder.

(q) Deliver to the Advisory Committee his bond in such form and amount as shall be approved by the Committee.

(r) Before resigning, give to the Advisory Committee at least sixty days written notice of his intention so to do.

PROVIDED ALWAYS that the power and authority given and granted hereby, and each and every liability assumed or to be assumed by us or on our behalf in any contract of insurance or otherwise, are upon these express conditions:

That our liability under all the contracts afore-

said shall not be or become by any one loss involving two or more risks more than ten times our own annual premium as hereinbefore defined and in force on the date of such loss; and

That we shall not be or become liable for any default, failure or neglect on the part of any other Underwriter in carrying out his obligations; and

That this power of attorney may be revoked at any time in accordance with the terms of this Agreement as hereinafter specified; and

It is hereby expressly stipulated that this power of attorney shall be and hereby is strictly limited to the uses contemplated by and expressed in this Agreement and no other.

ADVISORY COMMITTEE.

There shall be an Advisory Committee of seven persons each of whom shall be a person, or member of a firm, or officer of a corporation on record as an active Underwriter. The persons constituting the Advisory Committee at the time when this Agreement is executed by us shall compose the Advisory Committee until others are selected as hereinafter provided. At each annual meeting the successors of those whose terms shall expire in that year shall be elected for a term of three years. All members of the Advisory Committee shall serve until their successors are elected and qualified.

Four members of said Committee shall constitute a quorum for the transaction of business.

In case any member of said Committee or his firm or his corporation shall for any reason cease to write insurance under power of attorney as

aforesaid, he shall thereupon cease to be a member of said Committee.

Said Advisory Committee shall take into its own charge and keeping all moneys received by the Attorney for our account, after deducting and retaining the compensation to himself as herein provided, Advisory Committee fees and expenses, and any other moneys which the Advisory Committee shall direct him to retain for any purpose. Funds on deposit to the credit of, or securities held in trust by the Advisory Committee may be withdrawn or checked against only by such person or persons as the Advisory Committee shall from time to time designate. No member of the Advisory Committee shall incur any personal liability for loss of moneys or securities held in trust by said Committee, or any other loss sustained thereon, save only such loss as may occur by reason of his own wilful act or default.

The Advisory Committee shall call annual meetings, and may call special meetings of Underwriters, at any time, by mailing to the last known address of each timely notice thereof stating when and where said meetings are to be held.

FURTHER POWERS AND DUTIES OF ADVISORY COMMITTEE.

The Advisory Committee shall have full power and discretion to:

(1) Fill for the unexpired term any vacancy which may occur in the Advisory Committee.

(2) Fix the times and places of its own meetings, elect officers and committees and delegate to such committees authority to exercise any or all of its own powers.

(3) Adopt such regulations for the government of the Attorney, not inconsistent herewith, as it shall see fit.

(4) Fix the compensation of the Attorney, but it shall in no event exceed five per cent. of all income received or due as premiums or interest.

(5) At any time by a vote of not fewer than a majority of its members, after giving the Attorney written notice and an opportunity for a hearing, suspend him from his functions or remove him from the office of Attorney and terminate his powers.

(6) Fix its own fees from time to time within such limit as hereinbefore provided.

(7) Direct the Attorney in the disposal and investment of moneys and other assets.

(8) Deposit and safeguard all moneys and securities and make and change investments.

(9) Establish such special reserves, if any, as in its opinion are essential for the proper protection of policyholders, provided that only that percentage of the "earnings" of any Underwriter in any one year in excess of the average annual percentage of earnings of all Underwriters during the preceding five years, may be set aside for the purposes of such special reserves.

(10) Determine what acts, incapacity, or failure to act shall constitute a disqualification of any Underwriter to act further as such, and to adopt regulations concerning the closing or liquidation of the account of any Underwriters so disqualified.

Reciprocal Underwriter's Agreement.

General Provisions

I. No person, firm or corporation may become an Underwriter without the prior approval of a majority of the Advisory Committee.

II. No Underwriter shall be made liable as an insurer of his own property or interest therein.

III. Every Underwriter on becoming such shall take a contract or contracts of insurance. In each insurance contract issued every Underwriter whose name appears on the "Record of Active Underwriters" hereinbefore provided, as of any date on or after said contract became effective, other than the one to or through whom the contract is granted, shall underwrite for an amount which shall be that proportion of the total amount of each such contract which one annual premium on the insurance in force for such Underwriter bears to the aggregate of all such annual premiums in force for all Underwriters as of the same date; and we hereby assume our proportionate share, as aforesaid, of liability on all contracts of insurance at Affiliated Underwriters, which are in force at the time when we subscribe this Agreement.

IV. No contract shall be for a longer term than five years.

V. Every liability which the Attorney is authorized to incur for us hereunder shall in every case be several, and not jointly with any other Underwriter, but on the same or similar terms with every other Underwriter.

VI. In every contract issued there shall be inserted a clause stipulating that no Underwriter

shall be or become liable, by reason of any one loss involving two or more risks insured under contracts issued in pursuance of these presents, for more than a maximum amount of ten times one annual premium for all insurance granted to such Underwriter and then in force, and that if in consequence of such loss the aggregate of the adjusted claims against any Underwriter shall exceed such maximum amount, each of said claims shall be ratably reduced to where such aggregate shall equal such maximum amount.

VII. If the insurance granted by any Underwriter under any contract of insurance shall be cancelled because of his or its retirement during the term of said contract, such insurance may be assumed by the Attorney proportionately on behalf of the remaining Underwriters, or the aggregate amount of such contract may be reduced by the amount of such cancellation, or said contract may be cancelled and a new contract substituted therefor, provided that the aggregate amount insured by any one Underwriter upon any one risk shall not in any event be thus made to exceed the maximum hereinbefore specified.

VIII. An "Operating Reserve" shall be established as a credit item in the Account Current of each Underwriter, which in amount as of the beginning of the calendar year shall not exceed five times the current annual premium of such Underwriter. In each year, and until such time as said reserve is fully accumulated, three-fourths of the "earnings" of that year shall be set aside for the purpose of such reserve; the remaining one-fourth to be returned to such Underwriter in cash.

Reciprocal Underwriter's Agreement.

IX. Whenever our Account Current as of the end of any calendar year shows a credit balance in excess of five times our own current annual premium, such excess shall be paid to us by check of the Advisory Committee or the Attorney; provided that of the surplus reserve for guaranty fund contributed by Underwriters, a sum of not less than $200,000 shall be maintained at all times.

X. There shall be an annual meeting of Underwriters, to be held in the City of New York on the first Wednesday of February in each year, at which Underwriters may attend in person or by proxy. All questions arising thereat shall be determined by a majority of the votes of the Underwriters so attending, each Underwriter to have one vote, provided that no Underwriter who has been disqualified shall vote.

XI. It is understood that our execution of these presents recognizes and accepts such Deputies or Assistant Deputies, if any, as are qualified at the time of such execution. In the event of the decease of the Attorney or of his ceasing to act as such for any reason, such Deputy or Deputies as may then exist shall officiate with the same powers as the Attorney until such time as the Advisory Committee shall appoint a new Attorney.

XII. It is understood that all furniture, books, papers, records, stationery and other equipment used in conducting the business of Affiliated Underwriters, are and shall remain the property of the Underwriters.

XIII. We reserve the right to revoke this Agreement and the power of attorney herein con-

tained at any time upon thirty days' written notice to the Attorney; and within thirty days after receipt of such notice the Attorney shall cancel or reinsure all unexpired insurance granted by us through him; it being understood that such power, to the extent to which it shall exist as of the date of such notice, shall continue in full operation and effect until such insurances have been so cancelled or reinsured. It is further understood that our account shall not be closed until thirty days after the termination of all contracts in which we shall be concerned, and that any sum or sums to our credit shall be irrevocably pledged to the payment of all losses, expenses, or other charges against us for which we may be or become liable; and after such claims, if any, have been satisfied, the funds then remaining to our credit shall thereupon become due and payable to us. If we shall instruct the Attorney to revoke this power of attorney, or if we be adjudged disqualified as an Underwriter by the Advisory Committee, it shall be construed as equivalent to simultaneously ordering cancellation of all insurance then in force on our property.

XIV. At such time as the aforesaid Ernest W. Brown Inc. shall for any reason whatsoever cease to act as said Attorney-in-fact, the Advisory Committee shall select and appoint a new Attorney or Attorneys, and we agree that such person or persons, and his or their successors as shall be appointed from time to time by the Advisory Committee, are hereby given full authority and power to continue to act for us in carrying out the terms of this Agreement without any further action on our part; and the Advisory

Committee shall mail to us at our last known address timely notice of each and every such change made. We hereby authorize and empower the Advisory Committee, by its Chairman or other member designated by it for that purpose, to execute to such new Attorney or Attorneys in our name and on our behalf such power of attorney, designation or other instrument as may be necessary or proper to enable said new Attorney or Attorneys to act as such on our behalf with all the powers and authority herein given by us to the aforesaid Ernest W. Brown Inc.

XV. This Agreement and the power of attorney herein contained shall supersede all previous powers of attorney and Agreements, if any, executed by us at Affiliated Underwriters as now or heretofore constituted, but any and all outstanding insurance written thereunder shall continue in full force and effect as hereinbefore provided. And in consideration of the premises, we do hereby covenant and agree that we will fully and faithfully carry out, execute and perform everything to which the Attorney shall by virtue hereof bind us.

In Witness Whereof, we have hereunto set our hand and seal the 16 day of January, 1929.

Greenspan Bros. Co.
Philip Greenspan, *Sec.*

Signed, Sealed and Delivered in the Presence of:

Isidore Greenspan.

Findings and Postea.

(Filed July 31, 1930.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware, *Plaintiff*, *vs.* GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey, *Defendant*.	Action-at-law.

After the evidence in this case had been presented to the Court and jury, it was agreed that the jury be waived and that the case as to the facts as well as the law be tried and determined by the Judge without a jury, and this case was tried before Judge Daly without a jury at the Middlesex Circuit.

After hearing the evidence, and after hearing counsel for plaintiff and for defendant, orally and by briefs, the Court finds:

(1) Plaintiff and defendant made a contract dated January 6, 1928, whereby plaintiff was to install in a building occupied by the defendant as lessee at No. 224 Washington Street, Perth Amboy, New Jersey, an automatic sypho fire extinguishment equipment for which plaintiff was

likewise to furnish service, in consideration of the installation and service of which defendant was to pay a yearly rental of Eight Hundred Eighty-five ($885.00) Dollars for a period of ten years. According to the terms of the contract the rental was to be due and payable upon (a) the licensing of said equipment by the Sypho-Chemical Sprinkler Corporation, likewise a party to said agreement, or in the alternative (b) upon the date when the defendant first became entitled to an insurance rate credit by virtue of said installation and service. Plaintiff duly installed said system. Said system was duly licensed by the Sypho-Chemical Sprinkler Corporation and defendant upon such installation subsequently became entitled to a reduction of approximately fifty percent in its fire insurance rates through reciprocal insurance organizations. Defendant has made no payments to the plaintiff on account of said contract.

(2) The plaintiff did not at any time promise or represent that the installation of this Sypho fire extinguishment equipment would enable the defendant to procure insurance from the "old line" fire insurance companies at a rate premium lower than they were charging it at the time of the contract.

(3) The plaintiff did promise and represent to the defendant that if the defendant entered into the contract for the installation of this fire extinguishment equipment the installation of this equipment would immediately effect such reduction of fire hazard of the defendant's property that the defendant would be immediately able to

obtain "reciprocal insurance" at a rate premium of about fifty per cent. lower than he was paying without such equipment; that he would be able to obtain such insurance from organizations that could legally effect insurance on New Jersey property, and that in case of fire such "reciprocal insurance," so obtained, would be as good, legal and enforceable in the State of New Jersey as the kind of insurance he was then carrying,—insurance in the "old line" companies admittedly authorized to do business in the State of New Jersey. That at the time such representations and promises were made no person, firm, organization or corporation was authorized to do such "reciprocal fire insurance" business in New Jersey, and such "reciprocal insurance" was not good, legal or enforceable in the State of New Jersey. That at the time of the making of said contract the defendant believed that such false representations were true and that its belief that they were true induced and persuaded the defendant to enter into said contract and was a consideration for the entering of said contract.

(4) No person, firm, organization or corporation is authorized to do "reciprocal insurance" in New Jersey, or to enter into contracts, in or out of the State, for such "reciprocal insurance" with residents of New Jersey on property of such resident in New Jersey, that is legally enforceable in New Jersey, since such business and such insurance in New Jersey is against the law and the avowed public policy of New Jersey.

(5) Because of the illegality of the contract; because of the illegality of the consideration; be-

cause of the false representation that induced the contract the Court finds in favor of the defendant and against the plaintiff.

Dated May 17, 1930.

PETER F. DALY,
Judge.

It is hereby stipulated and agreed that the above is consented and agreed to as of form and that the same be entered *nunc pro tunc* as of May 17, 1930.

POTTER & BERRY,
Attorneys for Plaintiff.

JOHN E. TOOLAN,
Attorney for Defendant.

Notice and Grounds of Appeal.

(Filed September 3, 1930.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA, a corporation of the State of Delaware,
Plaintiff,

vs.

GREENSPAN BROTHERS COMPANY, a corporation of the State of New Jersey,
Defendant.

To the above named defendant, and/or
John E. Toolan, Esq., its attorney:

Please take notice that the plaintiff, "Automatic" Sprinkler Corporation, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the judgment entered in this cause in the New Jersey Supreme Court as of May 17, 1930, on the findings of fact and *postea of* Judge PETER F. DALY, who sat as a trier of both the law and the facts, on the following grounds:

1. That the trial court erred in finding that the plaintiff made any misrepresentation to the defendant.

2. That the trial court erred in not finding for the plaintiff and against the defendant, in that

the plaintiff had complied with the terms of its contract with the defendant, and was entitled to receive payment upon the licensing of the equipment installed without there being any reduction effected by the defendant in its insurance rate.

3. That the trial court erred in holding that reciprocal insurance is against the law and the avowed public policy of New Jersey.

4. That the trial court erred in holding that paragraph eighty-eight of the New Jersey Insurance Act is constitutional, and affects the validity, legality and enforcibility of reciprocal insurance in the State of New Jersey.

5. That the trial court erred in holding that a reciprocal insurance contract entered into outside of the State of New Jersey is illegal and unenforcible in the State of New Jersey because such reciprocal insurance is against the law and the avowed public policy of the State of New Jersey.

6. That the trial court erred in finding that reciprocal insurance contracts are in any way affected by the provisions of the New Jersey Insurance Act.

7. That the trial court erred in refusing to grant the plaintiff's motion for a directed verdict.

POTTER & BERRY,
Attorneys for the Plaintiff-Appellant, "Automatic" Sprinkler Corporation of America.

Case.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT,

December Term, 1929.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY,
Defendant.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court-house in the city of New Brunswick, New Jersey, on the seventh day of January, A. D. 1930, at 10.00 A. M.

APPEARANCES:

MESSRS. POTTER & BERRY,
RAYMOND H. BERRY, Esq. (Present),
MESSRS. MILLER & CHEVALIER (Of New York Bar),
JOSEPH H. EDGAR, Esq.,
Attorneys for the Plaintiff.

JOHN E. TOOLAN, Esq.,
Attorney for the Defendant.

(A jury being empaneled and found satisfactory, they were sworn.)

(Mr. Berry opens the case for the Plaintiff.)

(Mr. Toolan opens the case for the Defendant.)

Mr. Berry: A notice of demand for certain admissions was served on the Defendant, and certain admissions made, and I would like, at this point, in our case, to have those admissions put in the record, because they will save the time of the Court and jury, I am sure.

The Court: All right.

Mr. Berry: The Defendant admits the due execution of the contract in so far as Greenspan Brothers Company is concerned. Defendant has no knowledge respecting the execution by other parties.

Defendant admits that the signature of Isidor Greenspan to said agreement is genuine, and that said Greenspan Brothers Company, by Isidor Greenspan, duly executed the agreement, a copy of which is attached to the bill of complaint.

Defendant admits that through Ernest W. Brown, Incorporated, he obtained, through certain reciprocal exchanges, a reduction of fifty per cent. in insurance rates after the installation of Plaintiff's equipment.

Defendant admits that he has made no payment pursuant to the terms of the contract set forth in the bill of complaint.

The Court: Read me again about the reduction that he admits he obtained in insurance rates.

Mr. Berry: Defendant admits that through Ernest W. Brown, Incorporated, he obtained, through certain reciprocal exchanges, a reduction of fifty per cent. in insurance rates after the installation of Plaintiff's equipment.

The Court: What does that mean? I do not understand it.

Mr. Berry: It means that the premiums that

were usually paid for fire insurance were cut in half, through this one particular organization, and after the Plaintiff's equipment was installed in the Defendant's plant.

The Court: Does it mean that he actually consummated insurance to that effect?

Mr. Berry: They gave a binder.

The Court: I wanted to get a clear understanding, in view of Mr. Toolan's opening. He says they were not able to get any insurance at a reduced rate which insurance would have been legal in this state.

Mr. Berry: I believe Mr. Toolan attacks these organizations which give this fifty per cent. reduction. As to their legality, that is a question of law upon which we are at issue.

The Court: That is what I wanted to understand. I am not passing on it now. That means then that they admit that this insurance broker or agent, which your parties brought from New York, gave a binder for insurance at a rate fifty per cent. less than Greenspan had previously been paying, is that right?

Mr. Berry: That is correct, Your Honor.

THOMAS RIDLEY, a witness produced on behalf of the Plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. Mr. Ridley, how old are you? A. Fifty years old.

Q. Where do you live? A. Why, I live on the road all the time, for the Automatic Sprinkler Corporation.

Q. You have no fixed residence? A. No, sir. Gary, Indiana.

Q. What is your business? A. I am foreman of the Automatic Sprinkler Corporation.

Q. In what capacity do you act as foreman, what do you do as foreman? A. Construction department.

Q. How long have you had that job? A. About twelve years.

Q. How long have you been connected with the Automatic Sprinkler Corporation of America? A. Well, I have been connected with them about twelve years.

Q. What are your duties as—what did you say you were, foreman in the installation department? A. Installation department, I install sprinkler systems of various types.

Q. Is there more than one kind of sprinkler system? A. Why, there are different types; yes, sir.

Q. How many types do you install? A. I couldn't—I don't know. There are several. Wet system, a dry system, and there is the sypho system.

Q. Did you ever do any work at the plant of

the Defendant, Greenspan Brothers Company, in Perth Amboy? A. Yes, sir.

Q. When did you do this work? A. In the Fall of '28.

Mr. Toolan: We will save time—I don't want to interrupt counsel—we will admit that the Automatic Sprinkler Company did install a sprinkler system in the Greenspan Warehouse at Perth Amboy, pursuant to the contract dated January 4, 1928.

Mr. Berry: Will you likewise admit, Mr. Toolan, the nature of that, the sypho-chemical system?

Mr. Toolan: I do not know the nature of it.

The Court: Do you agree, Mr. Toolan, that the system was installed according to the technical terms of the contract, as far as the mechanical side of it was concerned?

Mr. Toolan: We are prepared to admit that it was installed, and we believe, in keeping with the contract, except as to one clause. Under their contract they were supposed to install this system, "All as pronounced standard and approved by Underwriters Laboratories," and we question whether or not it was "All standard and as approved by the Underwriters Laboratories." And we also question whether it was licensed by the licensor, after the installation.

Mr. Berry: With that in, I think I shall have this witness describe—

The Court: In view of that, that is not such an admission as would allow you to safely abandon the questioning of this witness. Go on.

Q. What did you install in the Greenspan Brothers Company plant? A. A sypho Automatic Sprinkler system.

Q. Will you describe that system to us telling us what various parts of which it consists? A. It consists of a tank six foot long, thirty inches across, cylinder shape, that holds 200 gallons, more or less, of solution.

Q. What kind of solution? A. Soda solution.

Q. Speak up loudly. A. It has an expansion chamber that contains calcium chloride water, about a foot across, two foot and a half long, sprinkler heads, pipe, fittings, and hangers.

Q. Anything more? A. Well, there is a dome on the tank that contained the acid.

Q. Do you recall how many sprinkler heads you installed in this particular job? A. 591.

Q. Was this equipment a standard equipment?

Mr. Toolan: I object.

The Court: Why?

Mr. Toolan: Because I do not know that he is qualified to say whether or not it is standard.

The Court: He has been at this business a long time, according to his testimony. You may cross-examine him on it as to whether or not he is qualified. I feel he is.

Special Cross-Examination by Mr. Toolan:

Q. How many of the so-called sypho Automatic Chemical systems have you installed in your twelve years of experience? A. Well, I can hardly say just exactly how many.

Q. Well, about how many to your best judgment? A. Thirty, I guess, anyhow. I can't say.

Q. Thirty over a period of twelve years? A. Well, the sypho chemical—I have not been installing that twelve years.

Q. I didn't hear your answer. A. I didn't install the sypho chemical for twelve years.

Q. How long have you been installing the sypho chemical system? A. Three years.

Q. Is that as long as it has been in existence? A. No, sir.

Q. How long has it been in existence? A. I don't know how long.

Q. Is there more than one sypho chemical system? A. More than one type?

Q. Yes. A. Why, I suppose there is.

Q. Not what you suppose. Do you know? A. Well, they have a new system out at present that wasn't in existence at the time this one was put in.

Q. Well, was this sypho system changing all the time? A. Not the one I installed. The only one I ever knew of. Then the new one since.

Q. You will have to keep your voice up. I can't hear you. I don't know whether the jury can.

(Question repeated by stenographic reporter.)

Q. So that there was only the one system you ever knew of during the three years that you were installing that system? A. Yes, sir.

Q. That was the one that you worked on? A. Yes, sir. Up to that period.

Q. Do you know whether any other companies had sypho systems or not? A. No, sir.

Q. You don't know? A. We are the only ones that handle them.

Q. You are the only ones that handle them? A. Yes, sir.

Mr. Toolan: That is all. I insist upon my objection.

The Court: He says he only knows about one system.

Mr. Berry: One type of system. This is the only one made, he says that no other company makes them, and that this is the only form of this particular system which this company makes that he has seen.

The Court: How does that prove that that particular system was a standard system? If he knows nothing about other systems?

Mr. Berry: I believe he testified positively there were no other.

The Court: No other systems?

Mr. Berry: Yes.

The Court: I wish you would clear that up. Go on with your questions.

Direct Examination (continued) by Mr. Berry:

Q. Do you know whether or not there was any other sypho chemical system in existence than this one? I ask you if you know? A. Another type do you mean?

Q. I ask you if you know whether or not there was any other sypho chemical system than this one? A. Not that I know.

Q. Well, do you know? A. Why, I am not certain. I don't think that there is.

Q. Well, you have been in this particular business for some time, have you not? A. Yes, sir.

Q. Have you ever seen any other? A. No, sir.

The Court: Why don't you go direct to the proof as to whether or not it was pronounced

standard and approved by the Underwriters Laboratories? That is the test.

Q. Was this equipment approved by the Underwriters Laboratories?

Mr. Toolan: I object.

A. Well, I can't say. I am not in that part.

Mr. Toolan: I have no objection to that answer.

Q. After you had installed this equipment what did you do, after the installation proper? Do you understand the question? A. Not exactly, no, sir.

Q. How did you leave the equipment? A. In working order.

Q. And in order to put it in working order what did you have to do? A. We had to charge it with chemicals and leave it in working shape.

Q. And you did that? A. Yes, sir.

Q. Do you recall when the matter was put into complete working shape? A. Fifth day of December.

Q. Did you do anything to it after that time? A. Why, yes, sir, done a little work around and cleaned up around and shipped out tools and material. That was the eleventh.

Q. Were you assisted in the installation of this by anybody else from the Automatic Sprinkler Company? A. Yes, sir.

Q. Who? A. I had a helper by the name of Hancock.

Q. Did anyone else come down to this job while you were there? A. Reilly from New York City.

Q. And what is Mr. Reilly's position with the Automatic Sprinkler Corporation? A. He is an inspector.

Q. Do you recall how many times Mr. Reilly was on the job? A. Made two trips to the job.

Q. When were they, first or last part of your work? A. The last part.

Q. Do you recall the date that he was there? A. He was there the fifth.

Q. Was that the day that you say you completed— A. Yes, sir.

Q. Put the equipment in working order? A. Yes, sir.

Q. What did he do on the fifth while you were there? What did you see him do? A. He inspected everything, put a license plate on the dome.

Q. Did you see him do that? A. Yes, sir. Seen him put the license plate on.

Q. Was he there again after that? You said Mr. Reilly, I believe, was there twice? A. Yes, sir; at two different times.

Q. Was the second time before or after that? A. I believe he was there the seventh, if I am not mistaken.

Q. That is two days later? A. Yes, sir; that is two days later.

Q. Why did he come down the second time, if you know? A. Why—

Q. Do you know? A. He was out—we made the final test on it, went over it again.

Q. Why didn't you make the final test on the fifth? A. Well, we couldn't do it.

Q. Why not? A. We just couldn't get to it all in the one day.

Thomas Ridley—Plaintiff—Cross.

Q. Then when you left would you say that that equipment was in perfect working order?

Mr. Toolan: I object to the form of the question. It is very leading.

Mr. Berry: I will withdraw the question.

Q. In what condition was the equipment when you left it? A. I had it in perfect condition.

Q. What did this equipment do in the event there was a fire? A. It automatically turned the water loose.

Q. Water? A. Chemical and turned in the fire alarm.

Q. Where did it turn in the fire alarm? A. Well, there was two bells on there, one inside and one out, went on the water motor, and the other was an electrical gong.

Cross-Examination by Mr. Toolan:

Q. How long did it take you to install this sprinkler system? A. Hardly two months.

Q. You started working there when? A. Eleventh of November, I believe,—no, it was earlier than that. I don't remember that date exactly.

Q. You don't know when you started working there? A. I don't remember the date exactly.

Q. Well, what month, can you give us that? A. October or November, I forget.

Q. Well, you say you finished on December 5? A. On December 5 I finished there.

Q. You don't know whether you started working there in October or November? A. October, I started there in October.

Q. What is the average length of time it takes to install one of these automatic sypho chemical

systems? A. There is no certain time. Different size buildings, more work in one building than there is others. No two buildings the same size.

Q. Well, would you say it took you two months on this job? A. Something like two months; yes, sir.

Q. Well, on jobs of this kind you would be able to do about six jobs a year then, is that correct? A. Yes, sir.

Q. You say that you had only been working on this system for three years? A. I didn't work on that all the time.

Q. You work on other systems? A. Yes, sir.

Q. And yet you say you installed thirty of these systems in three years? A. Well, there is some systems a good deal smaller than others. That is a large one.

Q. Can you tell us where you installed any of these other systems? A. Kentucky.

Q. What sort of a place was that? A. Well, that was in a commissary, coal mines.

Q. Coal mine commissary? A. Yes, sir.

Q. Large system or small? A. Some large and some small.

Q. I am talking about this one in Kentucky. A. There is fifteen there.

Q. In one place? A. No. Scattered in several towns.

Q. How long were you in Kentucky installing them? A. I was there about eight months.

Q. You installed fifteen of them in eight months? A. Yes, sir.

Q. Were there any of them as large as the one in the Greenspan place? A. No, sir. None of them as large as that.

Q. By whom is Mr. Reilly employed? A. Automatic Sprinkler Corporation.

Mr. Toolan: That is all.

Mr. Berry: I would like, at this time, to offer the contract in evidence, which it is admitted is signed by the defendant.

Mr. Toolan: All right.

Mr. Berry: I would like, at this time, to read this to the jury.

The Court: You had better have it marked first.

(Contract consisting of one page with one small rider entered in evidence and marked "Exhibit P-1.")

Bernard J. Reilly, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. Mr. Reilly, how old are you? A. Thirty-one.

Q. Where do you live? A. 2100 Beekman Place, Brooklyn, New York.

Q. By whom are you employed? A. By the Automatic Sprinkler Corporation of America and the Sypho Chemical Sprinkler Corporation.

Q. In what capacity are you employed by the Automatic Sprinkler Corporation of America? A. Chief inspector.

Q. In what capacity are you employed by the Sypho Chemical Sprinkler Corporation? A. Chief inspector.

Q. Are your duties similar with respect to those two corporations? A. Yes.

Q. Do you know what relation those corporations are one to the other? A. The Sypho Chemical Corporation is a subsidiary company of the Automatic Sprinkler Corporation. What are your duties as inspector for the Sypho Chemical Corporation? A. To inspect and approve new systems installed by the Automatic Sprinkler Corporation. In that manner I test the sprinkler system, the Sypho Chemical system to see that same is in operative condition, and attach a license plate to the dome cover of the sypho engine.

Q. Is that the only license plate that you attach? A. Why, we do attach ownership tags. We attach three of them throughout the building on the two-inch riser, but as we don't keep any record of where we put them, we may put them on the first floor, sometimes on the second. Wherever it is most easily seen.

Q. What is the nature of these tags that you attach? A. Why, I don't—

Q. Of what material are they made? A. Brass.

Q. How big are they? A. About four by three inches.

Q. Have you got one with you? A. Yes.

Q. You said there were two kinds of tags, a license tag and— A. That is the license tag. That is an ownership tag.

Mr. Berry: I offer these in evidence.

(Flat license plate entered in evidence and marked "Exhibit P-2.")

(Half-round license plate entered in evidence and marked "Exhibit P-3.")

Q. Did you ever inspect an installation at the property of Greenspan Brothers Company in Perth Amboy? A. I did.

Q. Do you recall when that inspection took place? A. I inspected it on the fifth of December and I suggested several changes, which were made, and I re-inspected it on the seventh of December and attached the license plate.

Q. Were they license plates similar to those you have shown there? A. Yes.

Q. Do you recall what license plates you attached? A. Why, I attached one similar to this flat one.

Q. You attached just one of those? A. One of those.

Q. Showing the witness Exhibit P-2? A. Yes.

Q. Did you attach any other? A. Three similar to the Exhibit P-3.

Q. Where did you attach the three which are similar to Exhibit P-3 in the Greenspan building? A. I remember attaching one on a two-inch riser on the top floor. The other two I don't remember just where I put them. Through the building some place.

Q. Are these easily removable? A. Yes, very easily.

Q. Into what material are these nails driven? A. Cast iron. There is a small hole drilled in the cast iron dome plate and those little brass tags are attached.

Q. In fixing these for which corporation are you acting? A. For the Sypho Chemical Sprinkler Corporation.

Q. Did these plates have different numbers or are they all the same? A. The round ones are all the same. The flat ones have different numbers.

Bernard J. Reilly—Plaintiff—Cross.

Q. Do you recall what number you affixed to the job in Perth Amboy? A. 799.

Q. How do you know that? A. Why, up in the corner of that you will find that there is a number, or a place for a number.

Q. How do you know that you attached plates 799 in the Greenspan job? A. Why, my record shows it.

Q. Have you those records here? A. Why, I believe.

Mr. Berry: There are certain papers in this matter coming down from New York on the 11:32, I have someone meeting the train now and I believe this record is among those papers.

Q. What was the last time you were in Perth Amboy on the Greenspan job? A. December 7.

Q. Who did you see there at the time? A. Thomas Ridley, the foreman in charge of the job, and a helper whose name I don't recall.

Q. What did you do on the occasion of this last visit? A. I attached the license plates and approved the system that was installed there for the Sypho Sprinkler Corporation.

Q. What was the effect of attaching these plates? A. The licensing of the system.

Q. What can you say of the condition of the equipment at the time that you finally inspected it? A. The system was in good working order.

Cross-Examination by Mr. Toolan:

Q. Are you familiar with the contract in the Greenspan case? A. No, sir.

Q. Well, is there a uniform contract used in

reference to the installation of these sypho chemical systems? A. Why, I couldn't even tell you that.

Q. Well, this contract, the one that has been introduced in evidence and marked "Exhibit P-1" provides that the system shall be installed by the Automatic Sprinkler Corporation; they are the people that installed the system, is that true? A. Yes.

Q. And then according to that contract, and it is before you there, if you want to look at it, there is no money to be paid, to be due until that system is licensed by the sypho chemical sprinkler corporation, is that correct? A. Yes, sir.

Q. And you work for both companies? A. Yes, sir.

Q. Who pays you? A. Why, my time is divided amongst them. In other words, sometimes I may spend five days for the Sypho Chemical Corporation and the rest of the time for the Automatic Sprinkler Corporation, and vice versa probably the next month.

Q. Well, on what basis are you paid, time? A. No. I am paid a salary.

Q. Well, who pays that salary? A. The Automatic Sprinkler Corporation.

Q. And you say that the Sypho Chemical Sprinkler Corporation is a subsidiary of the Automatic Sprinkler Corporation? A. Yes.

Q. And you are paid by the Automatic Sprinkler Corporation? A. But my time is charged against the Sypho Chemical Corporation.

Q. I know but you are paid by the Automatic, and these systems are no good until the Automatic, which is the subsidiary, licenses the system, is that correct? A. Yes.

Q. You are working for both corporations and you are the gentleman who goes out to put the license on? A. Yes, sir.

Q. They are pretty sure of getting a license, aren't they? A. Why, yes, providing they come up to the conditions.

Q. Well, have you ever had a case where they didn't come up to the conditions? A. Yes.

Q. What did you do about it? A. Why, we suggested changes. This particular case we had several changes to make. That was the reason for the second trip.

Q. Well, they always get a license in the end, don't they? A. Why, if they make the recommendations, yes.

Q. If who makes the recommendations? A. If they comply with the recommendations that I make.

Q. That is, if your boss, the Automatic Sprinkler Corporation, complies with the recommendations that you make to them, then you, as an employee of the Sypho Chemical Company, give the Automatic Sprinkler Corporation a license, is that right? A. Yes.

JOHN W. COVERT, a witness produced on behalf of the Plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. Mr. Covert, you signed an affidavit in this cause, did you not, for the defendant? A. I did.

Q. Will you look at this affidavit that I show you and tell me whether that is a true copy of the affidavit which you signed? A. It is.

Q. This affidavit says in the fourth paragraph, does it not, Mr. Covert, that on or about January 5, 1929, I advised Mr. Isidor Greenspan that the schedule rating office of New Jersey would allow him a reduction of only about two and one-half per cent. and would not allow a fifty per cent. reduction as Mr. Greenspan had expected and represented that he would obtain?

Mr. Toolan: I object as entirely irrelevant. If counsel has any question that he desires to ask of Mr. Covert, the witness is not an antagonistic witness, he has been put upon the stand, and I don't believe counsel should read to him some statement that he made on a previous occasion and ask him whether or not that is true, unless he has some reason for attacking the witness's credibility. It is his own witness and he is not surprised.

Mr. Berry: I am not attacking his credibility. I am simply asking him whether he filed an affidavit in the cause in which he stated a two and one-half per cent. reduction in insurance rate—

The Court: Why don't you put to him a question and then if it is not according to the affidavit you can confront him with the affidavit.

Q. Mr. Covert, do you know whether or not the schedule rating bureau of New Jersey would give Mr. Greenspan any reduction in rates by virtue of the installation of the sypho chemical system? A. Do I know now?

Q. Yes. A. I do. They will not.

Q. Did you know, at the time you made this affidavit? A. Not that they would not allow Greenspan an allowance.

Q. You stated in this affidavit that they would allow him a reduction of two and one-half per cent., did you not? A. That is right.

Mr. Berry: That is all.

Mr. Toolan: That is all.

Mr. Berry: There was taken in Chicago a deposition of a certain officer of the laboratory mentioned in the contract and I would like now to read that deposition into evidence and have Your Honor pass upon the objections that were made at the time it was taken.

Mr. Berry: I am reading to you, ladies and gentlemen, transcript of certain testimony which was taken pursuant to a stipulation between Mr. Toolan and myself, the testimony being taken before Edward E. Bartell, as special master, at 208 South LaSalle street, Chicago, Illinois, on October 7 of this year, in accordance with the law of this state.

The witness examined was named Ray W. Hendricks, and was called by the Plaintiff. The direct examination is as follows:

(Mr. Berry read the deposition.)

(Objection to testimony back to 1916.)

Mr. Toolan: I want to insist upon those objections. I think the objections are really to this, that the witness testifies to certain tests being made in 1916. Objection is made that is too remote. And the second objection is that it does not appear that the Un-

derwriters Laboratory, on behalf of whom this witness is testifying, is the Underwriters Laboratory referred to in the contract.

Mr. Berry: The question of the identity of the Underwriters Laboratory is cleared up on this page after that objection is made.

The Court: You may go on and I will subsequently pass on that.

(Mr. Berry continues reading.)

Mr. Toolan: I want to insist upon that objection.

The Court: Give me the question and answer.

Mr. Berry: (Reading page 10.)

"Question: I show you an affidavit made by you in this action on July 6, 1929, together with an affidavit of Thomas J. Ridley, also made in this action, and referred to by you in your affidavit. In Mr. Ridley's affidavit, which you corroborated in your affidavit, paragraph 4 states: 'Deponent installed in the Greenspan job a sypho chemical tank.' Now, will you point out, if you can, on this plan, the sypho chemical mixing tank referred to therein, and corroborated by you, as part of the apparatus approved?"

Mr. Berry: I submit, as far as the objection is concerned, we are not trying here to identify that, but to show it as part of the standard system.

The Court: What was his objection?

Mr. Berry: His objection was that it should be stricken on the ground that there is no means of identifying the particular

tank concerning which the witness is testifying to the one that is installed under this contract.

Mr. Toolan: I think the question objected to, and the answer which is moved to be stricken out, are clearly improper for the reason here stated, because reference is made to affidavits previously made in the cause and signed by other parties than the man who is testifying. And the further fact they endeavor to have this man out in Chicago, who had never seen the tank in the Greenspan shop, identify a picture which they show to him and ask him whether or not that is a picture similar to the one installed on the Greenspan job which, of course, he cannot do.

Mr. Berry: We asked him if that was the type that was made standard. If that was similar to the one—

The Court: As I understand the question, it is simply asking him whether the tank pictured on something that was before him was of the approved type.

Mr. Berry: That is it.

The Court: I will allow it. That does not prove, however, that the tank on the picture is the same kind of a tank as was installed in the Greenspan job.

Mr. Berry: No, Your Honor.

The Court: It simply goes to the effect, and has the effect of his testimony that the picture shows the true type of this particular kind of a tank. That is all. That is as I understand the question.

"Mr. Barbour: We object that there is no

evidence that it was approved by the Underwriters Laboratory."

The Court: Let him answer.

Mr. Toolan: I do not believe any of this is material and I want to press the objection made.

The Court: I will allow it. You may have an exception.

(Further reading by Mr. Berry.)

"I object on the ground it is incompetent, irrelevant, and immaterial."

Mr. Toolan: I will press the objection.

The Court: I will deny his motion to strike out. You may have an exception.

"Mr. Barbour: We object to that question on the same ground as the last objection."

Mr. Toolan: I want to press that objection.

The Court: I will not pass on that just now. Finish your reading.

The Court: The answer is stricken out and the objection sustained. It is his understanding. He qualifies it.

Mr. Berry: There is still more on that.

"Question: Do you know to what extent? Answer: I do not know to what extent.

"Question: You have stated that on December 19 the Underwriters Laboratories approved the sypho chemical system which you described. Do you know whether such approval has ever been revoked? Answer: I do. It has not."

Mr. Toolan: That objection we want to press, if there is any distinction. I believe there is some further testimony on it and Your Honor might pass on it later on.

The Court: Yes.

Mr. Berry: I would like to offer that testimony as it occurs in evidence. There was an original given to me and one to Mr. Toolan. My original, pursuant to the statute, I have filed in Trenton, and I have only certified copies, and I have not the exhibits which are attached, so that I would like to offer Mr. Toolan's copy which he can have returned to him.

Mr. Toolan: If counsel desires to offer this I have no objection. This is my copy and it will be here and available.

(Deposition of Ray W. Hendricks entered in evidence and marked "Exhibit P-4.")

Mr. Berry: The papers we needed before are here now and I would like to put that witness back on the stand.

Bernard J. Reilly, recalled.

Direct Examination by Mr. Berry:

Q. Mr. Reilly, when you make your inspection what do you customarily do upon returning to the office?

Mr. Toolan: I object.

Mr. Berry: I will withdraw the question.

Q. Are there any office records made by you as a result of your duties?

Mr. Toolan: I object. I believe I can anticipate counsel's purpose in calling this wit-

ness and while I cannot make objections to questions before they are asked, I think it is all objectionable. The witness has already testified that he put this license plate on. I do not know that anything he did on the outside can strengthen that. That is his testimony here under oath.

Mr. Berry: Very well. It was merely corroborative.

Q. Mr. Reilly, you testified a little while ago that you inspected the equipment at the Greenspan plant, did you not? A. I did.

Q. I show you Exhibit P-4 and direct your attention to Exhibit A, which is attached to this testimony, and in particular call your attention to page two and page three of that exhibit and I ask you to compare that with the equipment which you inspected in the Greenspan Brothers Company plant at Perth Amboy and tell us in what respect, if any, that the two equipments differed?

Mr. Toolan: I object. I do not see how that is relevant.

The Court: Has not this witness already testified that he went over this system and found that it was exactly in accordance with what is stated in the contract?

Mr. Berry: Yes. That is not the point.

The Court: What is the point of this?

Mr. Berry: In a way it is, providing you assume by the contract that it is the same as it has been approved by the Underwriters' Laboratory. I have already tied up, I believe, through the testimony of Mr. Ridley, but I wish again to have this witness, who in-

spected the equipment, identify the exhibits given by Mr. Hendricks, who, for the Underwriters Laboratory, approved the system as being identical. That is all.

The Court: I will allow it.

Q. Do you recall the question? A. No.

(Question repeated by stenographic reporter.)

A. They don't differ at all in operating principle.

Q. Did they differ in any particular? A. Yes. This here drawing shows a half-inch line inside of the two-inch pipe, and with the one at Greenspan's the half-inch line is installed outside of the two-inch pipe.

Q. Is that a material variation? A. No.

Q. Would it, in any way, affect the equipment? A. No.

Q. That you put in the Greenspan plant? A. No.

Q. From being standard? A. No.

Mr. Toolan: I object and move that answer be stricken out.

The Court: That last part "from being standard" I will strike out. He says that any change between that picture and what was installed in Greenspan's did not, in any degree affect the effectiveness of the operation, or, as he put it, the operating principle.

By the Court:

Q. Is that right? A. Yes.

Bernard J. Reilly—Plaintiff—Recalled.

By Mr. Berry:

Q. Can you tell, from that drawing,—can you tell from the diagrams there whether or not what is so diagrammed is similar to what you inspected at the Greenspan Brothers plant? A. Yes.

Q. And are they? A. Yes.

Cross-Examination by Mr. Toolan:

Q. Where is the half-inch pipe that you mentioned? A. Right inside here. This is a two-inch pipe on the outside.

Q. What is the function of that half-inch pipe running down inside of the two-inch pipe as shown on Exhibit A, page 2? A. That is a suction line, what we call a suction line.

Q. From where to where? A. From the expansion chamber through the soda syphos.

Q. What function does it perform there? A. Lowering of the solution in the expansion chamber causes a vacuum which in turn causes the acid to go into the soda.

Q. Well, in the Greenspan job is there any such half-inch pipe? A. Yes, sir.

Q. Where is it? A. Running right along on the outside of the two-inch riser.

Q. Rather than on the inside of the pipe? A. Yes, sir.

Q. What size pipes are used on the Greenspan job? A. Two-inch, one-inch, and three-quarter, and half-inch on the suction line.

Q. Is there anything that indicates that this is a half-inch pipe inside of that two-inch pipe? A. On this drawing?

Q. Yes. A. No.

Q. Why do you say it is a half-inch pipe? A.

Because I know it. I have seen several of them before.

Q. Well, you are testifying now from what you know before and not from anything that is on this drawing, is that correct? A. I have seen those drawings before.

Q. Is there anything on this drawing that indicates that is a half-inch pipe? A. No.

Q. Is there anything on this drawing that indicates the size of any of the pipes? A. No.

Q. Is there anything on this drawing that indicates the solution in the various tanks here? A. No.

Q. What size tank was on the Greenspan job? A. 200 gallons.

Q. What solutions were used? A. 120 pounds of carbonate of soda mixed with 200 gallons of water.

Q. One hundred and twenty what? A. Pounds of bicarbonate of soda.

Q. Mixed with what? A. With 200 gallons of water.

Q. Any other solution of any kind used? A. Not in the tank.

Q. Any other liquid of any kind used? A. In the dome, in lead containers, there were approximately twelve quarts, eighteen ounces of sulphuric acid.

Q. You mean eighteen ounces to a quart? A. No. Twelve quarts and eighteen ounces approximately.

Q. Any other liquid of any kind used? A. Not in the tank.

Q. Anywhere else? A. In the pipes there was calcium chloride.

Q. What do you mean by in the pipes? A. In the pipe lines in the distribution system.

Q. In other words, as I understand it, the distribution system are all the pipes shown on—well, what would be page four if it were numbered, of the exhibit here, is filled with calcium chloride? A. Yes. All these pipes.

Q. And the tank shown in the basement on page four is the chemical mixing tank? A. Yes.

Q. That is filled with sodium bicarbonate? A. Yes.

Q. And the expansion chamber shown as number five? A. Yes.

Q. On page four contains a solution of what? A. Of calcium chloride filled about two-thirds full to take care of expansion and contraction.

Q. Where is the sulphuric acid container? A. Why, in this upper part of the tank (indicating).

Q. Did I ask you what size pipes were used on the Greenspan job? A. Yes, sir.

Q. What size were they? A. Two-inch, one-inch, and three-quarter-inch. One-half inch on the suction line.

Mr. Toolan: That is all I have.

Herbert C. Cleary, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. How old are you, Mr. Cleary? A. Twenty-four.

Q. Where do you live? A. 327 Hanover, Concord, Staten Island, New York.

Q. By whom are you employed? A. The Automatic Sprinkler Corporation of America and the Sypho Chemical Sprinkler Corporation.

Q. In what capacity? A. Sprinkler inspector.

Q. Who is your superior? A. Mr. Reilly.

Q. Is that Mr. Reilly who just testified? A. Yes, sir.

Q. Did you ever do any inspecting at the plant of Greenspan Brothers Company in Perth Amboy? A. Well, I tried to make an inspection.

Q. When did you try to make that inspection? A. About April 1, 1929.

Q. Will you tell us what happened on that day? A. Well, I went into Greenspan's office and told him who I was, and the gentleman there told me to go ahead.

Mr. Toolan: I object. Until we find out who he was speaking to.

A. I was led to believe that—

Q. Just a moment, Mr. Cleary. Do you see anyone here that you saw in Mr. Greenspan's office? A. Why, no, I don't believe I do.

Q. Do you recognize anyone sitting here in the court? A. Well, that gentleman there, I believe.

Q. Did you see this gentleman while you were there (indicating)? A. I believe I saw him.

Q. Are you sure? A. I have only been there once. I guess I am sure. I know I could pick him out from the place here.

Q. Where was the office located? A. On the first floor at 226 Washington Street.

Q. What happened when you got there?

Mr. Toolan: I object. I object to the testimony because the witness, after quite sug-

gestive questioning by counsel, finally points to Mr. Greenspan and he said he guesses he is sure.

The Court: Mr. Greenspan knows. Let us shorten the time. He knows whether he was there or not. Why don't you call Mr. Greenspan to the stand? You have not identified him. This man is not certain enough.

Q. Are you certain that you were in Perth Amboy in an attempt to make an inspection at Greenspan Brothers plant? A. I am.

Q. On what date? A. On or about April 1, 1929.

Q. Are you certain that you were at Greenspan Brothers plant? A. I was there.

Q. Did you make an inspection? A. No, sir.

Q. Why didn't you? A. Because I was not allowed.

Q. When you say you were not allowed, how were you prevented? A. By Mr. Greenspan coming to me, after I was admitted to the building, and telling me practically to get out.

Cross-Examination by Mr. Toolan:

Q. Do you know whether or not it was the Mr. Greenspan seated here behind me? A. Yes.

Q. You say it is? A. It is.

Q. Why did you say a moment ago you guessed you were sure? A. Well, I was asked a question the gentleman in the office that I met, and Mr. Isidor Greenspan was not the gentleman that I met in the office.

Q. Do you know how many Greenspans there are? A. Well, I know there is, I think, three brothers.

Q. Why do you say it was Mr. Isidor Greenspan? A. Because he told me that he was Mr. Isidor Greenspan.

Q. He told you he was? A. He did.

Q. He told you you would not be permitted to make an inspection? A. Yes, sir.

Mr. Toolan: That is all.

Clarence Simpson, a witness produced on behalf of the Plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. Where do you live, Mr. Simpson? A. Maplewood, New Jersey.

Q. Your full name is what? A. Clarence Simpson.

Q. Where are you employed? A. I am employed out of the New York office of the Automatic Sprinkler Company.

Q. What is your position there? A. I am manager of the maintenance and inspection service department for the Automatic Sprinkler Company and the Sypho Chemical.

Q. Do you know how much the installation cost at the Greenspan Brothers Company place? A. Yes, sir. $4,230.83.

Mr. Berry: That is all.

Cross-Examination by Mr. Toolan:

Q. How do you know that? A. I saw a letter from our treasurer in answer to an inquiry.

Mr. Toolan: I move the testimony be stricken out.

The Court: How is that competent?

By Mr. Berry:

Q. Do you have any other records in the New York office as to the cost and maintenance, that you receive at the home office? A. No, sir.

The Court: What is the point of this kind of testimony? Is not the amount fixed in the contract?

Mr. Berry: Yes. Except on perhaps another theory of damage which we may request. We are, of course, following the doctrine—

The Court: Have you raised that in your pleadings?

Mr. Berry: Yes, your Honor, we have stated that it cost so much, just the amount testified to install.

The Court: How have you raised it in your pleadings as to whether or not it is pertinent?

Mr. Berry: We simply stated in paragraph 4 of the complaint—it is not pertinent to the theory of the action on the doctrine on which we are relying. But on any quasi contractual theory that might be followed.

The Court: How is this proof as to what it cost the company? He simply said that he saw a letter to the treasurer of the company.

Mr. Berry: From the treasurer of the company.

The Court: Well, from the treasurer of the company.

By Mr. Berry:

Q. Was that letter in reply to an inquiry on the point?

Mr. Toolan: I object.

A. Yes, sir.

The Court: We do not know how the treasurer of the company arrived at the amount that he gave this gentleman.

Mr. Berry: That is all I can offer, Your Honor.

The Court: I am afraid it is simply hearsay. In other words, if he had the treasurer himself, his mere statement as to what it cost would not be enough. He would have to show the items that went to make up the cost.

Mr. Berry: May I ask a question?

The Court: Yes.

By Mr. Berry:

Q. Do you know the prices of the various parts of the sypho chemical equipment? A. No, I don't, but I can tell you the approximate labor cost on the installation.

Q. You can tell the labor cost? A. Yes, sir.

Q. What is it?

Mr. Toolan: I object.

The Court: How does he know what the labor cost is?

Q. How do you know what the labor cost is? A. From about sixteen years' experience.

Q. How do you estimate it?

The Court: You would have to have the books of your company in order to prove what it actually cost the company. How much they paid out for labor, how much they paid out for material, about what percentage of overhead there was, and all that.

Mr. Berry: Well, I will withdraw the witness.

The Court: I am afraid this would be the veriest kind of hearsay. Besides that I do not see how, in view of your pleadings, you could look for any damages excepting damages that are fixed by the contract itself.

Mr. Berry: The only reason I offered it is in case of possible change on a quasi contractual theory.

The Court: How could you make it on the quasi contractual theory when you are suing on a specific contract?

Mr. Berry: That is true, Your Honor. That is all.

Mr. Toolan: Do I understand this testimony is stricken out?

The Court: It is stricken out, yes, as hearsay.

Mr. Berry: I have here two letters from Mr. Toolan, both of which I believe he admits, and I offer them at this time. I ask to read them to the jury.

(Copy of letter dated March 5, 1929, entered in evidence and marked "Exhibit P-5.")

(Letter dated April 23, 1929, entered in evidence and marked "Exhibit P-6.")

Mr. Berry: Plaintiff rests.

MOTION FOR NON-SUIT.

Mr. Toolan: I want, at this time, to move for a non-suit on the ground that the Plaintiff has not proven a cause of action, on the theory that the contract contemplated a reduction in insurance rates, or the licensing by the licensor, and upon the further fact that there is absolutely no proof of damage before the Court at this time. There is absolutely no proof before the Court of any reduction in insurance premiums. There is no evidence before the Court of any damage at this time.

The Court: Well, you admit in your pleadings, don't you, that you never paid them anything?

Mr. Toolan: Yes.

The Court: Of course, if there is a breach of contract on your part, which I do not say is so, but if there were, why, then the contract itself determines the amount of damages, doesn't it?

Mr. Toolan: I suppose the contract speaks for itself. Then I suppose also—

The Court: I think there are questions. I will deny your motion for a non-suit and you may have an exception.

(Adjourned until 2.00 P. M.)

AFTERNOON SESSION.

2:00 P. M.

DEFENDANT'S CASE.

GEORGE H. SPOONER, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Spooner, by whom are you employed? A. Schedule Rating Office in New Jersey.

Q. By the Schedule Rating Office in New Jersey? A. Yes, sir.

Q. How long have you been employed by the Schedule Rating Office in New Jersey? A. Since 1913.

Q. And what is your particular position with the Schedule Rating Office? A. Superintendent of the Sprinkler Risk Department.

Q. You are the superintendent of the Sprinkler Risk Department? A. Right.

Q. What are your functions and duties as the superintendent of the Sprinkler Risk Department? A. Superintendent of preparation of rates for sprinkler risk, fire insurance rates.

Q. Are you familiar with the system known as the sypho chemical sprinkler system? A. I am.

Q. Are you familiar with the installation of that particular system in the warehouse of Greenspan Brothers in Perth Amboy? A. Yes, sir.

Q. Now, as a result of the installation of that system in the Greenspan Brothers warehouse in Perth Amboy, New Jersey, was an application made for a reduction in insurance rates, or a pub-

lication of a new schedule of rates on that building? A. There was.

Q. Did the New Jersey Schedule Rating Bureau make any reduction in insurance rates as a result of the installation of that system in that building?

Mr. Berry: I object until it is shown that this man, of his own knowledge, knew these things.

The Court: Of course, I am assuming he will not testify to anything he does not know of his own knowledge. I will strike it out if it is not proven that he knows it of his own knowledge.

(Question repeated by stenographic reporter.)

By the Court:

Q. Of your own knowledge? A. No, sir.

By Mr. Toolan:

Q. That is, they did not make any reduction? A. They did not.

By the Court:

Q. How do you know? A. Because I determined it myself.

By Mr. Toolan:

Q. That is, it was your particular function and duty as superintendent of the Sprinkler Risk Department in the New Jersey Schedule Rating Bureau to determine whether or not there would be any reduction in rates? A. Yes, sir.

Q. And you determined that there would be no reduction of rates? A. Yes, sir.

George H. Spooner—Defendant—Cross.

Cross-Examination by Mr. Berry:

Q. Why did you determine that, Mr. Spooner? A. You mean why we decided there was no reduction?

Q. Did you say that? A. That is the office, myself, I decided it.

Q. Why did you decide that? A. Because it was not a complete equipment covering the risk.

Q. What wasn't a complete equipment? A. The equipment of sypho did not cover the entire premises and we didn't think it warranted any reduction. That is, I say "we", I mean myself.

Q. Is that the reason no reduction was given, that it didn't cover the complete premises? A. That and the fact that the sypho system has such a limited supply of liquid to extinguish the fire in the size of the plant.

Q. Do you know what Underwriters' Laboratories are? A. Oh, yes.

Q. Well, what is it? A. Well, it is an organization for approving fire prevention apparatus out in Chicago.

Q. Do you know whether or not it has approved the sypho chemical system? A. Well, I know from the regular reports we get from them, yes, that parts of it are all approved, yes.

Q. What parts? A. All the pieces of apparatus that make up the system.

Q. Of this particular sypho chemical system? A. Well, yes.

Q. What is the Schedule Rating Bureau? A. It is an organization run by Mr. Leon Watson for supplying insurance rates in the State of New Jersey.

Q. Does it supply insurance rates for mutual companies? A. I don't think it does now, no. It could, though, if they asked for it.

New Jersey State Library

Q. Does it supply rates for reciprocal exchanges? A. I think not.

Q. In other words, it supplies rates only for stock companies? A. And I think a few of the smaller mutuals. I am not sure about that. I don't have anything to do with that end of the business.

Q. It does supply rates for stock companies? A. Yes.

Q. The stock companies are interested in its fixation of rates? A. Oh, yes. That is, anybody who subscribes to the office is interested in the rates.

Q. Did you ever approve of a reduction for any sypho system? A. Yes.

Q. What one? A. I couldn't name you one. I thought you asked, as a general question, whether we approve of the sypho system.

Q. Do you approve of any sypho system that exists?

Mr. Toolan: I object as being too general and not relevant or pertinent to this issue. It should be confined to the particular sypho system under consideration.

Q. How many sypho systems do you know anything about? A. I think of three in New Jersey. I don't know of any others myself.

Q. Are these three different plants that have a sypho system? A. Yes.

Q. I am asking you how many types of sypho systems? A. One.

Q. Is that the one that we are now speaking about? A. Yes, sir.

Q. And that this case concerns? A. Yes.

By the Court:

Q. Is your objection to the system or to the fact that there was not enough of the system put into these particular premises? A. That and the size of the water supply for the size of the premises. That is why we objected.

Q. Did the system have anything to do with the size of the water supply? A. Well, the system calls for only two hundred gallons, sir, and that is a very small supply, we think.

The Court: Go on.

Mr. Berry: That is all.

The Court: Haven't you got anything more?

Mr. Berry: No, Your Honor.

By the Court:

Q. What I want to know from you is whether your objection is to the principle of the system? A. No.

Q. The principle you approve of? A. Yes.

Q. You say the reason why you objected then is because the system, under this particular contract—you have read this contract, have you? A. Yes, I have seen it.

Q. Didn't give an adequate supply of what? A. Well, extinguishing liquid, in this case, that solution of bicarbonate of soda.

Q. What I want to know, for the jury's benefit and my own, is whether or not that system could have proved an adequate supply? Whether it was because of the size of this particular plant that was put in there or whether it was due to some defect in the system? A. I would not call it a defect in the system. It was due to the size

of the plant and their not equipping the whole of it, that we refused.

Q. Equipping the whole of what, the buildings? A. All the buildings. They only equipped—I don't know whether you know the plant or not, the three-story buildings, and there are some connecting buildings which were not equipped, and it was all fire area, so we said "nothing doing."

Q. Then, do I understand it, that your objection was based upon the fact that all of the buildings that were included in what you regarded as one fire risk had not been equipped with the system, is that right? A. That is right.

Q. And not the fault of the principle behind the system? A. No, not the fault of the principle; no, sir.

Q. Well, as a matter of fact, if all of the building had been equipped with this system would it then have been entitled to the approval of your Schedule Rating Bureau? A. Yes, I think it would, with a small credit.

Q. Well, could it have been so equipped with this particular kind of a system as to have gotten a larger credit? A. No, sir.

Q. Why not, if the principle behind the system is right? A. Because we don't think it gives the protection that would warrant it at all.

Q. Couldn't you put enough of this particular kind of a system in a building to give you the protection that you required? A. Oh, if they increased the supply of liquid; yes, sir.

Q. Well, this fire risk then was equipped then in part and not in entirety, is that right? A. Yes, sir.

Q. All of the structures were not equipped, is that right? A. That is right.

Q. If all of the structures had been equipped, all of the structures that you regard as within the one fire risk, if they had all been equipped like the part, the part that had been equipped, would it have been adequate? A. We would have given a small credit for it.

Q. That is just why I am trying to get at why a small credit if the whole plant—— A. Perhaps I had better explain that: This system calls for just that 200-gallon tank, and we don't consider that adequate for a big area. As I understand, they don't put any larger supply in.

Q. Well, suppose, for example, so that the jury may get an understanding of this, suppose the Greenspan plant was half the size it is, would the system that was put in there be adequate? A. Not for half; no, sir.

Q. Well, for one-third? A. It might be for that; yes, sir.

Q. How many buildings are there in the Greenspan plant and what are the sizes, about? A. I don't know. I can't tell you. I know there is one three-story, and three other buildings. but I don't know the sizes.

Q. Are the three larger buildings detached from the main building? A. All attached.

Q. In what way are they attached? A. Well, they communicate with their walls, and they communicate.

Q. Their walls all meet, is that right? A. Yes. With doorways.

Q. And the walls are contiguous to one another, right up against one another? A. Yes, sir.

Q. Where was this apparatus, in the main building? A. In the three-story building.

Q. In the three-story building? A. Yes, sir.

Q. How many stories? A. Three stories and a basement, if I remember right.

Q. Was the apparatus in each one of those stories? A. Yes.

Q. Where was this boiler? A. That was in the basement.

Q. And the pipes from the boiler went from the basement up through the three floors of the three main story building, is that right? A. Yes, sir.

Q. And there were no pipes in the three detached buildings, is that right? A. Right.

Q. And your bureau regarded, in estimating a risk, the three detached buildings as part of the same risk as the three-story main building, is that right? A. Yes.

Q. And one of the reasons why you didn't approve this so as to affect a reduction of rate was because there was no piping in the so-called three separate buildings, is that right? A. Yes, sir.

Q. Was that the only reason? A. That and the limited supply of liquid there for extinguishing the fire.

Q. If there had been two boilers or three boilers instead of the one put in the main building and the other three buildings had been piped, would this system have been adequate?

Mr. Toolan: If the Court please, I don't want to interrupt, but may I say that in that connection that would not be the system approved by the Underwriters Laboratory because, in the approval of the Underwriters Laboratory, if you will read the approval, it is limited to a 200-gallon tank, and any other system would not be that system that is ap-

proved, so consequently they would be out on that ground. I think we can clear up some of this.

The Court: I know that it is not of direct probative force, but I wanted to get an understanding of the reason why they didn't approve.

Mr. Toolan: I think I can clear up some of the things the Court has in mind.

The Court: He might answer that question just as a matter of enlightenment. When it comes to summing up and charging the jury we will take care of what they are to consider as the evidence that is to determine the case.

(Question repeated by stenographic reporter.)

A. Not with two or three. It would have taken a good many of them.

Q. Taken a good many of them? A. Yes, sir.

Q. Then, as I understand you, and I almost put this question in the same way several times I think before, this system, in principle, is all right? A. Yes.

Q. If there had been such a boiler capacity as to have produced more fluid, or a fluid that would be adequate for your judgment, is that right? A. Yes, sir.

Q. If there had been a boiler put in the cellar of the main building that was adequate, and the main building had been piped in an adequate way, and there had been no piping in the other three buildings, the three smaller buildings, it would still be inadequate, so far as your fire risk is concerned, wouldn't it? A. Yes, sir.

Q. In other words, in a case of a fire in one of those three buildings, unless such a building was piped there would be no benefit from any so-called sprinkler system, would there? A. No, sir.

The Court: I do not know anything about a sprinkler system. I assume most of the jurors do not either.

By Mr. Toolan:

Q. This was a sypho chemical system, was it not? A. Yes, sir.

Q. Then there is what is known as the water sprinkler system, isn't that true? A. Yes, sir.

Q. The water sprinkler system, in so far as sprinklers are concerned, and the pipes that run through the building, is practically the same as this? A. Except for the pipe sizes.

Q. What is the size of the pipe in the water system? A. Larger.

Q. Well, a water system is connected with a city main, is it not? A. Sometimes.

Q. Well, what else might it be connected to? A. Tanks, pumps.

Q. Tanks, pumps, or city mains? A. Yes.

Q. The water sprinkler systems are approved and result in a very substantial reduction in rate, isn't that true? A. They do.

Q. Is that because you have practically an unlimited supply of water, is that one of the reasons? A. That is part of it.

Q. That is part of the reason? A. Yes.

Q. As I understand it, the reason that this system was not approved, one of the reasons, at least, was that in the event of fire,—and the testimony this morning was that there were five hun-

dred of these little sprinklers, with valves on them, that would flow out in the event of fire, that there was only 200 gallons of fluid to take care of a brick or three-story building, is that correct? A. That is correct.

Q. And, in your opinion, that was not sufficient fire protection to warrant any reduction in rate under the circumstances in this particular case? A. Yes, sir.

Mr. Toolan: That is all.

By Mr. Berry:

Q. Of course, this fluid that the chemical system produces is more effective in extinguishing the fire than water, isn't it?

Mr. Toolan: I object. I do not see how it is relevant to this issue.

The Court: Well, you asked him about the water. Now, let us understand the difference between the water system and this chemical fluid system.

Mr. Toolan: The reason I make the objection is this: that it does not make any difference, after all, what the reason is why the Jersey Schedule Rating Bureau declined to make any adjustment in rate. That is a matter that reposes entirely in their judgment, and if they refused to make any adjustment in rate, we were bound by it, and so was every insurance company practically that operates in the State of New Jersey bound by it. Consequently the reason for that conclusion of theirs makes no difference.

The Court: I do not know about that, Mr. Toolan.

Mr. Toolan: Unless it could be shown that they arbitrarily refused.

The Court: That is the point of allowing this question as to whether or not they were reasonably justified in refusing their approval. I hold without question that if they put in a system there that was reasonably adequate, according to the standards of requirements of this Bureau, and this Bureau had knowledge of that fact, and yet arbitrarily refused to put them in the special class because of the sprinkler system, that still the company had complied with furnishing a system that properly entitled them to the reduction in the rates.

Mr. Toolan: That would be true if this cause were being tried on a different issue, but the issue we are trying it on, namely, whether or not we could get a reduction in this state, of insurance rates, I don't believe it is proper.

The Court: I have not heard yet what the special representations were, if any were made, and I think, for the present, I will allow a thorough probing so the jury may have a full understanding of this sprinkler system, and of the different kinds of sprinkler systems that enter into the make-up of the judgment of this particular Bureau to fix rates.

By Mr. Berry:

Mr. Spooner, what is the principle of fire extinguishment in this chemical system? What is it that puts out the fire in a chemical system? A. It is the carbon dioxide gas and water mixed.

Q. Two hundred gallons of the fluid generated into a gas in process of discharge, is greatly increased, isn't it, that is, two hundred gallons of fluid produce a much greater quantity of gas, doesn't it? A. Somewhat, yes. I won't say much greater. Not much.

Q. When did you fix the rate or fasten the rate on the Greenspan building? A. Do you mean the refusal to change it?

Q. When did you make this rate or refuse to make a decrease in rate as you testified to? A. I think it was about last January, I think.

Q. Have you no record? A. No, I have no record of it.

Q. Do you keep no record? A. No record of that, no.

Q. You think it was in January of this year? A. No. Last year.

Q. 1929? A. 1929; yes, sir.

Q. Was that when you were first approached on the subject? A. We were asked to go down there and make a figure on rating there and that was the result.

Q. Were you asked in writing? A. That I don't remember.

Q. Who asked you? A. I have forgotten that too.

Q. Could you say yes or no if I should suggest Boynton Brothers? A. I think it was, but I would not say definitely.

Q. Of course, your rates are only binding on the companies which are your subscribers? A. That is all.

Q. There are other members in the forty-eight states of the Union that have a similar function to that which yours has, aren't there?

Mr. Toolan: I object. We are not concerned with the other forty-seven states in the Union.

Q. Do you know whether any other similar Board in any other state allows a similar reduction in the case of the sypho chemical system that is allowed to a water sprinkler system?

Mr. Toolan: I object. I don't believe that is material, what happens in any other state.

The Court: Well, it might be material on the question of whether or not, if they made a representation, that they knew it was false at the time they made it. For instance, suppose this system of theirs had been approved in other states, and they had no knowledge that there would be objections upon the part of the rate-making body in this state, and assumed they would act the same as they do in other states, where would there be a false representation?

Mr. Toolan: They have got no right to assume that. It is no concern that has a fire prevention device such as this, that does not first learn from the Schedule Rating Bureau whether or not any reduction will be allowed upon the installation of that particular system, and it was their duty, even if they made the representation ignorantly, under the decisions, if they misled Greenspan, through ignorance on some subject that they should know about, that then they are equally guilty of fraud, because the result upon Greenspan, under some of the decisions, would be just the same.

The Court: I know nothing of those deci-

sions, and I also know we are up against the first and fundamental proposition that a man is supposed to include in his written contract all that there should be in it. And why a man of intelligence did not require that any representation made as to what the effect of the system would be, was not put in the written contract, makes it a very serious question for the jury in passing on whether or not there was any representation that was seriously made outside of that written contract.

Mr. Toolan: I appreciate that.

Mr. Berry: There will be no question on our part as to whether or not we knew that the Schedule Rating Bureau would not allow a discount, as I think the testimony will disclose our position that we knew at all times that the Schedule Rating Bureau of New Jersey were not going to allow a reduction in rate.

The Court: You knew that before the contract was made?

Mr. Berry: We knew that before we made our very first negotiation and so told the defendant, as we intend to show.

The Court: That simplifies the question in this case.

Mr. Toolan: Because of counsel's statement I want to renew my objection. As long as they knew that, or say they knew it, then this question is certainly not material.

The Court: I do not know. It goes to the question of the probability or improbability of the claims that will be made upon the part of the witnesses for the defense as to just what the representations were actually made.

The trouble about it is, they have called this witness before we know what the defense is, so far as a matter of evidence is concerned. That is the only trouble about it.

Mr. Toolan: I appreciate that he was called out of turn. I wanted to release the witness to let him get away.

The Court: It might very well be, Mr. Toolan, if I heard what Mr. Greenspan, or whoever to whom the representations were made, that I would sustain your objection, but now I cannot, because I don't know what he is going to say as to what the representations were. If you want to withdraw the witness and go on first and prove just what the representations were, why, then, all right. If you want to let him get through with it, all right.

Mr. Toolan: I would rather finish with the witness.

The Court: I will allow the question in view of that. It may be that it is not relevant.

(Question repeated by stenographic reporter.)

The Court: I do not see how that is competent in any case. What is the difference what other states do?

Mr. Berry: It shows the unreasonableness of the refusal and, of course, as we are trying to show, the Schedule Rating Bureau is connected with the stock companies, and the stock companies wish to drive out reciprocal insurance, which they say is illegal in this state, and which we claim is perfectly bona fide in the way it is being conducted.

The Court: Your claim is going to be, as you said before, or your demand is going to be—

Mr. Berry: That we knew this stock company representative—

The Court: That you knew the stock companies would not allow a reduction?

Mr. Berry: That is it.

The Court: You told him the reduction would be made by other companies?

Mr. Berry: Knowing that other companies which they hoped to throw out of the state, or keep out of the state, through forms of insurance, would allow a reduction.

The Court: I will allow it over Mr. Toolan's objection. He may have an exception. Go on.

A. I don't know of any states that allow the same reductions, no.

Q. But you do know that there are states that allow reductions? A. Allow some reduction, yes.

Q. And they are by far in the majority, are they not? A. That I don't know.

Q. Did you go down to Perth Amboy to see this equipment? A. No, sir.

Q. You don't know anything about those buildings that you testified to then? A. Only from reports in the office, that is all.

Q. Do you know whether the outlying buildings were new or old? A. I don't know how old they are, no.

Q. Do you know whether they are new? A. No, I don't.

Q. Do you know when they were built? A. No.

Q. Do you know whether any were constructed since 1928, since January, 1928? A. I think not.

Q. You think not. Do you know? A. That is as far as we know the plans we have were the same then as they are now.

Q. As far as you know, but do you know? A. Not personally. I have not seen it, no.

Q. Do you know of a building down there known as the New Truskin Building? A. Not by that name, no.

Q. Do you or do you not know whether there is a new building or are new buildings constructed since 1928? A. Not definitely, no.

Mr. Berry: That is all.

Isidor Greenspan, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Greenspan, what is your connection with Greenspan Brothers, the defendant in this case? A. I am the treasurer of the company.

Q. And are you the member of the firm with whom a representative of the Automatic Sprinkler Corporation— A. Yes, sir.

Q. (Continuing)—negotiated for the installation of a sprinkler system in your property at Perth Amboy? A. Yes, sir.

Q. Will you please give us a description of the property that you occupy in Perth Amboy? A. Well, we have a three-story warehouse with a cellar, that has about 35,000 square feet.

Q. What are the dimensions of the building approximately? A. Approximately about 65 feet

wide—the width of it is about 65 feet and the length runs on an angle, and one end of it is about 140 and the other end is about 125 feet. That is the main warehouse. Then we have another building attached to it that has about 4,000 square feet.

Q. What sort of a building is that? A. That is a brick building.

Q. How many stories? A. One-story building. Then we have a garage, which is not attached to any of the buildings, that has about seven or eight thousand square feet. And since then we have built—

Q. Since when? A. Well, from the time we have negotiated the contract with the Automatic—

Q. Do you mean subsequent to January 4? A. Yes, subsequent to January 4 we built a Truskin steel building, that is a steel building which has about eight or nine thousand square feet.

Q. How did you meet with a representative of the Automatic Sprinkler Company to discuss the matter of the installation of sprinkler systems? A. Well, in the latter part of 1927 a gentleman from the Automatic Sprinkler Company came in to see me in reference to sprinkling the buildings and at the time I told him I wasn't interested because I had taken the matter up about buying a sprinkler equipment, but that the expense was pretty high, we didn't own the buildings and we didn't care to spend that much money being we only had a lease for five and one-half or six years, and to spend that much money it would not pay us. So he explained to me that they would lease us a system which would be—which would answer the purpose and we would pay a rental for it, and in that way get the benefit of a sprinkler system

and not have to buy it. So, of course, that sounded interesting, because we carry quite a large stock of merchandise, it amounts to probably about $300,000, and the insurance rates are pretty high, on a business like ours, so we discussed the matter of leasing a system.

Q. Who was this gentleman? A. Mr. Lyons. I took him through the building, that is, I explained to him, showed him the building, and we went through the entire building. He said he would send his engineers down, they would go through the entire building and see just what was necessary, and then they would tell us what the rental would be. The Automatic Sprinkler Company has always been known as a tremendous large outfit, people that have put in sprinklers all over the United States, and naturally there wasn't any question about the kind of a company that Mr. Lyons represented, and he explained to me very thoroughly that the reduction in rates, if I installed the sprinkler system, would be not less than fifty per cent. of my present insurance rate. "On the other hand, he" (meaning Mr. Lyons) "told me if we were not financially well rated, that is, if Bradstreet and Dun would rate us as a good financial concern, we pay our bills promptly, he could get a reciprocal company in New York, that there was a company by the name of Ernest W. Brown, he would investigate us, and if we were financially responsible, would take our insurance and still save us a further reduction of fifty to sixty per cent., and in other words, the insurance on the entire thing would be about twenty per cent. of what our present premium was. We carried approximately $300,000 worth of fire insurance on our merchandise alone, and it was costing us $3600 a year just for the fire rate, and

then we carry use and occupancy insurance, which protects us after a fire, while the business is at a standstill, which costs us an additional $3600 a year, practically the same as the fire insurance, making it $7200. And then we discussed the fact that the landlord—we called up the landlord of the building and he agreed to turn over the insurance—the premium that he was paying for insurance to us, and we would make the saving, whatever the saving would be, from the fact that a sprinkler system was installed, we could have that saving. In that way the saving would be quite a big amount, $7200 we were paying, and the landlord was paying probably one thousand or $1200 a year insurance, all in all we would have a saving amounting to a great deal of money, and then I told him to go ahead and have his engineers go through the building to figure out just how much the rental would be. Well, after the engineers went through the building they told me the rate would be about a $900 rate, or, I think they gave me the exact amount would be just $890, or something like that, for a year. Then I told him we had five and one-half year lease. They wanted a contract for ten years but I told them we couldn't give them a contract for ten years because we didn't think we would stay in the building for ten years, the building was too small for us. So the contract was made for five and one-half years with the understanding that we would give them, I think it was six months' notice before, to the effect we were going to move. Then after that—

Mr. Berry: I think that should be stricken out. The contract speaks for itself.

Mr. Toolan: That is true.

Q. On what basis did Mr. Lyons approach you to put in or install this sprinkler system? A. Well, it was simply—we were talking about a sprinkler system and as long as I didn't want to spend the money to buy a system, so we did the next best thing, as long as he had a proposition where he could lease us a system on a rental basis, we did the next best thing and leased the system.

Q. What character of system was it that you could only put in on a permanent basis and buy, do you know? A. Well, we had previously, we had been talking about a water system, or a dry system, which is practically the same thing.

Q. Can you lease those systems or not? A. I don't know.

Q. Well, what was the purpose of installing a sprinkler system at all? A. Well, the main purpose was to save insurance, because our insurance rates were high, and the sprinkler system would give us a tremendous saving in insurance.

Q. Who said that? A. Mr. Lyons brought it in to me very distinctly that the insurance saving would be tremendous, and I had taken it up formerly with the Grinnell Company, who are also large makers of sprinkler systems, and they told me, and every company that I took up the sprinkler system with, explained to me thoroughly that the saving would be enormous on insurance if I put a system in, because it makes a fire almost —it is almost impossible to have a fire with a sprinkler system.

Q. When did this first conversation with Mr. Lyons take place, do you know? A. Well, it was around September, 1927.

Q. Well, after your conversation with him in September of 1927, which you have just elicited

to us, what was next done? A. After the conversation, after we arranged—after it seemed agreeable to me to put a sprinkler system in on a rental basis, the next thing was for the engineers to measure out the building and see how much the rent would be, as the rent was gauged on the basis of how big a system was necessary. Then the engineers came down, measured out the building, and made out a set of plans for the entire building, and after the set of plans were figured out Mr. Lyons came to me and told me that the rate would be the amount that is in the contract.

Q. That is the amount of rent? A. That is the amount of rent.

Q. Which was $885 a year? A. That is right.

Q. What happened then? A. Well, when he told me that the rent would be $885 per year I asked him when the rent would start. He told me that the rent would start as soon as the system was approved by the Schedule Rating Office, and that I would get the reduced rates.

Mr. Berry: May I ask to have that conversation fixed?

The Court: Yes. When and where?

Q. Where did you have that conversation? A. In our office at 224 Washington street.

Q. And when? A. That was just before the contract was signed.

Q. Well, was particular reference made to the Schedule Rating Office? A. The reference was made to the Rating Bureau; in my mind it was all set that the Rating Bureau was the Bureau that fixed rates on insurance, so I don't believe we exactly said schedule rating, we said Rating

Bureau, or until the new rates would be formed.

Q. That is, your lease and your obligation under the lease would not start until the new rate was made? A. Until the new rates were formed and the reduction came through.

Q. What happened after that? A. After that, of course, the system was put in, the whole system was installed and it took—the negotiations were on for quite a while, and after the negotiations were finished and they started working on the system, the system was put in there about the end of 1928, the system was installed.

Q. In the meantime you had seen this contract and signed it, had you not, on January 4? A. I signed the contract before anything was done, naturally.

Q. Why did you sign that contract, Mr. Greenspan? A. Well, because I felt that we would get a great deal of saving in insurance, just exactly what Mr. Lyons told me we would get.

Q. Subsequent to your conversation with Mr. Lyons that you have just elicited and the installation of the system, what happened then? A. When the system was installed I called up the landlord to go through this agreement of letting me handle his fire insurance, and he said all right, he would do so. His insurance ran out on January 1, 1928, and he would let me insure the buildings for him.

Q. Just a minute before we get into 1928. In 1927 did you meet or talk with anybody about insurance as a result of anything that Mr. Lyons did? A. No, I didn't talk to anybody as far as I can remember.

Q. How about a man named Shotwell? A. Stockwell?

Q. Stockwell.

Mr. Berry: I think that is leading.

A. Mr. Lyons told me, as I explained before, that if we were financially well rated he could introduce a gentleman—he could introduce me to a firm of Ernest W. Brown, who would give me reciprocal insurance at further saving of fifty per cent. over what the insurance companies were insuring me at the present time. And he brought down a gentleman by the name of Stockwell, who represented Ernest W. Brown, and I think it was two more people, one or two more people came down to my office and we discussed the question of insurance.

Mr. Berry: May I ask to have that time fixed?

The Court: Yes.

Q. When was that, do you know?

Mr. Berry: I think the witness is consulting something. I would rather have him testify from his recollection.

By Mr. Berry:

Q. Have you a memorandum, Mr. Greenspan, there? A. Not in reference to Mr. Stockwell. I have a memorandum about the amounts.

Mr. Berry: I object to the witness referring to a piece of paper for his testimony.

The Court: Answer the question, when was it, without referring to any paper?

A. I can't exactly bring the date.

Q. Well, about when? A. The latter part of 1927.

By Mr. Toolan:

Q. Well, will this refresh your recollection?

Mr. Berry: May I see before he looks at it?
Mr. Toolan: Yes.

A. Yes, that was in September of 1927.

Q. Was the conversation you had with Mr. Stockwell in Mr. Lyons' presence? A. Mr. Lyons was present; yes, sir.

Q. Did you know Mr. Stockwell? A. No. Mr. Lyons introduced him to me.

Q. Mr. Lyons presented him to you? A. He presented him to me, yes.

Q. Where did you have that conversation? A. In our private office in Perth Amboy.

Q. What conversation did you have with Mr. Stockwell? A. To the effect that they had investigated us and found that they would be perfectly willing to take the line.

Q. Did you discuss insurance rates with Mr. Stockwell in Mr. Lyons' presence? A. Well, in general we took up the matter of rates, and the rate was—the agreement was—when Mr. Stockwell was there we took up the saving that the reciprocal companies would give us. Now, if the rate was $1.20 per hundred with the old line companies, the new system would naturally bring it down to sixty cents, and then off that the insurance with the reciprocal companies would bring it down to about twenty-five or thirty cents per hundred, with the savings and everything that go with it.

Q. That is, as I understand it, the reciprocal companies would give you a saving in addition to what other companies would give you? A. Yes.

Q. I show you this letter of September 27 and ask you whether or not you received that letter, and from whom? A. Yes. I received this letter from Ernest W. Brown and it was signed by Mr. Stockwell.

Q. Was that subsequent to your conversation with Mr. Stockwell? A. This letter was after I had a conversation with Mr. Stockwell.

Mr. Toolan: I offer it in evidence.

(Letter dated September 27, 1927, entered in evidence and marked "Exhibit D-1.")

Q. I show you another letter and ask you whether you received that letter? A. Yes.

Mr. Toolan: I want to offer that letter.

(Letter dated February 2, 1928, entered in evidence and marked "Exhibit D-2.")

(Letter dated June 25, 1928, entered in evidence and marked "Exhibit D-3.")

(Letter dated October 30, 1928, entered in evidence and marked "Exhibit D-4.")

(Letter dated October 30, 1928, entered in evidence and marked "Exhibit D-5.")

(Letter dated November 1, 1928, entered in evidence and marked "Exhibit D-6.")

(Letter dated December 11, 1928, entered in evidence and marked "Exhibit D-7.")

(Letter dated January 16, 1929, entered in evidence and marked "Exhibit D-8.")

(Letter dated January 30, 1929, entered in evidence and marked "Exhibit D-9.")

(Letter dated March 6, 1929, entered in evidence and marked "Exhibit D-10.")

Q. Now, Mr. Greenspan, how many conferences did you have with Mr. Stockwell, the gentleman who wrote all those letters? A. I had several conferences.

Q. Beginning when, about? A. Beginning in September, 1927.

Q. And when was the last conference you had with him, do you know? A. About February or March of 1929.

Q. After you got this sprinkler system installed, did you write any insurance? A. Did we write any insurance?

Q. Yes. A. Well, we wrote insurance with Boynton Brothers, that is, Boynton Brothers put a binder on the entire thing, and I also put a binder on with Ernest W. Brown for this reason: Mr. Lyons—the question came up when I took the matter up with the landlord about the insurance, he took it up with Boynton Brothers and Boynton Brothers sent a representative down to see me.

Q. Boynton Brothers are in what business? A. In the insurance business.

Q. Boynton Brothers & Company of Perth Amboy? A. That is right.

Q. All right. A. They sent a representative down to me and told me why I shouldn't try to let them get the new rate from the Schedule Rating Office, because they could get as good a rate as anybody, and if the rates were satisfactory they would like to continue the insurance of the land-

lord, and at the same time take some of my insurance, if they could—if the rate was reasonable enough. So I told them I was perfectly satisfied for them to try to get the insurance rate from the Schedule Rating Office, and they put in an application to the Schedule Rating Office who sent down a representative to examine the system, and when the representative came down he said he had never seen a system of that kind—

Mr. Berry: I object to what somebody else said.

Q. Well, anyway, as the result of that— A. As a result when the new schedule came through, there wasn't any saving whatsoever. The rate was exactly the same as it had been before the system had been put in there.

Q. Well, was that a surprise to you? A. I got in touch with Mr. Lyons and he came down to the office, and I said to him, "What was the idea of you, or your company, putting in a system into our building here that would not save us any money? You knew well enough that our entire aim of putting in a system was to save money on our insurance." Well, he told me that—

Mr. Berry: May I have that conversation fixed also?

The Court: Yes.

Q. About when was that? A. That was in the early part of January.

Q. All right. A. That the Automatic people had put their sypho system before the New Jersey Schedule Rating Office and it was only a matter of a month or so when they would approve the

system and then I would get my reduction in rates. So as long as that being the case he told me to continue to put a binder on from the Ernest W. Brown Company and that if the reduction didn't come through it would not cost me anything. So I let the Ernest W. Brown put a binder on, and Boynton Brothers agreed, at the same time, to do the same thing, if they couldn't get me a satisfactory rate, their binder would not cost me anything. In the meantime the whole question about the reciprocal companies being illegal—

Mr. Berry: I object to this.

Q. Well, did you get any information about the insurance that you had written or the binder that you had made in the reciprocal companies?

Mr. Berry: I object unless this opinion was—

Q. What was the source of your information? A. Boynton Brothers came back to me and told my company that the insurance,—that the reciprocal companies, to begin with, the landlord told me—

Mr. Berry: I do not think it is proper evidence what Boynton Brothers told Mr. Greenspan.

Mr. Toolan: Counsel asked for it himself.

Mr. Berry: I objected, just to see whether what he said would be proper or not.

Q. What information did you receive respecting the reciprocal company? A. The landlord of the building came back to me and told me he was very sorry that he couldn't let me do the insuring be-

cause his mortgagees, who held a mortgage on the building, would not stand for reciprocal insurance, because they were absolutely—it was absolutely illegal for them to do business in the State of New Jersey.

Mr. Berry: I object to what someone else told him, and I move it be stricken out.

The Court: It does not prove the fact at all. He is giving the reason why he didn't take the reciprocal insurance.

A. That they did not have an office in the State of New Jersey—

Mr. Berry: I object to this. This is purely hearsay.

The Court: Of course it is.

A. So I investigated.

Q. What did you find out as the result of your investigation? A. I investigated the whole thing and found that the reciprocal companies had no office—

Mr. Berry: I object now.

By Mr. Berry:

Q. When you say you investigated, what did you do? A. Why, I took up with my attorney.

Q. Is he the one who gave you this information? A. That was afterwards.

Mr. Berry: I object.

A. The original information was brought to me by Boynton Brothers, Mr. Bartholomew.

Q. Who are Boynton Brothers? A. They are

insurance agents in Perth Amboy and Mr. Bartholomew is a representative of theirs and he brought me the information that it was illegal for the—

Mr. Berry: I object.

The Court: Objection sustained.

By Mr. Toolan:

Q. Well, did you find out whether or not you could bring a suit against the reciprocal insurance companies in the State of New Jersey in the event you had a fire loss? A. Yes. Mr. Stockwell—

Mr. Berry: I object to that.

The Court: Objection sustained.

Mr. Toolan: I think it is absolutely relevant and material, a very material thing.

The Court: Yes, but he cannot say so. How does he know? That is not legal proof.

Mr. Toolan: We will submit legal proof on that. But I am endeavoring to put in proof to show what this man discovered subsequent to making this agreement and entering upon these negotiations. Every one of these facts, we contend it was the duty of the plaintiff in this case to disclose and make known to this man before they got him into this contract.

Mr. Berry: I think, if he will proceed with what he claims to be misrepresented, and will give the actual conversation word for word, that the Court and jury would be able to determine then, and we will be able to meet the issue. But to recall what someone else tells you—

Q. Well, may I ask you this, Mr. Greenspan, when you discovered some of these things, whom did you send for?

Mr. Berry: I object to the question.
The Court: I will allow that.

Q. Whom did you send for? A. Sir?

Q. When you discovered some of these things you have just mentioned, whom did you send for? A. I sent for Mr. Lyons.

Q. Did Mr. Lyons come to Perth Amboy? A. Yes.

Q. When was that? A. In the latter part of December and the early part of January. He came several times.

Q. Well, did you have any conversation with Mr. Lyons? A. Yes, I did.

Q. Well, will you give us your conversation with Mr. Lyons? A. I told Mr. Lyons that I couldn't understand why he had put the system into the building that he did put in, being that the system was not recognized by the Schedule Rating Bureau of New Jersey, that it didn't save me any money, that I couldn't get the landlord to put the insurance through us, and that at the same time he could have installed a water system with very little additional expense, where I could have had all these savings, and that I had taken the matter up with Boynton Brothers, and that I wanted him to come down and see Boynton Brothers and see whether he could arrange somehow or other to put a system into the building which would take care of us fully, give us the saving in insurance and still could be leased, and at the same time I explained to him the reason that I couldn't get the landlord's insurance was be-

cause he had a mortgage on the building, and the mortgagee would not stand for an insurance company insuring the building that couldn't be sued in the State of New Jersey. And so he told me it was only a matter of time, just a short period, maybe a month or so, confidentially that they had brought this system before the Schedule Rating Office in New Jersey, might take two months' time, they would recognize it, and everything would be all right, and he would go up to Boynton Brothers and discuss the matter with him.

Q. Did Mr. Lyons, at any time during the period of his negotiations with you, make known to you or say to you that the sprinkler system that he was installing in the building was not approved by the Schedule Rating Office of the State of New Jersey? A. No, sir; at no time, except toward—around January, or December, 1928, when the whole thing came up and I brought the thing to him, but at no other time did he bring the fact to me that this system was not licensed in the State of New Jersey.

Q. Did he make that known to you prior to the signing of the contract on January 4? A. No, sir. That never entered the conversation, not being recognized by the State, because I think I would not have considered putting a system in that wasn't—

The Court: We do not want his reasoning.

Q. Did he ever make known to you that without the approval of the Schedule Rating Bureau in the State of New Jersey that you could not get any reduction in insurance premium in any or-

ganization or insurance company authorized to do business in the State of New Jersey? A. No, sir. He told me that I could get a fifty per cent. reduction from the insurance company that I was insuring with at the present time.

Q. Was there ever any mention made respecting the meaning of the phrase "Underwriters Laboratory" used in the contract? A. Well, I was always under the impression—

The Court: No, you were not asked that.

Q. Did he ever say anything to you about it? A. Underwriters was brought in the conversation at different times, meaning—

The Court: Never mind what it meant.

Q. Did he ever say anything specifically as to what was meant by Underwriters? A. I don't recollect.

Q. Well, what did you have in mind when you used it, referring to the word "Underwriters"?

Mr. Berry: I object.

The Court: Objection sustained.

Mr. Toolan: I think we are entitled, under the circumstances in this case, to show what this man's state of mind was with reference to the use of a word such as "Underwriters".

The Court: I think the contract is very plain about that. "Underwriters Laboratories" as used in the contract has not anything at all to do with rates. I so interpret the contract. It only means that their approval was necessary as to the mechanical side of the system.

Q. Well, in what connection was the word "Underwriters" used by you and Mr. Lyons in your conversation? A. In reference to making the rates.

The Court: He has not told us how it was used.

Q. Well, will you tell us how it was used and what reference was made to the term "Underwriters"? A. The Underwriters would set the schedule of rates for the insurance. They would determine what the rate would be on the merchandise and the buildings.

The Court: The trouble with this claim of false representation, this man is not giving us the specific language used by the man that he claims made false representation. Of course, he cannot give the exact words, at least, it is not reasonable to expect him to give the exact words, but the substance of it, but he has not done that. Now he says Underwriters is a word that was used right along. That means nothing. Just what did he say? First he said that the expression that was used was the schedule fixing bureau. He has repeatedly said that. When was that said? When was Underwriters, or Rate Fixing Bureau used, the word Underwriters instead of the other words? We haven't that. However, go on.

Q. In the conversations you had with Mr. Lyons prior to the signing of this contract, that is, between September, 1927, and January of 1928, was any reference made to the word "Underwriters"

and can you give us the conversation and give us the date? A. Before the contract was signed?

Q. Yes. A. Before the contract was signed Mr. Lyons expressly explained to me that the system that the Automatic Sprinkler Company would install would cut my rates in half with the insurance companies that I was insuring with at the time. That alone was sufficient savings for us to install the system. Furthermore he told me that in the event that we were financially good enough for the reciprocal companies—

The Court: He is not answering your question. He has told us this several times before, what he is saying now.

Q. Was there ever any specific reference made to the word "Underwriters", or was that used in your conversation, and in what connection? A. It was used in the conversations, but in my—as far as my memory goes the word "Underwriters" was used simply on the basis of the rate making.

The Court: Do you want to strike that out?

Mr. Berry: Yes.

The Court: It is stricken out. It is not an answer to the question. He is taking his own conclusion instead of giving us the substance of any conversation of Lyons.

Q. When he said to you that you would obtain a reduction of fifty per cent. in your insurance rates, did he say to you how that would be accomplished?

Mr. Berry: I object to that question as leading.

The Court: It is simply reminding him of what he has already said.

A. As soon as the system was installed and was approved by the Underwriters we would get our reduction in rate.

Mr. Berry: I object as not answering the question.

By the Court:

Q. Why do you say Underwriters now when previously you said that it would be the rate making bureau that would fix it? A. Well, as the thing comes up it refreshes my memory.

By Mr. Toolan:

Q. Well, what, if anything—give us the conversation you had with Mr. Lyons in the latter part of December or January when you discovered that you could not get a rate reduction in the State of New Jersey? A. I wanted them to find out—wanted Mr. Lyons to go into the matter with—

Mr. Berry: I object.

Q. Give us the conversation; what did you say to him? A. I said to Mr. Lyons, "Why did you induce me to put this system in as long as it don't do us any good?

Mr. Berry: I object to conversations that are after the contract. What I believe the defense is interested in are the conversations which dealt with the inducing of this man to enter into the contract. I do not see the ma-

teriality of any conversation had after the contract was entered into unless, of course, it goes back to show what went on before.

The Court: That may be, or else they may claim it was an admission that they had made a false representation. I do not know.

Q. Will you please give me the conversation you had with Mr. Lyons in December of 1928 or January of 1929 when you discovered that you could not get any rate? What did you talk to him about? What was his conversation with you and you with him? A. Mr. Lyons came down to see me and he asked me what was the trouble. Why was all this fuss being made? I said to Mr. Lyons, "You know that we are not saving anything by having this system in."

Mr. Berry: I object to this. That is no statement of any admission.

The Court: It might be. I do not know what it will lead up to.

A. When Mr. Lyons came into the office he asked me what was all the trouble about, and why I had written him that the system wasn't satisfactory. So I explained to him that I wasn't—it don't seem that I was going to get any saving, and that the system wasn't adequate for our use—the reciprocal companies couldn't be used by us, in that way, there was no saving. At the same time he could have leased me a system that would have been satisfactory to everybody, and I wanted him to go down to the insurance company, Boynton Brothers, and figure out some way whereby this system could be taken out and an adequate system put in there.

Mr. Berry: May I ask that be stricken out?

Q. You have told us what you said to Mr. Lyons, and what did Mr. Lyons say to you then? A. Mr. Lyons told me that it was only a question of a very short period—

The Court: We have had this at least three times before.

Q. Did he say anything else? A. That he would go over to Boynton Brothers and discuss the matter with them.

The Court: We have had that three times.

Q. Is there anything else now you can tell us about your conversation with Mr. Lyons at any time, that you have not told us? A. I don't know anything else just then.

Q. Did you finally take out that system? A. Yes, sir.

Q. Did you notify the sprinkler company that you were going to do it? A. I instructed you to do so.

Q. Did you afford them an opportunity to bid on a new system? A. Yes, sir.

Q. Well, as the result of—after you took out this system, did you install a new system? A. Yes, sir.

Q. Who installed that system? A. The Globe Automatic Sprinkler Company.

Q. What sort of a system is that? A. They put in a water system.

Q. At what cost?

Mr. Berry: I object to this line of testi-

mony as incompetent, irrelevant, and immaterial.

Mr. Toolan: I think it is relevant to show that this man actually wanted a system in which would give him protection, and that the system he had in didn't give him what he wanted.

Mr. Berry: I do not think his wishes in the matter are relevant, competent, or mateiral either.

The Court: The question is What kind of a system was guaranteed him. What kind of a system did they represent he could get, not whether he could have gotten a different kind of system. The question is, in this case, whether or not they represented that he would get a different system from the one that he got, and I do not see the fact that he could get a different kind of a system has anything to do with it. He says that he was given representation that he would get a system that would reduce his insurance by one-half. And the gist of the misrepresentations is that he got a system which would not reduce his rates by one-half. That is the whole of it. In all his testimony so far he has just simply said that it was explained to him. He has not given us the substance of the conversations that he had with Lyons, and all of the correspondence that he got from the insurance people in New York, there is not a word said about insurance with old line or stock companies, nothing excepting this special kind of insurance. I do not think whether he put in a different system

has anything to do with the question involved, Mr. Toolan.

Mr. Toolan: It is on the theory that the only reason for installing any system is reduced insurance rates. They represented this man would obtain it. It is our contention he never got any reduction, because it is our contention, and we hope to be able to show to you, that the insurance they did produce was no insurance.

The Court: That would be very important. If he could not get any effective insurance in the State of New Jersey that would be very, very important. That has not been proved yet.

Mr. Toolan: We will produce proof on that.

The Court: Because it is a serious question of fact, in view of all the evidence so far, that there was any representation made to this man that he would get any other kind of insurance except this reciprocal company insurance.

Mr. Toolan: I want to introduce a letter dated March 9, 1929.

(Letter dated March 9, 1929, entered in evidence and marked "Exhibit D-11.")

Mr. Toolan: You may cross-examine.

Cross-Examination by Mr. Berry:

Q. You had other correspondence, didn't you, Mr. Greenspan, than that which Mr. Toolan has read, with Ernest W. Brown, Incorporated? A. I think I turned over my entire file to Mr. Toolan.

Q. Did you ever receive the original of that letter, showing the witness a letter dated October 6, 1928, addressed to Mr. Greenspan, by the Ernest W. Brown, Incorporated? A. The way this letter was read I am not positive. I couldn't say whether we received it or not, because I turned over the entire file to the attorney.

Q. Do you recall receiving that letter (showing the witness a letter dated January 17, 1929)? A. I couldn't say.

Q. You would not deny that you received it? A. I don't know. I might have received it and I might not. I told the girl who has charge of the correspondence file to turn over the entire file to me and I gave it to Mr. Toolan.

Q. I show you letter dated January 3, 1929, and ask you if you ever received that letter? A. This seems familiar.

Q. You did receive that? A. I think so.

Mr. Berry: Have you any objection to that?

Mr. Toolan: Not if he says he received it.

Mr. Berry: I offer in evidence a letter dated January 3, 1929, addressed to Greenspan Brothers and signed "A. P. Stockwell, division manager." This is a copy.

(Copy of letter entered in evidence and marked "Exhibit P-7.")

Q. Now, I show you a binder number 319, dated January 16, 1929, for seventy thousand, on merchandise, and ask you if you ever received the original of that? A. We received some binders; I don't know. It would be hard to tell if this is

a copy or not, but we did receive binders for insurance from the Ernest W. Brown office.

Q. Did you receive one for $70,000 in merchandise? A. I don't remember.

Q. You don't remember? A. No, sir. We did receive several binders. The exact amounts, or whether this is a copy of it I couldn't say.

Q. How many meetings did you have with Mr. Lyons of the Automatic Sprinkler Corporation? A. Do you mean before the contract was signed?

Q. All together? A. Quite a few.

Q. Did you have ten? A. I couldn't say.

Q. More than ten? A. I know there was quite a few meetings but I wouldn't say how many. It kept on going right along, you know.

Q. How many meetings with Mr. Lyons did you have prior to January 4, 1928? A. Several meetings.

Q. How many are several? A. I couldn't say. It might have been five, it might have been three, it might have been six. I keep pretty busy and I can't tell exactly.

Q. More than six? A. I don't know.

Q. Might it have been? A. I couldn't tell you.

Q. You couldn't say it would not be? A. I met him several times. I don't know just how many. It might have been three or four times, or five times, I couldn't say. He was in quite often.

Q. Where did you meet him? A. In my office.

Q. Always? A. Always.

Q. Every time you met him was in your office? A. In reference to this contract?

Q. Yes. A. Yes, always in my office.

Q. The first time you met him, or the first time you had anything to do with Mr. Lyons with

reference to negotiations for this contract, was anyone else present? A. Well, there were several people in the office, but we always talked this matter between ourselves.

Q. Who else was present at the time of this first meeting? A. The first time he ever came in?

Q. The first time he ever came in? A. I don't know how many people were in the office but Mr. Lyons just took the matter up with me. He inquired from the—

Q. Were the other people who were in the office your employes or people who came in with Mr. Lyons? A. Why, Mr. Lyons, I think, came himself.

Q. He was alone when he came the first time? A. I believe so.

Q. And he spoke to you in your office? A. Yes, sir.

Q. That, you say, was in September, 1927, or before that? A. Why, I think it was before.

Q. In August of 1927? A. No. I think it was in September. It is hard for me to remember.

Q. You don't remember very well what went on in these meetings? A. I can't remember what happened two and one-half years ago.

Q. You can't remember what happened two and one-half years ago? A. That is distinctly as to—

Q. Can you remember that you were deceived two and one-half years ago, in any way? A. Well, I remember the contract.

Q. You remember what contract? A. That was made and the conversations we had.

Q. Oh, you do remember the conversations you had. Now, what particular conversations do you remember? A. Well, the first conversation Mr.

Lyons had with me was the fact that he represented the Automatic Sprinkler Company.

Q. That was in August of 1927? A. Either in August or the early part of September.

Q. August or early part of September, 1927. And that was held in your office? A. Yes, sir.

Q. And you and he were alone so far as the conversation was concerned. Now, what did he say to you and what did you say to him on that occasion? A. That he was a representative of the Automatic Sprinkler Company and wanted to know if I was interested in a sprinkler system. I told him at the time that I didn't think I was because I had gone into the matter of sprinklers and found they were too expensive to buy a sprinkler system, on account of the fact we didn't own the building, we just leased the building, and I wouldn't be interested. So Mr. Lyons told me he had a different proposition, he would lease—his company would lease a system to us.

Q. That was because you were not the owners of the building? A. That is right. That his company would lease a sprinkler system to us that would give us the benefit of reduced rates and still would not have to buy the system. And then when the lease ran out they would take the system out and we would have the benefit of it. So that sounded quite interesting as we were desirous of saving some insurance.

Q. What did you say to him regardless of how interested you were? A. Well, I told him if the rental would not be too high, and the saving of insurance—

Q. Did you discuss the saving of insurance? A. Oh, yes.

Q. Did Mr. Lyons say anything to you about

it? A. Well, you see, a sprinkler system is put in mainly to save insurance and give you protection. That is the main reason for a sprinkler system. And when Mr. Lyons spoke sprinkler system it automatically meant a reduction in rates.

Q. Now, isn't it true that Mr. Lyons, in that first meeting, told you that he could effect a saving in insurance for you, providing you would be interested in taking some reciprocal insurance, and on that meeting he suggested that he bring down someone who could explain reciprocal insurance? A. Reciprocal insurance wasn't mentioned at the first meeting.

Q. Wasn't it suggested that Mr. Lyons bring down Mr. Stockwell to talk the matter over with you? A. That was at the next meeting.

Q. When was the next meeting? A. The next meeting was a little later, I don't know just how far apart they were exactly. At the second meeting Mr. Stockwell—Mr. Lyons—

Q. Was he there alone again? A. Yes, he was there alone again. Told me that he could, besides the savings that we could get from the old line companies, if we were financially in financial position whereby the reciprocal companies, that worked with the Automatic Sprinkler Company, would accept our risk, he could still give us a further reduction which would bring our rate down almost to nothing.

Q. Can you repeat his words? A. Yes. To my best recollection was besides getting fifty per cent. cut in rates, which we would get by insuring with the reciprocal companies, it would bring it down to twenty or twenty-five per cent., and that he would bring down a gentleman from

Ernest W. Brown's office that could explain it much better to me—so that I would understand it much better than he could explain it to me, providing the people that were the managers for—that is, were the managers for the reciprocal companies would accept our risk.

Q. You had two meetings then alone with Mr. Lyons and then this second meeting you decided to go into reciprocal insurance, didn't you? A. That is, we didn't decide to go into reciprocal insurance, because Mr. Stockwell hadn't come down.

Q. You decided to look into it? A. We decided to look into it.

Q. So you had the third meeting then in September, 1927? A. No. First off—oh, yes, we had a meeting, I think then Mr. Lyons brought Mr. Stockwell down with another representative of the—

Q. Someone else was there? A. Someone else of the Ernest W. Brown office.

Q. There were three people present that came down to your office the next time? A. That is right.

Q. And you talked with Mr. Stockwell, Mr. Lyons, and a third person, is that right? A. That is right.

Q. Would you recognize that third person if you saw him? A. No. I only saw him once and I don't think I could recognize him.

Mr. Berry: Mr. Johnson, stand up. Do you recognize that gentleman as the third person who was down?

A. I can't recognize him because I only spoke to

him in the office about a half hour, and that was over two years ago.

Q. You don't remember very well what went on two years ago? A. There was the third person there. If you meet a person once in two or three years it is hard to recognize them.

Q. Do you remember conversation better than faces? A. Well, I naturally would remember a conversation better than I would a face.

Q. Do you recall the conversation that the three of you had? A. Somewhat. I recall a conversation fairly well.

Q. Who did most of the talking? A. Mr. Stockwell did quite a lot of talking.

Q. What did he talk about? A. Well, about the reciprocal insurance.

Q. What did he say? A. The benefits that reciprocal insurance could cause. That reciprocal insurance would be very saving and that reciprocal insurance was a low cost, and that they were very particular as to what accounts they gave reciprocal insurance to.

Q. Did he explain to you the kind of people that took reciprocal insurance? A. He gave me a list of a great many names.

Q. Did you see Bamberger on that list, and Hahne? A. Yes, I did.

Q. And the Wheatena Company? A. And the Wheatena Company.

Q. You understood it was a perfectly respectable form of insurance? A. Well, as far as I could see, the way they explained it to me it was very good insurance.

Q. Isn't it true that you promised at that time to investigate and look into this and write some of the subscribers? A. Well, the entire thing,

in my mind, always went through my mind the fact that the Automatic Sprinkler Company when they—

(Question repeated by stenographic reporter.)

A. Yes, I did.

Q. Did you do that? A. I didn't.

Q. Did you subsequently tell anybody that you had? A. Sir?

Q. Did you subsequently tell anybody that you had? A. Several times Mr. Lyons asked me if I had written and I told him I hadn't done it yet but I intended to.

ADJOURNED UNTIL TOMORROW, WEDNESDAY, JANUARY 8, at 10.00 A. M.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1929.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY,
Defendant.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury,

at the Middlesex County Court House, in the City of New Brunswick, New Jersey, on the eighth day of January, A. D. 1930, at 10:00 A. M.

APPEARANCES:

MESSRS. POTTER & BERRY,
RAYMOND H. BERRY ESQ. (Present),
MESSRS. MILLER & CHEVALIER (of New York Bar),
JOSEPH H. EDGAR, ESQ.,
Attorneys for the Plaintiff;

JOHN E. TOOLAN, ESQ.,
Attorney for the Defendant.

ISIDOR GREENSPAN resumed the stand and testified as follows:

Cross-examination (continued) *by Mr. Berry:*

Q. To resume where we left off yesterday, Mr. Greenspan, I believe you testified, did you not, that you saw Mr. Lyons approximately six times in the course of these negotiations? A. Do you mean from the time he started until he got through?

Q. Yes. A. I think so.

Q. You said you saw him the first time in August of 1927? A. That was the first time, either the latter part of August or the early part of September, I don't know the exact date.

Q. And then again in September early you saw him? A. In September.

Q. And then you saw him just before September 27 in your office in Perth Amboy? A. Yes, sir.

Q. And at that last meeting did you say there were certain people present besides Mr. Lyons and yourself? A. Not the last meeting. There was one meeting—

Q. I mean this third meeting we are talking about. A. Well, I don't know whether the third or fourth meeting, when he brought these gentlemen in from the reciprocal company, he brought Mr. Stockwell and one more gentleman from the Ernest W. Brown office.

Q. You don't recall exactly whether there were two or three meetings before the meeting when all were present? A. Oh, there were several meetings because Mr. Lyons first off he came in and broached the proposition and then he came again, and the building had to be measured up for the pipes to see what the rental fee would be, and then after that was all settled then he brought Mr. Stockwell and this other gentleman.

Q. That made it about the third meeting. Can you definitely tell us whether that meeting, when they were all there, was the third or fourth meeting? A. Mr. Lyons came in to sell me this system, or lease it to me, and there were quite a good many negotiations and I can't exactly say how many times he was up to see me before we settled on it.

Q. You received a letter which is in evidence, you received this letter, you testified yesterday, did you not, showing the witness Exhibit D-1? A. Yes, I received this letter.

Q. So that letter was written to you before or after this meeting in which Mr. Lyons, Mr. Stock-

well, and Mr. Johnson were at your office? A. You see, when these gentlemen were at my office—

Q. Please answer the question. A. I don't know.

Q. Read the first paragraph of that letter, please. A. "As agreed during my call on September 23, I am writing to confirm the essentials of my statements in reference to this form of insurance and also to outline a proposition for your fire insurance that will indicate to you how our operating methods work out in practice."

Q. That is enough. Who wrote that? A. Mr. Stockwell wrote this letter.

Q. Is Mr. Stockwell the man Mr. Lyons or Mr. Johnson brought to see you from the reciprocal insurance company? A. Yes. Mr. Stockwell came out ahead of the—I think he came out one time before the general meeting when we had the three—the four of us together.

Q. Mr. Stockwell came out ahead of the gentlemen? A. I am not quite positive whether the first meeting of the reciprocal people was—Mr. Stockwell was there the first time or whether Mr. Stockwell was there once before that.

Q. Do you see what I mean? Why was it that the reciprocal people came to you at all? A. Mr. Lyons, at the time he sold me the idea of sprinkler system, told me that if I would put this sprinkler system in, and if I did not desire to insure with the old—with the stock companies that I was insuring with at the present time, and we were financially well rated, that he could insure with the reciprocal companies.

Q. Who told you that? A. And after he would bring our name to the reciprocal companies, and

they would find that we were the proper people to do business—that is, that they were satisfied to do business with us, then he would bring them down and they would explain the whole situation to me about reciprocal insurance.

Q. They said they would bring him down? A. He would bring them down, he would bring the reciprocal people down.

Q. In other words, the reciprocal people were to be produced through Mr. Lyons and the Automatic office? A. Through Mr. Lyons and the Automatic office.

Q. Are you positively sure, in view of that, that the reciprocal man, Mr. Stockwell, came to you alone before this meeting? A. That I am not positive. He either came before the general meeting or with Mr. Johnson and Mr. Lyons.

Q. One or the other of those two things? A. Yes.

Q. He either came alone or with somebody? A. I am not exactly sure whether he came ahead of the general meeting, when we had the five of us—four of us together, or whether at one time he came with Mr. Lyons ahead of that or not. I am not just positive what was the first meeting.

Q. Well, will you fix that general meeting that you did have? A. You see, at the general meeting when we got through I asked Mr. Stockwell to write me a letter, put everything in writing as to what took place at the meeting, and there is a letter here.

Q. Will you pick out the letter which he wrote after the general meeting? After the witness's assistance I would ask him to look at the letter dated September 27, and ask him whether there is anything in that other than a general setting forth

of what reciprocal insurance is and what it will do? A. That is all it is, just a general outline.

Q. In other words, that is the letter, isn't it, that you received from him, telling you what reciprocal insurance was, and what it would do? A. I think it is. That is right, too, this is the letter.

Q. In its first paragraph he says he is referring to the meeting had in your office? A. That is exactly what happened. I asked him to do that.

Q. When did you see Mr. Lyons next after that general meeting? A. I don't recollect just now. He was down in—

Q. That makes at least three and possibly four times you had seen Mr. Lyons? A. Yes, sir.

Q. That was all up to September, 1927, is that right? A. Up to about October, 1927.

Q. That would be three and possibly four times you had seen him? A. Yes.

Q. You said you had seen him about six times in all. When did you see him next? A. Well, he came on and off, because he brought me a sketch of the buildings and a sketch of the piping, the way he could go into the building, a question of drawing a blue print and so forth. He was there quite often.

Q. Was he there when you signed the contract? A. Yes. He brought the contract to me.

Q. And when did he bring the contract to you? A. When we agreed on the terms.

Q. Was it on the date of the contract? A. Well, I couldn't be positive about that.

Q. Well, you know the date of the contract, of course, that speaks for itself? A. Yes.

Q. The contract which is in evidence was made on January 4, 1928? A. I probably signed it that day or the day after.

Q. That would make five times you had seen him, wouldn't it? Now, when was the other time that you saw him? A. Well, do you mean after the contract was signed?

Q. Did you see him before the contract was signed at any time other than those three in September, or August and September, and the time the contract was signed? When else, before you signed that contract, did you see Mr. Lyons? A. Well, it is hard to place just when I saw him. There was no definite time.

Q. You can't specify any particular time? A. No, I can't specify.

Q. Did Mr. Lyons deceive you in any way on the occasion of the first meeting that you had with him in August or September of 1927? A. Well, he told me that I would get a fifty per cent. duction in insurance.

Q. Simply answer me yes or no. A. Yes.

Q. In what particular, and give me the express words that Mr. Lyons used to you on the occasion of the first meeting which you claim to be deceptive? A. He told me if I would put a sprinkler system that he would lease to us from the Automatic Sprinkler Company, that I could insure with the same companies that I was insuring at the time that I had insurance, and save fifty per cent. of my premium that I was paying at that time.

Q. In other words, he made a promise to you, which you say was subsequently not fulfilled, but he did not make any misrepresentation to you of any presently existing fact, did he? A. Well, I didn't get any saving at all.

Q. Well, what I am saying is he didn't tell you any particular thing in that meeting that was

not true at the time, did he? A. He told me that I could get a fifty per cent. reduction in my insurance.

Q. In the future? A. As soon as the system was approved by the Underwriters.

Q. He said that that would occur in the future? A. As soon as the system was approved.

Q. In the future? A. Yes. Then my saving would take place.

Q. That is all. Did he say anything that deceived you on the occasion of the next meeting that he had with you prior to this general meeting which took place before the twenty-seventh of September, 1927? A. Well, we went over the same thing again in reference to—

Q. Did he use the same words? A. In reference to saving of insurance. Well, at that time he told me not only would I save fifty per cent. by insuring with the old line stock companies, but if I would take reciprocal insurance I would have still a further—a greater reduction than even with the fire insurance companies.

Q. Now, I call your attention again to the fact that is a promise, isn't it?

> Mr. Toolan: Now, if the Court please, I appreciate what counsel is doing and I think the questions are clearly improper. Let counsel not put the words of the cases in the witness's mouth, but let him ask the witness questions and let the witness answer them.

Q. Now, on the occasion that the three people were present, Mr. Stockwell, Mr. Johnson, and Mr. Lyons, in your office, sometime immediately prior to September 27, 1927, do you recall the

conversation which took place at that time? A. I recall some of it.

Q. Who did the talking there? A. Well, Mr. Stockwell did quite a good deal of talking.

Q. Do you recall what he said to you? A. I asked him questions about insurance, how they saved their money, how they saved their clients' insurance, and he explained to me that they used preferred risks; that they only insured people they thought well off, and whatever savings they had they divided among the stockholders. I asked him to explain to me the entire system of reciprocal insurance and he did.

Q. Mr. Stockwell did most of the talking, didn't he? A. He did some of the talking and Mr. Johnson did some of it, too.

Q. Did Mr. Lyons do any of the talking? A. Mr. Lyons didn't do much of the talking. After he introduced—

Q. Just a moment.

(Question repeated by stenographic reporter.)

A. After he introduced me to these gentlemen, why, he didn't do much of the talking.

Q. Mr. Johnson did some talking though? A. Yes.

Q. What did Mr. Johnson say? A. Just explained in a general way what reciprocal insurance was.

Q. Mr. Johnson also explained what reciprocal insurance was? A. That is, what my savings would be if I took on the reciprocal insurance.

Q. Nothing of a deceptive nature was said to you at that meeting, was there? A. Not that I know of.

Q. That was all in September of 1927? After that the months of October, November, and December went by and then in January of the ensuing year you signed a contract, is that correct? You can read and write, can you not, Mr. Greenspan. A. Certainly.

Q. Did you read that contract before you signed it? A. Why, I believe I did.

Q. Don't you know? A. Yes, I read it.

Q. You sign contracts frequently in your business, don't you? Is it your custom to sign contracts without reading them? A. I usually read the contracts. I have—when I sign a contract with a reputable company I am sorry to say I don't always read them, because I know that the companies would not hand me a contract that is going to try to put anything over on me.

Q. Did you read this contract? A. To the best of my recollection I did.

Q. Your best recollection is that you did. And you know that in accordance with the terms of this contract there is absolutely nothing mentioned about the Schedule Rating Bureau, don't you? A. I don't think there is.

Q. Well, look at it. Is there? A. No, I don't believe there is, if you say there isn't. The main thing that I was interested in, when I read this contract, was the paragraph where it says that there would be a saving of insurance to me. That was always uppermost in my mind when I signed the contract.

Q. You got a saving in insurance, didn't you? A. No, sir, I did not.

Q. Didn't you have binders with the reciprocal organization? A. I couldn't keep them. I didn't use them.

Q. I am not asking you whether you could keep them or not. I am asking you if you didn't have them. A. I had them at no cost at all.

Q. But if you had kept them would you not and had you not been guaranteed not only a saving of fifty per cent. but greater? A. Well, if I had no insurance at all I wouldn't have to pay any premium.

Q. Answer the question, please. What rate had the reciprocal organizations agreed to give you, or what reduction of rate had they agreed to give you? A. About seventy per cent. over my rate that I had.

Q. A saving of seventy per cent. What ever became of this equipment of the Automatic Sprinkler Corporation that was installed? A. It was installed, was it not? A. Yes, sir.

Q. What became of it? A. We had it all packed up.

Q. Has it been removed from where it was installed? A. Yes, sir.

Q. When was it removed? A. Why, it was removed the early part of 1929, that is, I don't remember, May or—April or May of 1927.

Q. Who removed it? A. We hired a plumber to remove it.

Q. What plumber? A. I think it was Therkelson & Son, plumbers from Perth Amboy.

Q. To remove this equipment? A. Yes, sir.

Q. What is the exact name of the plumber that removed it? A. Therkelson is the man's name. I don't know his first initial. I could look it up in the telephone book.

Q. Are you sure of the time that it was removed? A. Not exactly. It was removed during the early part of last year.

Q. In your talk in September when these three persons were present in your office, Mr. Stockwell, Mr. Johnson, and Mr. Lyons, was any mention made of any people who were insured by reciprocal organizations? A. Yes.

Q. Who made mention of that? A. Why, both Mr. Stockwell and Mr. Johnson. They gave me a list, a printed list of the names of people that were insured in the reciprocal companies.

Q. Do you recall any of the names of the people who were insured by reciprocal organizations? A. Yes, they had quite a list of names.

Q. Who were they? A. There was General Cigar, and some department stores in New York. There was, at that time, Bamberger of Newark. I can't recall. I know there was quite—

Q. Do you recall Wheatena? A. Wheatena was on there.

Q. Do you recall Hahne? A. No, I don't remember.

Q. Did you have any conversation with reference to the limited contingency liability that you would assume if you undertook this form of insurance? A. I don't know whether we brought that up or not.

Q. What do you understand by reciprocal insurance? A. Well, I understood by reciprocal insurance that was an insurance company that picked out preferred risks and therefore by doing so they would be able to save money to the insurers.

Q. You understood that if you accepted a reciprocal form of insurance that you were going to be liable also as an insurer, didn't you? That feature was explained to you? A. I think it was, yes.

Q. And you objected to it, didn't you? A. I

did, and they explained to me that it was hardly possible for it to occur.

Q. They explained to you also in this letter, didn't they, on September 27? A. That is right.

Q. They said that while there is a limited contingent liability fee of ten dollars this is of practically no importance whatever as our reserves are so widely distributed it is inconceivable that enough of them could be involved in any conflagration to exhaust the reserves that would be necessary before the contingent liability fee would be called into effect, is that right? A. Yes.

Q. Where was the tank of the sypho chemical system in your building? A. It was on the top floor.

Q. You heard the inspector yesterday testify something about a tank in the cellar. There was no tank in the cellar, was there? A. I don't think so.

Q. You built a new building, did you not? A. Yes, sir.

Q. When was your new Truskin building completed? A. Why, I think it was completed toward the end of 1928, around November or December of 1928.

Q. About a year after you entered into the contract, is that so? A. Yes, about nine or ten months.

Q. This correspondence which you have read here, or put in evidence, that you received from the reciprocal insurance companies, makes certain recommendations, does it not? A. Yes.

Q. With respect to limiting the fire area? A. Yes, sir.

Q. Do you recall what those recommendations were? A. They told us to build fire doors between the buildings and block up the windows.

Q. Did that limit the fire area? A. Well, it would not affect the main building in any way. As far as the main building was concerned where the sprinkler was in, that had nothing to do with the other buildings. The only saving I would get would be of the new building.

Q. Yes, but I am calling your attention to this, Mr. Greenspan, that you did block off, following the recommendations, these new buildings? A. No, we didn't block off. We didn't follow their recommendations.

Q. You didn't follow their recommendations? A. No, sir.

Q. Didn't you put in certain fire doors? A. No, sir, we did not.

Q. You just said you did, didn't you? A. I didn't say we put them in. You asked me if we got recommendations and I said, "Yes, we did receive recommendations, but we didn't follow the recommendations because when we found we couldn't use the sprinkler system, so it was no use following up the recommendations of the reciprocal people."

Q. You had a fire, didn't you? A. We had a small fire in the back platform.

Q. That was while the sprinkler system was still in, wasn't it? A. Yes, sir.

Q. And the sprinkler system put out the fire? A. No, sir.

Q. Did it function at all? A. It didn't touch the sprinkler system. The fire started from a freight car on the outside and just burned the platform and the outer door. Some kids set fire to a freight car and that set fire to the outer door, and the sprinkler didn't go on the platforms.

Q. During the three or four months from the

time when you say that these fraudulent statements were made to you which induced you to enter into this contract, and the time when you actually entered into the contract, did you make any investigation of any sort? A. No, sir, I did not.

Q. How many buildings have you? A. We have four buildings.

Q. How many of those are used as a warehouse? A. Three.

Q. How many of the three that are used as a warehouse were in existence at the time that you entered into the contract on January 4, 1928? A. How many buildings were in existence that we used for a warehouse?

Q. Yes. A. Two.

Q. And for how many of these two did you contract to have sypho chemical system installed? A. For the main warehouse.

Q. For the one, is that right? A. Now, I am not really positive whether we put it in the second building or not. I didn't pay much attention to it. To my best knowledge, I believe it was only put in the big warehouse, but it might have gone into what we call a barn, like a brick barn, and I am not so sure whether the sprinkler went in that second building or not.

Q. You had had people come to you prior to your negotiations with the Automatic Sprinkler Corporation to interest you in sprinklers, hadn't you? A. Yes, sir.

Q. You had had the proposition presented before. You hadn't accepted them before because of the cost and because you were not the owner of the building? A. That is right.

Q. You told Mr. Lyons that when he first went to see you, didn't you? A. That is true.

Q. And because you were not the owner of the building and because you could get a form of sprinkler protection which you would not have to pay for, something which would benefit the owner and not yourself, you became interested in this lease arrangement, isn't that so? A. You say the owner? How is that again? I didn't understand that question.

Q. Because of the fact that you were not the owner of the building, and because of the fact that you would get here certain sprinkler advantages which would not entail an expense which would benefit the owner of the building, you were interested in the lease arrangement, were you not? A. Yes.

Q. Later on when the Truskin building was equipped you took this matter up with your landlord, didn't you? A. In reference to the sprinkler system?

Q. In reference to the sprinkler system. A. Well, you see the landlord would also get a saving.

Q. Answer me yes or no. A. I took up with the landlord before that year.

Q. When did you first take it up? A. Before I signed the contract with the sprinkler company.

Q. Before you signed the contract with the sprinkler company? A. Certainly.

Q. What did you say to them then? A. You see, I told the landlord that being that he would get a saving in insurance by the fact that the sprinkler was being installed in the building that it is only fair to him to let me do the insuring of his building and I should gain the advantage of the saving, and he was perfectly willing.

Q. Who did his insuring, do you know? A. Boynton Brothers, insurance people in Perth Amboy.

Q. Who had done your insuring before? A. Jacobson & Goldfarb.

Q. At the time the new Truskin building was erected did you endeavor to have an extension of the sypho chemical system? A. Why, I talked to Mr. Lyons about that, that is, I took it up with Mr. Lyons and Mr. Stockwell.

Q. And subsequently didn't you find that the landlord insisted upon the other forms of insurance and would not accept the reciprocal insurance? A. He would not accept reciprocal insurance as soon as he found out that they were not legal to do business in the State of New Jersey.

Q. So it was his objection and not any objection that you particularly had? A. Why, certainly.

Q. That caused the rupture between yourself and the Automatic Sprinkler Corporation? A. It was our objection also because we couldn't insure with a company that in case of fire we had to sue in some other state. If we had a fire and we couldn't come to an agreement and we had to go to court we couldn't sue them in the State of New Jersey.

Q. When did you learn that you couldn't sue in the State of New Jersey? A. Well, when this matter was brought to my attention I took it up with Mr. Stockwell and he told me it was a fact. Mr. Stockwell himself.

Q. When did you first learn it? A. Why, it was around—I wasn't really positive, around December, 1928, but I kept questioning and I wasn't entirely positive until about March or April of 1929.

Q. You were not positive about what until March, 1929? A. About the illegality of the Ernest W. Brown insuring in the State of New Jersey. Also about the sprinkler—

Q. Are you sure of it now? A. I am quite sure, yes.

Q. Are you aware that there are any number of insurance coverages in the State of New Jersey in reciprocal insurance at this time?

Mr. Toolan: I object.

The Court: I will allow it.

A. You asked me what?

Q. I am asking you if you are aware that at the present time that there is any number of coverages from reciprocal insurance on property in New Jersey at the present time? A. I am not sure about that.

Q. You are not sure of it? A. I don't know whether it is or not.

Q. Are you sure that it is not so? A. No, I don't know whether there is or not.

Q. In fact, you don't know anything about reciprocal insurance, isn't that so? A. Reciprocal? A. Yes. A. I never went into it until the time it was brought to me by the Ernest W. Brown Company.

Q. Isn't it true that this whole matter came to your attention through the insurance brokers of your landlord, who was insisting that those brokers handle the insurance rather than that it be given to a reciprocal organization? A. He wasn't insisting on any brokers. All he wanted was to insure with companies that were allowed to do business in the State of New Jersey. That

is all. He wasn't particular as to who was doing the insuring.

Q. Isn't it true that you had a conversation on March 9, 1929, with Mr. Lyons of the Automatic Sprinkler Corporation of America in which you told him that he was perfectly right, that you were stuck on the contract, but that Boynton Brothers had said they wanted to handle the insurance and said they would see you through on it? A. I had a conversation with Mr. Lyons in the—

Q. Answer me, isn't it true that that was said? A. I don't know whether these were the exact words.

Q. Did you say words to that effect? A. Well, I could tell you what I said if you will let me.

Q. Please do. A. I told Mr. Lyons that he stuck me with a system that was of no value to us, that we couldn't get any saving of insurance, and I would like to find some way that his company could install a system that would be of proper use to us and in that way straighten things out.

Q. Isn't it true that you stated to Mr. Lyons that you knew you would have to pay, under the contract, but Boynton Brothers had told you that they would give the Automatic a run for their money so that you had turned the matter over to them on March the ninth? A. No. There was no such statement made by me.

Q. I show you a copy of a letter dated December 18, 1928, addressed to Greenspan Brothers Company and signed "A. P. Stockwell" in type, and ask you if you received that letter? A. Yes.

Mr. Berry: I offer that in evidence.

(Letter entered in evidence and marked "Exhibit P-8.")

(Letter read to the jury by Mr. Berry.)

Q. You received that letter in due course, it was written on the eighteenth, and in it it specifically takes up the question of suit out of the State, does it not? A. Yes, sir.

Q. Yet subsequent to that you had considerable communication with the reciprocal insurance companies, did you not? A. Mr. Lyons came to see me—

Q. Just answer me yes or no, you had considerable communication not with Mr. Lyons but with the reciprocal insurance company, didn't you? A. Yes, sir.

Q. And it was after that they sent you these binders which you held for a period of time? A. Well, I can explain the reason for that.

Q. It is true, though, isn't it? A. It is true.

Q. And you likewise signed one subscriber's agreement after that, did you not? A. Yes, sir.

Q. And it wasn't until March of 1929 that you, in any way, attempted to interrupt the relations which you had established with the reciprocal insurance companies? A. Yes.

Q. Or with the reciprocal insurance organizations? A. That is right.

Re-direct Examination by Mr. Toolan:

Q. Why did you hold the binder? You say you can explain that? A. Mr. Lyons told me that the—

Q. Mr. Lyons? A. Mr. Lyons came to see me and told me that the sypho chemical system was before the insurance rating bureau, it was only

a matter of a couple of months when they would recognize it, as had been done in a great many other states, and I should accept the binders, it would not cost me anything, and if it didn't go through I could cancel them, and if it did go through I had the insurance and I didn't have to pay anything to the reciprocal companies for the binders.

Q. Have you ever paid anything to the reciprocal companies? A. No, sir. Never. I never received a bill or anything.

Q. Had there ever been any discussion prior to this letter of December 18 which is a copy and which you say you received, had you ever been advised prior to that time by Mr. Stockwell or anybody else, that the reciprocal companies were not licensed to do business in the State of New Jersey? A. When Mr. Stockwell came to see me a few days before that letter, that is, when we discussed—that was the first time we ever discussed the matter of the reciprocal companies not being allowed to do business in the State of New Jersey.

Q. Was that about the time you had learned it through Boynton Brothers & Company? A. Yes, sir.

Q. When you removed this Automatic or sypho chemical system, did you install any other system? A. Yes, sir.

Q. A sprinkler system? A. Yes, sir.

Mr. Toolan: That is all I have of the witness.

Mr. Berry: That is all.

Walter J. Snedeker—Defendant—Direct.

WALTER J. SNEDEKER, a witness produced on behalf of the Defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Snedeker, do you hold any official position with the State of New Jersey? A. I do.

Q. What is your position? A. I am chief of the license division of the Bureau of Insurance of the Department of Banking and Insurance of the State of New Jersey.

Q. In other words, you are an employe of the State? A. I am.

Q. Your particular department in the Department of Insurance, of the Department of Banking and Insurance is respecting the licensing of insurance companies? A. Insurance companies, agents, and brokers.

Q. Under the law of the State of New Jersey, are insurance companies, brokers, and agents required to be licensed in order to do business in the State?

Mr. Berry: We will save Mr. Toolan time, we will admit that they are not licensed. We will further admit that there is no law in the State of New Jersey which would permit any such license to be issued to a reciprocal organization.

Mr. Toolan: Will you also admit that Ernest W. Brown, Incorporated, who solicited this insurance, are not licensed to solicit insurance in the State of New Jersey?

Mr. Berry: Yes, we will admit that.

Mr. Toolan: As I understand counsel's admissions, they admit that there is no law

in the State of New Jersey under which any reciprocal company can be licensed, that the reciprocal companies particularly mentioned in the communications of Ernest W. Brown, and through whom they endeavored to write insurance for Greenspan Brothers & Company, are not licensed in the State of New Jersey, and that Ernest W. Brown, Incorporated, who solicited this insurance—

Mr. Berry: We do not admit solicitation of the insurance.

Mr. Toolan: If they do not admit solicitation—

The Court: Go on with your witness. It will be quicker.

Q. Mr. Snedeker, have you the records of your department indicating what insurance companies are and what insurance companies are not licensed in the State of New Jersey? A. I have the records that show the companies that are authorized to do business in this state.

Q. Can you tell us whether or not there is any insurance company known as the Individual Underwriters licensed to do business in this State? A. Individual Underwriters, is that the name?

Q. Yes. A. Under the laws of what state are they incorporated, because there may be another one of a similar name?

Mr. Berry: I might say, Your Honor, that they are not incorporated.

A. They are not authorized.

Q. Will you look up the Metropolitan Inter-Insurers? A. Under the laws of what state are they incorporated?

Mr. Berry: Likewise we will say they are not incorporated.

A. They are not admitted.

Q. And Affiliated Underwriters? A. Under the laws of what state are they incorporated?

Mr. Berry: The same.

Mr. Toolan: They are not incorporated, I understand.

A. They are not admitted.

Q. Can you tell me whether or not the firm of Ernest W. Brown, Incorporated, are licensed to solicit insurance in the State of New Jersey? A. They are not.

Q. Mr. Snedeker, can you tell us what sort or type of insurance is conducted by reciprocal insurance companies?

Mr. Berry: I object unless the witness is qualified.

A. I am not qualified.

The Court: He says he is not qualified.

Mr. Toolan: That is about all I have with the witness.

Mr. Berry: No cross-examination.

JOHN COVERT, recalled.

Direct Examination by Mr. Toolan:

Q. Mr. Covert, by whom are you employed? A. Boynton Brothers & Company, Perth Amboy.

John W. Covert—Plaintiff—Recalled.

Q. What is their business? A. Engaged in the insurance, real estate, and mortgage business.

Q. How long have they been engaged in that business? A. Under the present title about sixteen years. As a partnership as long as thirty years.

Q. Do they do a substantial business or not? A. They are the third largest insurance agency in the State of New Jersey.

Q. How long have you been engaged in the insurance business yourself? A. For fourteen years.

Q. How long with Boynton Brothers & Company? A. For the past four years.

Q. Do you specialize in any particular line of insurance? A. Fire insurance entirely.

Q. Has your entire fourteen years of experience been devoted exclusively to fire insurance? A. Nine years of it to fire, five years of it to marine.

Q. Are you familiar with the operation of stock, mutual and reciprocal companies, Mr. Covert? A. I am.

Q. What is the method of operation of reciprocal companies? A. It is an inter-insurers exchange.

Q. Will you please explain to the jury just what you mean by that? A. Briefly, a group of individuals will get together,—this is reciprocal now that I am describing, not a mutual; a group of individuals will get together and give to one a power of attorney to enter into contracts of insurance with other individuals. That power of attorney not only enables the man in the power to effect the insurance on the individual's property, but to extend his operations throughout the

country, and effect insurance on other individuals' property subject, of course, to the same conditions. Nevertheless the individual in the exchange gives to that man unlimited power to effect insurance, on which he is obligated.

Q. That is, is there a contingent liability on the part of every subscriber to that agreement? A. There is, in the contract, what is sold as a limited contingent liability. That is to say, in the normal agreement you will say you are limited to five times, or six times, or ten times your annual premium. Nevertheless, Supreme Court decisions handed down show that to be valueless, that the actual liability is unlimited.

Mr. Berry: I object to this testimony.

The Court: Yes. Any expression of opinion as to the law is stricken out.

Q. Mr. Covert, do you know of an organization known as the Underwriters Laboratories? A. I do.

Q. What is the Underwriters Laboratories? A. It is the testing concern organization of the National Board of Fire Underwriters.

Q. Set up where? A. Well, they have particularly an office in Chicago, but they have also offices in other cities for convenience.

Q. Do they have any official publication? A. They publish practically all of their articles and all of their approvals through the National Board of Fire Underwriters which owns and controls the laboratory.

Q. I show you a book or pamphlet entitled "List of Inspected Fire Appliances, July, 1929, Underwriters Laboratories, Incorporated 1901,

established and maintained by the National Board of Fire Underwriters.''

Mr. Berry: We object to this. I do not know where it has been or where it came from. I do not know for what purpose it is going to be offered. I cannot see its materiality, relevancy, or competency to the issue, and I do not know what Mr. Toolan is trying to prove by it.

The Court: Neither do I. I will have to find out before I can pass upon whether or not it is admissible.

Q. I asked you whether or not that book is issued by or from the Underwriters Laboratories, or the National Board of Fire Underwriters? A. It is.

Mr. Berry: I object.

By Mr. Berry:

Q. How do you know that? A. They mailed it to me.

Mr. Berry: I object.

The Court: Objection sustained.

By Mr. Toolan:

Q. Well, is it received in the regular course from or through the National Board of Fire Underwriters? A. It is.

Mr. Toolan: I might say this: This is a book from its caption, and so forth, which indicates it is a list—

John W. Covert—Plaintiff—Recalled.

Mr. Berry: I do not think the jury should be told—

The Court: Do you object?

Mr. Berry: I object.

The Court: Objection sustained. The only way to prove that book is to get somebody from the authority which issued it to prove it.

Mr. Toolan: May I formally offer the book for the purpose of the record?

The Court: Yes, certainly.

Mr. Toolan: I take exception to Your Honor's ruling.

The Court: Certainly.

By Mr. Toolan:

Q. Mr. Covert, did Boynton Brothers & Company, during the year of 1928 write insurance for Greenspan Brothers? A. No, sir.

Q. Write any insurance for them at all? A. No, sir.

Q. Well, did you have any negotiating with Greenspan Brothers during the year of 1928 or early 1929 respecting insurance? A. In December, 1928.

Q. Whom did you do business with? A. Mr. Isidor Greenspan.

Q. Without detailing the conversation which you had with Mr. Isidor Greenspan, what, if anything, did you do? A. We wrote his insurance.

Q. I know, but when did you write his insurance? A. We wrote his insurance in January of 1929.

Q. That is, wrote it by binder or how? A. We executed binders for the period, and then exe-

cuted contracts. Binders were in effect for perhaps thirty days and the policies afterwards issued.

Q. Prior to writing that insurance, or during the period the binder was in existence, did you make any application for rates? A. The reason that Mr. Greenspan gave us the insurance is because we promised to do certain things for him. One of those things was to secure a sprinkler system that would meet with the approval of the Schedule Rating Office. The second thing was that we agreed to secure from the Schedule Rating Office certain fixed rates.

Q. Well, did you make any application for rates on the Sypho chemical system that was installed in Mr. Greenspan's warehouse by the Sypho chemical and the automatic sprinkler system? A. We did.

Q. And when did you make that application? A. About the fourth of January, 1929.

Q. Did you receive any new rating? A. We did not.

Q. Did you communicate that intelligence to Mr. Greenspan? A. We did.

Q. And then after that what did you do? A. Immediately after communicating the fact that we could secure no premium saving, Mr. Greenspan asked me how we could help him to secure a premium saving, and I told him that the only way, through stock fire insurance companies which we represented, that we could help him to secure a rate reduction, was to have installed a proper sprinkler system.

Q. And what, if anything, did you do with reference to remedying conditions? A. Knowing the Automatic Sprinkler Company from years

past in negotiations concerning their wet pipe or water system, I immediately communicated with their New York office to tell them what I thought about their putting in a Sypho system, and to tell them also that we were going to give the opportunity, through Mr. Greenspan, of re-figuring on a water system.

Q. Did you give them that opportunity? A. We did give them that opportunity and they did submit a bid.

Q. Did you have any conversation with Mr. Lyons of the Automatic people? A. I spoke with Mr. Lyons over the telephone, and the letter in which they give his bid was Mr. Lyons' letter.

Q. How are rates determined in the State of New Jersey, Mr. Covert?

Mr. Berry: I object. Unless this witness shows he is qualified.

The Court: He has been at it fourteen years.

A. The law requires that an insurance company licensed to transact business in the State of New Jersey must file with the New Jersey Department a schedule showing how they are going to rate risks in the State of New Jersey. That schedule is a part of the Act. They have, however, in the Act, a provision that an insurance company may employ an expert to help them to arrive at the proper rates which must be filed with the Insurance Department. So, the normal practice is for an insurance company to employ an expert who, in turn, maps out the schedule showing sometimes sixty or seventy charges on the one rate sheet that together are applicable to any partic-

ular risk as a class, and after those charges are all arrived at and set up—

Mr. Berry: I object to this line of testimony. It is not relevant, or competent, or material here to any particular part of the issue that is involved.

The Court: Saving time, he is quoting the law, I assume that so far as how rates are determined, that a man who has been in a business on a large scale for fourteen years should be able to tell us. However, if you object I will sustain you. If it is going to be a matter of law, you will have to get the law itself and not take an explanation of it from the witness.

Mr. Berry: I do object.

The Court: What part do you object to?

Mr. Berry: To the statement of the law from this witness.

The Court: What is the law?

Mr. Toolan: I will get it for Your Honor.

The Court: Why is it necessary, Mr. Toolan, to have this witness tell us what the law is, if it is there?

Mr. Toolan: I do not suppose it is.

The Court: I thought it would shorten it, so that the jury might get it in a short compass.

Mr. Berry: I have no objection to assisting the Court in any way.

The Court: That is the point. If he does not state, he might be able, from his experience, to give us succinctly just about what the law is.

Mr. Berry: I am not familiar in detail with the insurance law, and I don't know whether

he would be repeating something which is strictly in accordance with the Act or not. Let him read the Act.

The Court: The jury will have to have that and the Court will have to have it. Suppose you read the Act, then.

Mr. Toolan: Does counsel want me to read it aloud?

The Court: It will take the place of the answer that you were expecting from this witness.

Mr. Toolan: It is Chapter 85 of the Laws of 1913. Supplement to General Insurance Act. (Reading Act.)

Q. Mr. Covert, as the result of that section of the law, what has happened in the State of New Jersey? A. The companies transacting business under license or charter in this State have filed with the Superintendent of Insurance, or the Department of Banking and Insurance, a schedule schowing how they will apply charges making up individual rates in this state and agreeing, of course, that there will be no change from that schedule without a substitution of a new statement.

Q. What is the relation of the New Jersey Schedule Rating Bureau? Is that the creature of the Statute or not? A. That is purely the creature of Leon Watson, an expert in the State of New Jersey, who is employed as an expert by insurance companies.

Q. Under the authority of this Act? A. Under the authority of this Act.

Mr. Berry: I object to characterizing that as under the authority of the Act, because it

stands to reason that it is purely, as he said, a creature of Mr. Watson. It has nothing whatsoever to do with the Act any more than I have.

Mr. Toolan: The Act says they shall be authorized to employ an expert.

The Court: As I understand it, this witness claims that instead of any particular company appointing a particular expert for themselves to fix rates, that all the companies got together and employed one expert.

By the Court:

Q. Do I understand that right? A. That is correct, Your Honor.

Mr. Berry: We don't want anything more to be understood from his testimony than that.

The Court: Oh, no.

Mr. Toolan: That is all we want.

The Court: In other words, he is the kind of an expert that is authorized to be appointed by the companies under the statute.

Mr. Toolan: Under the statute.

The Court: But he is not appointed by the statute or by any official authority.

By Mr. Toolan:

Q. Mr. Covert, can you say whether or not, as a result of the installation of a new system in the Greenspan warehouse any reduction in rate was obtained through the regular companies authorized to do business.

Mr. Berry: I object.

John W. Covert—Plaintiff—Recalled.

A. There was.

The Court: I do not see how that is pertinent.

Mr. Toolan: I think all of this testimony is relevant on this theory: The issue here is whether or not Mr. Greenspan put in this system with the primary thought in mind of obtaining reduced insurance rates. Of course, that is a factual question whether or not they represented to him that he would obtain these reduced insurance rates. I claim that it is evidential for this reason: To show that when he did not obtain what he expected to obtain from the installation of the one system, he then installed another system which would obtain for him the benefit that he expected to obtain under the original system.

The Court: I am not conclusive about this, Mr. Toolan, but I am willing to say that my present belief is that there is only one question of fact in this case, so far from the evidence as it has been adduced, and that is, whether or not, at the time that this contract was entered into, it was induced by a representation upon the part of the licensor and the licensee, so-called, that the installation of that, as a matter of fact, would result in a reduction of at least fifty per cent. in the rates that he might obtain from the old line stock companies. That is what he claims, and I do not see anything else that could be a false representation, in view of the evidence up to the present time. If that was the representation that was made that induced

him to enter into this contract, that he could take up with the companies he was dealing with, or any of the old stock companies doing business, old line stock companies doing business, and get a reduction of fifty per cent. If that was the promise that was made to him, and that was so at the time the promise was made, and that that was not a fact, why, then, of course, there was an obtaining of this contract under a false inducement, that is all. So I say again that it seems to me that it narrows itself to simply the question of fact for the jury to pass upon in that respect as to whether or not there was the distinct representation that he could, if he installed this sprinkling system, obtain insurance from the same kind of companies he was already obtaining it from, that is, a stock company, at a reduction of at least fifty per cent. That is what he claims. What else is there?

Mr. Toolan: I think there is further—

The Court: There is no question about it at all, it is admitted that he was persuaded to believe that he could get insurance at a much reduced rate if he would install the system. The question is, what kind of an insurance was he told he could get. Isn't that right?

Mr. Berry: That is right, Your Honor.

Mr. Toolan: That is true, and then there are just a couple of additional features which, at the proper time, I hope to be able to call the Court's attention to. I agree with the Court that we are getting confined really to that issue.

The Court: That is the pregnant question

of fact for the jury to pass upon, the main and the important question of fact, that is, whether a promise was made to him that it was the fact that he could get insurance from the old line companies, so-called, at a reduction of at least fifty per cent. from the rates that he was then paying, if he would install that system. That is what the claim is.

Now, then, if the promise made to him was that he could get a reduction of rates through these reciprocal companies, why, that is not questioned at all. That is all that he could. It is admitted that that was promised.

Mr. Toolan: We admitted it in our demands before trial even.

The Court: You admit that, don't you?

Mr. Berry: Yes.

The Court: Now, what is this question?

(Question repeated by stenographic reporter.)

Mr. Berry: I do not think that is a proper way. It has already been covered by the man who fixed the rate. Why go over it again where it is purely hearsay?

Mr. Toolan: This is not hearsay.

The Court: He is the man that placed the insurance. I will let it stand for what it is worth.

Mr. Toolan: That is all. You may cross-examine.

Cross-Examination by Mr. Berry:

Q. You represent stock companies, do you not, Mr. Covert? A. Yes, sir.

John W. Covert—Plaintiff—Recalled.

Q. Stock companies are in general not on friendly terms with reciprocal insurance organizations, are they? A. They don't sleep very well together because naturally their principles are different.

Q. That condition obtains not only in the State of New Jersey, but in the other forty-seven states of the Union? A. Throughout the country.

Q. It is a general fight that is going on? A. One would say that, if you can fight with a flea.

Q. I show you a letter on Boynton Brothers stationery, dated January 19, 1929, and signed by John Covert, and ask you if that is your signature? A. That is.

Mr. Berry: I offer that letter in evidence.

Mr. Toolan: I am perfectly willing to have it go in.

(Two-page letter dated January 19, 1929, entered in evidence and marked "Exhibit P-9.")

Q. Greenspan Brothers abrogated their agreement with the reciprocal insurance companies in March, several months after that letter, isn't that true, Mr. Covert? A. Oh, I would say definite termination of that agreement was later.

Q. Later than that letter? A. Absolutely.

Q. You said in that letter that there was some little reduction given by the Schedule Rating Bureau? A. That is right.

Q. You also said that in your affidavit which you filed in this case, is that correct? A. That is correct.

Q. The Schedule Rating Bureau is purely a

stock company proposition, isn't it? A. Absolutely not.

Q. What other organization then is affiliated or uses the Schedule Rating Bureau? A. Mutuals.

Q. The Mutual companies? A. Mutuals.

Q. In New Jersey? A. In New Jersey, licensed to transact business in the State of New Jersey.

Q. They also use the Schedule Rating Bureau? A. They do.

Q. But it is a stock company organization? A. Well, if you say that the predominance of the members are stock companies, yes, but the predominance of the insurers are stock companies.

Re-direct Examination by Mr. Toolan:

Q. Counsel has asked you about your statement in this letter where you said that the New Jersey Schedule Rating Bureau would allow a slight credit, about the amount they would allow for an ordinary chemical extinguisher, and yesterday when you were called upon the witness stand you said that the Schedule Rating Bureau would allow no insurance credit. How do you reconcile those two statements? A. The affidavit and the letter were written after securing information from the Rating Office, and also from my own knowledge of what we have done in connection with sypho chemical systems in this state. Later, however, the rating office came down through request to make an inspection of the Greenspan properties for new rate purposes, and then they told us that that system as installed in Greenspan's would not warrant a single cent reduction.

Q. Do I understand that as a general proposition, and under favorable conditions, if this system is installed there will be some slight credit

given? A. Nothing is said about this system at all. There is a provision in the rate schedule which says that if the assured shall install either two and one-half gallon chemical extinguishers, or a forty-gallon portable chemical extinguisher, one of those things you put on wheels and roll around, they will allow a certain credit, and that is the credit that will be allowed on the sypho chemical system, because it too is a chemical system.

Q. That is, provided it is installed under favorable conditions? A. Yes, sir.

Q. And the report after inspection of the Greenspan property, however, was that they would allow no credit there? A. Yes, sir.

Q. Counsel asked you whether the reciprocals and the stock companies were unfriendly? A. He asked that question.

Q. And your response was what? A. That they naturally were unfriendly because their principles were different.

Q. You mean what by that? A. I mean that a reciprocal and a mutual operate on the theory that they will take the so-called cream business or the best business. That leaves for the stock company only that which is left, which is the hazardous business. Naturally if we were to insure all the cream business our rates would be lower, but because we have to take all classes of business our rates must be adjusted, so that a mutual or reciprocal can pay a dividend because they take only the best. But anybody taking the best and refusing the man with a frame property is not playing the game as we think an insurance company should play the game, because every man, whether his business is a hazardous one or not, is entitled to protection.

Derben W. Bartholomew—Defendant—Direct.

DERBEN W. BARTHOLOMEW, a witness produced on behalf of the Defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Bartholomew, what is your business? A. I am connected with Boynton Brothers and Company.

Q. Perth Amboy? A. Perth Amboy, New Jersey.

Q. How long have you been connected with them? A. I have been with them about nine and one-half years.

Q. How long have you been in the insurance business? A. About eleven years.

Q. Sometime in December,—If I am not correct about the time will you correct me,—did you speak to Mr. Isidor Greenspan respecting insurance? A. Yes.

Q. On his Perth Amboy properties in December of 1928? A. Yes. I will tell you why. Potts and Kaufmann Incorporated of Perth Amboy own this building. For many years I have been the salesman handling all the insurance for Potts and Kaufmann. I was told by Mr. David J. Kaufmann, president of Potts and Kaufmann, that we were not allowed to renew the insurance which expired around the first of January. He told me that he had made arrangements with Mr. Greenspan, that Mr. Greenspan was going to take all the insurance over because he had installed a sprinkler system, and that he was going to pay to Mr. Greenspan the same insurance cost as he had paid before to us. When I found that out I went up to Mr. Greenspan, not primarily for that, because I had no personal connections with

Mr. Greenspan at that time, but I went up to see Mr. Greenspan on another matter and at that time I discussed with Mr. Greenspan that he was taking the insurance of Potts and Kaufmann, and I asked him where he was going to place it, and he told me he had a list of companies operating in New York State. They were reciprocal organizations. I knew a little something about reciprocals, because I sold business all over the East, not long ago I sold a risk in Philadelphia that had a reciprocal—

Mr. Berry: I object.

A. All right. I found out these three reciprocals, or three or four, I forget which, Mr. Greenspan, and I came back and asked Mr. Covert, the manager of our fire insurance department, who in turn communicated with the insurance department, and I went back then, I received some information, and I went back and I told Mr. Greenspan that reciprocals were not licensed to do business in the State of New Jersey; that in the event he sued them, in the event he had a loss and there was disagreement, he would have to sue them in an outside state; and when Mr. Greenspan found that out, of course, that threw the situation, I mean he had never known it apparently before and, of course—

Mr. Berry: I object to what Mr. Greenspan knew or didn't know before this witness talked to him. I think Mr. Toolan should take him in hand and ask him questions and let him answer them rather than have long speeches here dealing with his past life.

Derben W. Bartholomew—Defendant—Cross.

Q. Did you discuss the matter of insurance with Mr. Greenspan? A. I did, and the second time in the presence of Mr. Greenspan and Mr. Kaufmann.

Q. Were you party to obtaining a rating on this building from the New Jersey department? A. I was.

Q. Was any rate credit allowed? A. None.

Q. Did Mr. Greenspan inform you what rate credit he expected to get? A. Yes, he told me the very first time he was going to get a fifty per cent. reduction in stock companies, he would not give us the insurance, because he could get his insurance so much cheaper in reciprocal organizations, that he had virtually decided to place it in there, and then was in doubt after I informed him that reciprocals were not admitted to do business in the state of New Jersey. That immediately cast a doubt in his mind. I put the proposition up we carry the renewal of the insurance on binder, free of charge, until he could definitely decide whether he was going to accept reciprocal insurance, or whether he was going to accept stock company insurance.

Mr. Toolan: That is about all I have of the witness.

Cross-Examination by Mr. Berry:

Q. Are you a fire insurance man or a casualty man? A. I am a casualty insurance man.

Q. You don't claim to be an authority on fire insurance? A. I do not.

Q. You just happened to stumble on this fire insurance problem? A. With the information I received and gave to Mr. Greenspan, was verified.

Q. As I understand your testimony you went to Mr. Greenspan and found him perfectly satisfied with an arrangement to take reciprocal insurance, but when you told him what an iniquitous thing this was, that he had a change of heart— A. I didn't tell him iniquitous.

Q. You didn't use that word? A. No. I told him the facts. They were not licensed to do business in the State of New Jersey, it was a misdemeanor for Ernest W. Brown to come in there and solicit.

Q. You told him enough to make him change his mind? A. I did. The facts.

Q. You changed his mind so as to give— A. No, I didn't change his mind right then and there, because he didn't know for months afterward whether—he even accepted my statements with a lot of skepticism, I will tell you, you bet he did.

Q. In fact, he did receive binders, didn't he? A. He did.

Q. After from the reciprocal organizations? A. He did, and I knew all about it, yes, because he was skeptical still of the fact that in these situations—he couldn't believe that he had been led into this situation in this reciprocal insurance, and then the statements that I told him were wrong.

Q. And Boynton Brothers were up in the air for some period of time, they didn't know whether they were going to get the insurance until— A. I would say around the first of March.

Q. You were there in March? A. That is right.

Q. Did you deal with Mr. Greenspan throughout in this matter? A. I did.

Q. Did you finally tell him, sometime around the first of March, "All right, you give us the in-

surance and we will see—we will take care of the reciprocal''? A. I did not.

Q. Did anyone from your organization? A. No. I was the only contact man.

Mr. Berry: That is all.

Mr. Toolan: That is all.

Joseph A. Kelly, a witness produced on behalf of the Defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Kelly, what is your business? A. Plumber.

Q. With what organization are you connected? A. Kelly and McAlinden.

Q. Perth Amboy? A. Perth Amboy, New Jersey.

Q. Did you, at my request, on or about April 9, 1929, go to the warehouse of Greenspan Brothers and Company and make an inspection of the sprinkler system?

Mr. Berry: I object.

A. Yes, sir.

Mr. Berry: I think it is immaterial, whatever was developed from the inspection of the plant at that time as to what had occurred previously with reference to the plates, which I believe this witness was asked to examine.

The Court: What is the purpose of this?

Mr. Toolan: Simply to show that he made an inspection for license plates, and the result of that inspection.

The Court: One of the defenses is that the contract is breached in that there was a failure to get the certification of license. But we have evidence to the effect that it was actually placed on there, that the plate was placed there.

Mr. Toolan: I know. I want to show through the medium of this witness that he inspected the premises on April 9, and what the result of that inspection was with reference to the plates.

Mr. Berry: I don't think this witness's testimony that he went on April 9 of this year, after this trouble had all begun, to look over these things and then say he couldn't find anything there, without basing that testimony on some inspection during the entire period of time from the time we said we put them on until the time he said he made the inspection, that they were never there. It is improperly grounded.

Mr. Toolan: I think that only goes to the weight of the testimony. It is argumentative.

The Court: That may be, but I do not think there is any question about the fact that the certification that it was licensed by the licensee was there. I do not see how the jury could find that it was not.

Mr. Toolan: Under the circumstances I would not seriously contend otherwise myself. It was about this time that I discovered this clause and I asked to have an in-

spection made for that purpose. This inspection was made. I don't suppose that this is part of the case—

The Court: I think we are only taking up unnecessary time. I will allow you to put the question if you think it is still in dispute. The licensee was a party to the contract.

Mr. Toolan: I appreciate that.

(Question repeated by stenographer.)

The Court: I will allow it to stand for what it is worth.

Mr. Berry: Will Your Honor allow me an exception?

Q. Did you find any license plate similar to the plate which has been introduced in evidence and marked "Exhibit P-2"?

Mr. Berry: I make my objection.

The Court: Yes. I will allow it. And you may have an exception.

A. No, sir.

Q. Did you make a thorough examination for that purpose, Mr. Kelly? A. Yes, sir.

Q. You found no such license plate? A. No such license plate as that, sir.

Q. That is, any plate from the Sypho chemical sprinkler corporation or the Automatic Sprinkler Company licensing that system?

Mr. Berry: I object to that on the same ground.

A. No. This is the only plate I have seen on the system.

Q. The round plate? A. The round plate was on the pipe.

Mr. Toolan: Round plate on the pipe, introduced in evidence and marked "Exhibit P-3".

That is all I have of the witness.

Mr. Berry: No questions.

Mr. Toolan: That is all.

Mr. Toolan: The only other thing which I wish to do is to offer in evidence—I don't believe it is absolutely necessary,—Chapter 221 of the Laws of 1928, page 396, respecting the authority of insurance brokers and companies to solicit business in this state.

Mr. Berry: I object to the introduction of that act as irrelevant, incompetent, and immaterial to the issue.

The Court: I do not know that you could specifically put in any law. The law is already there, Mr. Toolan.

Mr. Toolan: I believe that is the law and that the Court will take judicial notice of all of the public statutes. I do, however, want to call the Court's attention to that section of the statute.

The Court: Yes, surely, you can do that later.

Mr. Toolan: We rest.

MOTION FOR DIRECTION OF VERDICT.

Mr. Berry: I move for a direction of a verdict on the following grounds:

There is no contradiction in evidence to

our case. The contract is admitted. The reduction in insurance rate is admitted, the saving. I do not think that the question of our having license by the Sypho chemical system, the equipment, is seriously questioned.

The Court: That is not in question. I will direct the jury that the only affirmative proof is to the effect that the licensor licensed that system in this particular plant.

Mr. Berry: So that the sole question remaining is as to the defense which has been raised of fraud in inducing the Defendant to sign this contract. The Defendant's own testimony in this matter has been that he was induced to sign this thing,—and he does not specify particularly the thing,—in general terms, that he had been induced to sign because they told him that his insurance rate, at the Schedule Rating Bureau, with stock companies, would be cut in half.

Assuming, Your Honor, that that very statement is so, it is not a misrepresentation of a presently existing fact. It is, at most, a promise of something which would happen if the contract was signed.

There is wealth of authority in this State holding that in order to base any action for fraud—

The Court: I do not quite get you there, Mr. Berry. I do not see that it is simply a promise of something that might happen.

Mr. Berry: If you will take our system they will, in the future, reduce rates.

The Court: If you take our system it is the fact that the fact of the installation of our

system will mean a reduction of fifty per cent. of the rates of the stock companies. That is substantially what he says was the representation made to him. In other words, that it is the fact that the installation will effect a reduction—

Mr. Berry: You have to use the word "will" and it refers to the future. It does not say *ipso facto* the rate will go down.

The Court: That is his claim. If he cannot prove that, of course, that is different. If I want to sell you a particular kind of a machine, for example, and I say to you, if you will use this machine, the fact is that it will reduce the cost of your production by fifty per cent. from what it now is, you might call that a promise. That is not a promise. That is a statement as to what the result will actually be, although you don't get the benefit of the result until the future, until after it has been installed.

Mr. Berry: I do not quite clearly see what presently existing fact there was here which could be said to be allowed, that it was wrong.

The Court: This is as they claim it, otherwise, if they do not satisfy the jury that that was done, that it was the fact that if this system was installed there would be a reduction of fifty per cent. in the rates charged by the stock companies.

Mr. Berry: That was a matter he could have investigated in the four months he took to decide.

The Court: That goes to the question of whether or not that representation was made. I am not saying it was made. But I am say-

ing what their charge is, and they must, through a preponderance of the evidence, prove that, that there was the actual promise made, that it was the fact that if they installed this system there would be a reduction of at least fifty per cent. in the rates charged by the old line stock companies. That is the question of fact in this case. However, I do not want to stop your argument, but I am telling you how I look on your suggestion that the representation must be as to an existing fact. I think there are several cases along that line.

Mr. Berry: Yes, I can cite them.

The Court: Anything that is a mere promise of something that is possible to happen, or something that even will probably happen, that is not a false representation in the sense that we are treating it in a case like this. That is not the point in this case. They claim, and they have to prove to the satisfaction of the jury, that they said that it was a fact that if they installed this system the result would be a reduction of at least fifty per cent. in the rates from the old line stock companies.

Mr. Berry: I call Your Honor's attention to the testimony of the last witness for the defense who quite clearly shows that he was content with this form of insurance until Boynton Brothers came in.

The Court: That all goes to the jury as to whether or not that representation was ever made.

Mr. Berry: Then, of course, there is the matter of *Bayard* vs. *Holmes,* which holds in

effect that a mere general allegation that a person would falsely and fraudulently testify, is not sufficient either in criminal or civil cases (citing case).

The testimony adduced by this defendant has been, in most every instance, vague and uncertain. He does not remember anything, even when the meetings were. And when it comes to stating what deceived him, he does not tell words that he relied upon, but he gives his general impression about the schedule rating bureau, and I do not think that the rule as laid down in that case of *Bayard* vs. *Holmes,* has been followed.

The Court: I am not going to dispute with you about whether or not his statements have been most general. It might be that I agree with you personally; it might be that I do not. The fact remains, however, that he has, on one or two occasions, said that the promise made to him was that the result of this would actually result in a reduction with the stock companies of at least fifty per cent. in their rates. He has not, in any instance, said that he was giving the specific language, or verbatim what had been said to him, but he makes that statement on two or three occasions in the giving of his testimony. He says a number of other things too. However, if there is anything else, I will be glad to listen to you.

Mr. Berry: I think that would settle the matter.

The Court: I will deny your motion and you may have an exception.

PLAINTIFF'S REBUTTAL TESTIMONY.

LeRoy Faust Lyons, a witness produced on behalf of the plaintiff, in rebuttal, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. How old are you, Mr. Lyons? A. Twenty-eight years.

Q. Where do you live? A. I live, at the present time, 14 Reed Street, Newark, New Jersey.

Q. What is your business? A. I am employed by the Automatic Sprinkler Corporation of America at the present time as a contracting engineer.

Q. What can you say of your general education? Have you any degree? A. I was graduated from Pratt Institute in the School of Mechanical Engineering, in their class of Mechanical Engineering, in their class of Mechanical Engineering in 1922, and attended Syracuse University in the School of Business Administration from that time on and graduated in 1925. Admitted there as an advanced student, of course.

Q. How long have you been connected with the Automatic Sprinkler Corporation? A. I went to work for the Automatic Sprinkler Corporation of America in September of 1926, on road construction, that is, road work, as we call it, swinging pipe, and was engaged in that line until January of that same year, and then I was transferred to the engineering department of our company at Youngstown, Ohio, and remained in the capacity of an engineer working over a drafting board designing sprinkler systems until the first of July, 1927, when I was transferred to the con-

tracting department of the New York office of the Automatic Sprinkler Corporation of America in 1 Park Avenue, New York City.

Q. Are you still there? A. I am still there.

Q. What is your title now? A. I am a contracting engineer.

Q. You, in your line of duties, do what? A. I make surveys of risks, estimate on the installations, fire protection appliances, and do general sales work.

Q. Do you get new business? A. Yes, sir, I do.

Q. Did you have anything to do with the Greenspan job? A. I surely did.

Q. Do you recall your first negotiations? A. I do. I called at Greenspan Brothers wholesale warehouse or grocery warehouse in August of 1927, and entered the office and was met by a man who later I learned was Mr. J. Greenspan, a brother of Mr. Isidor Greenspan. I introduced myself as a representative of the Automatic Sprinkler Corporation of America and asked him if I could interest him in fire protection for his place.

Q. Who did you say that to? A. Mr. J. Greenspan.

Q. Not Mr. Isidor? A. No. Mr. Isidor Greenspan, I was told at that time, was on his vacation and would return, he thought, in two weeks. Mr. J. Greenspan said that all matters pertaining to improvements to the property or any buying, or anything pertaining to insurance, was taken up, or was taken care of entirely by Mr. Isidor Greenspan.

Q. Did you see Mr. Isidor Greenspan on that visit? A. No, I did not.

Q. When did you first see him? A. I saw Mr.

Isidor Greenspan approximately between the first and the fifteenth of September, 1927.

Q. Where did you see him? A. I met him at his office.

Q. Who else was there? A. I really walked in and asked who Mr. Isidor Greenspan was. There was a gentleman, as you enter the office, there is also a switch board operator, I am not sure whether I asked the girl—

Q. At any rate you went in and saw him? A. Yes, I met Mr. Isidor Greenspan.

Q. That was the first time you had ever seen him? A. That was the first time I had ever seen him.

Q. Who else was present when you talked with him, if anyone? A. No one was present when I talked to him.

Q. Where did you talk to him? A. Right there at the office. We were standing at the time.

Q. What did you say to him and what did he say to you? A. I introduced myself as a representative of the Automatic Sprinkler Corporation of America and asked him whether I could submit some figures for him on his building for fire protection. He said that he had gone into the matter previously, I think he said he had received a figure from the Grinnell Company, one of our competitors, and he said, "I do not own the building, I have a lease on it, and I am pretty sure," he said, "I have about seven years to run, and for the reason that I do not own the building, the proposition was not attractive."

Q. What did you say to him? A. I said, "Well, there is a possibility that we might be of some service to you, and I wonder if I couldn't go through your building and make a survey of it?"

He said, "Why, yes, go ahead."

So I immediately went up to the top floor of the building, and I had in mind all the time, "Well, there is a man that is leasing the building," and I knew from what short experience I did have that usually a tenant is not inclined toward putting in a wet pipe system, or dry pipe system or dry action system, or any kind of system you might name, something that would be a permanent part of the property, an asset to the property. So naturally my mind, I just—

Q. Never mind what went on in your mind. What did you say to Mr. Greenspan and what did he say to you? A. At that time while I was upstairs I said, "I will shoot a sypho case on this particular individual."

Q. Who did you say that to? A. To myself.

Q. Never mind what you said to yourself. A. I made a survey of the property. I carry all paraphernalia right along.

Q. On that occasion of your first visit? A. First time that I met Mr. Greenspan.

Q. Mr. Isidor Greenspan? A. Yes. I always carry it.

Q. When you came downstairs from your survey, I presume? A. I sat right down. Mr. Greenspan is a pretty busy man around his office, and I took advantage of one of his tables, I sat down and started to figure this thing out, and I figured it out right there, and I came over to Mr. Greenspan, I told him, I said, "Now, Mr. Greenspan, there is a possibility of us giving you some fire protection in this building of yours, and we can effect, I think, fifty per cent. reduction in insurance, in the event that you place your insurance with an outfit known as Ernest W. Brown, Incorporated. I think I introduced them as the

New York reciprocals. I didn't say "Ernest W. Brown, Incorporated," I said, "New York reciprocals." And I went on to explain the system right away.

Q. Did you say anything more about the insurance? A. About the insurance?

Q. Yes. A. Oh, yes, I did. I said that the— I told him that they were a very strong concern and I gave him briefly—

Q. Who was? A. Ernest W. Brown, New York Reciprocals, as I spoke of them then. Told him that they were a very strong insurance outfit, as I had understood, and that they had a very conservative plan of writing insurance, told him that first of all, that they would not write a risk that was owned or occupied by anyone who didn't have a first-class rating, I think in Dun's they require something C-1½ rating. And before I had come in—first time I made the visit to Mr. Greenspan's place, that is, when I saw Mr. J. Greenspan, I looked in the rating book that I carry, a pocket edition of Dun's, and I saw they had a rating of B-plus 1, which is half a million dollar strength of first credit.

Q. Did you say anything to him on this first meeting with Mr. Isidor Greenspan about the Schedule Rating Bureau? A. I did say something to him about the Schedule Rating Bureau, right.

Q. What did you say and what did he say? A. In introducing the system I said at the present time the Schedule Rating Bureau would not give us any substantial reduction for sypho systems in the State of New Jersey. And I said, "yet right across the river in New York we can install those systems, and we do get a substantial reduction in insurance premiums for that type of

system." I said, "We have been presenting this system for many years, as I understand it, and we think that it is quite unfair, because throughout the United States we do get substantial reductions in our insurance, in insurance premiums, for the installation of this system."

By Mr. Toolan:

Q. Is this what you were telling Mr. Greenspan? A. Yes, sir. That is right. I told Mr. Greenspan that on our first meeting.

By Mr. Berry:

Q. What did Mr. Greenspan say to all this? A. Well, I told him briefly the plan of the New York reciprocals in writing insurance, how they effect their saving. I said, "Now, the New York reciprocals allow us a reduction of fifty per cent. in premium based on stock rates. Now, they give us a fifty per cent. for this sypho system. That is, they allow you fifty per cent. reduction for the sypho system."

Q. That does not go to the Automatic Sprinkler Company? A. No. They give that to the assured. Now, on top of that, they anticipate an additional saving of twenty-five per cent., which is in the form of—comes in the form of a dividend. However, of that additional twenty-five per cent., or fifty per cent., of that additional twenty-five, if you want to put it that way, goes to the owner or to the assured as a dividend yearly, and the other is put in a reserve until you build up a reserve equal to five times your annual premium, and then, after you have reached that point, then you get a return annually of fully

seventy-five per cent. Of course, it is possible, if they didn't have a good year, I suppose they wouldn't give you that additional twenty-five per cent. because—

Q. Did you tell all this to Mr. Greenspan? A. I did. "Now," I said, "I don't know anything about insurance." I said, "I would like very much to bring down a representative of Ernest W. Brown, if you would like, and let him cover the thing fully." He said he would be interested, and I left.

Q. When did you see him again after that? Pardon me, before you answer that. How long were you there on that first time? A. Well, it is hard to say, to judge the time, but I imagine I was there, oh, close to an hour on that call. Yes, longer than that. That is, talking to Mr. Greenspan, because I had to go through the plant and look that over and make a survey of it.

Q. When did you go again? A. On the next visit was on September 23 we—

Q. Did you go alone? A. No. I called up the day before and told Mr. Greenspan that I could get hold of Mr. Stockwell, because Mr. Stockwell, as I told him on my previous visit, was a hard man to get, because he covers quite a wide territory, he did cover quite a wide territory, and I said, "I think it is possible to get him down there sometime in the afternoon, is it all right to come?" He said, "Yes." So it so happened on the date of September 23, Mr. Johnson, who was at that time employed by our company in the same capacity as I, except he has had much more experience in that line, he had an appointment with Mr. Stockwell, I was working on a case over in Irvington, New Jersey, so I called up Mr.

Johnson at the office and I told him, "Be sure and get Mr. Stockwell down there so that we could keep my engagement with Mr. Greenspan on the afternoon of September 23." And he assured me he would. And I met both Mr. Johnson and Mr. Stockwell at the train in Perth Amboy, and we went over to the Greenspan Brothers warehouse.

Q. When you went to the warehouse who did you see there? A. We went into the office and Mr. Isidor Greenspan was not in at that time. They expected him shortly, but he wasn't in. We met Mr. J. Greenspan again, and he knew that I had been there before, because I met him the first time that I went to the place of business, I met him, and he had seen me there talking with his brother, no doubt, because he is always usually in the office, and I told him that I had brought down a representative of Ernest W. Brown, of New York reciprocals, and I would like to take him through the plant and let him make his inspection. So we did.

Q. What time did you arrive there on this day? A. I think he come down—they came down somewheres around half-past one or so, as I recall now, because we didn't get to see Mr. Greenspan until about three o'clock.

Q. All right. A. I wouldn't say definitely that it was half-past one or anything like that, but I know it was around that hour. I know it was in the afternoon, it was early afternoon. We went up in the plant.

Q. When you say that you mean yourself and Mr. Johnson and Mr. Stockwell? A. Mr. Stockwell, Mr. Johnson, and myself, we went up to the plant; we started right up from the top floor,

as we usually do, and we went right straight through and we listened to the different comments that he made on the risk.

Q. Who made? A. Mr. Stockwell, because it was entirely up to him.

Q. Did Mr. J. Greenspan go with you? A. No, he didn't. He just allowed us to go through.

Q. Well, you met in Mr. Greenspan's office at three o'clock, is that right? A. Approximately three o'clock.

Q. Who did the talking while you were there? A. Why, I just introduced the two gentlemen that I had, Mr. Johnson and Mr. Stockwell, and introduced Mr. Stockwell as a representative of Ernest W. Brown, and Mr. Johnson, as one of my colleagues I work with in the Automatic Sprinkler Corporation of America, and I said, "I am just going to let Mr. Stockwell carry on his own line in his own way, and tell you all about his insurance." So I sat right down.

Q. Where is Mr. Stockwell now? A. Mr. Stockwell is deceased. He is dead.

Q. When did he die? A. He died, I think, about —I heard that about a month ago. I don't know just when he died.

Q. Mr. Stockwell did most of the talking? A. Yes, Mr. Stockwell, he did most of the talking, because it was a question of insurance entirely.

Q. What did he say? A. Well, he covered very minutely all the details of their form of insurance. He covered every angle of it, as I remember. I don't know how much there really is to it. There is an awful lot, I know, but I am sure—he covered an awful lot of it on his line of insurance.

Q. Did you, at that meeting, make any mention of the Schedule Rating Bureau? A. Yes. Men-

tion was made of the Schedule Rating Bureau.

Q. Who made it? A. Mr. Stockwell even made it.

Q. What did he say? A. He said that he understood, or he knew that the Schedule Rating Bureau wasn't giving any reduction for sypho systems in the State of New Jersey.

Q. He said that? A. Yes, sir.

Q. What words did he use in stating it? A. He said in those very words that I have given you.

Q. Did Mr. Greenspan hear that? A. Why, I should hope he should. He was sitting right down at the end of the table, and Mr. Stockwell was off to my right, and Mr. Greenspan was across at the other table. Incidentally, we were in a sort of a little office that is off from the main office. I would call it a kind of a reception room, small reception room. That is where we were carrying on this meeting. And surely he should have heard it.

Q. You are positive that at that meeting Mr. Stockwell made the remark that the Schedule Rating Bureau would allow nothing for the sypho equipment. A. I am positive. And I am more than positive that Mr. Johnson made that same statement. Because he did most of the talking on the end of the sypho end.

Q. That is, Mr. Johnson did? A. That is, Mr. Johnson did, because he had a lot of experience, and I appreciated that he did have a lot of experience, and I let him take care of that end of it.

Q. Did Mr. Greenspan have anything to say at this meeting? A. Why, he listened a lot, and he asked questions about the possibility of being assessed should they suffer a great number of

losses in a year; Mr. Stockwell covered that point.

Q. What do you mean possibility of being assessed? Explain that more fully. A. Well, if Ernest W. Brown, Incorporated should have a disastrous year, for instance, should have a number of losses.

Q. You don't mean Brown, you mean the reciprocal organizations? A. Yes, reciprocal organizations. I am referring to them as Ernest W. Brown.

Q. You say Mr. Greenspan brought that up? A. Yes.

Q. Whether there would be any losses. What was said? A. No. What assessment he would have.

Q. What was said to him? A. Mr. Stockwell told him that there was a possibility of an assessment, yes.

Q. Was that the only thing he said to him with reference to assessment? A. No. He told him what it would amount to. And also the fact that up to the present time they have never assessed any of their subscribers and that they had been in operation for a good many years. I don't know exactly what he said. I think it is forty or fifty years.

Q. Did Mr. Greenspan raise any other objections? A. Well, he did. He just said that he had a lot of insurance there on that warehouse, and his merchandise represented about all they had, and that he, as one of three brothers, I think it is, one of three brothers, was sort of obligated to the rest. He just wanted to watch his step and be sure that he got into a good thing because it involved a lot of money, naturally.

Q. Did any question come up about—tell us what Mr. Stockwell said about this reciprocal insurance. A. Why, he covered it fully.

Q. Did he tell anything about subscribers? Tell us what he said. A. Well, I know—yes, he mentioned—he told first, he gave their plan of insurance, the plan of writing their insurance, that first, in order to enjoy their line of insurance they must first have a good credit rating. Secondly, that their risk must be one that will—that would not take—they would not take a frame structure. It must be a preferred risk. That it would have to have some form of protection, it must be sprinklered. In other words, they were looking for preferred risks, and for that reason they were able to write insurance at such a low rate.

Q. Well, did Mr. Greenspan make any queries or interruptions? I have asked you this before and I realize it, and I am trying to get you to tell the full story. You say he inquired, for instance, about the contingent liability fee. Did he question any other part or ask about any other subject? A. Oh, yes. He asked about whom they were writing and how much insurance they were writing.

Q. Mr. Greenspan asked this? A. Yes.

Q. Did Mr. Stockwell answer it? A. Yes.

Q. What did he say? A. He mentioned a number of risks they were covering, amongst them L. Bamberger & Company, and Hahne, and then he had a list of subscribers, and the different exchanges that Ernest W. Brown have there, and he was—he just handed him one of these pamphlets and asked him if he knew any of these subscribers, and Mr. Greenspan said he did.

Q. Did Mr. Greenspan say anything further? A. Why, the most all he said was in the form of questions. He was just looking for information and he asked questions of both Mr. Stockwell and Mr. Johnson. Mr. Johnson answered questions mostly pertaining to the Sypho system, and how we had worked that Sypho in the State of New Jersey on some previous cases. We mentioned—Mr. Johnson told Mr. Greenspan that we had installed one system in Sutsman Brothers in Paterson, under this same plan of insurance, through Ernest W. Brown, and that it was most satisfactory in every way, and Mr. Johnson took care of that end of it, mostly pertaining to the system.

Q. On the occasion of the very first visit that you made then you didn't see Mr. Isidor Greenspan, but you saw Mr. J. Greenspan, did you make any statements with reference to the Schedule Rating Bureau? A. Not the day I saw Mr. J. Greenspan, no. That was very brief.

Q. You have already covered what you said on the second and on the third. You are quite positive that you informed Mr. Greenspan on those occasions that the Schedule Rating Bureau of New Jersey would not allow any reduction or a very slight reduction on the Sypho chemical system? A. That is right.

Q. When did you see Mr. Greenspan next? A. Oh, I saw him on several occasions. I used to drop in there. I knew that Mr. Stockwell had confirmed all that he had said in the meeting, because he sent me a copy of the letter. And I dropped in there.

Q. You say he sent you a copy of the letter, is that this letter, Exhibit D-1? A. Yes, that is it.

Q. When did you see Mr. Greenspan next? A. I saw him on several occasions after this meeting of the twenty-third.

Q. When was the next time that you recall? Did you see him in the month of October? A. Oh, yes, I did.

Q. Once? A. Shortly after that. I wouldn't say how many times in the month of October. I would say during our negotiations all through I saw him at least six times.

Q. Six times? A. Yes, and then I would call him up once in a while on the 'phone.

Q. Do you recall any conversation with him subsequent to September 27, 1929? A. September 27?

Q. Yes, September 27, that is the date of that letter. A. Oh, yes. I went down on these different occasions, was usually about this same line. He said he hesitated about putting his insurance, as he said, all of his eggs in one basket, I think he said he hated to put all of his insurance with one company, And I said, "Well, there is one way you can find out just how good they are, just send out some letters to the subscribers, you have a whole list of them there, and surely that will bear some weight in your decision." I said, "Because it is absolutely necessary that you get sold on this proposition or we cannot do any business, that is all." So he said he would.

Q. Did you see him after that? A. Yes, I did.

Q. When did you see him? A. I came in quite often and I would ask him if he had written to these subscribers, quite a few times he said he hadn't. He said he hadn't just gotten to it, he had been very busy, and so forth. So I believed him. I wouldn't stay around there long.

Q. What happened next? A. Well, it finally led along up until—I made a call just one month from the date we signed that contract, that was my last call, and then he said something about, well, I am going to put it off until after the first of the year. I didn't ask him why or anything else.

Q. Did you say anything about looking up subscribers? A. I asked him whether he had written and he said no, he hadn't, and he said, "Well, I am going to put the thing off until after the first of the year." So I didn't say a thing, and I left, and I came back after the first of the year.

Q. When? A. I came back on January 4.

Q. What happened then? A. I asked him whether he had come to any decision, and he said, "Well, I don't know."

I said, "Well, don't you think this is a good line of insurance?"

He said, "Well, I guess it is all right."

I said, "Have you sent out your letters as you promised and find out about these subscribers?"

He said he had. He said he got very favorable reports.

Q. Did he name any of them, who they were? A. I think he said Bamberger. I wouldn't swear to that that he did. He just said that he got favorable reports. And I asked him, I did ask him whether he had called up Sutsman in Paterson and asked him anything about the system.

He said, no, he hadn't. So then I said, "Well, aren't you—don't you think this is a good line of insurance to be carrying, and don't you think it is satisfactory, isn't everything satisfactory to you?"

And he said, "Well, yes, I think it is."

So I asked him then to sign my contract. I had

been negotiating and had been carrying on the same, practically the same thing over and over and over again, from the twenty-third of September up to that date, and it was just a case of getting set on this form of insurance. So we read over the contract twice and the only thing that he was really concerned about—

Q. Out loud. A. Well, he had one copy—yes, I think we did. I read it to him, I think.

Q. Well, don't think about it. Do you know what you did? Did you read it out loud or didn't you read it out loud? A. Only the part that he called for. I didn't read all of it out loud.

Q. But he had a copy and you had a copy and you sat there and went over the contract? A. Yes, we did. We went over the contract. I remember that distinctly. I couldn't quite understand why we went over it twice.

Q. Did he sign it? A. Yes, he signed it.

By the Court:

Q. You were about to say what he was concerned about. What was he concerned about? A. He was concerned about when he should pay that $885.

Q. Well, in what way did he express his concern? A. He said, "Well, now, is it a fact that I don't have to pay for anything else but this $885?"

I said, "That is right." I said, "That covers the installation of this equipment, service, and maintenance, which is part of this service; it is not the system, we are giving you service here."

He said, "When do I have to pay it?"

I said, "Just as soon as you get your credit

reduction for your insurance from the New York reciprocals."

Then he said, "Well, I don't want this system to go in now."

So I said, "All right, there is no harm in signing the contract, that is all the better for us, because if we don't have to rush this system in right away we can let our engineering department take care of the engineering of this work at their leisure." I said, "When do you want it put in?"

He said, "I don't want it in until after August 1 anyway."

So I said, "All right, we will just put a little rider right on the contract stating that the engineering work could be done prior to August 1, but the material should not arrive until after that date." And that was the end. I just took the contract to my home office and gave it to my department manager.

Q. You refer to this rider, you refer to this piece of paper that is stuck on the original contract? A. That is right.

Q. Did you see Mr. Greenspan after that? A. No, I didn't see Mr. Greenspan again until the following December.

Q. The fifth of December? A. Around the first part.

Q. I thought you said "fifth"? A. No, the following December.

Q. What year? A. That is 1928.

Q. Where did you see him then? A. Why, he called up the office and I was given a message that Mr. Greenspan wanted to see me in reference to the system. That is all the information I got.

Q. What did you do? A. Well, I went right down to Perth Amboy, and I came into the plant,

and our men were at work then. They were just about ready to clean out. I think they were practically through with their work.

Q. Installing this equipment? A. Installing this system.

Q. What happened? Did you see Mr. Isidor Greenspan? A. He wasn't there when I first arrived. I just stuck my head in the office and looked around and he wasn't there. I went out. I saw this Truskin steel building, so I wanted to know what that was all about. So I went in there and I saw Mr. Ridley had some of his helpers around and he had his material stored there, and he had his bench set up, and I went in there just looking the building over, this Truskin steel building.

Q. When did you see Mr. Greenspan? A. I came back, oh, I saw him about, I think around one o'clock he usually came back.

Q. Did you have any conversation with him? A. Yes.

Q. What did you say to him and what did he say to you in that conversation? A. I think I opened the conversation, "What can I do for you, Mr. Greenspan?" He said, "Well, I want to see you about the possibility of extending this equipment to take care of that new Truskin building, or this new building that I have out here."

So I had been thinking about it while I was in the building looking it over. It was a building that was about, I think it was about sixty-eight feet wide and it was about one hundred and sixty some feet long; sort of a triangular shape, one corner of it cutting off, due to the tracks coming in on that side; it had a ceiling height of about around thirty feet, and I told Mr. Greenspan that

due to the fact that this was such a high building that it looked kind of bad, that we would have to go to some expense of really fixing this thing up, to retain that heat, because a high ceiling like that, if you have a fire, naturally the heat goes up, and it spreads all over, and it will open a number of sprinkler heads, and put a lot of them into operation. Of course, we realize we have a limited supply of extinguishing fluid in our system, and we want to confine that heat to one area, so it does not spread. I said we would have to go to the expense of putting in full doors, baffle doors in there. I told him it would be very impractical to hook on the present system, that it would just overload it, that was all, and we would have to put in a new tank, another tank. He said, "I don't want to go into that expense." He said, "I am just going to let the thing ride."

I said, "All right." So I left and that was all was said at that meeting.

Q. Did you see him again after that? A. I saw him again—this was the early part of December. I didn't see Mr. Greenspan—the next time I saw Mr. Greenspan was in January, and that was through—we got a call over at our office from a representative of Boynton Brothers, that Marks, another agent in the office, answered the 'phone, and I didn't know where this request came from, but he said, "Come down to Greenspan Brothers' warehouse, they have got some work for you to do down there;" that is all he said to me.

So I went down to Perth Amboy and I had in mind, well, Mr. Greenspan had come to some decision on what to do in the way of protection for

that Truskin building. So I got down there, and I went in and met Mr. Greenspan.

Q. That is Mr. Isidor Greenspan? A. Yes, Mr. Isidor Greenspan. And I said, "Well, what can I do for you again?"

He said, "Well, I am going to take this system out, this sypho system."

(A recess was taken until 2:00 P. M.)

AFTERNOON SESSION

2:00 P. M.

Q. What meeting was this? A. This was on January 11, 1929.

Q. Was there any further conversation at that meeting? A. Oh, yes, that is just the beginning of the meeting. I said, "Well, how come, Mr. Greenspan?"

He said, "Well, I was talking with some brokers here and they informed me that this system does not comply with the requirements of the Schedule Rating Bureau, and I am not going to get any credit rating through them; they told me that I would be very foolish to enter in an agreement with Ernest W. Brown Insurance, I would be putting all my insurance in one company," and he said, "I have come to the conclusion that it is not a good proposition," and he said, "I have turned the whole thing over to them," and he said, "They have promised to get me a real proposition with a standard water system in this building," he said, "and I believe they are going to get the co-operation of the owner to pay part

of the expense," and he said, "I have just turned it over to them."

So I said, "Well, then the request that I received through my office really came through you."

He said, "Well, it came through Boynton Brothers," he said, "and you should go down there and see them."

I said, "Well, you want a figure on the entire group of buildings here on a standard water system?"

And he said, "Yes, that is right."

So I said, "Just what is the matter here, Mr. Greenspan," I said, "gee, we have been negotiating on this thing a long time, the contract has been closed over a year, I thought everything was absolutely settled in your mind, I understand that you placed your insurance with Ernest W. Brown," I said, "I thought everything was satisfactory and settled all the way around." I said, "Here we are, we haven't got our system in, and here this thing comes up, and you claim that you didn't know that this system wasn't approved by the Schedule Rating Bureau, that they wouldn't give you a substantial reduction on your insurance," and I said, "here is the whole thing is just mussed up, I can't understand it." I said, "Just what can I do anyway, I want to treat you right, and I want to see that you get exactly what you want." I said, "When I came in here to make my first call, the first time I saw you, you told me you didn't own the building, and that you had figures previously for a water system, and they were not attractive." I said, "I tried to give you something that would fit in there, that I thought would fit in. The only reason that I

went to—brought you Ernest W. Brown's representative down here was the only way that I could give you that sypho system, you had to take that insurance, I went to all that trouble negotiating from September 23, 1927, away until January 4, the same old thing, waiting for you to get sold on it."

He said, "Well, I am just turning it over to these brokers, and," he said, "I am going to have the system out."

I said, "All right, very well, the only thing I can do is comply with the request of the brokers." I said, "We get many requests through brokers, we are not playing partial to any one particular company, we got bids for factory mutuals, Ernest W. Brown, or the reciprocals, in fact, any insurance organization, we have to do that. Brokers do. They bring us business and we realize it."

So I went back home and I told my department manager what had happened, and shortly after that I was ill, and I didn't submit—oh, after Mr. Greenspan told me to go down and see Boynton Brothers, I didn't go to Boynton Brothers, I didn't want to go down there and start getting in a scrap with them on this insurance. I knew all they wanted was a figure on this building. That is one thing I can sell them. I can sell devices. I can't do anything on insurance.

Q. Did you see Mr. Greenspan again after that? A. After the meeting of January 11?

Q. Yes. A. Yes, sir, I did. A letter came through, it was given to me by my department manager, it was a letter signed by Mr. Toolan, and that letter read something like this: It said, "If you—"

Mr. Toolan: I object. The letter is in evidence.

The Court: It is in evidence.

Q. Is that the copy of the letter you are referring to? A. That is right. That is that letter.

Q. That is what exhibit? A. Exhibit P-5. Well, I took that letter and I went down to see Mr. Greenspan, and I went in and I said—

Q. What was that date? A. That was on March 9 of '29.

Q. Did you have a conversation with Mr. Greenspan there? A. Yes. I went in.

Q. What did you say to him and what did he say to you? A. I took the letter out and I said, "Mr. Greenspan, did you authorize that letter to be sent to us?"

He said, "Yes, indirectly." He said, "I have turned this whole matter over to the brokers and really indirectly I authorized that letter to be sent."

And I said, "Well, now, what is the reason for all this?"

He said, "Well, as I told you, I have turned this whole thing over to these brokers, and," he said, "I have been assured," he said, first of all, before that, he said, "I think that perhaps there is a possibility of me—this might cost me some money, but I have been assured by them that they are going to give you a good run for your money."

I said, "All right, Mr. Greenspan, very well, that is all I can say," and I returned to my office and told my department manager exactly what had happened, and that is the end of my case.

Q. Did you, at any time in your negotiations with Mr. Greenspan, ever tell him that the

Schedule Rating Bureau would reduce his rate fifty per cent. if he would put in a Sypho chemical system? A. Never.

Q. You are quite positive of that? A. Never. I told him, in one of our interviews, we had hopes that some day we might be able to get a reduction, but we couldn't promise anything, because that is entirely out of our hands.

Mr. Berry: That is all.

Cross-Examination by Mr. Toolan:

Q. You had been in the sales end of this business with your employer, the Automatic Sprinkler Company, only from July 1, 1927? A. That is right.

Q. And you first saw Mr. Greenspan, you say, the latter part of August or early in September? A. That is right.

Q. How many sprinkler systems had you sold between July and September, that is, you personally? A. I had sold one water system up in my own home town.

Q. This was your second proposition then? A. It was really my second. I had been working on other prospects.

Q. In other words, you were not a seasoned veteran at this game? A. No, sir; not in the sprinkler line.

Q. That is the reason you referred to Mr. Johnson to indulge in some of the sales talk on some of your subsequent meetings? A. On the twenty-third.

Q. Deferring to his greater experience? A. That is right.

Q. You say that Mr. Greenspan informed you

that practically everything they had in the world was in that storehouse, that is, in the way of their assets? A. Yes, sir.

Q. Consequently insurance was a very important thing to him, isn't that true? A. That is right. I would imagine it would be.

Q. Wasn't that what he said, they had to be very careful about insurance because all their worldly goods practically were invested in that business? A. That is right.

Q. You made an affidavit in this case, did you not, for Mr. Berry, at one time? A. Yes, I did.

Q. That affidavit is dated, I believe, the tenth of July, 1929? A. I don't know the date.

Q. Just for the purpose of refreshing your recollection, look at this. A. Yes, sir.

Q. In that affidavit you said, did you not, referring to this section right here, that I have underlined, "He would be interested in procuring some form of sprinkler equipment that would effect a reduction in his insurance rate?" A. That is right.

Q. That was the basis and the cornerstone, was it not, of your discussion with Mr. Greenspan, reduction in insurance rate? A. After I introduced my system, I would think so, yes.

Q. But isn't it a fact that all sprinkler systems practically are sold fundamentally on the saving to the man who is installing the system, in his insurance premium? A. In a usual case, yes. There are many companies, of course, that carry their own insurance, and are looking for protection.

Q. Excluding the people who carry their own insurance, and who simply put it in for protection, the average man who writes his insurance

through the usual insurance companies is primarily interested in how much insurance premium he can save when he installs the sprinkler system? A. Yes. That is our strongest selling point, I would say.

Q. And naturally you stress that when you talk to a man, isn't that true? A. That is true.

Q. You testified that on this first occasion when you met Mr. Isidor Greenspan, and he had made known to you that he was only the lessee of the premises, and when you went up to make a little survey of the property to determine about what it would cost to install the system, that you say you decided in your own mind, and I believe I am quoting your exact words: "I am going to shoot a sypho case on this fellow"? A. Yes.

Q. That is what you thought? A. Yes.

Q. There aren't many sypho systems installed in this state, are there? A. In this state?

Q. Yes. A. No, not very many.

Q. Did you ever sell a sypho system in this state before? A. No.

Q. This was your first sypho case you were working on? A. That is right.

Q. It is a difficult thing, is it not, to sell a sypho system in this state? A. Yes, it is.

Q. What is the reason for that? A. Because we must depend on reciprocal insurance, or there are a few other small mutuals, that are not so good, they have to take, in order to get this system.

Q. In other words, the insurance field that will enable a reduction in premium is very limited with the sypho system? A. That is right, in the State of New Jersey.

Q. Did you know that at the time you came out to Mr. Greenspan? A. I most assuredly did.

Q. How did you know that if you had never installed a sypho system before? A. Why, because I had been working with Mr. Johnson. He was primarily working on sypho cases, and he had been in connection with the New York reciprocals quite a bit, and in Youngstown I had studied the sypho system quite extensively, and finding its applications.

Q. That was the mechanical features of the sypho system, wasn't it? A. Yes. And then when I got to New York it was very necessary—well, about the first two weeks I had to study up on insurance. Of course, I knew a little bit about insurance. We don't really need a whole lot in our business, but there was something I had to learn on insurance and those different forms of insurance were given to me.

Q. This Ernest W. Brown, Incorporated, has its office where? A. Number 1 Park Avenue.

Q. And where is the office of the Automatic Sprinkler Company? A. Number 1 Park Avenue.

Q. Is there any alliance or connection between the Automatic Sprinkler Corporation and the Ernest W. Brown Company? A. I believe not, no, sir. Not to my knowledge. They are in an insurance field. We are in fire protection.

Q. I know, but whenever you installed a sprinkler system— A. Yes, sir.

Q. (Continuing)—that is, a chemical system— A. Yes.

Q. (Continuing)—was it your practice to immediately introduce the Ernest W. Brown to the man that you were going to sell the system to, in order to prove to him that he could get insur-

ance? A. In the State of New Jersey, yes, it was absolutely necessary.

Q. And on this first visit to Mr. Greenspan? A. Quite.

Q. When I say Mr. Greenspan I am always referring to Isidor, because he is the only one you really did business with? A. Right.

Q. On this first visit to him will you please tell me just exactly what you said to Mr. Greenspan when you started in describing this sypho system? A. The sypho system?

him a full description of the system itself first.

install this system, is that correct? A. I gave

Q. Yes. As I understand it, you proceeded to show him what advantage it would be to him to

Q. Eliminating the mechanics of it, what sales argument did you use to indicate to him that it was good business for him to put this system in? A. First of all, because he didn't own the property, and that he could not put, naturally would not put devices in there which would become a part of the property and would naturally be very expensive. Something which he himself admitted. Because he had had figures previously to my visit, from the Grinnell Company.

Q. What I want you to do now is tell me what you said to Mr. Greenspan. A. Well, I told you that I explained the mechanical features of the system first.

Q. All right. A. Now, after I got through with that I told him, in order for us to install that system, and in order for him to enjoy a premium reduction, it would be necessary to write his insurance with Ernest W. Brown.

Q. Well, what else did you say? A. I went into the plan, briefly, of Ernest W. Brown. I wasn't

too well versed in it except that I knew that Ernest W. Brown were allowing our company, that is, the sypho division, a fifty per cent. reduction for a sypho system installed in a risk which they would approve, and which we, of course, felt was adequate protection, because we have a lot at stake too. In order to try to put in a system—

Q. Never mind this. A. I told him this. I told him we had something at stake too, that we couldn't afford to put in a system and have the building burn down. And I also told him that this particular system had a wonderfully fair record, and I dare say that we have—I know we have at least fifty testimonials, written testimonials which have been unsolicited.

Q. Is this what you told Mr. Greenspan now? A. Yes, sir. I gave him a history of this sypho system.

Q. What I want to get from you now is what you told him, not all the arguments you thought of since. As I understand, you told him he had to insure through Ernest W. Brown? A. Right.

Q. And you told him that this was a good system and that you had something at stake, is that correct? A. I told him it was a good system, right.

Q. And that you people had something at stake? A. Yes, sir.

Q. What else did you tell him about this system? A. About the system? Outside of its mechanical features, and I told him, oh, that the heads, sprinkler heads we used in the system were the very same heads we used in our water systems; that the arrangement of the heads were the same as in our water system, to comply with the same rules of the National Board of Fire Un-

derwriters, that is, our red book, sprinkler man's bible, as we call it. And that the piping was small, small piping, and how we distributed the liquid, in case of accident, how the acid was dumped automatically into the bicarbonate of soda solution, and how the chemical action set up as the result of this acid going into the bicarbonate of soda solution, acted as a motive force to send this solution to the point of action where a head fused.

Q. Was there anything else you told him? A. I gave him briefly—now, the system is practically out. I gave him the price, because I made a survey, told him the price, our price of $885 a year for this service. I explained to him that it was a service, that he could not buy the system outright, because it had to be maintained, it had to be inspected. These acids had to be tested, and so forth. And told him that in no way could he buy the system, we had never sold one. Then went right into the plan of Ernest W. Brown briefly, telling him first they allowed us fifty per cent. reduction with the sypho system installed in a risk they would approve, and then told him that an anticipated saving of additional twenty-five per cent. would be given him in the form of a dividend. I asked him whether he would be interested and he said yes he would. I asked him would he like to meet one of the representatives of Ernest W. Brown, so he could come down and tell him all about this insurance plan. He said he would. And I left.

Q. Now, is that about all you told him? A. That is about all I told him in my first talk.

Q. Did you tell him anything in addition to

that in any of your subsequent meetings? A. Anything in addition?

Q. Yes, to what you have just related? A. In what way? The question will have to be—

Q. I am simply asking you whether or not you told him anything in addition to that. A. About prices, or what?

Q. About anything?

Mr. Berry: I object to the question as being not quite clear. I don't believe the witness understands. I don't blame the witness for not being able to answer that. He has already testified to what he told him. Mr. Toolan should question him about that.

The Court: The question is all right, I think. If the witness does not understand it, he may say so, that he does not understand it.

A. I have asked Mr. Toolan just what he refers to. You said, "Have you said anything else to him?"

Q. Let me review briefly what you have said: that he had to insure through Ernest W. Brown; that the system was a good system, and it produced good results, and you had some interest in putting in a system. A. Yes.

Q. And you explained the mechanical features of the system to Mr. Greenspan, and how it operated, and worked, and the fact you had had testimonials that it did work well? A. Yes.

Q. And you gave him the price? A. Yes.

The Court: That is not all he said to you. He also said that the water system was a very expensive system as compared with it, and

that this was the only system that could be put in and taken out. I got from that—I do not know whether I am right or not—that if the water system was put in it would be part of the structure of the building and could not be removed.

A. That is true.

By the Court:

Q. Whereas this system was one that could be leased because it could be removed at any time, is that right? A. That is right.

Q. But a water system could not be removed, is that right? A. Could not be removed.

Mr. Berry: I believe he also testified why he had to go to Ernest W. Brown.

The Court: Oh, yes, surely he did.

By Mr. Toolan:

Q. Was there anything, in addition to that, that you said to Mr. Greenspan at any time in selling him this system? (No answer.)

By the Court:

Q. Was there anything said about the old line insurance companies, or stock companies? A. Oh, yes. I did tell him something about old line stock companies. I said how the old line stock companies depend upon brokers to get their insurance, that a broker, of course, must get a commission, and that a good many times a broker will have a number of risks which he may be able to place with some stock company, and he goes to them, and some are good and some are not so

good, and said, "Well, here is some insurance for you." Of course, in a good many cases, in order to get the business, they take this line. Whereas, Ernest W. Brown, they do not do this. They take the better class of risks, and for that reason they can write at a much lower rate.

By Mr. Toolan:

Q. Is that the only thing you said to him about old line insurance companies or stock insurance companies? A. I believe that is about all I ever said about them.

Q. Now, at any time in the course of your conversation, did anything come up about the New Jersey Schedule Rating Bureau? A. Oh, yes, he asked me if it was approved by the Schedule Rating Bureau, and I said it was not.

Q. What is that? A. I told him it was not accepted by the Schedule Rating Bureau.

Q. When did you tell him that? A. Told him at the first meeting.

Q. Well, you omitted to tell us that. A. Did I omit to tell you that?

The Court: Not on direct examination.

Mr. Toolan: Yes, he did say that on direct examination.

Q. You did tell him that at your very first meeting? A. Yes.

Q. How do you know it wasn't approved by the Schedule Rating Bureau? A. Well, I have been told it hadn't. On our advices, because he knew we had to go to Ernest W. Brown in order to get a sypho system in the State of New Jersey.

Q. Did you ever have any published rate,—do

you know, of your own knowledge, whether there was any published rate by the New Jersey Schedule Rating Bureau on this system? A. A published rate?

Q. Yes. A. Well, all rates that are published are—it is according to the risk you are on. They are just separate. There is no fixed rate.

Q. Did you know, at that time, whether or not the New Jersey Schedule Rating Bureau had ever published a rate on this system at any place at all? A. Would give credit for it?

Q. Yes. A. No, I didn't know of any they would give credit for. I knew later they would, but not at the first meeting I didn't know that.

Q. That is your understanding, you told Mr. Greenspan that the old line insurance companies, or the stock companies, could not give him as good a rate because of the fact they had brokerage overhead, and so forth, but the reciprocal company didn't have, is that correct? A. Yes.

Q. Did you tell him any other reason why the old line companies could not give him as good a rate? A. Except the one I just gave you.

Q. What one is that? A. I just told you one of the reasons, if it were either fire protected, or sprinklered with this, got A-1 rating in Dun's. That is, not an A-1 rating, but a very good hazard.

Q. As I understand it, you didn't tell him that the old line or the stock companies would not get him a rate because the Schedule Rating Bureau had never approved it? A. I told him it wasn't accepted by the Schedule Rating Bureau.

Q. Did you tell him that was the reason the old line companies could not and would not give them a rating? A. Well, the old line companies,

they hadn't any rates. It is a Schedule Rating Bureau that has to do with a stock company.

Q. Did you tell him what rate, if any, he could get in any of the old line companies? A. With a sypho system?

Q. Yes. A. No. Never gave him any on that.

Q. Did you tell him that he could get a reduced rate? A. Not at that meeting. I think at a later time I said, "You could get possibly a small reduction. Not very much."

Q. You say you think you told him that? A. Yes, I will say I am sure I told him that.

Q. That you told him he could get a small reduction? A. Yes.

Q. Did you tell him he would get a fifty per cent. reduction in any company that he applied for insurance? A. I told him he would get a fifty per cent. reduction with Ernest W. Brown, but he would never get it with a stock company.

Q. Is this sypho system regarded as a sprinkler system or merely as an extinguisher system? A. It is known as a sprinkler system.

Q. That system, according to the approval of the Underwriters' Laboratory, has to be so laid out and so designed that not more than three of the sprinkler heads will go off at one time, isn't that true? A. It is not exactly so that it would have to be laid out and so designed, but the point it refers to is that the ceiling heights must not be too great so that more than that number will open. You are never sure of anything in a fire, in a wet pipe system, or any kind of a system.

Q. I am referring to page 8 of the testimony taken in this case at Chicago. Are you familiar with the approval of the Underwriters' Laboratory? A. I just know that it exists. I haven't seen it.

Q. I direct your attention to this clause in their approval on page 8: "Designed for use in case where not more than three sprinklers are expected to control the fire, or 200 gallons of chemical solution," isn't that what that means, that this system is only good when thus installed in such places as you may expect to control the fire by the discharge of not more than three sprinkler heads? A. That is where it should be.

Mr. Berry: I do not see what relevancy it has to the testimony. It has nothing to do with the main examination, and I do not think the issues.

The Court: I will allow it. You may have an exception.

Q. Did you, or anyone in your presence, that is, referring to Mr. Stockwell, of Ernest W. Brown, and Mr. Johnson, make known or say to Mr. Greenspan that the reciprocal insurance companies were not licensed to do business in the State of New Jersey? A. I never made mention, no, that they were not licensed in the State of New Jersey. Mr. Stockwell might have, because he had interviews that I wasn't there—

Mr. Toolan: I move that be stricken out.

A. You are asking me whether I did?

Q. Yes. A. I never made mention that they were not licensed to operate in the State of New Jersey.

Q. Did you know whether they were or not? A. I did not know.

Q. Did Mr. Stockwell, in your presence, ever make known to Mr. Greenspan that the reciprocal

companies were not licensed to do business in the State of New Jersey? A. No.

Q. Did you ever make known or say to Mr. Greenspan that in the event of a fire loss, and failing agreeable adjustment, with the reciprocal company, that it would not be possible for him to bring suit in the State of New Jersey, under his policy, against the reciprocal companies? A. No, I didn't enter into that end of it at all. That was covered by Mr. Stockwell.

Q. Did Mr. Stockwell ever cover that in your presence? A. Not in my presence.

Q. So that you don't know whether he did it or not? A. Tell him that if, in event of loss, recovery, and suit where a suit was involved, he could not sue in this state?

Q. Yes. A. No. He never covered that in my presence, and I don't know whether he covered it with him or not.

Q. Did you ever make known to Mr. Greenspan that it was a misdemeanor for any representative of a reciprocal company to solicit business in the State of New Jersey? A. I didn't know that it was a misdemeanor for them to solicit business in the State of New Jersey. I had an understanding, as I just before testified, I thought it was all right for them to.

Q. Did Mr. Stockwell, in your presence, ever make known to Mr. Greenspan that it was a misdemeanor for any representative of a reciprocal company to solicit business in the State of New Jersey? A. No.

Mr. Berry: I would like to interpose, at this point—

The Court: That is implying in your question that it is a misdemeanor.

Mr. Berry: I would like to have Your Honor take judicial notice of the fact that the law Mr. Toolan is referring to was passed after all this took place. That is Chapter 221 of 1928, and approved April 3, and went into effect April, 1928, yet, this contract was signed January 4, 1928, and these negotiations which he says were illegal took place in 1927.

Mr. Toolan: The statute that I refer to did not go into effect until April of 1928. The negotiations with Ernest W. Brown, however, went on a period of many months following that, but the statute of 1928 is merely an amendment of a previous statute, which, while I am in error when I say it was a misdemeanor, it was not a misdemeanor, but was subjecting the party soliciting insurance to a penalty, and with that, I would like to ask those questions again because I think it is material.

The Court: Where is there any decision to the effect that such an insurance as this could not be enforced?

Mr. Toolan: I think this is a case directly on this statute.

The Court: In this state?

Mr. Toolan: Yes, State of New Jersey against New Jersey Indemnity Company, 95 Law, 308, which is under Section 88 of this Insurance Statute, where there was a penalty of some $500 imposed for any agent or representative of any insurance company, not authorized to do business in this state, soliciting business in the state. Suit was brought to recover under that penalty, and

the penalty was imposed, and it was taken up to the Court of Errors and Appeals, and it is our contention it is the identical sort of a company as this company, and it was affirmed, the imposition of the penalty. That is under Section 88. The amendment of 1928 is an amendment of that section; the only change in the section is the addition of the fact that it is a misdemeanor under that section, and following that line of reasoning, there are any number of cases which hold that any contract which contravenes a statute which prohibits a doing of the thing, will not be enforced in this state, even though the statute does not say the thing is void, the courts will not enforce it. We have a number of cases on that proposition.

The Court: I do not quite agree with your general proposition as a matter of perfect law. For instance, no one doing business—anyone doing business under a firm name, for example, whose firm name is not filed in the County Clerk's office, is subject to a penalty, yet that does not stop the effectiveness of a contract between a party doing business under a firm name that is not filed.

Mr. Toolan: I think if they brought suit under that situation, under the decisions—

The Court: I know, but there is a decision in this state clearly to that effect. I have forgotten the name of the case. There is a decision in this state in which the Chief Justice filed the opinion.

Mr. Toolan: A case which is analogous to this situation is a case where a man sold an automobile and failed to deliver a bill of sale.

Upon the consummation of the transaction a check for $1200 was given for the automobile to the seller by the buyer. The seller failed to deliver a bill of sale and subsequently brought suit to recover on that check. The Court refused to permit him to recover on that check because he had violated the statute in not giving a bill of sale.

The Court: I know, but the statute in that case distinctly states that there can be no sale, there can be no sale unless it is done in the way that the statute provides, so far as automobiles are concerned. That is a different proposition. I am not ready to say now that a contract of insurance, such as one of these reciprocal contracts, is an illegal contract. Where is there any law for saying it is an illegal contract?

Mr. Toolan: The case I cite here, as supported by these cases. Here is the case of Lewis, 1 Miscellaneous, 392, is authority for the proposition that any contract which requires a violation of law is absolutely void, even though the statute does not expressly prohibit the doing of an act, but only subjects the person doing it to a penalty.

The Court: How does that answer this? The statute may be framed as to make the thing itself illegal, because it is not done in a certain way, but that does not say simply because an agent is subject to a penalty for attempting to do a brokerage business that he is not authorized to do, that the contract itself is bad.

Mr. Toolan: Well, that is our contention.

The Court: I cannot agree with you and

will not unless you show me some specific decision of the State of New Jersey to the effect that reciprocal insurance is, as between the parties insured, illegal under that statute. I do not believe it.

Mr. Toolan: We have any number of cases here that I think I can submit to Your Honor that hold this proposition, that if two parties make a contract which is in violation of any public law of this state that the courts will not enforce that contract as between either of the parties.

The Court: Suppose a half a dozen manufacturers got together and agreed by contract between themselves to have a joint insurance fund for their own protection. Isn't that legal? Where is there anything to stop that under the law of this state?

Mr. Toolan: That is different from this situation. There they would not be engaging in the insurance business. There they would have a contract for the mutual protection of each other.

The Court: Isn't that this case?

Mr. Toolan: No, it is not.

The Court: Eliminating Brown altogether, if they have an agreement among themselves, any five, six, or five hundred businessmen, manufacturers, and all that, engaged in a joint contract to mutually insure one another, why can't it be done? It might be that any man who presumes to be an agent to do business among others outside of that contract, that that is what this statute is intended to reach.

Mr. Toolan: No. I think this statute is in-

tended to prohibit anybody except specified insurance people that comply with the insurance law of this state from doing business in this state, and anybody who does not comply with the law of this state and does business in this state is subject, prior to 1928, to a penalty, and subsequent to 1928 to indictment as a misdemeanor.

Mr. Berry: In reply to that we say that all of these contracts entered into in New York, and being valid in New York, under the constitution of the United States they are valid in every other state.

Mr. Toolan: I have a number of cases on that proposition, that the courts of this state will not enforce a contract made in this state that contravenes the law of this state. That is an exception to that rule. There are cases in this state directly in point.

The Court: Where is that statute we have this morning?

Mr. Toolan: Section 123. I will give it to you right away.

Mr. Toolan: May I put the same question, and instead of saying a misdemeanor, say that it was contrary to the law of the State of New Jersey to solicit?

Mr. Berry: I object to that.

Mr. Toolan: Insure by any representative or agent of the reciprocal company, and with that change in the question I would like to have it submitted to the witness.

The Court: That is objected to and the objection is sustained, and the Court, for the present, sustains it on this ground: that the witness has already testified as to what he

did say to Mr. Greenspan, and since he has limited himself, under thorough probing, as to what he said, that in itself leaves the proof that he said nothing else. Therefore any questioning along this line would be simply in the form of—or would be practically arguing the case through questions before the jury.

Mr. Toolan: As I understand Your Honor's ruling, Your Honor thinks we have already negatively established that and it is not necessary for us to affirmatively establish it.

The Court: That is it precisely. He has testified to everything he has said, after repeated questioning what was all that he said, he has testified and, therefore, so far as effective proof is concerned, he said nothing else.

The other question that you raise I will pass on subsequently as to whether or not the insurance offer of this so-called reciprocal insurance was, as a matter of fact, an illegal act. That is a matter I am not passing on just now.

By Mr. Toolan:

Q. Referring to your affidavit of July 10, I believe it was, I show you this clause here where you say that you explained to Mr. Greenspan that the Sypho system was not yet approved by the Schedule Rating Bureau, and therefore, so great a reduction in an insurance rate would not be effected, with old line insurance companies, as would be effected through a mutual company or a reciprocal exchange, did you say that? A. Yes.

Q. And is that what you said to Mr. Greenspan? A. That is right.

Q. Did you say to him that you could not get as great a reduction through the old line insurance companies as you could get through the reciprocal companies? A. What meeting is this?

Q. Any meeting at any time? A. Oh, I said he would be granted a slight reduction. I made such a statement, sir. There might be a slight reduction, but it would not be worth while, it would be a small reduction. They would have to do that because it is an extinguisher.

Q. Is that what you said to Mr. Greenspan, that you would not be able to get as great a reduction in the old line companies as you would in the reciprocal companies? A. That is right, I would not be able to get as great a reduction.

Q. Did you ever get any more specific than that and say to him what rate you would be able to get in the old line companies? A. No. I never quoted rates.

Q. On the occasion in December when you went down to Mr. Greenspan and he spoke to you about putting this system in the Truskin steel building that he built? A. Yes, sir.

Q. As I understand it, you told him that it would be impractical from a fire protection standpoint to enlarge on the system that was in process of then being installed, is that correct? A. Yes.

Q. Why would it be impractical from a fire prevention point of view to enlarge on the system? A. Because at the Greenspan plant there is a main building, three-story main building, and then there is what I call an extension off to the east side, one-story structure, and that was what you would call the whole main building. It has been referred to as two buildings, but since there

is a communication between the new building, or the three-story building, and this structure, it is what I call an extension. Now, sometime during the year, after January 4, whenever this building was put up, I don't know when it was put up, this building was erected adjacent to this extension and alongside of the garage building. Now, before this building went up, that garage building was approximately fifteen feet away from this extension.

Now, when they put up this Truskin steel building they had it so that you could go right straight through the extension, the building that I call an extension, right into the Truskin building, and then through another communication right into the garage. There were no fire doors on there when I was there, and it was a very high building, that is, about thirty feet, the ceiling heights were very high, and for that reason we were covering everything all on one area.

Q. Well, may I ask you this question: Was the reason you could not extend this system because you were limited to a 200-gallon tank? A. That is right. It is too much for the system.

Q. Of liquid supply? A. Yes.

Q. And to extend the system any further would be overloading that particular tank? A. It would be overloading the system.

Q. Now, in this affidavit, and referring, I believe, to your meeting with Mr. Greenspan as of January 11, you say that Mr. Greenspan said, however, that he had been told that Ernest W. Brown, Incorporated, that insurance with them was illegal and, therefore, no good, that Boynton Brothers & Company told him that? A. Yes.

Q. Did he say that to you ? A. Yes, he told me that.

Q. Now, again, and I believe this is on your meeting of March 9, you say, Mr. Greenspan further told deponent at this interview that the proposition of Boynton Brothers was far more attractive because it gave him very low insurance rates and at the same time allowed him to place his insurance with old line companies, and he wanted to know why deponent, that is you, had not figured water equipment for his building in the first place, did he ask you that? A. Yes, sure.

Q. Did you tell him why? A. Yes, sir.

Q. What did you tell him? A. I told him when we began our negotiations back in the first part of September, my first meeting with him, he told me he didn't own the building, and he leased the building, and had already had figures from a competitor, namely, Grinnell Company, prior to my visit, so that was the reason I didn't figure water system.

Q. What would be the minimum cost to Mr. Greenspan of this contract which you signed? A. This cost here?

Q. Yes. A. The minimum cost?

Q. Yes. A. That is something that is entirely out of my hands. I can't give you a minimum cost. Do you mean to say could it be less?

Q. What would the minimum cost to Mr. Greenspan be of this sprinkler system, under that contract? A. A water system?

Q. No, of the system that you sold him?

Mr. Berry: I object to that. The contract speaks for itself.

A. Don't forget, this is a service—

Mr. Berry: I object.

A. It is not a system. It is a service.

The Court: Do you mean the service as provided for by the contract?

Mr. Toolan: Yes.

The Court: The contract itself tells that. $885 a year for ten years.

Mr. Toolan: No. It was a shorter period than that, under certain contingencies.

The Court: Yes, I understaand that.

Mr. Toolan: That is what I wanted to get.

Q. What would the cost of a water system be as compared to this system?

Mr. Berry: I object as irrelevant.

The Court: I think that may be competent. It may be of some assistance to us.

Mr. Berry: I will withdraw the objection.

A. On the entire plant? That is the only water survey that I made. That was on his main building, his extension, his Truskin building, and his garage building. That is very precisely what I made up. And I think my price submitted to Boynton Brothers was over $10,000, and I tried to qualify that price later with Mr. Greenspan, and I couldn't. That is, I tried to qualify it.

Q. If this system ran the whole ten years at $885, the price would be $8,850, wouldn't it? A. He would have to pay in to us that amount of money.

By the Court:

Q. If the water system was put in, who would have the burden of maintenance of the water system? A. The tenant, I imagine, in this case.

Q. Well, would you? A. Oh, in a water system?

Q. Yes. A. Absolutely not. They own that.

By Mr. Toolan:

Q. It would be up to the tenant to maintain it? A. Absolutely.

Q. It was up to the tenant to maintain this system? A. It was not.

Q. He had to pay for re-charging? A. Oh, yes.

Q. And so forth? A. Yes.

Q. Any new acids or liquids that would go in, isn't that true? A. Yes. He had to pay in the case of a fire, if it was discharged, he had to pay.

Q. Suppose something went wrong with the system while it was in there? A. The mechanics?

Q. Yes. A. We would have to repair it.

Q. Didn't he have to bear the expense of that under this contract? A. No.

My Berry: The contract can speak for itself.

Mr. Toolan: I appreciate that, if the Court please.

Q. This morning you stated that Mr. Greenspan was quite concerned about when he would start to pay this rental under this contract? A. Yes.

Q. And you stated that you told him that he would start paying rent as soon as he got an insurance credit, is that right? A. From the New York reciprocal companies, right.

Q. Is that what you told him? A. Right.

Q. That was contrary to your contract, wasn't it? A. Contrary to my contract?

Q. Yes. A. It is an original contract form that I made out there.

Q. Isn't that contrary to your contract, that statement?

Mr. Berry: I object to the question. If it is, it will be apparent.

The Court: He is under cross-examination now. He may be asked that to clear it up.

A. You say that that is contrary to that contract?

Q. Yes. A. I can't see that it is.

Q. How does this contract read there? Will you read it, as to when Mr. Greenspan would start paying rent? A. "Subscriber shall pay to licensor, in advance, upon the licensing of the equipment by the licensor, or upon the date when subscriber first becomes entitled to insurance rate credit by reason of said service, the sum of $885 for the first year's service."

Q. That is all I want. So that Mr. Greenspan might be required to pay this first installment in the annual rental therefore under this contract if he got no insurance reduction whatsoever, isn't that true? A. The reason—

Q. Is that true or not. A. According to that first part, yes.

Q. In other words, as soon as Mr. Reilly came down and put that license tag on there? A. Yes.

Q. Mr. Greenspan's rent started, isn't that true? A. That is true. He had protection on his building.

Q. So that you didn't tell him that, did you, when he signed this contract? A. No. He can read the contract.

Q. I say, you didn't read him that? A. I said when his insurance credit became due.

Q. And Mr. Reilly, who put that license tag on

there, is employed and paid by the Automatic Sprinkler Company, isn't that true?

Mr. Berry: I object.
The Court: We have already had that.
Mr. Toolan: I will withdraw that.

Q. You also testified this morning that on your visit on January 11 that Mr. Greenspan said to you that he had learned that he could get no reduction from the Schedule Rating Office of New Jersey. Did he tell you that? A. Yes.

Q. Did he tell you that he had applied to the Schedule Rating Office? A. No, he didn't say he applied. He just learned that he couldn't get it.

Q. That was on January 11, 1929, he told you that he had just learned he couldn't get it? A. That is when he told me.

Q. What did you say to him? A. I said, of course, you couldn't get credit from the Schedule Rating Bureau through the Schedule Rating Office.

Q. What did you say to him when he told you he had just learned that? A. Had just learned it?

Q. Yes. A. I didn't think that he could just learn it because of these negotiations all up to this time, my goodness, why should he still be holding my contract? If he felt, in his own mind, he could get fifty per cent. reduction on any kind of insurance, why not sign the contract? His lease is getting younger and younger, or nearer expiration.

Q. Well, did he tell you that, that he had just learned it? A. No, I wouldn't say that he just learned it.

Q. Isn't that what you said this morning, that he told you that at that meeting, or do you re-

member your testimony? A. He got that from, surely, from this gentleman that came over there and told him from Boynton Brothers, and I imagine, I don't know, some broker told him that.

Q. Did he say that was the first time he had learned that? A. He didn't say whether it was the first time or when.

Q. Didn't you think it was unusual that he should be speaking to you about that at that time after you had told him that a year ago? A. Yes, surely. Absolutely I was surprised to think he would say it.

Q. This morning I believe you testified that Mr. Stockwell, in this letter of September 27 had confirmed all he had said to Mr. Greenspan in your conversation? A. I wouldn't say all that he said.

Q. And discussion at Greenspan's warehouse? A. I wouldn't say all that he said. You can't always cover everything that you say in a letter. He covered the essential points of reciprocal insurance, I know that.

Q. He covered the essential points of reciprocal insurance? A. Very fully, I would say.

Q. He didn't cover any of the objections to reciprocal insurance, did he, in this letter? A. Objections to it?

Q. Yes. A. Oh, yes. One objection is on the point of assessment.

Q. Well, is there anything other than the point of assessment that was covered in this letter, that you know of? A. It was brought out, the fact you are placing all your insurance with one company, too. That is an objection.

Q. Well, was there any other objection to reciprocal insurance companies that he brought out in this letter? A. It might be, but I don't recall.

Mr. Berry: May the witness see the letter? The letter speaks for itself.

The Court: The letter speaks for itself. It is not this witness's letter.

Q. May I ask you this then: Did Mr. Greenspan tell Mr. Stockwell, in your presence, to write him confirming all that had been said at that time? A. He said, "Yes, you confirm the essentials of our meeting here today, tell us about your insurance plan."

Mr. Toolan: I think that is about all.

Mr. Berry: Nothing further.

Louis Senn, a witness produced on behalf of the Plaintiff, in rebuttal, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. What is your full name? A. Louis Senn.

Q. Where do you live? A. White Plains, New York.

Q. How old are you? A. Forty-five.

Q. What is your business? A. Insurance man, reciprocal insurance specifically.

Q. Where are you employed? A. 1 Park avenue.

Q. With what company? A. Ernest W. Brown, Incorporated, the attorneys in fact for five reciprocal organizations.

Q. What position do you hold in Ernest W. Brown? A. I am vice-president.

Q. How long have you been connected with Ernest W. Brown? A. About twenty-nine years.

Q. How long have you been engaged in reciprocal insurance work? A. Same time. Pardon. I have not been connected with Ernest W. Brown. The present attorneyship is only ten or eleven years in operation. Previous to that there were other attorneys whom I served under.

Q. Will you give us, in your own words, briefly, an idea of what reciprocal insurance is? A. Reciprocal insurance is—

Mr. Toolan: I object to this on the ground that I do not believe it is material what it is.

The Court: How can I tell whether it is an illegal insurance or not until I know what it is as a matter of fact?

Mr. Toolan: Isn't it a fact that it is not licensed to do business in the State of New Jersey and is prohibited from doing business in the State of New Jersey?

The Court: I do not know whether it is or not. I want to find out what it is.

A. Reciprocal insurance is merely an aggregation of individuals, partnerships, corporations, who have combined together for the purpose of interinsuring; merely that you will insure my risk, I in turn will take my share of your risk. Indemnify you in the event of fire. Inasmuch as there are thousands of concerns such as that in the average reciprocal organization of our type, the administration must be conducted by a certain individual or corporation who can act for these people, who, of course, are engaged in all lines of business, and Ernest W. Brown, Incorporated, in this particular case is appointed the attorney in fact to act for and in behalf of all of these people.

Q. In each instance anyone who joins a recip-

rocal organization is both an insurer and an insured person? A. There is a two-fold relation; one is an Underwriter, the other is a policyholder. They must go hand in hand.

Q. How is there any security in this situation? How is the organization stabilized, if it is, in any way? A. The organization is stabilized through the fact, of course, that we are domiciled in the State of New York, and are under the supervision of the laws of the State of New York applying to reciprocal organizations.

Q. How does any individual take out, how does he effect insurance under this plan? A. He makes application, he is investigated thoroughly, as to his moral and financial standing, his risk is inspected from the physical standpoint to see whether it is standard, so far as our requirements are concerned. He is then presented with the opportunity of signing an agreement, which, of course, is absolutely the same as signed by every other subscriber.

Q. Are these agreements which are signed, signed in various jurisdictions, various states? A. They are signed all over the United States and Canada, that is, they are all signed practically as emanating from New York, although the individual signs where he feels like signing. It emanates from the City of New York. In other words, we have no branches, no agencies anywhere that can in any way affect the writing, or the acceptance of an agreement, except at 1 Park avenue, New York City.

Q. Do you know whether that complies with the laws of the State of New York? A. No question about it.

Q. Do you or do you not? A. I do know.

Mr. Toolan: I object. I move it be stricken out.

The Court: How do we know whether he does or not?

Q. How do you know whether they do or not?

Mr. Toolan: I object.

The Court: I am asking you, is he competent to express an opinion as to what is the law of the State of New York?

Mr. Berry: No. I will come to that point.

The Court: The last answer as to whether or not—in answer as to whether or not it complied with the laws of the State of New York is stricken out.

Q. Do the reciprocal organizations, which are represented by Ernest W. Brown, as attorney-in-fact, at the present time cover any risks in the State of New Jersey?

Mr. Toolan: I object.

The Court: I will allow that.

A. They do.

Q. Will you name some of them?

Mr. Toolan: May I interpose another objection and say this: that I do not believe that it is relevant at all to this issue whether or not they have written other risks or not in this state?

Mr. Berry: I think Your Honor would be greatly interested in knowing the extent of this—to which this case may go in affecting probable contractual relations.

The Court: I have not any right to be interested as to its effect on anybody outside of the immediate parties to this suit. Personally I might be curious about it, but I have not any right to be interested in anybody outside of the people involved.

Mr. Berry: It will also support the previous question, Your Honor.

The Court: I am in doubt as to whether or not any of this is competent. I am in doubt as to whether or not it is necessary to put in this kind of evidence. But, since I have allowed a probing along the line of reciprocal insurance, as to what it was, as conducted by Mr. Toolan, I am going to allow a wide latitude in having explained what it is. Now, you are going beyond an explanation of the nature of this.

Mr. Berry: May I state the first meeting Mr. Lyons had with Mr. Greenspan it was stated he was given a list and this is, in a way, corroboratory of what has previously been given.

The Court: I will allow you to ask him if he knew who were insured in the State of New Jersey, in this kind of insurance, at the time this contract was entered into, because that might be pertinent. Because he has already testified that he was told, so far as reciprocal insurance was concerned, that Bamberger and other names were given as men who had taken advantage of this insurance. Now you are asking him who is insured—

Mr. Berry: I will withdraw that question.

Q. I ask you, Mr. Senn, whether you know what companies or individuals were insured in the State of New Jersey on or about the twenty-seventh of September, 1927?

Mr. Toolan: I object.

The Court: I will allow you to specifically ask him if, as a matter of fact, the men that were mentioned to Greenspan, and the concerns that were mentioned to Greenspan, were actually insured in the reciprocal insurance at the time of the entering of this contract.

Mr. Toolan: May I respectfully point out that I cannot see the relevancy of that for the reason that we are not contesting in anywise anything they might say about reciprocal insurance. We simply say this: that in so far as the sovereign state of New Jersey is concerned, that they are barred from this state and they cannot do business in this state. Now, this evidence is, according to our theory, evidence that they are violating the law of this State, and they are endeavoring to use that to their own advantage, because, every time they did business in the State, according to our theory, they violated the law. I have no objection to this man explaining what reciprocal insurance companies and so forth are, but I do not believe he ought to be permitted to go beyond that and take advantage of their own illegal conduct to establish their claim in this case.

The Court: Well, of course, there is the point of saying that there was a deception, that he was told that certain big prominent concerns in this State were insured in this

character of insurance. If you are willing to admit that when he testified, Greenspan testified, that he was told those who carried this kind of insurance, that that was true, then there will be no necessity for this question.

Mr. Toolan: Mr. Greenspan admitted on the stand that they told him that. He admitted they told him that.

The Court: Yes, but the point I am making is this: Did they tell him the truth?

Mr. Toolan: That we don't know.

The Court: Then I am not going to give you the chance of saying before a jury that "we don't know." Because that might be an element of deception, that is, if they told him a certain thing, and it was not true.

Mr. Toolan: We cannot contest it, because we do not know whether it is true or not.

The Court: On the point I have raised that, as a matter of fairness, if they can prove affirmatively the truth of any statement they made to him, which helped to induce him to sign this kind of a contract, I am going to allow it.

Mr. Toolan: May I have an exception?

The Court: You may have it, Mr. Toolan.

By the Court:

Q. Was Bamberger insured under reciprocal insurance, with your concern, at the time of the entering of this contract, which was January 4, 1928? A. It was.

By Mr. Berry:

Q. Was the Wheatena Company? A. It was.

Q. Was Hahne? A. It was.

The Court: I think you have enough now to cover that point. They were telling him the truth at the time when, in encouraging him to the signing of this contract, that there were certain concerns that were insured in this kind of insurance with them.

Q. Where were the contracts entered into by subscribers accepted?

Mr. Toolan: I object. We are not interested in where contracts were accepted. We are interested in this particular contract, if any there was, and the contract itself is the best evidence of that.

Mr. Berry: If the legality of this insurance is in issue, or does have any part in the case, and we shall also contend that it has not, Mr. Toolan insisting that it has, if it has, the question of where these contracts are accepted is a material fact respecting the legality.

The Court: Confine it to this contract.

Q. Where was the contract that was signed by Mr. Greenspan, in one reciprocal organization which he accepted, accepted by Ernest W. Brown Company?

Mr. Toolan: I object.

The Court: That may be a legal conclusion, Mr. Berry, as to acceptance. Give us the facts, and then as to what is acceptance is a matter of law.

Mr. Toolan: May we also have developed whether or not this witness knows anything

about the particular contracts that are referred to?

The Court: Certainly.

Q. Outline this procedure that took place when Mr. Greenspan signed up with one reciprocal organization for insurance, as he testified to that he did this morning.

Mr. Toolan: If the witness knows.

A. The agreement came to my desk, was accepted by me on behalf of Ernest W. Brown, that is one of my duties, and was checked up as to proper signature.

Q. Have you that agreement here? A. I have not. I don't know whether it is in evidence or not. I would not be prepared to say. Cancellation of the insurance automatically cancelled that.

Q. Is the insurance valid until you accept it in New York? A. Not necessarily.

Q. What do you mean by "not necessarily"? A. Well, from this angle, while we might consider ourselves morally held by the action of any of our men who might accept insurance outside, it is not considered to be fully accepted until we put our O. K. on it in New York.

Mr. Berry: Cross-examine.

Cross-examination by Mr. Toolan:

Q. Do you know how much insurance L. Bamberger & Company had on January 4, 1928, in your companies? A. I couldn't give you a definite answer. I can estimate for you.

Q. I don't want your estimate. I want to know if you know. A. I don't know.

Q. Do you know how much Wheatena had? A. Wheatena I am positive of, I should say—no, I won't be positive. I may be wrong in ten or twenty thousand dollars, and I prefer not to go on record.

Q. Do you know how much any of these concerns had? A. To the dollar?

Q. Well, within a thousand or two, Hahne, for instance? A. Well, I would say that, if you want Wheatena, I possibly have that a little better in mind. I should say we have about $1,200,000 on Wheatena, did have at that time. It has not changed much.

Q. That is at the Rahway plant? A. The Rahway plant.

Q. Is the plant worth that much? A. The buildings are worth that much almost. Their contents are very nominal amount.

Q. You don't know what you had on Bamberger? A. I couldn't say. We have four or five risks for Bamberger and it is difficult for me to remember.

Q. As I understand it, this reciprocal proposition is practically a partnership, is it not? A. No, sir.

Q. How is it distinguished from a partnership? A. Because each subscriber signs a separate and distinct power of attorney, appointing Ernest W. Brown attorney-in-fact. There is absolutely no joint liability.

Q. Attorney-in-fact for what? A. For them.

Q. To do what? A. To underwrite insurance, adjust losses.

Q. Have you got one of those contracts with you? A. I am sorry, I have not.

Q. Well, this agreement then that a man signs

when he wants to take out insurance, he agrees to do what? He appoints Ernest W. Brown as attorney to do what? A. To act for him in an insurance capacity. That says, he authorizes him, as I said before, to appoint insurance—to appoint him on risks which we insure, to adjust losses, to pay taxes, to negotiate, as far as is necessary, with insurance departments, and so forth, and produce licenses and go through the legal steps necessary where such legal steps are required.

Q. That is, Ernest W. Brown is a corporation, is it not? A. It is a corporation.

Q. Of the State of New York? A. Of the State of New York.

Q. Then, what a man has to do to take out insurance in these reciprocal organizations is give Ernest W. Brown, Incorporated, authority to go out and bind other risks, and obligate the man who signs that contract to pay a fair share of the loss, or a certain percentage of the loss, in case there is any loss? A. Entirely *pro rata,* based on the premium he pays.

Q. Suppose there is a loss, who do they sue? A. The insurance commissioner—

Q. Suppose one of your subscribers has a loss, who do they sue? A. Of course, we never had a suit.

Q. Well, who do they sue if you can't agree on it? A. The Insurance Commissioner of the State of New York accepts service of process from any subscriber located anywhere.

By the Court:

Q. Who do you sue? A. He sues the subscribers. The subscribers at New York reciprocal underwriters, or individual underwriters, I am

giving you the legal title now. And they can be sued by service of process upon the insurance department, the superintendent of insurance, and can sue Ernest W. Brown for these subscribers, that is, including all of the subscribers. I don't know whether I have the legal phraseology right.

By Mr. Toolan:

Q. If you want to sue, do you have to name everybody that is a subscriber to one of these organizations? A. No, sir. All you have to sue is Ernest W. Brown on behalf of the subscribers.

Q. Is that set forth in this subscribers' agreement? A. That is set forth in this subscribers' agreement in black and white.

Q. And you haven't one with you? A. I am sorry I haven't. I didn't know it was necessary.

Q. And these reciprocal companies are not incorporated, are they? A. No, sir.

Q. Just a combination of individuals all over the country? A. It is an aggregation, that is about the best word you can use. It is not an association even.

Q. Ernest W. Brown is not authorized to—is not an authorized broker in the State of New Jersey to solicit insurance? A. Is not.

Q. And none of these companies that you attempted to write insurance for Greenspan in are authorized to do business in the State of New Jersey? A. They are not.

Q. And you knew that at the time this business was solicited? A. Absolutely. We do not concede, however, that we have not any right to come into the State, that is, to treat with anybody in the State of New Jersey who wishes to

take our insurance. I am not a lawyer, or of the legal profession, but that is our contention.

Q. Have you ever read Section 88 of the Insurance Laws of the State of New Jersey? A. Irrespective of what it may say, we consider, and this is based upon legal opinion, and we act accordingly.

Q. Well, you know that you can't get a license from the Department of Banking and Insurance in the State of New Jersey to do business here, don't you know that? A. There is no law, no. We can come in.

Q. You know you are barred from the State of New Jersey? A. As long as the present laws are in force, yes. As far as obtaining certificate of authority.

Q. In the event Mr. Greenspan had a loss under any policy that he might have had with you, or the subscribers' agreement, could he sue in the State of New Jersey? A. I do not believe so.

Mr. Berry: I move that be stricken out. That is a question which Mr. Toolan has answered just as well as that witness. He knows he could sue him in New Jersey if he could catch him here.

The Court: Catch who here?

Mr. Berry: Catch any representative of Ernest W. Brown here. That is, this question of possibility of suit is, after all, immaterial to the issue, and one, furthermore, which is not the question of fact. It is a question of law.

The Court: That is true. He has no right to express a legal opinion, Mr. Toolan.

Mr. Berry: I move that be stricken out.

The Court: It is stricken out.

James B. Johnson—Plaintiff—Direct.

JAMES B. JOHNSON, a witness produced on behalf of the Plaintiff, in rebuttal, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Berry:

Q. What is your full name, Mr. Johnson? A. James B. Johnson.

Q. Where do you live? A. Kansas City, Kansas.

Q. How long have you lived in Kansas City, Kansas? A. Thirty-five years.

Q. Where is your residence at the present time? A. New York City.

Q. What is your business? A. I am a salesman.

Q. Connected with what company? A. Timken, Detroit.

Q. With what organization were you connected prior to your association with this last one you have mentioned? Where were you employed before you had this present occupation? A. I was in the same line of business with the American Nokol Corporation.

Q. And before that? A. Automatic Sprinkler Corporation of America.

Q. How long were you connected with the Automatic Sprinkler Corporation of America? A. From 1919 until 1928.

Q. You left the Automatic Sprinkler Corporation in 1928? A. April of 1928.

Q. Why did you leave the Automatic Sprinkler Corporation of America?

Mr. Toolan: I do not believe it is material.

A. I was discharged.

Q. In what capacity were you employed by the

Automatic Sprinkler Corporation of America while you were employed by them? A. Salesman.

Q. During the entire period of time? A. Yes.

Q. What did you sell? A. All of their devices, particularly their sypho chemical service.

Q. Did you sell sypho equipments in New Jersey? A. I sold two in New Jersey.

Q. Did you take part in an interview with Mr. Greenspan, Mr. Lyons, and Mr. Stockwell, at Perth Amboy? A. I was present at one, yes.

Q. When did that interview take place? A. September, 1927.

Q. Do you recall the circumstances of your going there? A. Yes.

Q. What were they? A. I was with Mr. Stockwell in Irvington, we had just negotiated a contract for chemical sprinklers.

Q. Was that a sypho system? A. Yes.

Q. Did you put that system in? A. Automatic Sprinkler did, yes. Mr. Stockwell, when he finished it, told me he had an appointment in Perth Amboy with Mr. Lyons on a similar proposition, and asked me if I would accompany him. I was going back to New York. And I went along with him.

Q. Well, what time did you arrive in Perth Amboy? A. I don't recall. Sometime after lunch. Between one and two, possibly.

Q. What did you do when you got there? A. Mr. Lyons met us at the train. We took a taxi and went to the warehouse of the Greenspan Corporation.

Q. You went to the warehouse of Greenspan Corporation. Who did you find after you arrived there? A. Mr. Lyons asked for one of the members of the firm, a Mr. Greenspan, and he wasn't

present at the time. He was expected back in an hour or so.

Q. Did you wait? A. Yes. We went through the building first. Mr. Stockwell wanted to look it over from an insurance standpoint.

Q. Did you subsequently see Mr. Greenspan? A. Saw several Greenspans, yes.

Q. Did you have an interview with one of them? A. I saw this gentleman, yes.

Q. Is this the gentleman that you had the interview with? A. I didn't have any interview. I thought I saw this gentleman there. I sat in on an interview. He was one of the Greenspans that listened in, yes.

Q. Who was present at the meeting that was had subsequently? A. Mr. Stockwell, myself, Lyons, and three gentlemen, all of whose names were Greenspan.

Q. Was this gentleman there all the time? A. That gentleman was there all of the time. The other two gentlemen were in and out of the conference room or private office.

Q. Do you recall what was said at Mr. Greenspan's office on this occasion by the people who were there? A. No, I didn't pay particular attention to it. The whole purpose of the interview seemed to be, Mr. Greenspan wanted to hear about reciprocal insurance from Mr. Stockwell, and that was—

Q. Will you tell us what was said by him—what one party said to another, what Mr. Stockwell said, and what Mr. Lyons said, and what you said, and what Mr. Greenspan said so far as you can recall? A. Well, the only things I can recall are those things that were of interest to me. I was interested in the sale of sypho, and not in that particular installation. I recall Mr. Greenspan

asked me why the Schedule Rating Office, or why the New Jersey authorities,—I don't know whether he used the term "Schedule Rating Office," or the New Jersey authorities, did not accept this form of protection. I answered him, "Ask the Schedule Rating Office," that was a question we didn't attempt to answer.

Q. Did Mr. Greenspan know that the Schedule Rating Office would not accept this sypho system?

Mr. Toolan: I object.

A. I don't know what he knew.

Q. But you say he asked why it was the insurance authorities would not accept this form? A. In the course of this interview, we were all sitting around the table, he asked that question, why this equipment was not accepted in New Jersey. I don't know whether he said "Schedule Rating Office," or "New Jersey Underwriters."

Q. Who did most of the talking at this meeting? A. Mr. Stockwell did practically all of it.

Q. What did he start off by telling him? A. Reciprocal insurance.

Q. What did he tell him about reciprocal insurance? A. I really didn't follow it. It is a long, long story. He told him, in effect, that it was good insurance, and attempted to explain to him and show him where it was economical, less costly to him than stock insurance.

Q. What was that last? A. Less costly to him than stock company insurance. In other words, attempted to sell him or convince him that that insurance was good insurance and better for his purposes.

Q. Was any question brought up as to why Mr. Stockwell was brought down there? A. Mr.

Stockwell was obviously expected, because Mr. Greenspan came in late and apologized for being late, explaining he had been detained for some cause or other.

Q. Why had Mr. Stockwell been brought down there, did that come up? A. Well, I knew why he was brought down. Mr. Lyons had asked him to come down.

Q. Did you say anything about Schedule Rating Bureau, did you have any part in the conversation? A. Practically none. Mr. Greenspan asked that question about why they didn't accept it, and at the end of the interview Mr. Lyons and Mr. Stockwell asked him to go ahead with an agreement at that time, and he gave several reasons for not wanting to go into it immediately, saying he wanted to look it up, was one of his reasons, look up the insurance companies. He also wanted to get in touch with his landlord and find out if the landlord would be willing to switch his insurance from the stock companies to these reciprocal companies, and give Mr. Greenspan the savings that he would get by virtue of this protection towards paying the service charges for sypho.

Mr. Berry: Cross-examine.

Cross-Examination by Mr. Toolan:

Q. You live in New York, Mr. Johnson? A. Live there now. My home is Kansas City, Kansas.

Q. You appear here today in accordance with the request of the plaintiff corporation? A. At the request of one of these attorneys. Called me up and asked me if I would come down voluntarily, and I did.

Isidor Greenspan—Defendant—Recalled.

Mr. Toolan: That is all I have.
Mr. Berry: Plaintiff rests.

ISIDOR GREENSPAN, recalled.

Direct Examination by Mr. Toolan:

Q. Mr. Greenspan, don't answer this until it is ruled on. What was the cost to you of installing the sprinkler system that you put into your building after you took out the sypho system?

Mr. Berry: I object.
The Court: Objection sustained.
Mr. Toolan: May I say this: The reason I believe this to be relevant is this: Testimony has been produced here that the reason Mr. Greenspan put in this system was because he did not want to go to the additional expense of putting in a different system which would become part of the building. Therefore, the item of cost, I think, is material, and I think we are entitled to show what the cost was of installing another system.
Mr. Berry: The cost to him is no part of the negotiations. That we think we could show, if that matter was opened up, and it would require as much testimony as we have had in this trial, of what he actually did pay for the new system, because there were other people beside himself who were interested in the installation of that, Boynton Brothers, the landlord, and himself. And there was undoubtedly contribution from all parties. So that it is not only irrelevant, so far as the

issue to this case is concerned, but whatever it cost him would not prove the very fact Mr. Toolan is trying to inject in the case. I think it only clouds the issue.

Mr. Toolan: The only thing I want to prove is the absolute cost, and cost to only one person, and that is to Mr. Greenspan. I mean the cost of installing that system. As far as Boynton Brothers paying any part of it, that is absurd. They are in the brokerage and insurance business, and they are not paying the installation of anybody's equipment. It is a cost between Mr. Greenspan and the owner of the property, and whatever that cost is, I think we are entitled to show it, and I would like to show it, in view of this testimony.

The Court: I think it is competent, in view of the fact Mr. Lyons said that in his negotiations with Mr. Greenspan, that Mr. Greenspan demurred to the installation of the sprinkling system because it would cost so much, he not owning the building, and that he, as an inducement to Greenspan, said that they would lease a system, this sypho system, instead of putting in a water system; that they could lease the sypho system because that was something that could be removed without substantially destroying the structure that it was in. Whereas a water system would be built right into the buildings themselves and would be practically unremovable. That was one of the reasons that was advanced by the seller to induce the buyer to enter into the contract.

The other reason was, according to Mr.

Isidor Greenspan—Defendant—Recalled.

Lyons, through the installation of this service, this leased service, that Greenspan would be able to get from this reciprocal insurance rates that were at least fifty per cent. less than the other one. It all goes to the question of the probability or improbability of the respective stories told by Lyons and other witnesses on the part of the plaintiff, and by Greenspan, and everything that was said at the time that could in any way move the mind and the will of the parties, is, in my opinion, entirely competent, if for no other reason than to assist the jury in determining the probability or improbability of the truth of the stories as respectively told by the different parties. For that reason I will allow it.

Mr. Berry: One more ground: This man is testifying something which ought to show, by record, and he has not produced the record. Likewise, this is not installed by himself personally but by a corporation.

The Court: It is what it cost Greenspan.

Mr. Berry: I think the corporation books and records would be the best to show that.

Mr. Toolan: I will find out if we have the contract. If we have, we will produce it.

Mr. Berry: I do not think this is proper evidence.

The Court: I have told you the reason why I think it is proper.

Mr. Berry: I mean proper proof. I object on that ground also.

The Court: He has the records of what it cost.

Isidor Greenspan—Defendant—Recalled.

Q. Have you the original contract? A. I haven't got it with me, but I can have it here within a half hour.

Mr. Toolan: We will produce it in the morning.

The Court: I want to finish the case outside of this.

Mr. Toolan: I just want this one question, it is simply a matter of production of this contract, and we will produce it, whatever it is.

Mr. Berry: I will withdraw my objection.

The Court: Yes. And then tomorrow morning he can bring it along as a matter of corroboration, if you want it.

Q. What was the cost, Mr. Greenspan? A. $5,700.

Q. Is that the total cost of installing that system? A. Everything.

Q. That contract was signed by whom? A. By Potts and Kaufman and Greenspan Brothers. Globe Automatic Sprinkler Company.

Q. Does that system cover the same area that was covered by the Sypho system? A. It covers a great deal more area. It covers the new Truskin building and the garage.

In other words, it covers the same— A. Covers about twice as much area.

Q. That contract was $5,700? A. Yes, sir.

Q. Does that represent the entire cost to you and everybody, Potts and Kaufmann? A. Everybody; yes, sir.

Mr. Toolan: That is all I have.

Mr. Berry: Nothing further. In view of

that testimony I would like to put on Mr. Lyons again.

The Court: Certainly.

LeRoy Faust Lyon, recalled.

Direct Examination by Mr. Berry:

Q. Mr. Lyon, what kind of a sprinkler equipment does the Globe Indemnity sell with reference to make? A. The Globe Company?

Q. Yes. A. What kind of sprinkler equipment is it? Very good equipment.

Q. I mean the Globe Automatic? A. They can install wet pipe systems, and dry pipe systems; they are also licensees of our company, they can handle our special devices. They are a very good company, if that is what you want to know.

Q. They use your— A. Our devices they are licensed to handle. Also our automatic extinguisher, which we use in connection with dry pipe systems.

Q. Did you make an estimate on the plant subsequent to the talk you had with Mr. Greenspan in December of 1928? A. Not in December. After—

Mr. Toolan: I object for several reasons: First, that it is not material. Second, that Mr. Lyon, I believe, has already testified, in his previous testimony, that he submitted a bid of some $10,000, as I remember it.

A. Yes, that is right.

Q. What did that estimate include? A. That estimate covered the entire group of buildings,

as has been named in this proposal here, the new Truskin building, the old three-story building, the extension, and the garage.

Q. Did it include the Sypho system which had been installed? A. No, sir; I had an extra for that, in my proposal.

Q. You say you tried to qualify that figure. What do you mean? A. On March 9, during my call at Mr. Greenspan's, Mr. Greenspan showed me a proposal that had been submitted to him, but it wasn't giving—I asked him—he told me he had this price. I said, "It is outrageous, I can't figure it at all, it is so far below mine." I said, "Do you mind showing me the specifications, and let me see if you are getting a good buy here?" I said, "You are getting a wonderful buy, if you can buy a system like that, I don't blame you for buying it."

He said, "I will show you the specifications."

So he showed me a set of specifications, but they were not sprinkler specifications. I couldn't pick the different parts that make up a system. It was a proposal that was drawn up by—I don't know who it was drawn up by, but it sounded like an insurance company guaranteeing rates, and that his entire plant would be covered with a dry pipe system, in accordance with requirements of the Schedule Rating Office of New Jersey, and his price was around $5,700 or $5,900, I have forgotten that point. I saw that the payments were, I think, $1,200 down, or something like that. Some form of deferred payments in that proposal.

Q. Do you figure on any of these proposals? A. I figure very many.

Isidor Greenspan—Defendant—Recalled.

Q. Are you well acquainted with the manner of estimating the cost of a job? A. Yes, sir.

Q. In your opinion, was the estimate that you submitted to Mr. Greenspan a reasonable one? A. A fair one. Had a good legitimate profit.

Cross-Examination by Mr. Toolan:

Q. This proposal was to cover not only the warehouse that had been covered by your Sypho system, but the Truskin building and the garage and everything? A. That is right.

Q. Covering approximately twice as much area would you say? A. No, that is not true because, you see, your new building is three stories, 1,550 more, and you have 591 in the other one.

Q. Do you know whether or not this is the specification? A. I haven't seen that. I have seen the Globe before. Sometimes I get a good friend to show me one.

Isidor Greenspan, recalled.

Direct Examination by Mr. Toolan:

Q. Is this a copy of the contract you signed with the Globe? A. Yes.

Mr. Berry: I object to the introduction of this.

Mr. Toolan: I thought counsel asked me to produce it.

Mr. Berry: I do not deny we entered into this, but I do not see why the jury should be mixed up with a number of different papers. The testimony is in. I do not think it is rele-

vant or material to the issues in this case as to whether or not a contract be entered into, induced by the—

The Court: You did not make any objection to him stating what the price was, excepting that there should be a record of it. Haven't you waived that? Now, they have found the record. Of course, that is not the original.

Mr. Toolan: This is a duplicate copy signed by the Globe people. I think we are entitled, especially in view of the last witness's testimony, to produce the copy.

The Court: I will allow it.

Mr. Berry: Prays exception.

The Court: Certainly.

Mr. Toolan: I offer that in evidence.

(Copy of contract entered in evidence and marked "Exhibit D-12.")

(A recess was taken until tomorrow, Thursday, January 9, 1930, at 10.00 A. M.)

LeRoy Faust Lyon—Plaintiff—Recalled.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1929.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA,
Plaintiff,
vs.
GREENSPAN BROTHERS COMPANY,
Defendant.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court-house in the city of New Brunswick, New Jersey, on the ninth day of January, 1930, at 10.00 A. M.

APPEARANCES:

MESSRS. POTTER & BERRY,
RAYMOND H. BERRY, ESQ. (Present),
MESSRS. MILLER & CHEVALIER (of New York Bar),
JOSEPH H. EDGAR, ESQ.,
Attorneys for the Plaintiff.

JOHN E. TOOLAN, ESQ.,
Attorney for the Defendant.

LeRoy Faust Lyon—Plaintiff—Recalled.

LeRoy Faust Lyon, recalled.

Direct Examination by Mr. Berry:

Q. Mr. Lyon, I show you Defendant's exhibit 12, and ask you if you can tell me what that is? A. It is a proposal submitted by the Globe Automatic Sprinkler Company.

Q. How many sprinkler heads does that call for on the job at Greenspan Brothers Company plant?

Mr. Toolan: I do not believe that this testimony is relevant. We introduced the proposal, and Mr. Greenspan testified that they had that sprinkler system installed under that proposal. What difference does it make if this gentleman figured something differently and didn't get the contract on the basis of his figure? That, as I understand it, is the purport of this testimony.

Mr. Berry: It is already in. I am simply asking the witness to read something that is already in the evidence.

The Court: There is already evidence to the effect that one of the inducing causes of this contract was the fact that the installing of the sypho system was much cheaper than the installation of the water system. And on the question of the probability or improbability of whether or not there was a contract induced by false representation I thought that that evidence was pertinent. Now, then, the Defendant has put in evidence to the effect that he was able to install a system at a certain price, and the evidence was put in to tend to show that such a system

could have been put in at the time the sypho system was put in, at a price as reasonable or as small. Therefore, the question of whether or not the same area was covered, and whether or not it was as effective a system, and the why of the price, I think is material in full explanation of the whole subject along that line. And for that reason alone—I do not think it has any probative force. It goes only to the question of the probability or improbability of the truth of the respective stories told by the parties, but since I have allowed one part of it in I think I will allow this.

Mr. Toolan: May I respectfully pray an exception?

The Court: Certainly.

A. The price for the work as specified within the proposal and specifications is $5700, and based on the installation of 570 automatic sprinklers, and has to be paid $1,200—

Q. That is all right. 570 sprinkler heads? A. Yes. But there is really more to be read here, because a part of this contract covers a pro rata on more or less sprinklers.

Q. All right. A. $1,200 upon completion and approval by the Schedule Rating Office, $1,200 annually for three years thereafter, and $900 four years thereafter. It is understood and agreed that Potts and Kaufmann, Incorporated, will pay $700 on each of the five payments—

Mr. Toolan: Why read this?

A. There is a pro rata clause comes after all this.

Mr. Toolan: The contract speaks for itself.

LeRoy Faust Lyon—Plaintiff—Recalled.

A. Any charge or credit for more or less sprinklers is to be adjusted at the first payment on the basis of Potts and Kaufmann paying or receiving seven-twelfths, and Greenspan and Company five-twelfths of the charge or credit involved, as the case may be. As far as the security is concerned, that is put next.

Q. That proposal in itself shows that the cost might be more than— A. Yes.

Mr. Toolan: I object to the form of the question and I move the answer be stricken out.

A. I can prove that myself. I don't have to have his help.

Q. Mr. Lyon, how many sprinkler heads were there in the Sypho chemical system that was installed in Greenspan Brothers' plant? A. 591.

Q. That proposal speaks of how many? A. This estimate or proposal is based on the installation of 570.

Q. In other words, the proposal there is based for the entire plant? A. For the entire plant.

Q. Does that include not only the building in which you had a chemical sprinkler system, but also the new Truskin building? A. It certainly does because the first paragraph says on the proposal and contract and specifications a dry pipe system, automatic sprinklers to be installed in all buildings covered by this contract.

Q. In other words, the proposal calls for fewer sprinkler heads to cover a wider area than you had already installed in a less area, is that right? A. That is correct.

Q. Are you familiar with the requirements of

the Schedule Rating Bureau? A. I most certainly am.

Q. What makes you familiar with that? A. Well, I have been figuring jobs under the rules and requirements of the Schedule Rating Office practically since I have been connected with Automatic Sprinkler Corporation of America.

Q. How many jobs have you figured on?

Mr. Toolan: How is this material?

The Court: I do not see why you are going into that now.

Mr. Berry: For this reason:

Q. Could the number of sprinkler heads which are named or numbered in that proposal possibly pass the Schedule Rating Bureau requirements? A. Absolutely—

Mr. Toolan: I object to that, because, if this question is answered all I am going to do, and what I have got to do, is bring Mr. Greenspan back and show that it did pass, that is all, and we got our reduction.

Mr. Berry: I don't know that Mr. Greenspan can testify to it.

Mr. Toolan: He knows whether he got the reduction or not.

Mr. Berry: Does he know how many heads he got the reduction on?

The Court: I will allow it, and I will allow any answer to it the Defendant may want to make. You may answer the question.

(Question repeated by stenographic reporter.)

A. For the entire group of buildings?

Q. Yes. A. Absolutely not.

Q. Did you make an estimate as to the number of necessary heads to pass the Schedule Bureau? A. I did.

Q. How many, in your estimation, did you find necessary? A. My proposal covered the installation of 853 sprinklers.

Q. And, in your opinion, is that the necessary number? A. It surely will cover it.

Cross-Examination by Mr. Toolan:

Q. That is a good contract, isn't it, Mr. Lyon, this one here? A. It is a very good contract. If he bought it for $5,700 he bought a peach.

Q. This contract requires, does it not, directing your attention to the first page, reads as follows: "In other words, that the system shall be installed and shall comply with, and so forth, rules and regulations of the National Board of Fire Underwriters"? A. Right.

Q. And subject to inspection by them, or by the Schedule Rating Bureau? A. Right.

Q. Is that correct? A. Right.

Q. So that before these people could collect anything on their contract they would have to have the approval, would they not? A. That is right.

Q. Of both those bodies? A. Right.

Q. That would mean the reduction in insurance? A. Right.

Re-direct Examination by Mr. Berry:

Q. What you are saying is that the Schedule Rating Bureau never approved that number of sprinkler heads? A. Well, I mean that—

Q. I say you deny that? A. I know they couldn't possibly do it.

Q. Do you know whether they did or not? A. Well, if they did, then all their rules and regulations don't mean a thing, because I know all their rules and regulations are according to space of sprinkler heads.

Q. You don't know whether they approved that or not? A. I am not sure, no.

ISIDOR GREENSPAN, recalled.

Direct Examination by Mr. Toolan:

Q. Mr. Greenspan, after the Globe people installed the sprinkler system mentioned in the contract which you have before you and marked "Exhibit D-12", did you obtain a reduction in your insurance rates?

Mr. Berry: I object unless it is shown that this witness knows exactly that the changes called for in that proposal, the exact number of sprinkler heads, was what was installed.

The Court: Ask him along that line, Mr. Toolan.

Q. Mr. Greenspan, do you know whether or not there were any additional sprinkler heads installed other than called for in that contract? A. I know we got our first invoice for what we were to pay, and that was $1,200, according to the contract.

Mr. Berry: I object. The answer is not responsive.

Isidor Greenspan—Defendant—Recalled.

Q. May I ask you this, did you pay any more than the $5,700 mentioned in the contract? A. No, sir.

Mr. Berry: I object, Your Honor. That does not answer the question.

The Court: There he has a contract calling for so many openings.

Mr. Berry: The very wording of the contract shows there are other people paying on it beside Mr. Greenspan. That does not show —that proposal does not show actually what went into that plant. The only way they could prove that was by the insurance broker, or some representative of the Schedule Rating Bureau, showing what actually was approved.

The Court: He has a contract and he says that under that contract he got a reduced rate of fifty per cent. of what his former rates had been, as I understand; he has testified to that before. And there is the contract.

Mr. Berry: The proposal is elastic. The figures are based upon a certain number, with a more or less clause which allows a greater or less amount of money to be paid, the amount to be determined by the requirements of the Schedule Rating Bureau.

By the Court:

Q. Mr. Greenspan, is there any other contract excepting that that you have entered into? A. No, sir.

Q. Has there been any negotiations with the company that installed that system? A. None whatsoever.

Isidor Greenspan—Defendant—Recalled.

Q. As to any additions or subtractions from that contract or proposal? A. No, sir.

Q. Has that been entirely paid for? A. This is the only contract I know of.

Q. Has it been paid for? A. I have got the invoice. I haven't paid it yet.

Q. You mean it has to be paid— A. I got an invoice of $1,200, but I haven't paid it yet. That was the first bill.

By Mr. Toolan:

Q. That was the invoice for the first payment? A. First payment; yes, sir; we are supposed to pay a part and Potts and Kaufmann a part.

Q. Have you made any other arrangement whereby you agreed at any time to pay the Globe people any additional prices? A. No, sir.

Q. For the installation of that system? A. This is the only contract we have got.

Q. Did you get a reduction in insurance rates? A. Yes, sir.

Q. How much? A. The new rate is twenty-eight and one-half cents.

Q. Expressed in terms of percentage with reference to your former rate, how much of a reduction is that? A. It is about twenty-seven per cent. of what it was before.

Q. That is, your rate is twenty-seven per cent. of what it was before? A. Of what I paid last year.

Q. That means you got a reduction of approximately seventy-two per cent? A. Seventy-two per cent; yes, sir.

Q. As the result of that contract? A. As the result of this.

Isidor Greenspan—Defendant—Recalled.

By Mr. Berry:

Q. Mr. Greenspan, have you counted the number of sprinkler heads that are in your plant now? A. No, sir.

Q. Would you say that there were as many in the main building as there were when the sypho chemical system was there? A. We were not interested in that. All we were interested in was the new rate.

Q. You don't know? A. I don't know. I didn't count them.

Q. Have you got any in your new Truscon building? A. The whole premises are covered.

Q. You didn't handle this matter at all, it was all handled for you, wasn't it? A. Sir?

Q. It was all handled for you? A. Well, the contract was brought to me.

Q. Who brought it to you? A. Boynton Brothers and the Globe Sprinkler system.

Q. Boynton Brothers are the ones who took care of having this thing installed, didn't they? A. They negotiated the contract with the Globe people, and got the best price.

Q. They secured the rates from the Schedule Rating Bureau, didn't they? A. Yes, sir.

Q. You don't know whether there are more or less sprinklers in your plant now? A. We made a contract—that is, before we signed we got a guarantee we didn't have to pay any money until the new rate would be at least twenty-eight and one-half cents or less.

Q. That is the only thing you had to do with this? A. That is all we were interested was to get the rate.

Q. Do you know whether there are more or less

sprinklers than you had before? A. Well, as far as I am concerned I wouldn't care if there wasn't any, as long as we got the insurance rate we were looking for.

Q. You don't answer the question. Do you know whether there are more or less? A. I don't know how many sprinklers.

Q. You don't know anything about the number of sprinkler heads you have there, do you? A. Sir?

Q. You don't know whether the number there conform to what is in that proposal or not? A. I wasn't interested in that.

Q. You just don't know, isn't that so? A. I don't know how many sprinkler heads are in there.

The Court: He said he never counted them.

Q. If the Schedule Rating Bureau had required 10,000 more heads, you would not have had to pay any more money, would you? A. The contract we made was to get a certain rate of insurance, to spend so much money for a sprinkler system.

Q. The amount that you were going to spend was limited by that proposal, regardless of what it cost, isn't that so? A. The contract was turned over to the Schedule Rating Office, before we signed it, so we could get a guarantee as to the rate, how much we were to pay.

Q. Yes, but answer the question, Mr. Greenspan. The amount of money that you had to pay was definitely fixed and you were to get, for that amount of money, a reduction in rate, regardless of how many sprinkler heads had to be put in, isn't that so? A. I couldn't tell you that.

Isidor Greenspan—Defendant—Recalled.

Q. Does that contract provide you have to pay any more money at any time than a certain definite amount you pay or are going to pay? A. I don't know what it provides. I know we got our bill in. We have nothing else but an invoice of $1,200, and that is our first payment. I have got the bill in the office. We haven't paid it yet.

Q. Are you going to be charged in the last payment for the additional heads? A. Every payment is scheduled on the contract. If there are any additional payments, it would have been in the first payment, naturally, because it is all—

Q. Why would it have been in the first payment? A. Because it is all scheduled here.

Q. Will you show us in the agreement there where it is all scheduled? A. The price for the work is specified in the within specification is $5,700, based on the installation of 570 automatic sprinklers. This is to be paid $1,200 upon completion and approval of the Schedule Rating Office, and $1,200 annually for three years thereafter, and $900 four years thereafter. It is understood Potts and Kaufmann will pay $700—

Q. Who are Potts and Kaufmann? A. The landlords. And the balance of the above five payments to be paid by Greenspan Brothers. Any charge or credit for more or less sprinklers is to be adjusted at the first payment on the basis of Potts and Kaufmann receiving seven-twelfths, and Greenspan Brothers five-twelfths. And I know that I got an invoice of $1,200, and that is all I know.

Q. Weren't you guaranteed you would not have to pay more than $5,700 in any circumstances? A. We?

Isidor Greenspan—Defendant—Recalled.

Q. Yes. A. This is the only contract there is.

Q. Weren't you guaranteed that you would not have to pay more than— A. Who could I be guaranteed by?

Q. You just said you were, didn't you? A. According to this contract that we would have to pay $5,700.

Mr. Berry: That is all.

Mr. Toolan: That is all.

The Court: Members of the Jury: I am sorry to have kept you waiting this morning, but we were engaged, counsel for the respective sides, and the Court, in a discussion of this case, and we have come to the conclusion that there are many questions of law involved in this case, and that this subject of reciprocal insurance is one that has not been completely passed upon by the Appellate Courts of the State, although there may be decisions that, in general principle, treat with such subjects as this, in such a way that it would be applicable, of course, to a proper determination of this case.

There is substantially no real question of fact involved, excepting one problem. There may be incidental questions of fact, but there is so much law involved that counsel have agreed, and the Court agrees with them, that it is the kind of a case that should be thoroughly argued as to the law, and it is the kind of a case that, with all consideration for the rights of the respective parties, can be safely left to the Court alone, for the determination of such questions of fact, if any, that are involved, and, certainly as to the law, and therefore, it has been agreed that the foreman shall be withdrawn from the jury, and that this

case shall be decided by the Judge, sitting as a Judge of the facts in question, as well as of the law in question.

The Court wants to express its appreciation to you for the admirable and intensive attention that you have followed the unfolding of the evidence in this case. Our time has not been wasted, because it was necessary to make up all this record anyhow, in order to determine, not only the questions of fact that have been raised, but certainly to intelligently and thoroughly pass upon the questions of law that are involved.

Have you anything to add to it, Mr. Toolan, or Mr. Berry?

Mr. Berry: I believe it is likewise agreed, Your Honor, that for the purpose of assisting the Court we will be allowed to—

The Court: Oh, yes, as to the vice-president of the reciprocal companies orally testified as to the subscribers' agreement, and it is agreed that an actual copy of the kind of an agreement Mr. Greenspan signed will be made part of the record. Is that right?

Mr. Toolan: And, if possible, the one he signed.

The Court: And, if possible, the one he signed.

Mr. Berry: Together with the binders.

The Court: Together with the binders.

The Court: Is there anything else to be added.

I want to thank the jury very sincerely for the time they have given. Of course, there is one thing about it, when you get the evidence out this way before a jury, even though it is subsequently agreed that the Court shall pass upon it completely, not only as to the law, but the facts, we get it out more thoroughly, and more satisfactorily than if it was left as a matter of mere

agreement. So, by consent, the foreman of the jury will be withdrawn and this case will be submitted to the Court, both as to the law and the fact, for the Court's sole determination, sitting as a judge of the facts as well as of the law.

The agreement is that after the stenographer has submitted the record to counsel for the plaintiff, that the plaintiff's counsel shall submit to the defendant's counsel, Mr. Toolan, a brief, within three weeks, and Mr. Toolan will submit to the plaintiff's counsel his reply brief in two weeks after the receipt of the brief from the plaintiff's counsel. Plaintiff's counsel will have a right to make a reply brief in one week thereafter, and the defendant's counsel will have the right to make a reply brief within one week after receipt of the reply brief of the plaintiff. Then they will be submitted to the Court and counsel will agree upon a time for any oral argument they may care to make.

Exhibit P-1.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA

Executive Offices
910-28 B. of L. E.
Bank Bldg.
Cleveland, Ohio

Offices
in all
Principal Cities

Manufacturing and Installing

Approved Devices
for the
Automatic Control of Fire

CONTRACT FOR SYPHO FIRE EXTINGUISHMENT SERVICE

THIS AGREEMENT, made by and between "Automatic" Sprinkler Corporation of America, a corporation of the above address, hereinafter called Licensee, Sypho-Chemical Sprinkler Corporation, a corporation of the same address, hereinafter called Licensor, and Greenspan Brothers Company of Perth Amboy, County of Middlesex, State of New Jersey, hereinafter called the Subscriber, for themselves, their successors, executors, administrators and assigns respectively, for Sypho Fire Extinguishment Service, WITNESSETH that

1. Licensee shall install on the premises described under "A" on the reverse side hereof, and thereafter maintain as hereinafter provided, an Automatic Sypho Fire Extinguishment Equipment including a Sypho chemical mixing tank, Sypho expansion chamber, "Automatic" sprinkler heads, fire alarm, pipe, fittings and hangers, all as pronounced standard and approved by Underwriters' Laboratories; and, upon completion, Licensor will inspect the same and, if it approves, will license same for use hereunder for the term hereof by attaching its license plate thereto, and

will thereafter, during such term, inspect the same at least three times annually.

2. Subscriber shall pay to Licensee in advance, upon the licensing of the equipment by Licensor, or upon the date when Subscriber first becomes entitled to insurance rate credit by reason of said Service, the sum of ($885) eight hundred and eighty-five dollars_____Dollars for the first year's Service and shall thereafter, during the term thereof pay yearly, in advance, the sum of ($885.) eight hundred and eighty-five dollars _____Dollars for said Service.

3. The term hereof shall be ten (10) years from the due date of the first payment and thereafter until terminated by one year's prior written notice by any party to the other, but Subscriber may, should he vacate said premises after making five annual payments, terminate the term hereof at any time during said ten (10) years if not then in default hereunder, by giving sixty (60) days' prior written notice of his intention to terminate, enabling Licensee to remove said equipment and by paying Licensee a sum equal to 50% of the second yearly payment.

4. All equipment shall remain the property of Licensee, who may, at all reasonable times, enter any part of the premises and at the end of the term hereof or upon any default by Subscriber, and in addition to any of its other rights and remedies, remove the equipment without any liability for damages by reason thereof.

Exhibit P-1.

5. Subscriber shall furnish, defraying the expenses thereof, all necessary facilities, including space, light and heat, for the proper installation of the equipment; shall maintain the chemical-mixing tank thereof at a temperature not less than 50 degrees F. and, whenever the fluid contents be wholly or partially discharged by fire or other cause, Subscriber shall, by the quickest method, immediately notify Licensee thereof, and if the same was without Licensee's or Licensor's fault, shall pay Licensee not to exceed $75.00 for each recharging.

6. Unless Licensor's written consent is first obtained, this contract shall not be assigned, nor shall any of the equipment or the use thereof be changed, nor shall there be such change in the use or occupancy of said premises as, in Licensor's opinion, will in case of fire cause more than three sprinklers to function.

7. Licensee shall maintain the equipment and make repairs and replacements thereto from time to time and in a manner satisfactory to Licensor, but any repairs, replacements, alterations or maintenance caused by improper or negligent use or by changes or alterations within said premises shall be at Subscriber's expense. Installation of additional equipment caused by additions to, extensions of or changes in said premises increasing the protected area, shall be paid for by Subscriber at Licensee's prevailing charges therefor.

8. The liability of Subscriber hereunder shall not cease because of any default on Subscriber's

part, or because of the exercise by Licensee or Licensor of any of their respective rights as a consequence of such default, including the removal of the equipment from the premises, or because of any damage to the equipment or premises not caused by the fault of Licensee or Licensor.

9. Neither Licensee nor Licensor shall be under any obligation other than herein expressly stated, and in no event shall their aggregate liability for damages, whatever the cause, be greater than $100.000, unless at the time of the execution hereof the parties agree in writing upon a greater liability in consideration of an additional sum to be paid by Subscriber.

10. Neither Licensee nor Licensor shall be bound hereunder until the execution and delivery hereof by both, and no change in the terms hereof shall bind either unless approved in writing by an executive officer of each.

Submitted by LeRoy F. Lyon. Contracting Agent. Jan. 4, 1928.

In Witness Whereof the parties hereto have made this contract at the City of Cleveland, Ohio, this 6 day of Jan., 1928.

"Automatic Sprinkler Corporation of America
By J. J. Harrington
Asst. Treas.

Sypho-Chemical Sprinkler Corporation
By E. J. Salisbury
Treas.

Greenspan Brothers Company
By Isidore Greenspan
Subscriber.
Treas.

Exhibit P-1.

"A"

DESCRIPTION OF PROPERTY REFERRED TO IN PARAGRAPH ONE

Street and No., 226 Washington Street.
City, Perth Amboy.
County, Middlesex.
State, New Jersey.

	Sub Basement	Basement	1st	2nd	3rd	4th	5th	6th	7th	8th	Total
			STORIES								
Ceiling area		6750	6750	6750	6750						27000
Ceiling height	normal		9 ft. to 12 ft.								
Ceiling material	open	joist—w. s. in office									
Ceiling Construction	open	joist									
Decks, area	none										
Benches or tables, area	none										
Contents?	food	products				Extension to main building					
Occupied by Subscriber?	yes					open joist ceiling with small					
How Heated?	steam					attic—total area					2920

Roof is Hip, Gable, Flat, Pitch, Saw-tooth, Monitor, flat and pitch on extension.

Height of roof from attic floor, at high point and at low point

Attic open or closed? No attic.

Occupancy of attic?

Give character of business and of all buildings within twenty feet of property to be protected. Wholesale grocery.

Greenspan Bros. Co.
224 Washington St.
Perth Amboy, N. J.

It is mutually agreed by the parties whose signatures appear on this proposal for Sypho-Chemical Service, that all engineering work may be executed prior to August 1st, 1928 but materials for the equipment of this above-named property shall not be delivered until after August 1st, 1928.

Exhibit P-2.

SYPHO-CHEMICAL SYSTEM NO. 660

The Property of and Leased by

"AUTOMATIC" SPRINKER CO. OF AMERICA

Not Transferable

Licensed for use as and where installed, on condition that royalty, renewal and replacement charges are promptly paid.

PATENTED

1,075,014, Oct. 7, 1913—1,075,020, Oct. 7, 1913
1,075,015, Oct. 7, 1913—1,075,091, Oct. 7, 1913
1,075,016, Oct. 7, 1913—1,075,195, Oct. 7, 1913
1,075,017, Oct. 7, 1913—1,075,283, Oct. 7, 1913
1,075,018, Oct. 7, 1913—1,143,169, June 15, 1915

Other Patents Pending
Inspected and Approved

SYPHO CHEMICAL SPRINKLER CORPORATION
New York City

Exhibit P-3.

SYPHO SYSTEM

Installed and Maintained by

"AUTOMATIC"

SPRINKLER CORPORATION

OF AMERICA, CLEVELAND, OHIO

In emergency notify company as instructed in emergency notice posted below and elsewhere on the premises. Do not alter this system.

Inspected and licensed by Sypho Chemical Sprinkler Corporation. Patents listed on tank license plate.

Exhibit P-4.

DEPOSITIONS OF RAY W. HENDRICKS.

(Printed at page 83.)

Exhibit P-5.

JOHN E. TOOLAN

First National Bank Building
Perth Amboy, N. J.

March 5, 1929

Automatic Sprinkler Corporation,
1 Park Avenue,
New York, N. Y.

Dear Sirs:

Greenspan Brothers Company has referred to this office for our attention a certain agreement entered into with them by your Company.

We have been informed that the sprinkler system does not conform with the representations and warranties made by your Company. In view of this situation we must advise you to remove the machinery and fixtures which you have installed in their building. Unless this is done within ten days, we will undertake to remove the same at your risk and expense.

Will you please give this matter your immediate attention and advise us what you propose to do?

Yours truly,

J. E. Toolan.

JPH:C

Exhibit P-6.

JAMES P. HANEY

JOHN E. TOOLAN
Counsellor at Law
First National Bank Building
Perth Amboy, N. J.

Phone 2268

April 23, 1929.

Miller & Chevalier, Esqrs.,
111 Broadway,
New York, N. Y.

Dear Sirs:

I am advised by my clients Greenspan Brothers, to inform you that your clients, the Automatic Sprinkler Corporation of America and/or Sypho Mechanical Sprinkler Corporation, have entirely failed to comply with the terms and provisions of the contract made with Greenspan Brothers for the installation of a sprinkler system and to obtain the reduction in insurance premium which was represented would be allowed Greenspan Brothers when the installation was complete.

Greenspan Brothers have been extremely patient in this matter and have afforded your clients every opportunity to make good on their contract and to obtain the reduction in rates and other results promised at the time of signing the contract. In view of your failure to perform your agreement, Greenspan Brothers consider that you have not only neglected but wilfully refused to carry out the terms of their contract. Will you, therefore, please have your clients remove this equipment within ten days from date? If they

Exhibit P-7.

fail or neglect to do so, the equipment will be removed by Greenspan Brothers or their agents and the goods packed for shipment to your clients.

Yours truly,

JOHN E. TOOLAN.

JET:C

Exhibit P-7.

Jan. 3, 1929.

Greenspan Bros.,
224 Washington Street,
Perth Amboy, N. J.

Attention: Mr. I. Greenspan.

Dear Mr. Greenspan:—

Since you requested me during my call Dec. 21, to see you again soon after the first of the year, it occurs to me that you may be interested at this time to know as nearly as we can determine on the basis of present rates without building improvements what we may eventually be able to accomplish after the building improvements and extension of sprinkler alarm to fire department have been completed. This case is somewhat complicated in view of which three of our vice-presidents and myself discussed the matter quite thoroughly last night.

I think you understand that as soon as the building improvements especially those providing for standard fire walls between the new building and adjoining buildings are completed, you will be entitled to a substantial reduction in

rates on all of your buildings and contents. I judge the extremely high rates on the new building and contents are due to the fact that there are no standard fire cut-offs between these buildings, meaning that the new building and contents doubtless take the garage rate.

To give you an idea of what we will be able to do for you when the building improvements are completed, I am outlining below an illustrative or tentative proposition.

MAXIMUM AMOUNTS ACCEPTABLE AT THIS OFFICE RATES SAVINGS AND NET COSTS.

At Individual Underwriters.

Sprinklered Bldgs.—$125,000 @ .495	$618.75
Less Average Savings 70%	433.13
Net Cost	$185.62

At Metropolitan Inter-Insurers.

Use and Occupancy—$225,000 @ .41	$922.50
(Note: We are assuming that at least three-fourths of the use and occupancy value is for the main sprinklered building and contents.)	
Less Average Savings 70%	645.75
Net Cost	$276.75

At Affiliated Underwriters.

Contents—	
$150,000 (Sprkld. Bldgs.) @ 60c	$900.00
Less Average Savings—50%	450.00
Net Cost	$450.00

Exhibit P-7.

(Should you eventually insure all contents under one blanket item, we could handle $200,000 at Affiliated Underwriters at a rate of about $1.20 with savings of about 50%.)

Total Premium	$2,441.25
Total Savings	1,528.88
Total Net Cost	912.37

Of the $1,528.88 annual savings mentioned about, 25%, or $382.22 would be paid to you in cash each year. The remaining 75%, or $1,146.66 would be held to your credit until a reserve fund had accumulated equal to $12,206.25, which is five times your own premium on an annual basis. Upon completion of this reserve, the full savings would be paid to you in cash each year. The interest income from this surplus would be credited to you, and if for any reason business relations were terminated, all money standing to your credit would be returned.

It is in order to consider that you effect savings of about 62% from the time you start with us as the amount held to your credit is an asset, earns interest and will be paid on termination of our insurance at any time.

The question will arise, if it has not come up before this time as to the desirability of covering all of the fire insurance on buildings and contents under a blanket form. This would cause complications with us as we could not include the garage building or contents. I should say that your original plan for specific coverage is most desirable under the circumstances.

I think you will note that the big problem for

the moment is to obtain proper reductions of the rate on the new building and contents. You will readily see that with the present rates premium on this comparatively small part is extremely high. If you have obtained information as to reductions in rates on this new building and contents, and also some reductions in rates that should be allowed on the sprinklered buildings and contents, on account of the new building being properly cut off and stairways enclosed, please advise. You may eventually be disturbed on account of our not having sufficient capacity for all of the sprinklered buildings and contents, the new building and contents, and use and occupancy.

I have previously advised that while we could handle eventually all of the sprinklered buildings and contents, also the new building and contents, we could not take care of the use and occupancy in addition. My suggestion is that you place the use and occupancy with us and our maximum amounts on contents and then have the remaining contents insurance covered at the Warner Exchange in Chicago as they will allow the 50% credit for this sprinkler protection and effect additional savings of about 30%. You doubtless know that this Warner Exchange in Chicago operates almost entirely on wholesale grocery risks both sprinklered and unsprinklered, also canning risks.

The reason I have suggested that the use and occupancy be placed with us, and the excess contents coverage elsewhere, is that our use and occupancy coverage is not only far superior to coverage obtained elsewhere, but is extremely low in cost.

Exhibit P-8.

If you prefer, you could place the use and occupancy elsewhere in which case we could handle all of the contents and sprinklered buildings.

Trusting this information may be of assistance at this time, I remain,

Yours very truly,

Division Manager:
A. P. STOCKWELL.

APS LB

Exhibit P-8.

Dec. 18th, 1928.

Greenspan Brothers,
224 Washington Street,
Perth Amboy, N. J.

Attention: Mr. I. Greenspan.
Subj. Fire Insurance.

Dear Mr. Greenspan:

In view of our telephone conversation last evening, I am writing to advise that I expect to be able to call upon you Friday forenoon of this week. If anything develops to prevent my call at that time, I will notify you.

In view of my understanding that your insurance expires Jan. 1st, I am very anxious to see you as soon as possible. Since I last called upon you Oct. 25th, one of our Engineers has called with a view of making the approval inspection of the new sprinkler work and also of indicating certain improvements mainly in fire walls which were discussed at the time of my last call and were also covered in a report of our Inspector,

Exhibit P-8.

Mr. R. Paul, dated Oct. 23rd, and referred to in my letter of Nov. 1st.

I am enclosing herewith copy of the report of our Mr. Sewall who made the approval inspection referred to quite recently, and would suggest that you consider carefully the suggestions contained in Mr. Sewall's report before my visit in order that the suggested improvements may be discussed to the best advantage.

While the cost of these improvements will be quite moderate, we consider same to be very important and to be necessary as a condition of our accepting any considerable portion of your insurance.

Unfortunately the fire doors that were provided since my visit were made by a carpenter totally ignorant of requirements of insurance companies and are all practically of no value.

Briefly confirming my statements over the phone in reply to several questions you raised, would advise that on the sprinklered portions of your plant, our rate will be 50% of the present unsprinklered rate and that our savings will average about 60% in addition which will give you a net cost of about 20% of the present premium.

Regarding the unsprinklered building of noncombustible construction, we could handle this contents insurance without sprinkler protection at savings of 60% to 70% of the present premium.

While we are not licensed in the State of New Jersey as we are in nearly every other state, due to the fact that politicians in New Jersey influenced by Stock Companies have been able to prevent the adoption by the State Legislature of what is known as the uniform reciprocal law, there is no law preventing us from operating there, which means that there is no reason what-

ever why you should not do business with us from a legal standpoint.

In reference to the matter of possible litigation in reference to an adjustment, I would advise that since organization nearly fifty years ago, we have never been sued in connection with an adjustment. We have paid nearly fourteen millions in losses with no litigation involved. This results largely from the fact that we only do business with high class concerns of established financial integrity with selected risks.

This is certainly the strongest and lowest cost insurance available for reputable concerns with selected risks which we specialize in exclusively. You understand that we operate at actual cost for the benefit of our members, which means that there is no incentive to accept poor business or handle our losses on any other than a prompt and liberal basis.

I hope you understand that we have more reserves per thousand of outstanding insurance than the average of the twenty-five largest stock companies and that our reserves are actually the equivalent of about five times the reserves of stock companies on account of our losses averaging less than 20% of the average losses of old line companies doing a general business.

We use standard forms and could participate concurrently for a part of your insurance in case you do not wish to place it all with us. I am enclosing two pamphlets that may be of interest to you at this time.

Yours very truly,

Division Manager:
A. P. Stockwell.

APS LB
ENCLS.

Exhibit P-8.

P. S.

Regarding the suggested improvements would advise that these are based on long experience with a very large number of risks and are made by men classed as qualified experts in fire prevention work. I might state in connection with our fire prevention work that we suggest nothing that any prudent man would not want for his own security against interruption of business provided his judgment is backed up by our extensive experience.

I think I have advised that this is by far the largest and strongest office handling fire insurance by the reciprocal plan and that we have been in successful operation nearly fifty years with a premium income in excess of thirty-three millions, over twenty-two millions of which have been saved for our policyholders. We are now insuring over $1,250,000,000 for over four thousand most reputable concerns with selected risks distributed throughout this country and Canada, and are saving our policyholders over one million per year.

Exhibit P-9.

BOYNTON BROTHERS & COMPANY
Insurance, Mortgages and Real Estate

Ernest H. Boynton
President
Fred J. Cox
Vice-President and Treas.
Roy C. Evarts
Secretary

200 Jefferson Street
Perth Amboy, New Jersey

January 19, 1929.

"Automatic" Sprinkler Corporation of America,
910-28 B. of L. E. Bank Bldg.,
Cleveland, Ohio.

Attention—Mr. J. J. Harrington,
Assistant Treasurer.

Dear Mr. Harrington:

You will recall that we were of assistance to your Mr. Rubsamen in securing contract for the installation of sprinkler system at the Buffalo Plant of the General Ice Cream Corporation.

We are now engaged in a similar proposition for one of our assured at Perth Amboy but we are not securing satisfactory service from your New York representatives.

Sometime ago one of your representatives in cooperation with some reciprocal insurance organization persuaded Greenspan Brothers & Company to use your Sypho Chemical Sprinkler System. Our assured permitted you to make this installation with the understanding that there was going to be a very substantial reduction in his fire insurance rates and as a matter of fact would result in a reduction of over 50%. The work was completed and the Schedule Rating Office of New Jersey asked to publish fire insurance rates. They refused to allow anything but a very small credit (in the neighborhood of a few

Exhibit P-9.

per cent) which was about what they would allow for the better type of chemical extinguishers.

It was at this point that we were called in and our recommendation was accepted by the assured that we have you remove your Sypho Chemical System as unsatisfactory and that we give you the opportunity of figuring on the installation of a standard water supply equipment.

We asked your New York Office to let us have the figures at which they would construct this new system and we requested that they have their representative call upon us. The meeting was arranged for either Friday, January 11th, or Monday, January 14th. Your representative did not call, so we communicated again with your New York Office on Tuesday and asked that your representative telephone us. Again we heard nothing. We followed your New York Office up again on Wednesday, Thursday, Friday and this morning. We could get no one with authority to telephone us and we can secure from no one in your office any information as to whether your representative is figuring on the contract or not.

Because of the happy relations that have existed between us in the past we do not desire to take any arbitrary action in connection with the old chemical system that will hurt you but on the other hand we are going to see that a proper system is installed in our assured's building and we are preparing to secure bids from other sprinkler companies for this purpose.

Will you please see that your New York Office gives attention to this matter immediately?

Very truly yours,

(Signed) JOHN W. COVERT.

2-G

JOHN W. COVERT.

Exhibit D-1.

ERNEST W. BROWN, INC.

ATTORNEY AND MANAGER

New York Reciprocal Underwriters
Sprinklered Risks

Individual Underwriters
Sprinklered Risks

Fireproof-Sprinklered
Underwriters

Non-Combustible
Sprinklered Risks

Affiliated Underwriters
Sprinklered and Non-
Sprinklered Risks

Executive Office
One Park Avenue, New York

September 27, 1927

GREENSPAN BROTHERS,
Perth Amboy, New Jersey.

Attention Mr. I. Greenspan.

My Dear Mr. Greenspan:

As agreed during my call September 23rd, I am writing to confirm the essentials of my statements in reference to this form of insurance and also to outline a proposition for your fire insurance that will indicate to you how our operating methods work out in practice.

If I am correct in my understanding that the rate for your building is 40¢ and the rate for contents 60¢, the proposition for your building and contents insurance would work out about as follows:

Present Conditions

Building $125,000 @ 40¢	$ 500.00	
Contents $300,000 @ 60¢	1800.00	
Present Annual Premium		$2300.00

With Sypho Chemical Sprinkler Protection at Individual Underwriters

Building $125,000 @ 20¢	$ 250.00	
Less average savings 70%	175.00	
Annual Net Cost.....	$ 75.00	

Exhibit D-1.

At affiliated Underwriters

Contents $200,000 @ 30¢	$ 600.00	
Less estimated savings 50%	300.00	
Annual Net Cost	$ 300.00	

Sprinklered Risk Underwriters

Contents $100,000 @ 30¢	$ 300.00	
Less estimated savings 50%	150.00	
Annual Net Cost	$ 150.00	
Total Premium	$1150.00	
Total Savings	625.00	
Total Net Cost	$ 525.00	525.00
TOTAL SAVINGS FROM SYPHO CHEMICAL SPRINKLERS AND RECIPROCAL INSURANCE		$1775.00

Of the $625.00 savings mentioned above, 25%, or $156.25 would be paid to you in cash each year. The remaining 75%, or $468.75 would be held to your credit until a reserve fund had accumulated equal to $5,750.00 which is five times your own premium on an annual basis. Upon completion of this reserve, the full savings would be paid to you in cash each year. The interest income from this surplus would be credited to you, and if for any reason business relations were terminated all money standing to your credit would be returned.

It is in order to consider that you effect savings of about 54% from the time you start with us, as the amount held to your credit is an asset, earns interest and would be paid to you in full on termination of this insurance at any time.

You will note that we have indicated $100,000 Contents insurance at Sprinklered Risk Underwriters. This is a Chicago organization oper-

ating on Sprinklered risks exclusively by the reciprocal plan which I have suggested for $100,000 of the Contents insurance on account of the limit at this office being $125,000 at Individual Underwriters on Buildings and $200,000 at Affiliated Underwriters on Contents. I might mention that we frequently advise other similar organizations in cases like this for amounts we cannot handle with a view of producing the best results for the owner.

If I am correct in my understanding that you do not have standard watchman service with hourly rounds and records of same by a watchman at night, and rounds every two hours with records of same on Sundays and Holidays, we would require such watchman service if we were to be asked to carry all of the insurance or in lieu of such standard watchman service an extension of the electric alarm of the sprinkler system to the nearest fire department station.

You may not understand that this Sypho chemical sprinkler system in this way serves as an excellent automatic alarm system which we consider fully as efficient as standard watchman service.

I am enclosing copy of bulletin explaining why inter-insurance as conducted by this office produces such low costs, also a bulletin describing operating methods in detail. In addition I am sending a classified list of wholesale grocery concerns we insure.

This office has been in successful operation nearly fifty years and is now insuring nearly one thousand millions of business. We are effecting savings for our policy-holders at the rate of about one and one-half million a year.

Exhibit D-1.

Without question this is the strongest and lowest cost indemnity available for the selected risks of concerns of established financial integrity we specialize in. I would suggest that you confer with some of our subscribers that you are acquainted with by way of verification.

We have greater reserves per thousand of outstanding insurance than the twenty-five largest old line companies which is actually equivalent to several times reserves of Stock Companies on account of our reserves being at risk on properties with average loss ratios of less than 20% of the average losses of Board Companies.

While there is a limited contingent liability feature of ten times a subscriber's own annual premium, this is of practically no importance whatever as our risks are so widely distributed it is inconceivable that enough of them could be involved in any conflagration to exhaust the reserves which would be necessary before the contingent liability feature could be brought into effect.

The re-insurance we have with Lloyd's, London, that I explained to you is important in this connection although this Lloyd's re-insurance was put in effect with a view of keeping our returns uniform in years of extraordinary losses and not with a view of strengthening the indemnity.

Very truly yours,

A. P. STOCKWELL
Division Manager
A. P. Stockwell

APS:AS
Enc. Bull. 2 & 3

Exhibit D-2.

ERNEST W. BROWN, INC.
ATTORNEY AND MANAGER

New York Reciprocal Underwriters
Sprinklered Risks
Individual Underwriters
Sprinklered Risks

Fireproof-Sprinklered
Underwriters
Non-Combustible
Sprinklered Risks
Affiliated Underwriters
Sprinklered and Non-
Sprinklered Risks

Executive Office
One Park Avenue, New York

February 2nd, 1928

GREENSPAN BROS.,
Perth Amboy,
New Jersey.

Attention: Mr. I. Greenspan

Dear Mr. Greenspan:

In view of our understanding that you have definitely decided to go ahead with the installation of a Sypho chemical sprinkler system, it occurs to us to advise that should you have expirations previous to the time the sprinkler system is in service we could take up such expiring insurance up to a maximum amount of about $50,000.

It would be to your advantage to let us take care of such expirations as our rate would be reduced 50% as soon as the sprinkler system is in permanent service. We would save about 50% of the premium and you would avoid the necessity of cancelling with the Stock Companies at short rates in order to shift the insurance that you might renew with them otherwise.

We have quite complete information regarding your property which would permit our binding any amount you might wish us to cover at

any time without sprinkler protection up to the maximum mentioned on receipt of instructions.

As we understand you now have or expect to have a similar plant in Trenton, we would be pleased to make an inspection of this Trenton property on request with the intention of following the same course of procedure as suggested for your Perth Amboy plant.

Hoping to be of assistance, I remain

Very truly yours,

A. P. STOCKWELL
Division Manager
A. P. STOCKWELL

APS*nts

Exhibit D-3.

ERNEST W. BROWN, INC.
ATTORNEY AND MANAGER

New York Reciprocal Underwriters
Sprinklered Risks
Individual Underwriters
Sprinklered Risks

Fireproof-Sprinklered
Underwriters
Non-Combustible
Sprinklered Risks

Affiliated Underwriters
Sprinklered and Non-
Sprinklered Risks

Executive Office
One Park Avenue, New York

June 25, 1928

GREENSPAN BROS.,
Perth Amboy, N. J.

Atten. Mr. I. Greenspan.
Subj. Fire Insurance.

Gentlemen:

In view of our understanding that you intended to provide Sypho chemical sprinkler protection for your Perth Amboy property this summer, it occurs to us that you may be interested to know that by July 1st, we will have a new organization which will give us greater capacity for a risk of this character equipped with this protection than we were able to offer you when the matter was taken up last fall.

You may remember that when we first conferred with you, we only had one organization that handled risks with this protection, and that the capacity of that organization was somewhat limited so that we were not able to offer to handle all of your insurance.

I am writing you at this time merely to remind that with this chemical sprinkler protection, we

reduce the rate 50% and can save you about 60% in addition.

Hoping to be of assistance when this protection is in service, we remain,

Yours very truly,

A. P. STOCKWELL
Division Manager
A. P. STOCKWELL

APS:LB
ENCL.

Exhibit D-4.

ENGINEERING DEPARTMENT
ERNEST W. BROWN, INC.
ATTORNEY
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

Fire Prevention
Engineering
Inspections, Surveys

WILLIAM J. CHATTIN
Dept. Manager

October 30th, 1928.

INSPECTION REPORT:

Risk of GREENSPAN BROTHERS,

At 224-6 Washington St., Perth Amboy, N. J.
By R. Paul. On 10/23/28

Order and Neatness—GOOD

IMPROVEMENTS RECOMMENDED

1. Improve fire division between sprinklered and unsprinklered sections as follows:

(a) Brick up the full thickness of wall windows between the one-story brick storage building (old stable) and the new steel building; also the small windows facing the Garage. The two windows in the wall between the new steel building and the Garage should also be bricked up.

(b) Install standard automatic fire doors at doorways between new steel building and brick storage building, also at Garage.

2. Install watchman service with standard watchman's clock, making rounds hourly nights,

and during the day on Sundays and holidays, or in lieu thereof a fire department connection from sprinkler system with local alarm in building.

3. Provide enclosure for stairs, first to basement; doors to be self-closing.

4. Board up solid the space under both wooden loading platforms. This is to prevent the accumulation of inflammable material under the platforms.

The recommendations (if any) in this report are made in furtherance of your system of inter-insurance, which looks not merely toward indemnity in case of loss by fire, but also toward the cultivation and maintenance of improved means of care-taking and protection, so as to decrease the probability of a fire. It is expected that you will execute all improvements as soon as practicable, and that if difficulty is experienced you will promptly notify this office. If you do not know how best to make such improvements or to procure such appliances as may be recommended, the office will be pleased to answer your inquiries.

Please Annotate and Return the Duplicate to this Office at Your Earliest Convenience.

Exhibit D-5.

ENGINEERING DEPARTMENT
ERNEST W. BROWN, INC.
Attorney
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

Fire Prevention
Engineering Inspections
Surveys

WILLIAM J. CHATTIN
Dept. Manager

October 30th, 1928.

Inspection Report:

Risk of GREENSPAN BROTHERS

At 224-6 Washington St., Perth Amboy, N. J.
By R. Paul
On 10/23/28.

5. Install additional approved chemical extinguishers so that there will be two on each floor of Main Building. Also install one in one-story brick building (old stable) and two in new steel building. Also install two foam type extinguishers in Garage. In locations subject to freezing, extinguishers should be of non-freezing type.

6. Prohibit smoking and post notices.

7. Discontinue use of candles. Two were found burning at time of inspection.

IMPROVEMENT ADVISED

1. Install automatic sprinklers in new steel building and garage.

Exhibit D-5.

The recommendations (if any) in this report are made in furtherance of your system of inter-insurance, which looks not merely toward indemnity in case of loss by fire, but also toward the cultivation and maintenance of improved means of care-taking and protection, so as to decrease the probability of a fire. It is expected that you will execute all improvements as soon as practicable, and that if difficulty is experienced you will promptly notify this office. If you do not know how best to make such improvements or to procure such appliances as may be recommended, the office will be pleased to answer your inquiries.

Please Annotate and Return the Duplicate to this Office at Your Earliest Convenience.

Exhibit D-6.

ERNEST W. BROWN, INC.
Attorney and Manager

EXECUTIVE OFFICE
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

Nov. 1st, 1928

Greenspan Brothers,
224 Washington Street,
Perth Amboy, N. J.

Atten: Mr. I. Greenspan,
Subj. Fire Insurance.

Dear Mr. Greenspan:—

Referring to my call of Oct. 25th, would advise that I have conferred with our underwriting managers in reference to acceptability of insurance on stock in your new one-story steel building without sprinkler protection.

I am authorized to advise that we could handle this insurance which I understand amounts to $100,000 with savings of about 60% of the premium at tariff rates, if I am correct in my understanding that you will brick up windows in the wall between this building and the garage, and also the wall between this building and the old stable building, and provide fire doors at the doorways in these walls.

I am also authorized to advise that we could handle all of the building and contents insurance on the sprinklered building at a rate of 50% of

Exhibit D-6.

the unsprinklered tariff rates and with additional savings of about 60%. This means a net cost on sprinklered buildings and contents of about 20% of the premium at board rates without sprinklers.

I should have said that the insurance on the sprinklered buildings and contents is conditional upon your providing the fire cut-off referred to between the new building and the old stable building by bricking up the windows and providing a fire door as mentioned above, also upon providing standard watchman service with hourly rounds and records of same at night and rounds every two hours with records of same Sundays and Holidays, or in lieu of this watchman service, an extension of the sprinkler alarm to the nearest fire department station which I understand is about four blocks distant.

I am enclosing herewith a leaflet describing about what we have in mind in the way of obtaining a fire alarm gong located in the fire department station connected by a pair of wires to the alarm valve on the sprinkler system. You will understand that the sprinkler system could be used in this way as an excellent automatic fire alarm system. In the event of a fire in any part of the sprinklered buildings, the alarm in the fire station would operate instantly and the firemen would of course know just exactly where to go. We regard this as very important for all sprinkler systems where standard watchman service is not warranted.

We think you would want this additional protection for your own security against interruption of business by fire if you understood the importance of same.

Exhibit D-6.

Our inspector, Mr. Paul, who surveyed your property quite recently, has furnished a complete plan and report also a list of recommendations for improvements considered to be in order. I am enclosing herewith copy of the list of recommendations referred to from which you will note that the most important have to do with the completion of the fire walls between the new steel building and the adjoining buildings, also watchman service or fire alarm connection from the sprinkler system to the fire department station.

The suggestions for inclosing the stairways between the first story and basement, and also for boarding up the spaces below the loading platforms are important, but inexpensive.

We are in a position to furnish very superior use and occupancy insurance under our new form which is adapted to the particular needs of mercantile establishments at an extremely low cost. I am enclosing copy of bulletin describing the advantages of this new use and occupancy form which contains copy of the form itself as well as a work-sheet. I might explain that if you insure under this new form up to 75% of your annual gross profits, actual loss sustained from business interruption caused by fire namely loss in gross profits would be paid, regardless of the time of the year the loss occurred or the length of time of interruption. Assuming your annual gross profits at $300,000, you would need under this form $225,000. The rate is 75% of the average rate for buildings and contents, and the net cost about 40% of the premium on this basis.

We would not have sufficient capacity to handle all of your building and contents insurance, also this amount of use and occupancy, so my sug-

gestion would be that if you wish to take advantage of our superior use and occupancy coverage, you arrange to place about $100,000 of your fire insurance through other channels. I judge this could be handled to excellent advantage at the Warner Exchange in Chicago, which organization I understand, allows a 50% reduction in rate for chemical sprinkler protection and saves about 30% of the premium on this basis.

In view of my understanding that all of your insurance expires January 1st, I will arrange to call upon you about December 15th, with a view of taking up details and indicating more definitely just what we could accomplish for you.

Assuring you of our desire to assist in every way possible, we remain,

Yours very truly,

A. P. Stockwell,
Division Manager.

APS LB
ENCLS.

A. P. Stockwell.

Exhibit D-7.

(Copy attached)

ERNEST W. BROWN, INC.
Attorney and Manager

EXECUTIVE OFFICE
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

December 11, 1928.

Greenspan Bros.,
Perth Amboy,
New Jersey.

Subject: Sypho Sprinklers

Gentlemen:

We are herewith enclosing copy of letter written to Mr. C. Simpson, c/o Automatic Sprinkler Co. of America concerning the above.

Yours very truly,

ENGINEERING DEPARTMENT
E. D. SEWALL
Asst. Manager

MM
Encl

Exhibit D-7.

COPY

ERNEST W. BROWN, INC., *Attorney*
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Fireproof-Sprinklered Underwriters
Affiliated Underwriters

December 11, 1928.

Mr. C. Simpson, Mgr. Sypho Dept.,
Automatic Sprinkler Co. of America,
One Park Avenue,
New York, New York.

Subject: Sypho Sprinklers.
Greenspan Bros.,
Perth Amboy, New Jersey

Gentlemen:

You may consider this letter as our final approval of the above equipment as at present installed in the three story and basement building, and in the one story building adjoining.

We are mailing a copy to Greenspan Bros.

Yours very truly,

ENGINEERING DEPARTMENT
Asst. Manager

EDS/MM
CC to Greenspan Bros.

Exhibit D-8.

ERNEST W. BROWN, INC.
Attorney and Manager

EXECUTIVE OFFICE
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

Jan. 16th, 1929

Greenspan Bros.,
224 Washington St.,
Perth Amboy, N. J.

Atten: Mr. I. Greenspan.

Dear Mr. Greenspan:—

As per your request, we are binding $70,000 additional on stock in your sprinklered buildings effective from noon to-day.

I have just wired you to this effect as per enclosure. The enclosed binders will protect your interests until same can be replaced by regular policies which will be done as soon as your subscribership is established at Metropolitan Inter-Insurers.

I am enclosing duplicate copies of Subscribers Agreements at Metropolitan Inter-Insurers which I would suggest that you execute just as you did agreements for Affiliated Underwriters this forenoon, attaching your corporate seal and having the signature of an executive witnessed. These agreements should properly be dated Jan. 16th, the date this additional insurance on stock became effective at Metropolitan Inter-Insurers. One copy of the executed agreements should be sent

Exhibit D-8.

to this office and one copy retained for your files.

We will see that $225,000 use and occupancy insurance is effective February 1st. We will doubtless cover part of this use and occupancy at Metropolitan Inter-Insurers, and the remainder, at Individual Underwriters, both of which organizations will effect savings of about 70%.

I think you understand that acceptance of this insurance is conditional upon your completing the fire cut-off between the sprinklered group of buildings and the new non-combustible building by replacing the present unapproved fire door by a standard approved fire door, also that you connect your sprinkler alarm with an alarm gong at the nearest fire department station and inclose the open stairways and stock chute.

With all of the insurance on stock in the sprinklered buildings, and also use and occupancy, the amounts are quite large for a building of this character.

In fairness to our other subscribers, it is necessary for us to require completion of the improvements referred to within a reasonable time. We think these improvements could readily be completed within a month and hope you will advise us during that time that these requirements have been complied with.

You of course understand that the success of this office depends upon our being extremely careful about such matters.

We will issue policies to take the place of the binders at Affiliated Underwriters covering $200,000 on stock, and $5,000, furniture and fixtures at an early date.

To assist us in preparing these policies, will you kindly send us an old expired policy on stock?

Exhibit D-8.

Thanking you for your assistance and also for the additional coverage you ordered this forenoon, I remain,

Yours very truly,

A. P. Stockwell
Division Manager
A. P. Stockwell

APS LB
ENCLS.

P. S.

Regarding the sprinkler leakage, would state that I find from the Automatic Sprinkler Corp. of America that they did not agree to take care of sprinkler leakage in your case.

I have bound $30,000 sprinkler leakage on stock, assuming that you would wish this coverage. This is intended to be 10% of the value of stock which would be ample. The rate for this sprinkler leakage coverage is approximately 10¢ per $100 and the net rate, approximately 5¢ per $100, meaning the net cost for the sprinkler leakage would amount to about $15.00 per year.

If you do not wish this sprinkler leakage coverage, please advise, and return the binder.

Exhibit D-9.

ERNEST W. BROWN, INC.
Attorney and Manager
Executive Office
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

Jan. 30th, 1929.

Greenspan Brothers,
224 Washington Street,
Perth Amboy, N. J.

Atten: Mr. I. Greenspan.

Dear Mr. Greenspan:

Our New Business Department has called my attention to the fact that you have not executed Subscribers Agreements for Individual Underwriters and Metropitan Inter-Insurers that we sent you with our letters of Jan. 16th and 17th.

You will understand that we cannot issue policies to take the place of our binders at these organizations until the Subscribers Agreements are properly executed and copies are on file at this office. You executed Subscribers Agreements for Affiliated Underwriters during my call Jan. 16th, which will enable us to replace binders at Affiliated Underwriters with regular policies as soon as you send us copy of the form you wish to use for coverage on stock.

You will remember that we asked you for copy of form attached to an expired policy or if you do not have the expired policies, that you loan us one of your active policies in order that we might copy the form which is necessary to be sure

Exhibit D-9.

the coverage on stock is properly described. Thinking that you may have misplaced duplicate copies of Subscribers Agreements at Individual Underwriters, and Metropolitan Inter-Insurers, we are sending another set of these papers herewith.

For your information, would advise that we are now binding at Affiliated Underwriters, $200,000 on stock in your sprinkled buildings, $5,000 on furniture and fixtures, and $30,000 sprinkler leakage. At Individual Underwriters, we are binding effective February 1st, $100,000 of use and occupancy applying on sprinklered building and contents. At Metropolitan Inter-Insurers, we are binding $70,000 on stock effective Jan. 16th, and $125,000 on use and occupancy applying on sprinklered buildings and contents, effective February 1st. As I advised in my letter of Jan. 17th, we could make this Use and Occupancy apply not only on sprinklered buildings and contents, but also the new non-combustible building and contents, assuming that you will complete the improvements we advised in fire cut-offs and provide a sprinkler alarm connection to the nearest fire department station.

Kindly execute the Subscribers Agreements for Individual Underwriters and Metropolitan Inter-Insurers, and also send us copy of form used on policies applying on stock at your earliest convenience.

Thanking you in advance, we remain,

Yours very truly,

A. P. Stockwell
Division Manager

APS LB
Encls.

A. P. Stockwell

Exhibit D-10.

ERNEST W. BROWN, INC.
Attorney and Manager

EXECUTIVE OFFICE
One Park Avenue
New York

Individual Underwriters
New York Reciprocal Underwriters
Affiliated Underwriters
Fireproof-Sprinklered Underwriters
Metropolitan Inter-Insurers

March 6th, 1929

Greenspan Brothers
224 Washington St.
Perth Amboy, New Jersey.

Attention: Mr. I. Greenspan.

Gentlemen:

Our Policy Department has just brought to my attention the fact that we have not received a reply to Mr. Stockwell's letter of January 30th in which he enclosed Subscriber's Agreements for Individual Underwriters and Metropolitan Inter-Insurers in view of insurance on merchandise and furniture and fixtures bound in the early part of January.

With the thought that these papers may have become misplaced I am enclose duplicate copies and would ask that you have one copy of each signed for the Company, witnessed, stamped with your Corporate seal, if your Organization is incorporated, and returned to this office at your early convenience.

It is also very important that our policies be written exactly concurrent with other policies in force on the same items. We would, therefore, ask that you give us a copy of the form in use on

Exhibit D-10.

other policies covering merchandise. If it is not convenient to forward a copy of the form a policy would serve the purpose and would be returned to you immediately upon obtaining the proper information.

I trust that we will hear from you shortly in this connection.

Yours very truly,

ERNEST W. BROWN INC.
ROBERT E. ADAMS
Vice-President

REA**ntv
encl.

Exhibit D-11.

"AUTOMATIC" SPRINKLER CORPORATION OF AMERICA
Manufacturing and Installing
APPROVED DEVICES
for the
AUTOMATIC CONTROL OF FIRE
Executive Offices
910-28 B. of L. E. Bank Building
Cleveland, Ohio

910-28 Engineers National Bank Bldg.,
Cleveland, Ohio.

March 9, 1929

Greenspan Brothers Company,
226 Washington Street,
Perth Amboy, N. J.

Gentlemen:

We are again enclosing statement of your account showing balance of $885 covered by our December 18 invoice S 12-201. This billing was for your Sypho rental for the year beginning September 11, 1929 to December 10, 1930, and as you know this rental charge is payable at the beginning of the rental year.

This invoice is therefore more than two months past due. We have written you several times asking for payment and under date of March 1st we wired you as follows:

> "Please forward us check immediately our bill December eighteenth Eight Hundred Eighty-five Dollars."

Exhibit D-11.

So far we have had no reply to our letters, nor did you pay any attention to our wire. We cannot understand this attitude on your part. Certainly you are receiving the benefits of the reduced insurance on account of the Sypho protection and the terms of payment covering this rental are very clear in the contract. We must therefore insist that you give this matter your immediate attention and have your check in the amount of $885 forwarded to us by return mail. If it is not in our hands by March 15th, we will be forced to take other steps to protect our interests in the matter.

Yours truly,

"AUTOMATIC" SPRINKLER CORP. OF AMERICA
G. E. CRAMPTON
Assistant Treasurer

C:M
Encl.

Exhibit D-12.

PROPOSAL
GLOBE AUTOMATIC SPRINKLER COMPANY
INCORPORATED

Contractors for and Manufacturers of Automatic Fire Extinguishing Apparatus Heating and Power Piping Equipments.

Executive Office Philadelphia, Pa.	Factories Philadelphia, Pa. Lancaster, Pa.
Sales Offices In Principal Cities	Wheeling, W. Va. San Francisco, Cal.

DEFERRED PAYMENT FORM OF CONTRACT

Submitted by Newark Office, March 11th, 1929, to Potts & Kaufmann, Inc., 307 State Street, and Greenspan Bros. Co., 226 Washington Street, Perth Amboy, N. J.

(Hereinafter called "Buyer")

GLOBE AUTOMATIC SPRINKLER COMPANY (vendor and contractor, but hereinafter for brevity called "Seller") proposes to furnish the material and labor and therewith to equip for the said Buyer, at the price and on the terms and conditions hereinafter set forth, the property described as Warehouse and located at 226 Washington Street, Perth Amboy, N. J. with a dry pipe system of automatic sprinklers and fire extinguishing apparatus as described in the specifications consisting of Two (2) sheets which are hereto attached and made part hereof, as well as the rules and regulations of NATIONAL BOARD OF FIRE UNDERWRITERS and subject to inspection by them or by SCHEDULE RATING OFFICE, acting as the Agent of both parties, whose inspection and approval of the work done hereunder by the Seller shall be

Exhibit D-12.

conclusive evidence of the proper performance and completion of the Seller's obligations hereunder. After the said system is installed by the Seller and prior to and after said inspection and approval, the Buyer shall, during the full term of this contract and all extensions thereto, maintain the said system of automatic sprinklers and fire extinguishing apparatus in first-class, safe and properly operating condition at the Buyer's expense. The Seller's warranty shall be fulfilled by its correcting any defects in material or work hereunder, of which the Buyer gives the Seller prompt notice, and the Seller's liability in respect to all warranties hereunder is limited to the expense which it is obliged to incur in correcting such defects.

The following is a description of the property on which the sprinkler system aforesaid is to be installed:

Premises in the City of Perth Amboy, County of Middlesex and State of N. J. Brick building, 3 stories and basement approximately 50 x 150, one story bldg. adjoining, approximately 25 x 80, one story garage 50 x 70, one story new addition 25 x 30, all commonly known as 226 Washington Street, Perth Amboy, N. Y.

1. The Buyer shall provide sufficient, safe and proper permanent space on the premises for the storage and handling of material and shall provide sufficient, safe and proper facilities for the prosecution of the work, including light, water, local telephone, watchman and elevator service, all of which shall be furnished free of expense to the Seller as and when required by the Seller.

Exhibit D-12.

2. Except when and where Dry Pipe System is specified, the Buyer shall maintain sufficient heat or other protection throughout the premises to prevent freezing.

3. All material and labor not specifically described herein, together with the materials and/or labor which the Buyer is herein expressly required to supply, shall be supplied by the Buyer at the Buyer's expense, as and when requested by the Seller for the prosecution of the work; otherwise the Seller at its option may supply the same at its current market prices, and all its expense by reason thereof, together with any damage resulting from delay, shall be added to the contract price, and shall be paid to it by the Buyer on demand.

4. All receiving, unloading, loading and delivery of materials at and from buildings, earth, mason and carpenter work and painting, both materials and/or labor, required for the system herein specified, including among other things all permits, all foundations and supports, all shoring and protection of foundations, walls and other structures adjacent to and subject to be disturbed by ditching and other excavations for the purposes hereof and all staging and enclosures shall be furnished and paid for by the Buyer unless otherwise herein specified, and when so furnished the Buyer shall warrant the sufficiency of all such work, old and new.

5. Agents, servants and employes of the Seller shall tap water mains, connect up with tanks and turn the water on and off as and when in their

judgment necessary, solely as the Buyer's agents, servants and employes, and the Buyer agrees to indemnify the Seller against all damage or liability which may arise therefrom.

6. All taxes, assessments and Governmental or other charges imposed, levied, or to be imposed or levied upon the apparatus, equipment, material or any part thereof furnished hereunder shall be paid by the Buyer, and the Seller shall be saved harmless and indemnified by the Buyer from and against the same.

7. The Seller is obligated to perform the work only during the regular working hours. All overtime required shall be paid for by the Buyer to the Seller in addition to the contract price.

8. The Seller shall not be liable for any loss, damage or delay caused directly or indirectly by fire, flood, strike, lockout, riot, insurrection, casualty, inability to obtain material or skilled labor, embargo, failure of carriers to transport and deliver, act of civil or military authority, act, default or neglect of the Buyer or the Buyer's agents or employes, or any other cause beyond the Seller's control or resulting from the character, condition or use of any foundations, walls or other structures not erected by the Seller, or from ditching or other excavation for the purposes hereof in proximity to or disturbing such foundations, walls or other structures. Nor shall the Seller be liable for any damage caused in the prosecution of its work hereunder to existing concealed piping, wiring, fixtures or other equipment, provided reasonable care is exercised by

its employes. Nor shall the Seller be liable or accountable for the condition of the water pressure or other adjunct of the system furnished by the Buyer or a third party, and nothing herein contained shall be construed to mean that the Seller warrants, impliedly or otherwise, the operation of the system. All loss or damage from any cause not the fault of the Seller, to the materials, tools, equipment, work or workmen of the Seller, or its agents, or sub-contractors while in or about the premises of the Buyer, shall be borne and paid for by the Buyer, and the Buyer shall furnish the Seller with insurance on the automatic sprinkler and fire extinguishing apparatus (and on the material, tools and equipment therefor during the installation) against loss by fire, lightning and wind storm to the fair cash insurable value of same and for the full term of this contract, in insurance companies acceptable to the Seller, the insurance to run to both parties as their interests may appear.

9. If the work herein specified be interrupted by reason of any of the causes hereinbefore specified in Section 8, not the fault of the Seller, the Seller may at its option discontinue the performance of this contract, and thereupon there shall be immediately due and payable from the Buyer on account of this contract, a sum equal to the expense of the Seller, paid or incurred, for all materials, whether installed or not, labor and services up to the time of such discontinuance, including its reasonable profit, and should the work covered by this contract be substantially completed and be entirely destroyed by fire or from any other cause, then there shall be immediately

due and payable the entire unpaid balance of the contract price.

10. Notice of claims for defects or damages must be given in writing and with particulars to the Seller by personal service or registered mail within fifteen (15) days after the approval of the work hereunder by the Agent of both parties whose inspection and approval is hereinbefore particularly required, or otherwise the Seller shall be forever discharged from all liability therefor.

11. The conditions and covenants hereof shall apply to any repairs, replacements, extensions or alterations to the system hereafter at any time made by the Seller, and the Seller shall be under no greater liability therefor than is imposed upon it herein with respect to the original installation.

12. The price for the work as specified in the within proposal and specifications is Five Thousand Seven Hundred Dollars ($5,700.00), based on the installation of five hundred and seventy (570) Automatic Sprinklers, and is to be paid; One Thousand Two Hundred Dollars ($1,200.00) upon completion and approval by the Schedule Rating Office, and One Thousand Two Hundred Dollars ($1,200.00) annually for three (3) years thereafter, and Nine Hundred Dollars ($900.00) four (4) years thereafter.

It is understood and agreed that Potts & Kaufmann, Inc., will pay Seven Hundred Dollars ($700.00) on each of the above five payments, and the balance on each of the above five payments will be paid by Greenspan Bros. Company.

Exhibit D-12.

Any charge or credit for more or less sprinklers is to be adjusted at the first payment on the basis of Potts & Kaufmann paying or receiving seven-twelfths (7/12) and Greenspan Bros. Co. five-twelfths (5/12) of the charge or credit involved, as the case may be.

As security for the payment of the said annual installments, the Buyers are to execute and deliver to the Seller their promissory notes for said sums, which notes shall be the standard form of note used by the Seller, such notes to bear interest at six per cent. (6%) per annum and to be subject to the terms of this contract. The giving and acceptance of said notes shall not constitute payment of the installments provided for herein, in whole or in part. Upon default of any one of the said notes and all accrued interest at date of maturity, any and all notes then remaining unpaid shall forthwith become due and payable, notwithstanding their tenor.

If more or less than the aforesaid number of either automatic or open sprinklers be required, they shall be charged or credited at six dollars ($6.00) each for automatic sprinklers.

Any additional sprinklers or other additional materials and labor required on account of alterations or additions to the premises or resulting from obstructions along the ceiling not in position or shown on plans furnished by the Buyer at the time that the Seller's survey was made are to be considered as additional to work covered by the specifications, and not to be included under "more or less sprinklers" clause hereinbefore provided, but to be paid for by the Buyer at the Seller's market price. If for the Buyer's default or negligence the Seller shall resort to and pur-

sue any of its lawful remedies to protect or enforce its rights hereunder (whether such remedies shall be expressly mentioned herein or not) the Buyer shall pay all the costs and expenses of the Seller in the premises, including a reasonable attorney fee which in case of pecuniary claim or contract or for damages it is agreed shall be ten (10) per cent. of the amount involved and be included in the Seller's recovery.

13. The Buyer shall, at the option of the Seller, be deemed to have made default under this agreement if the Buyer shall make a conveyance or mortgage of the said real estate or any part of it, or if the Buyer shall be adjudicated a bankrupt or insolvent, or if a receiver or trustee in bankruptcy or insolvency or liquidation of the Buyer's property is appointed, or if the Buyer shall make an assignment for the benefit of creditors, or if a judgment shall be docketed against the Buyer's property or any part thereof and shall remain unsatisfied for a period of ten consecutive days, or if a material-man's or mechanic's lien shall be filed against the Buyer's property or any part thereof and shall remain a lien thereon for such period, or if an execution upon a judgment shall be issued or proceedings for foreclosure be begun against the Buyer's property, or if the Buyer fails to make any payment hereunder as herein provided, or to fulfill any of the terms or conditions hereof. Until the contract price shall have been paid in full the Buyer shall within one month after the end of every calendar year furnish to the Seller a clear and comprehensive and correct financial statement of the Buyer's operations during the condition at the end of that year in

such form as fully to inform the Seller concerning the credit of the Buyer; and if the Buyer's credit is found by the Seller to be impaired or endangered to such an extent as to be reduced or likely to be reduced twenty per cent. or more below the credit exhibited by the Buyer at the date of the acceptance of this agreement, or if the Buyer's financial statement discloses at any time a condition of actual insolvency the Buyer may at the option of the Seller be deemed to have made default under this agreement.

SPECIFICATIONS.

Work and apparatus as described herein to be furnished by the Globe Automatic Sprinkler Company, except when clauses specify you to furnish.

Sprinklers:

A dry pipe system of Globe Automatic Sprinklers to be installed in all buildings covered by this contract.

Special Sprinklers:

No coated sprinklers, plated sprinklers or sprinkler guards are included in contract price.

Open Sprinklers:

No open sprinklers are included in contract price.

Dry-Pipe Valves:

Globe dry pipe valve in each main supply to two dry pipe sprinkler systems.

Exhibit D-12.

Air Compressor:

Electric driven air compressor in place, including wiring from your switchboard.

Air Piping:

Necessary air piping between dry pipe system and air compressor.

Electric Alarms:

Install two point annunciator, with electric gong located in basement and connected to the two dry pipe valves.

Water Alarms:

Globe water motor alarm to be furnished and connected to two dry pipe valves, gong to be located on outside of building.

Discharge from water motor to run thru wall of building to open air.

Gate Valves-Check Valves:

Gate Valves, to be installed, controlling; two dry pipe valves.

Check Valves—One to be installed in supply from city main.

Draw-off Piping:

Draw-off piping to properly draw off system to be run to accessible place for discharge. If necessary to discharge draw-off to sewer, you to provide properly trapped sewer pipe connections for us to connect to.

Supply Piping:

Necessary pipe, fittings and hangers.

Exhibit D-12.

Extra Sprinkler Cabinet:

Sprinkler cabinet with six sprinklers and sprinkler wrench to be provided for emergency use.

Fire Department Connection:

One two-way fire department connection on wall of building and connected to system.

City Water Connection:

We will contract with the City Water Department to furnish a 6″ city water supply connection from existing main in Washington Street to inside of basement.

If water, quick-sand, rock, or other unforeseen obstructions are encountered, or shoring is required, you are to pay for, as an extra to the contract price, the additional expense involved.

Freight-teaming:

Deliver materials at your railroad siding, and do all local handling.

Mason and Carpenter Work:

All necessary openings for proper installation of the work specified, in foundations, walls, floors, ceilings, partitions, stairways, etc., including all patching and repairing required.

All staging for men to work from.

14. All material and labor furnished hereunder by the Seller constitute together a sprinkler system (whether completely installed or not) which is intended and understood by the parties hereto to be, in its relations to the Buyer's premises and in its relations to the contract price, the

New Jersey State Library

security and the remedies hereunder, a unit (hereinafter called the "Goods"). The sprinkler system (hereinafter referred to as the "Goods") is not intended by either the Buyer or the Seller to be so attached to the leasehold as to become a permanent fixture thereof. The Seller retains the ownership of and all title to the said goods until full payment of all sums due and to become due hereunder by the Buyer to the Seller shall have been made in cash, with the right reserved to the Seller to enter the premises and retake into its possession and carry away the said goods in case of any default by the Buyer hereunder, whether the said goods are or are not affixed to the realty, and whether, if so affixed, the said goods are or are not severable wholly or in any portion without material injury to the freehold, and with the further right reserved to the Seller, at its option after retaking the said goods, to sell the said goods at public or private sale, with or without notice, and apply the proceeds therefrom primarily to the payment of the expenses of retaking, removal, and sale, and secondarily to the payment of the balance due hereunder, the Buyer being liable for any deficiency, but being entitled to any surplus; PROVIDED, however, that this remedy shall be exercised only to the extent that it is not contrary to law; and PROVIDED, also, that it shall be cumulative only, and shall not deprive the Seller of or limit or qualify any statutory or other right or remedy which it might otherwise have for the security and collection of any balance due hereunder or on account hereof, all of which last-mentioned rights and remedies, including the right to waive the foregoing reservation or title, to treat (at the Seller's option) the said goods as

fixtures of the freehold, to file mechanic's or material-men's liens or other liens as provided by law, and to proceed thereon for the collection of any balance due hereunder, are expressly reserved by the Seller. The Buyer is to indemnify the Seller against purchasers, creditors or lien holders and all others now or hereafter having or claiming an interest in or to the equipment or the material therefor, and to give the Seller reasonable notice of every act or transaction coming to its knowledge which may affect the control, possession, title or ownership of the property. The equipment or the materials shall not be altered, removed or disposed of or used by others without the written permission of the Seller, and all labels and notices placed by the Seller on the equipment or any part thereof, indicating the Seller's ownership of the same, shall be strictly protected by the Buyer until all the Buyer's indebtedness to the Seller has been paid in full.

15. The taking of notes, bonds or other obligations or any renewals thereof, or the taking of any security for the payment of any amount due hereunder, shall not operate as a transfer or surrender of title to the said goods or as a waiver, limitation or qualification of any of the rights and remedies reserved hereunder, or of any other right or remedy of the Seller. Such notes, bonds or other obligations and renewals thereof may be made negotiable or otherwise, in such form and denomination, with such dates and maturities, bearing such rate of interest and containing such provisions for security and collection hereunder as may at any time be agreed upon by the parties hereto, including provisions for

adding attorney fees and other expenses of collection. Such notes, bonds or other obligations and renewals shall be evidences of the indebtedness due hereunder, and not payment thereof, and if they contain any reference hereto, shall be deemed to relate back to the origin of such indebtedness and take priority accordingly, notwithstanding the date which they bear or the maturities which they specify.

16. Any and all controversies arising under or out of, or in connection with, or relating to, or for a breach of an agreement of which this is a part shall be submitted to arbitration, and judgment upon any award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction in the premises.

17. This proposal is subject to acceptance within ten days from date hereof by the Buyer, otherwise at the option of the Seller it becomes null and void. The Seller may at any time assign all or any part of its rights under this contract.

18. Upon acceptance of this proposal by the Buyer, all previous communications between the parties hereto, either verbal or written, with reference to the subject-matter of this proposal, are hereby abrogated, and unless otherwise stated herein it constitutes the entire agreement between the parties hereto. No modification of this agreement shall be binding upon the parties hereto or either of them, unless such modification shall be in writing, signed by the Buyer, and by an executive officer of the Seller.

Exhibit D-12.

19. This proposal is subject to approval in writing by an executive officer of the Seller and in consideration of the Seller's proposal and its preparation thereof, including survey, it is agreed that upon acceptance of the proposal by the Buyer it is not subject to withdrawal or cancellation by the Buyer.

GLOBE AUTOMATIC SPRINKLER COMPANY.

By E. C. HERRICK,
E. C. HERRICK, *Dist. Sales Mgr.*

The foregoing proposal is hereby accepted this day of , 19 , at the prices and upon the terms and conditions therein named, and the Globe Automatic Sprinkler Company is hereby authorized to furnish the apparatus, materials, equipment and labor as therein specified, and we agree to pay therefor as therein stipulated, and to fulfill all the terms and conditions thereof on our part to be performed.

_____
(Buyer sign here)

Witness: _____ Title: _____

Accepted and approved this day of , 19 .

GLOBE AUTOMATIC SPRINKLER COMPANY.

By_____

New Jersey Court of Errors and Appeals

"Automatic" Sprinkler Corporation of America, a corporation of the State of Delaware, *Plaintiff-Appellant,* *vs.* Greenspan Brothers Company, a corporation of the State of New Jersey, *Defendant-Respondent.*	Action at Law On Appeal from New Jersey Supreme Court

STATEMENT OF FACTS.

Plaintiff-appellant, "Automatic" Sprinkler Corporation of America, is a corporation engaged in the business of manufacturing and installing various types of fire preventive equipment, including sprinkler systems. One type of such equipment, which is in the nature of a sprinkler system, is a device known as "Sypho-Chemical System". This is an automatic sprinkler system similar in many respects to a water sprinkler system except that the extinguishing fluid is chemical instead of water. This particular system is not sold by the "Automatic" Sprinkler Corporation, but is leased only, since for proper functioning, it requires an inspection and checking from time to time.

This sypho-chemical system is installed by the "Automatic" Sprinkler Corporation of America in the premises of its lessees, and since certain patent rights with reference to said equipment are held by the Sypho-Chemical Sprinkler Corpo-

ration, a subsidiary of the "Automatic" Sprinkler Corporation of America, the lease contracts with the lessees are made by way of a printed standard form contract between three parties, the "Automatic" Sprinkler Corporation of America, as licensee, the Sypho-Chemical Corporation, as licensor, and the customer, as subscriber. Such a contract was entered into between the two corporations above-named and the Greenspan Brothers Company, defendant-respondent herein, on January 6, 1928 (state of the case, pages 164-175 and 391). By the terms of this contract (State of the case, page 391) the plaintiff-appellant agreed to lease, install and service, for a period of ten years, a "Sypho-Chemical System" in the plant of the defendant-respondent at Perth Amboy, New Jersey, in consideration for which the subscriber, defendant-respondent, agreed to pay a yearly rental of $885.00 per year in advance. This rental included not only the installation but also a periodic servicing of the equipment. The express provision of the contract with reference to payment by the defendant-respondent to the plaintiff-appellant is (state of the case, page 392, paragraph 2):

> "2. Subscriber shall pay to Licensee in advance, *upon the licensing of the equipment by Licensor,* OR *upon the date when Subscriber first becomes entitled to insurance rate credit by reason of said Service,* the sum of ($885) eight hundred and eighty-five dollars _____Dollars for the first year's Service and shall thereafter, during the term thereof pay yearly, in advance, the sum of ($885) eight hundred and eighty-five dollars _____Dollars for said Service."

The language of the contract is quoted because appellant desires to draw the court's attention to the fact that in accordance with the terms of the contract, the respondent was to make payment upon the happening of either of two alternative contingencies. The defendant-respondent admits the execution of the contract and the genuineness of the signature of the defendant (state of the case, page 164, lines 10 to 20). The defendant-respondent likewise admits that through some reciprocal exchanges that it obtained a reduction of 50% in insurance rates after the installation of said equipment (state of the case, page 164, lines 10 to 30). In fact, Mr. Isidor Greenspan, testifying on behalf of the defendant (state of the case, page 258, lines 15-16) stated that a saving of 70% was obtained in reciprocal organization.

The system after installation was duly licensed (state of the case, pages 177-178, line 30) and the license plates duly attached. The defendant endeavored to raise some question as to this, but the court held quite clearly that the equipment was duly licensed (state of the case, page 292, line 32), and defendant's own witness testified to the finding of a license plate (state of the case, page 293, line 39, and page 294, line 1). The defendant has further admitted that although the equipment was installed, licensed and a reduction in reciprocal insurance obtained as alleged, that it had paid nothing pursuant to the terms of the contract to the plaintiff (state of the case, page 164, line 26). In fact, the court which sat in this case below, as tryer of both the law and the facts, has found, as a question of fact, that:

> "1. Plaintiff and defendant made a contract dated January 6, 1928, whereby plaintiff was to install in a building occupied by

the defendant as lessee at No. 224 Washington Street, Perth Amboy, New Jersey, an automatic sypho fire extinguishment equipment for which plaintiff was likewise to furnish service, in consideration of the installation and service of which defendant was to pay a yearly rental of Eight Hundred Eighty-five ($885.00) Dollars for a period of ten years. According to the terms of the contract the rental was to be due and payable upon (*a*) the licensing of said equipment by the Sypho-Chemical Sprinkler Corporation, likewise a party to said agreement, or in the alternative (*b*) upon the date when the defendant first became entitled to an insurance rate credit by virtue of said installation and service. Plaintiff duly installed said system. Said system was duly licensed by the Sypho-Chemical Sprinkler Corporation and defendant upon such installation subsequently became entitled to a reduction of approximately fifty per cent. in its fire insurance rates through reciprocal insurance organizations. Defendant has made no payments to the plaintiff on account of said contract.'' (State of the case, pages 157-158.)

The defendant by its answer (state of the case, page 14) in addition to a general denial has set up eight separate defenses. The finding of the court (state of the case, page 157) finds all of the issue raised by the answer for the plaintiff with the exception of the fourth separate defense (state of the case, page 16), and the eighth separate defense (state of the case, page 18). The defense in general raises the issue that the defendant corporation was induced by fraudulent misrepresentations of the plaintiff's agent to enter into a contract which forms the subject matter of this suit. We shall deal hereafter in greater

particularity with the phases of this as raised by the actual finding of the trial court in its postea and findings.

At the outset we call to the attention of the appellate court that the nature of the alleged misrepresentations, as insisted upon by the defendant, has materially changed during the progress of this litigation. After the answer was filed, a motion was made by the plaintiff, in accordance with the New Jersey practise, to strike out the answer and enter a summary judgment, and upon the return of that motion affidavits for and against were filed by the plaintiff and defendant in this suit. The gist of the defendant's contention at that time is distinctly shown in the statements appearing in the affidavit of Mr. Isidor Greenspan (state of the case, page 57), who states (state of the case, page 59, paragraph 3):

> "(3) It is absolutely untrue, as stated in Mr. Lyon's affidavit, that he told me that the old line (meaning thereby stock companies) would not allow any substantial reduction in insurance rates on any property in the State of New Jersey in which the Sypho-Chemical System was installed. On the contrary he withheld all this information from me until about sometime in January, 1929. The fact is he told me repeatedly that the Sypho-Chemical System was standard and approved by the authorities in New Jersey who fix insurance rates; that immediately upon its installation I would obtain a reduction of approximately fifty per cent. in my insurance rate."

The other affidavits filed in that motion (state of the case, pages 64-69-74-76) all go to this same point, namely, that the fraudulent misrepresentation made by the plaintiff, or its agent, to induce

the defendant to enter into the contract was a representation that *the installation of the plaintiff's equipment in the defendant's plant would enable the defendant to secure a reduction of 50% of its insurance in the old line companies—stock companies authorized to do business in the State of New Jersey.* The plaintiff, of course, throughout this entire litigation denied this allegation. This was the fact question, however, upon which the parties went to issue. The testimony of the plaintiff's witnesses is quite clear on the point. The testimony of the defendant in the matter was so weak, wavering and uncertain as to call forth comment from the court. The presiding judge interrupted the defendant's only material witness on this point and said (state of the case, page 234):

> "The Court: The trouble with this claim of false representation, this man is not giving us the specific language used by the man that he claims made false representation. Of course, he cannot give the exact words, at least, it is not reasonable to expect him to give the exact words, but the substance of it, but he has not done that. Now he says Underwriters is a word that was used right along. That means nothing. Just what did he say? First he said that the expression that was used was the schedule fixing bureau. He has repeatedly said that. When was that said? When was Underwriters, or Rate Fixing Bureau used, the word Underwriters instead of the other words? We haven't that. However, go on."

Again, page 239, the Court says:

> "The Court: The question is, What kind of a system was guaranteed him? What kind

of a system did they represent he could get, not whether he could have gotten a different kind of system. The question is, in this case, whether or not they represented that he would get a different system from the one that he got, and I do not see the fact that he could get a different kind of a system has anything to do with it. He says that he was given representation that he would get a system that would reduce his insurance by one-half. And the gist of the misrepresentations is that he got a system which would not reduce his rates by one-half. That is the whole of it. In all his testimony so far he has just simply said that it was explained to him. He has not given us the substance of the conversations that he had with Lyons, and all of the correspondence that he got from the insurance people in New York, there is not a word said about insurance with old line or stock companies, nothing excepting this special kind of insurance. I do not think whether he put in a different system has anything to do with the question involved, Mr. Toolan."

After both the plaintiff and the defendant had put in their cases, a motion was made by the plaintiff for a directed verdict (state of the case, page 294). The court decided against this motion, but its language shows that as far as misrepresentation was concerned, the case up to that point had been tried solely upon the issue of whether or not, as a matter of fact, the plaintiff, or its agents, had falsely represented to the defendant that the installation of this equipment would result in a reduction of one-half of the insurance rates in stock companies authorized to do business in New Jersey. In deciding the motion for a directed verdict the language of the court should be noted. The court says (state of the case, page 298):

> "The Court: I am not going to dispute with you about whether or not his statements have been most general. It might be that I agree with you personally; it might be that I do not. The fact remains, however, that he has on one or two occasions, said that the promise made to him was that the result of this would actually result in a reduction with the stock companies of at least fifty per cent. in their rates. He has not, in any instance, said that he was giving the specific language, or verbatim what had been said to him, but he makes that statement on two or three occasions in the giving of his testimony. He says a number of other things too."

Up to that point in the case, that was the sole contention as to the nature of misrepresentation. The defendant's position with regard to reciprocal insurance was solely that it was as a matter of law, illegal, and not to be considered. Mr. Toolan, the defendant's attorney, states this position (state of the case, page 240). The question of fact which had been the only fact on the question of misrepresentation raised by the pleadings or the evidence to this point in the litigation has been resolved by the trial court in favor of the plaintiff. For the court finds (state of the case, page 158):

> "(2) The plaintiff did not at any time promise or represent that the installation of this Sypho fire extinguishment equipment would enable the defendant to procure insurance from the 'old line' fire insurance companies at a rate premium lower than they were charging it at the time of the contract."

This finding of fact resolves in the plaintiff's favor the only fact question of misrepresentation

raised by the pleadings or the evidence. It is thoroughly consonant with the position taken by the plaintiff throughout, for the plaintiff's testimony shows that the plaintiff told the defendant, or its agents, that no reduction would be obtained in old line companies, that the sole reduction obtainable would be through insurance in reciprocal organizations. By subsequent argument after the trial, and in further support of the defendant's legal contention, the defendant has shifted its ground in an effort to find a new factual basis for misrepresentation, and it does this by the ingenious device of finding that the plaintiff, or its agents, failed to disclose to the defendant's agents the fact that it would have to sue on its reciprocal contract in the State of New York, and that it did not tell the defendant that there was no statute in New Jersey under which reciprocal organizations can qualify to do business *within the State*. There is not a shred of testimony which might have conceivably formed a basis for the court's finding that the plaintiff was informed or knew any of the foregoing statements or allegations with reference to reciprocal insurance which it is alleged to have concealed. On the contrary, Mr. Lyons, the plaintiff's agent, states quite positively (state of the case, page 335) that he did not know that reciprocal insurance was illegal and that reciprocal organizations were not authorized to do business in the State of New Jersey. Aside from the spaciousness of this argument, which we will treat more fully hereafter in considering the points raised, and from the entire lack of evidence to support it, we wish to draw to the attention of the appellate court that this change of position was a complete change of defense on the part of the defendant conjured up by the defendant after it had failed in establish-

ing the one factual charge of misrepresentation upon which it relied, namely, misrepresentation as to the reduction in insurance rates in old line companies. This is completely outside of matters raised in issue by the pleadings. The finding of the trial court is in effect nothing more than a determination of the law against the plaintiff on facts which the plaintiff has at all times asserted and admitted. The plaintiff's position is that it has entered into a clear and unambiguous contract which has been performed in full by it, and which the defendant has not performed on its part. The defendant's contention is that certain transactions of a fraudulent or quasi-fraudulent nature took place in the negotiation for the contract which vitiates the contract in its entirety. The fraud is supposed to go to the question of inducement. So far as these misrepresentations are concerned, as a matter of fact, set forth in the pleadings the court has found for the plaintiff. As a conclusion of law, the lower court has deduced misrepresentation from the fact that the plaintiff's agent mentioned reciprocal insurance to the defendant. This conclusion we urge to be erroneous. We respectfully submit that the trial court was in error in its legal holding and urge the following propositions to substantiate our position in this regard:

I. THE TRIAL COURT ERRED IN REFUSING TO GRANT PLAINTIFF'S MOTION FOR A DIRECTED VERDICT IN THAT THE TESTIMONY SHOWS THAT THE PLAINTIFF'S AGENT, ASSUMING EVEN THAT THE TESTIMONY ADDUCED BY THE DEFENDANT BE BELIEVED IN ITS ENTIRETY, ENGAGED MERELY IN SALES TALK AND MADE PROMISES IN THE COURSE OF NEGOTIATIONS TO BE PERFORMED IN THE FUTURE WHICH WERE IN NO SENSE MISREPRESENTATIONS OF PRESENTLY EXISTING MATERIAL FACTS

KNOWN TO BE SUCH BY THE PLAINTIFF'S AGENT AND MADE BY THE PLAINTIFF'S AGENT TO INDUCE THE DEFENDANT TO ACT TO ITS DETRIMENT, AND THE SAME IS TRUE AS TO ANY ALLEGED MISREPRESENTATIONS AS FOUND BY THE COURT.

II. PLAINTIFF IS ENTITLED TO PAYMENT IN ACCORDANCE WITH THE TERMS OF THE WRITTEN CONTRACT UPON THE LICENSING OF THE EQUIPMENT WITHOUT ANY REDUCTION IN INSURANCE RATE WHATSOEVER ACCRUING TO THE DEFENDANT, AND IT HAVING BEEN PROVED THAT SAID EQUIPMENT WAS DULY LICENSED IN ACCORDANCE WITH THE TERMS OF THE CONTRACT AND THAT ALL OTHER CONDITIONS PRECEDENT TO PAYMENT HAD BEEN COMPLIED WITH IN ACCORDANCE WITH THE CONTRACT, THE TRIAL COURT SHOULD HAVE DIRECTED A VERDICT FOR THE PLAINTIFF.

III. PROVISIONS OF THE NEW JERSEY INSURANCE ACT DO NOT AFFECT THE VALIDITY OF THE CONTRACT IN QUESTION BECAUSE (*a*) THE CONTRACT IS IN NO SENSE AN INSURANCE CONTRACT AND DOES NOT PRESCRIBE THAT ANY OF THE PARTIES SHALL, OF NECESSITY, ENTER INTO ANY INSURANCE CONTRACT, AND IN FACT, PROVIDES FOR PAYMENT WHETHER OR NOT A REDUCTION IN INSURANCE RATE IS EFFECTED BY THE SUBSCRIBER, (*b*) EVEN THOUGH THE CONTRACT BY ITS TERMS DID PRESCRIBE THAT THE SUBSCRIBER SHOULD TAKE RECIPROCAL INSURANCE (WHICH IT DOES NOT) THE NEW JERSEY INSURANCE ACT WOULD NOT APPLY TO THIS RECIPROCAL INSURANCE CONTRACT, AND (*c*) THE NEW JERSEY INSURANCE ACT IS UNCONSTITUTIONAL IN SO FAR AS IT WOULD AFFECT THE VALIDITY OF AN INSURANCE CONTRACT MADE OUTSIDE OF THE STATE OF NEW JERSEY, WHICH INSURANCE CONTRACT IS IN ALL RESPECTS LEGAL AND VALID WHERE IT IS MADE.

IV. THE CONTRACT IN QUESTION IS CLEAR AND PLAIN IN ITS TERMS AND WITHOUT ANY AMBIGUITY AND WAS SIGNED BY THE DEFENDANT AFTER EXTENDED CONSIDERATION AND SINCE THE DEFENDANT HAS REPUDIATED SAID CONTRACT, AFTER FULL PERFORMANCE BY THE PLAINTIFF, THE PLAINTIFF IS ENTITLED TO FULL PAYMENT OF THE CONSIDERATION OF SAID CONTRACT BY WAY OF DAMAGES UNDER THE DOCTRINE OF ANTICIPATORY BREACH.

POINT I.

The trial court erred in refusing to grant plaintiff's motion for a directed verdict in that the testimony shows that the plaintiff's agent, assuming even that the testimony adduced by the defendant be believed in its entirety, engaged merely in sales talk and made promises in the course of negotiations to be performed in the future which were in no sense misrepresentations of presently existing material facts known to be such by the plaintiff's agent and made by the plaintiff's agent to induce the defendant to act to its detriment, and the same is true as to any alleged misrepresentation as found by the court.

The negotiations which led up to the signing of the contract by the defendant-corporation, were carried on between Mr. Le Roy Faust Lyons, a contracting agent of the plaintiff, and Mr. Isidor Greenspan, an officer of the defendant corporation. The defense of inducement by means of

fraudulent misrepresentation hinges then in the main upon the testimony of these two who carried on the negotiations.

Mr. Greenspan's testimony (state of the case, pages 216 to 268, inclusive) sets forth in somewhat uncertain terms, as has already been pointed out, that this misrepresentation relied upon in defense was that if the plaintiff's sypho-chemical system were installed, the plaintiff's agent promised him that the defendant would receive a reduction of at least 50% in its insurance rate in old line companies. His testimony throughout is inconsistent. For example, he says (state of the case, page 221):

> "Q. What happened then? A. Well, when he told me that the rent would be $885 per year I asked him when the rent would start. He told me that the rent would start as soon as the system was approved by the Schedule Rating Office, and that I would get the reduced rates.
>
> Mr. Berry: May I ask to have that conversation fixed?
>
> The Court: Yes. When and where?
>
> Q. Where did you have that conversation? A. In our office at 224 Washington Street.
>
> Q. And when? A. That was just before the contract was signed.
>
> Q. Well, was particular reference made to the Schedule Rating Office? A. The reference was made to the Rating Bureau; in my mind it was all set that the Rating Bureau was the Bureau that fixed rates on insurance, so I don't believe we exactly said schedule rating, we said Rating Bureau, or until the new rates would be formed."

And in the course of cross-examination, Mr. Greenspan states (state of the case, page 243):

"Q. You don't remember very well what went on in these meetings? A. I can't remember what happened two and one-half years ago.

Q. You can't remember what happened two and one-half years ago? A. That is distinctly as to——

Q. Can you remember that you were deceived two and one-half years ago, in any way? A. Well, I remember the contract."

On his direct examination after considerable questioning and comment by the court, Mr. Greenspan made his clearest statement as to what he conceived to be the misrepresentation made to him, when he testified (state of the case, page 235):

"Q. Yes. A. Before the contract was signed Mr. Lyons expressly explained to me that the system that the Automatic Sprinkler Company would install would cut my rates in half with the insurance companies that I was insuring with at the time. That alone was sufficient savings for us to install the system. Furthermore he told me that in the event that we were financially good enough for the reciprocal companies——"

On cross-examination Mr. Greenspan testified as to the alleged misrepresentation as follows (state of the case, pages 254-255):

"Q. Did Mr. Lyons deceive you in any way on the occasion of the first meeting that you had with him in August or September of 1927? A. Well, he told me that I would get a fifty per cent. reduction in insurance.

Q. Simply answer me yes or no. A. Yes.

Q. In what particular, and give me the express words that Mr. Lyons used to you on

the occasion of the first meeting which you claim to be deceptive? A. He told me if I would put a sprinkler system that he would lease to use from the Automatic Sprinkler Company, that I could insure with the same companies that I was insuring at the time that I had insurance, and save fifty per cent. of my premium that I was paying at that time.

Q. In other words, he made a promise to you, which you say was subsequently not fulfilled, but he did not make any misrepresentation to you of any presently existing fact, did he? A. Well, I didn't get any saving at all.

Q. Well, what I am saying is he didn't tell you any particular thing in that meeting that was not true at the time, did he? A. He told me that I could get a fifty per cent. reduction in my insurance.

Q. In the future? A. As soon as the system was approved by the Underwriters.

Q. He said that that would occur in the future? A. As soon as the system was approved.

Q. In the future? A. Yes. Then my saving would take place.

Q. That is all. Did he say anything that deceived you on the occasion of the next meeting that he had with you prior to this general meeting which took place before the twenty-seventh of September, 1927? A. Well, we went over the same thing again in reference to——

Q. Did he use the same words? A. In reference to saving of insurance. Well, at that time he told me not only would I save fifty per cent. by insuring with the old line stock companies, but if I would take reciprocal insurance I would have still a further—a

greater reduction than even with the fire insurance companies.

Q. Now, I call your attention again to the fact that is a promise, isn't it?''

The testimony of Mr. Lyons, the contracting agent for the plaintiff (state of the case, pages 299 to 350, inclusive) is clear, detailed and convincing and contradicts the wavering claim of misrepresentation made by Mr. Greenspan. It is unnecessary to review the matter in detail, for, as has been pointed out in the preliminary statement, the court has found, as a matter of fact from the evidence (state of the case, page 158):

> ''(2) The plaintiff did not at any time promise or represent that the installation of this Sypho fire extinguishment equipment would enable the defendant to procure insurance from the 'old line' fire insurance companies at a rate premium lower than they were charging it at the time of the contract.''

The court, however, in its findings goes further and holds in paragraph three of the findings and postea (state of the case, pages 158-159):

> ''(3) The plaintiff did promise and represent to the defendant that if the defendant entered into the contract for the installation of this fire extinguishment equipment the installation of this equipment would immediately effect such reduction of fire hazard of the defendant's property that the defendant would be immediately able to obtain 'reciprocal insurance' at a rate premium of about fifty per cent. lower than he was paying without such equipment; that he would be able to obtain such insurance from organizations that could legally effect insurance on New Jersey property, and that in case of fire such

'reciprocal insurance', so obtained, would be as good, legal and enforceable in the State of New Jersey as the kind of insurance he was then carrying,—insurance in the 'old line' companies admittedly authorized to do business in the State of New Jersey. That at the time such representations and promises were made no person, firm, organization or corporation was authorized to do such 'reciprocal fire insurance' business in New Jersey, and such 'reciprocal insurance' was not good, legal or enforceable in the State of New Jersey. That at the time of the making of said contract the defendant believed that such false representations were true and that its belief that they were true induced and persuaded the defendant to enter into said contract and was a consideration for the entering of said contract."

It is respectfully submitted that the language of the court in this third paragraph of the findings is not substantiated by the record in this case inasmuch as (*a*) there is not a shred of evidence in the testimony that the plaintiff, or its agents, represented that reciprocal organizations could or could not legally effect insurance on New Jersey property, or that reciprocal insurance would be as good, legal, and enforceable in the State of New Jersey, as the kind of insurance which the defendant company was then carrying (*b*) the court finds that the plaintiff did *promise,* etc.—the language of the court as well as the testimony upon which the findings is based showing conclusively that the plaintiff's agent in speaking of insurance at no time was talking of a presently existing fact, but simply engaging in sales talk for the purpose of securing a lease contract for his principal, and (*c*) the so-called misrepresenta-

tion which the court finds by legal inference is not the misrepresentation raised by the pleadings and relied upon by the defendant in making its defense, which misrepresentation, as charged, the court has ruled upon in favor of the plaintiff.

To consider briefly the misrepresentation found by the court in the third paragraph of its findings, which is beyond the purview of the defendant's factual testimony, the only evidence in the case, which is uncontradicted, and unshaken in any way, is to the effect that the plaintiff's contracting agent knew nothing about reciprocal insurance or reciprocal organizations, knew nothing about the legal status of such organizations and made no representations about these matters concerning which he knew nothing. Mr. Lyons' testimony on cross-examination (state of the case, pages 334-335) shows this conclusively. His testimony being:

> "Q. Did you, or anyone in your presence, that is, referring to Mr. Stockwell, of Ernest W. Brown, and Mr. Johnson, make known or say to Mr. Greenspan that the reciprocal insurance companies were not licensed to do business in the State of New Jersey? A. I never made mention, no, that they were not licensed in the State of New Jersey. Mr. Stockwell might have, because he had interviews that I wasn't there——
>
> Mr. Toolan: I move that be stricken out.
>
> A. You are asking me whether I did?
>
> Q. Yes. A. I never made mention that they were not licensed to operate in the State of New Jersey.
>
> Q. Did you know whether they were or not? A. I did not know.
>
> Q. Did Mr. Stockwell, in your presence, ever make known to Mr. Greenspan that the

reciprocal companies were licensed to do business in the State of New Jersey? A. No.

Q. Did you ever make known or say to Mr. Greenspan that in the event of a fire loss, and failing agreeable adjustment, with the reciprocal company, that it would not be possible for him to bring suit in the State of New Jersey, under his policy, against the reciprocal companies? A. No. I didn't enter into that end of it at all. That was covered by Mr. Stockwell.

Q. Did Mr. Stockwell ever cover that in your presence? A. Not in my presence.

Q. So that you don't know whether he did it or not? A. Tell him that if, in event of loss, recovery, and suit where a suit was involved, he could not sue in this State?

Q. Yes. A. No. He never covered that in my presence, and I don't know whether he covered it with him or not.

Q. Did you ever make known to Mr. Greenspan that it was a misdemeanor for any representative of a reciprocal company to solicit business in the State of New Jersey? A. I didn't know that it was a misdemeanor for them to solicit business in the State of New Jersey. I had an understanding, as I just before testified, I thought it was all right for them to.

Q. Did Mr. Stockwell, in your presence, ever make known to Mr. Greenspan that it was a misdemeanor for any representative of a reciprocal company to solicit business in the State of New Jersey? A. No."

The record of the testimony of the contracting parties shows quite clearly the nature of the transaction that took place. Mr. Greenspan had been approached by other sprinkler companies before the plaintiff's agent approached him. The defendant did not wish to buy a permanent im-

provement for property which he was leasing (state of the case, page 217). Mr. Greenspan was interested when he found that the defendant could lease a system which would give it a sprinkler system that it did not have to buy. Mr. Greenspan was interested because he was told that the defendant would not only possibly effect a reduction in insurance rate if it wished to make a reciprocal insurance contract, but also because defendant would get a sprinkler protection (state of the case, page 245). He was told by the plaintiff's agent that he, the plaintiff's agent, knew nothing about reciprocal insurance which was the only form of insurance that might, in the event that the system was put in, effect a reduction in the future in defendant's insurance rate. Plaintiff's agent was selling devices and not insurance (state of the case, page 320, line 34). The plaintiff's agent, as a matter of courtesy, and in his own zeal and self-interest to secure a contract for his principal, offered to put the defendant's agent in touch with someone who could explain to him reciprocal insurance and this he did. The defendant carefully considered the matter from the latter part of August or the beginning of September, 1927, until January of the following year, during which time he conducted a lengthy correspondence with the reciprocal agency in New York City. Mr. Greenspan was given every opportunity to investigate, to satisfy himself as to whether or not defendant wished to contract with the plaintiff for the installation of plaintiff's device. After this lengthy consideration, Mr. Greenspan signed the contract in behalf of the defendant. He first read it over (state of the case, page 257). In fact, he read it over twice (state of the case, page 314).

The contract is quite clear in its terms. It is not a contract for insurance. It does not necessarily contemplate that the defendant will take out any insurance. It is a straightforward lease contract whereby in consideration of the installation of the plaintiff's equipment in the defendant's premises, the defendant will pay a rental consideration, the rent payment to be made on either of two alternative contingencies.

This is an action at law and the defense here is one of fraudulent inducement which must show the proper legal elements. The general rule as to misrepresentation without fraud is set forth in 13 *Corpus Juris,* page 381, as follows:

> "As a general rule a naked misrepresentation of fact, that is, an innocent misrepresentation or nondisclosure of fact, does not affect the validity of an agreement, unless it belongs to a special class of agreements in which the utmost good faith and accuracy of statement is required, or is between persons in fiduciary or confidential relations, or unless the representation is a condition in the contract or amounts to a warranty. Except in these cases, a misrepresentation has no effect at common law unless it is made with knowledge that it is false, or recklessly and without belief in its truth, so as to render it fraudulent."

With reference to fraud at law the rule is set forth in 13 *Corpus Juris,* page 382, as follows:

> "D. Fraud—1. Definition: Fraud is a false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should be acted on by the complaining party, and actually inducing him to act on it

> to his damage. It differs from mere misrepresentation in that it has the element of knowledge, and its most frequent example in the law of contracts is the making of false representations to induce consent to an agreement."

Paragraph 280 of 13 *Corpus Juris,* page 382, reads as follows:

> "(2) What Constitutes Fraud — *a.* In General. It may be laid down as a general rule that any false representation of a material fact made with knowledge of its falsity and with intent that it shall be acted on by another, in entering into a contract, and which is so acted on, constitutes fraud and will entitle the party deceived thereby to avoid the contract or to maintain an action for the damages sustained."

Paragraph 281 of 13 *Corpus Juris,* page 383, goes on to say that:

> "As a general rule the mere failure of a party to a contract to disclose facts is not such fraud as will entitle the other party to avoid the contract."

In this respect *Corpus Juris* cites the holding of this court in the case of *Crowell* v. *Jackson* (53 N. J. L. 656) where the court says (at page 657):

> "In purchase or sale, if there be no designed misrepresentation by words or deeds and no active intentional concealment, and no intentional silence where there is a duty to speak, an action for deceit will not lie."

In treating of defenses of contracts where the defense is grounded on false and fraudulent rep-

resentations as an inducement to enter into the contract, the rule is set forth in *Corpus Juris* as follows:

13 *Corpus Juris,* page 745, paragraph 896:

> "(3) False Representations. Where the defense is grounded on false and fraudulent representations as an inducement to enter into the contract, defendant must set forth the alleged false and fraudulent representations, together with the facts as they actually exist. He must state by whom the false representations were made in order that it may be ascertained whether they were made by a person in a position to speak for plaintiff; and he must distinctly negative the truth of the alleged false representations. So, also, he must allege that the representations were made with a knowledge of their falsity on the part of plaintiff; and that he was misled and induced to enter into the contract through a belief in their truth; and suffered resulting damage or injury."

The defendant to sustain the defense attempted in this action must show, under the rule, those elements that would support an action for deceit. These are clearly set forth under the decisions in this State. The leading case, *Byard* v. *Holmes* (Supreme Court 1870, 34 N. J. L. 296-297) holds:

> "The action being grounded on fraud in the defendant, concurring with damage to the plaintiff resulting from that fraud, to maintain it, the plaintiff must allege, with reasonable certainty, and be prepared to prove, at least these three things: 1. That the defendant made some representation to the plaintiff, meaning that he should act upon it. 2. That such representation was false, and that

> the defendant, when he made it, knew it to be false. 3. That the plaintiff, believing such representation to be true, acted upon it, and was thereby injured. *Lummis* v. *Stratton,* 1 Penn. 245; *Pasley* v. *Freeman,* 3 Term R. 51; *Upton* v. *Vail,* 6 Johns. R. 181; *Langridge* v. *Levy,* 2 Mess. & W. 519; *Gerhard* v. *Bates,* 2 E. & B. 488 (& 5 E. C. L.)."

Misrepresentation to be fraudulent must be as to some presently existing material fact. In the case of *Lembeck* v. *Gerken* (New Jersey Supreme Court 1914, 86 N. J. L. 111) Mr. Justice KALISCH, speaking for the Supreme Court, says on page 114:

> "There is no legal principle more firmly rooted in the law that a representation, in order to form the basis of an action of deceit, must be material to the subject-matter of the contract and relate to some existent fact. *Byard* v. *Holmes* (34 N. J. L. 298). If it merely affect the probability that it will be kept, *i. e.,* some assurance what shall thereafter be done, or as to any further event, it is not a representation but a contract for the violation of which a remedy must be sought on the contract. *Dawe* v. *Morris,* 149 Mass. 188; 4 L. R. A. 158."

And Mr. Justice MINTURN, speaking for the New Jersey Supreme Court in the case of *Halpern* v. *Cafarelli* (N. J. Supreme Court 1922, 98 N. J. L. 77), says:

> "So, it has been generally held, that an agreement to do something in future, relieved of all the elements indicating specific fraud (none of which is in evidence here) is regarded as a mere expression of opinion, or a mere promise or conjecture, upon which the

> other party has no right to rely, particularly where the means of information or investigation are equally within the range of both parties. 12 R. C. L. 252 and cases cited."

There are some instances in which a declaration with reference to matters in the future may be held to constitute misrepresentation and fraud where the future references show a misstatement of the speaker's mind as a fact. In these cases the reasoning is based on that of Lord Bowen in the case of *Edington* v. *Fitzmaurice* (L. R. 29, C. D. 483; 55 L. J. Ch. 650), in which case Lord Bowen says:

> "There must be a misstatement of an existing fact, but the state of a man's mind is as much a fact as the state of his digestion. It may be difficult to prove the state of a man's mind at a particular time, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is therefore a misstatement of fact."

On the basis of this quotation it has been held in this State that the making of promises, which the promisor at the time of making had no intention of keeping and which promises have induced a party to act to his detriment, does constitute actionable fraud and misrepresentation. This doctrine was announced by the New Jersey Court of Errors and Appeals in the case of *Roberts* v. *James* (83 N. J. L. 492). See also *Zuckerman* v. *Geller, et al.* (Court of Chancery of New Jersey, 1928; 142 Atl. 344; 6 A. R. 1218). In the case of *Roberts* v. *James,* Lord Bowen's statement above quoted is quoted and referred to on page 497. The reasoning in both the case of *Roberts* v.

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James, supra, and *Zuckerman* v. *Geller, et al., supra,* is this: That if I promise something and at the time I promise it I do not intend to keep my promise and this state of my mind can be shown as a fact, then it follows that I am misrepresenting a presently existing fact, namely, the state of my mind.

Unless it can be shown that a person has knowingly and deliberately lied about some future happening there could be no possible misrepresentation of a presently existing fact. On the other hand, the rule is quite well settled that promises and statements as to future events do not constitute fraud. This rule obtains not only in New Jersey (see *Lembeck* v. *Gerken* and *Halpern* v. *Cafarelli, supra*), but is the general rule throughout Anglo-American jurisprudence. This general rule is stated in a note in 51 A. L. R., page 46, entitled:—

"Promises and Statements as to Future Events as Fraud."

This note, which carefully collects the authorities throughout the United States, set forth the rule (at pages 49 to 60 inclusive) as follows:

> "The general rule, which is supported by numerous decisions in almost all jurisdictions, is that fraud must relate to a present or pre-existing fact, and cannot ordinarily be predicted on unfulfilled promises or statements as to future events. There are various reasons for this general rule, applicable according to the particular circumstances. The usual grounds assigned are that such representations and promises should be regarded merely as statements of opinion, hopes, or expectations, on which the party to whom they are made has no legal right to rely, and that

a statement as to a future event cannot, in the very nature of the case, be false when made. In contracts of sale, promises or statements are frequently of that category known as 'dealer's talk,' which the buyer, in view of the relation of the parties, usually discounts or relies on only after independent investigation. It is often difficult to determine in the cases which lay down this general rule, whether the promise was made in good faith and whether a belief was honestly entertained that the future event would in fact take place; and the cases cannot be relied on with assurance on this phase of the question. It seems probable that in many of the cases supporting the rule there was in fact no actual fraudulent intent. But, on the other hand, some of the cases doubtless support the view that, even though the person making the representations as to a future event may have entertained doubts regarding the occurrence of that event, and may have made the statement recklessly without any real belief in its truth, yet the same may not serve as a basis for fraud. And this appears to be one of the distinguishing features of this class of cases, as contrasted with cases where the statements relate to a past or existing fact, viz., that, if the representation consists merely of a promise or a statement as to a future event, it will not serve as a basis for fraud, even though it was made under circumstances as to knowledge and belief which would give rise to an action for fraud had it related to an existing or past fact. The question of fraudulent intent is considered subsequently in the annotation, and it will be noted that there are many exceptions or limitations to this general rule, in cases where the promise or representation is made with an actual fraudulent intent."

The applicability of the foregoing legal principles to the facts in the present case is too clear to require extended comment. To begin with, the misrepresentation, as actually charged by the defendant, has been found, as a matter of fact, by the court in favor of the plaintiff. As to the other alleged misrepresentations with reference to the nature of reciprocal insurance, the testimony shows quite clearly that the plaintiff's agent had no knowledge whatsoever of the matters which he is charged with having wrongfully stated or wrongfully concealed. The contract, moreover, (state of the case, page 391) by its express terms, removes the entire insurance question from consideration, for by its terms no reduction in insurance rate need be obtained by the plaintiff as we shall argue in the next point. Leaving out of consideration this matter of the alternative provisions of the contract as to payment, what presently existing material fact has the plaintiff's agent, in this case, knowingly misrepresented by allegation or silence? He said to the defendant's agent: "If you take our system you may get a reduction in reciprocal insurance provided your standards meet reciprocal organizations' requirements. I do not know anything about insurance but if you are interested you can talk it over with these people. I want you to investigate and satisfy yourself with respect to this." The defendant took four months to think it over. Plaintiff's agent knew nothing about the nature of reciprocal insurance, or its legal position. He made no statements about what he did not know. At the most, he said, "If you put in our system, you will in the future get a reduction in reciprocal insurance." This is sales talk. It controverts no presently existing fact. There is no testimony to show that Mr.

Lyons was knowingly telling a falsehood as to a future event. He left the matter of investigation to his prospect. Mr. Greenspan admits (state of the case page 247) that he agreed to get in touch with companies in New Jersey already carrying reciprocal insurance,—so that plaintiff's agent did everything possible to put in the defendant's hands information about reciprocal insurance of which plaintiff's agent was ignorant. This attitude clearly negatives any accusation of concealment.

The defendant says there was misrepresentation but the Court of Errors and Appeals has held in the case of *Fivey* v. *The Pennsylvania Railroad Company* (The Court of Errors and Appeals 1902, 67 N. J. L. 627, at page 633):

> "But to establish a misrepresentation that will invalidate a contract, it must appear that the representations were not only false, but made with intent to deceive, and that the party seeking relief acted upon and was misled by them."

Vice-Chancellor Backes has said in *Herder et al.* v. *Garman* (106 Equity 13):

> "It is true that equity will not relieve the complainants if they, being put upon or having resorted to inquiry, could have with ordinary care discovered that the facts were not as represented. Equity does not aid one whose indifference contributed materially to the injury he complains of."

The rule above in the Court of Chancery could find no misrepresentation in the present circumstances.

It is respectfully submitted that these transactions show no fraudulent inducement.

POINT II.

Plaintiff is entitled to payment in accordance with the terms of the written contract upon the licensing of the equipment without any reduction in insurance rate whatsoever accruing to the defendant, and it having been proved that said equipment was duly licensed in accordance with the terms of the contract and that all other conditions precedent to payment had been complied with in accordance with the contract, the trial court should have directed a verdict for the plaintiff.

The contract which forms the subject matter of this suit (state of the case, page 391) provides in its second paragraph (state of the case, page 392) as follows:

> "2. Subscriber shall pay to Licensee in advance, *upon the licensing of the equipment by Licensor,* OR *upon the date when Subscriber first becomes entitled to insurance rate credit by reason of said Service, the sum* of ($885) eight hundred and eighty-five dollars____Dollars for the first year's Service and shall thereafter, during the term thereof pay yearly, in advance, the sum of ($885.) eight hundred and eighty-five dollars____ Dollars for said Service."

The contract in its terms is clear and unambiguous. It is a simple lease contract. 13 *Corpus Juris,* page 524, paragraph 485, with reference to construction of a contract holds:

> "The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention existed in the minds of the parties, but what intention is expressed by the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. Where the contract evidences care in its preparation, it will be presumed that its words were employed deliberately and with intention."

There is nothing in the terms of this contract which would necessitate the defendant to have insurance on its plant, or to enter into insurance contracts of a reciprocal or any other nature. The contract by its clear and express terms provides that in consideration for leasing and inspecting a certain equipment, the plaintiff would be paid a yearly rental over a term of years, that rental was to be paid on the happening of two contingencies—either (*a*) the licensing of the system, or (*b*) the receipt by the subscriber of a reduction in insurance premium. The court has found that this first contingency has occurred and without more the rental was due. In no way is reduction in insurance premium made a necessary condition of payment, nor is it in any respect a consideration for the payment of the rental.

The defendant has testified that before signing the contract, he read the same (state of the case, page 257). Whether he had or not, it has been

held in this State in the case of *Twaits* v. *Pennsylvania Railroad Company,* (N. J. Court of Chancery 1910, 77 N. J. E. 103, at page 111):

> "It has been held that, where a man unrestrainedly enters into a contract in writing, he is bound by its terms even if he did not read it or cause it to be read to him. *Fivey* v. *Pennsylvania Railroad Co.* (Court of Errors and Appeals, 1902), 67 N. J. Law (38 Vr.) 627; *Zdancewicz* v. *Burlington County Traction Co.* (New Jersey Supreme Court, 1908), 71 Atl. Rep. 123; *Vellekoup* v. *Fullerton Co.* (New Jersey Supreme Court, 1909), 74 Atl. Rep. 793."

It is respectfully submitted that the court was in error in not directing a verdict for the plaintiff upon finding that the equipment in question has been duly licensed and all the other conditions precedent to payment complied with by the plaintiff pursuant to the clear terms of the contract in question.

POINT III.

Provisions of the New Jersey Insurance Act do not affect the validity of the contract in question because (*a*) the contract in question is in no sense an insurance contract and does not prescribe that any of the parties shall, of necessity, enter into any insurance contract, and in fact, provides for payment whether or not a reduction in insurance rate is effected by the subscriber, (*b*) even though the contract by its terms did prescribe that the subscriber should take reciprocal insurance (which it does not) the New Jersey Insurance Act would not apply to this reciprocal insurance contract, and (*c*) the New Jersey Insurance Act is unconstitutional in so far as it would affect the validity of an insurance contract made outside of the State of New Jersey, which insurance contract is in all respects legal and valid where it is made.

(A) The contract in question is in no sense an insurance contract and does not prescribe that any of the parties shall of necessity, enter into any insurance contract, and in fact, provides for payment whether or not a reduction in insurance rate is effected by the subscriber.

Plaintiff's Exhibit "P-1", the contract which forms the basis for this suit (state of the case page 391) is in no sense an insurance contract. It is a lease contract. It does not require that the de-

fendant shall take any insurance at all on the property in which the equipment is to be installed pursuant to the contract. Afortiori it does not require or prescribe that the defendant shall take insurance in any particular organization. A perusal of the terms of the contract shows nothing either directly or by construction that is illegal directly or indirectly in the contemplation of the parties. The defendant, however, has endeavored by its defense to inject the taint of illegality into its contract in order to void the plaintiff's just claim. Its motive for so doing appears, however, quite clearly in the record. Greenspan Brothers Company were approached in August or September of 1927 by the plaintiff's agent (state of the case page 243, line 23). Mr. Greenspan had previously considered the question of installing a sprinkler system but since he did not own the building, he did not want to incur the expense involved in the installation of a permanent fixture for his landlord (state of the case page 217). On January 4, 1928, after some four months of consideration, and after carefully reading the contract at the time (state of the case pages 257-391), he signed the contract and was apparently quite satisfied with his bargain. He remained satisfied throughout the year 1928. A rider is attached to the contract which appears in the state of the case page 395, and which Mr. Lyons testifies to have been made and attached at the time the contract was signed (state of the case page 315). This rider provides that material for the equipment to be installed was not to be delivered to the defendant's premises until after August 1, 1928, or seven months after signing the contract. Apparently Mr. Greenspan was still satisfied with the bargain that he had entered into since he made no objection to the delivery of the materials

at the stipulated time or for sometime thereafter, for the testimony shows that the installation actually occurred in the months of October, November and December of 1928 (state of the case page 173). Mr. Greenspan then considered the making of this contract from August of 1927 to January of 1928. He was agreeable to the terms of the contract and entered into the contract early in January 1928 and remained satisfied with his bargain during the entire year of 1928 making no objection to the delivery of the materials to his place of business, or its installation, over a period of some two and a half months.

Mr. Greenspan had made an arrangement with his landlord whereby Mr. Greenspan, or the defendant, was to place the landlord's insurance for him (state of the case page 219). In December of 1928 after the plaintiff's equipment was installed, the defendant's agent, Mr. Greenspan, was approached by one Derben W. Bartholomew, an insurance agent connected with the office of Boynton Brothers, insurance brokers of Perth Amboy, New Jersey, who had acted previous to that time in placing insurance for Greenspan Brothers Company's landlord, which by a new arrangement was now to be handled by Greenspan Brothers Company. Naturally Boynton Brothers were annoyed at the prospect of losing some business, and Mr. Bartholomew quite frankly states their trouble in his testimony where he says (state of the case pages 287-288 and 289):

> "Q. How long have you been in the insurance business? A. About eleven years.
>
> Q. Some time in December,—if I am not correct about the time will you correct me,—did you speak to Mr. Isidor Greenspan respecting insurance? A. Yes.
>
> Q. On his Perth Amboy properties in De-

cember of 1928? A. Yes. I will tell you why. Potts and Kaufmann Incorporated of Perth Amboy own this building. For many years I have been the salesman handling all the insurance for Potts and Kaufmann. I was told by Mr. David J. Kaufmann, president of Potts and Kaufmann, that we were not allowed to renew the insurance which expired around the first of January. He told me that he had made arrangements with Mr. Greenspan, that Mr. Greenspan was going to take all the insurance over because he had installed a sprinkler system, and that he was going to pay to Mr. Greenspan the same insurance cost as he had paid before to us. When I found that out I went up to Mr. Greenspan, not primarily for that, because I had no personal connections with Mr. Greenspan at that time, but I went up to see Mr. Greenspan on another matter and at that time I discussed with Mr. Greenspan that he was taking the insurance of Potts and Kaufmann, and I asked him where he was going to place it, and he told me he had a list of companies operating in New York State. They were reciprocal organizations. I knew a little something about reciprocals, because I sold business all over the East, not long ago I sold a risk in Philadelphia that had a reciprocal—

Mr. Berry: I object.

A. All right. I found out these three reciprocals, or three or four, I forget which, Mr. Greenspan, and I came back and asked Mr. Covert, the manager of our fire insurance department, who in turn communicated with the insurance department, and I went back then, I received some information, and I went back and I told Mr. Greenspan that reciprocals were not licensed to do business in the State of New Jersey; that in the event he sued them,

in the event he had a loss and there was disagreement, he would have to sue them in an outside state; and when Mr. Greenspan found that out, of course, that threw the situation, I mean he had never known it apparently before and, of course,—

Mr. Berry: I object to what Mr. Greenspan knew or didn't know before this witness talked to him. I think Mr. Toolan should take him in hand and ask him questions and let him answer them rather than have long speeches here dealing with his past life.

Q. Did you discuss the matter of insurance with Mr. Greenspan? A. I did, and the second time in the presence of Mr. Greenspan and Mr. Kaufmann.

Q. Were you party to obtaining a rating on this building from the New Jersey department? A. I was.

Q. Was any rate credit allowed? A. None.

Q. Did Mr. Greenspan inform you what rate credit he expected to get? A. Yes, he told me the very first time he was going to get a fifty per cent. reduction in stock companies, he would not give us the insurance, because he could get his insurance so much cheaper in reciprocal organizations, that he had virtually decided to place it in there, and then was in doubt after I informed him that reciprocals were not admitted to do business in the State of New Jersey. That immediately cast a doubt in his mind. I put the proposition up we carry in the renewal of the insurance on binder, free of charge, until he could definitely decide whether he was going to accept reciprocal insurance, or whether he was going to accept stock company insurance."

Boynton Brothers did not rest, however, solely by arguing with Mr. Greenspan. Pressure was likewise brought to bear on the landlord, their own client, for Mr. Greenspan in his testimony says (state of the case, page 228):

"Q. What information did you receive respecting the reciprocal company? A. The landlord of the building came back to me and told me he was very sorry that he couldn't let me do the insuring because his mortgagees, who held a mortgage on the building, would not stand for reciprocal insurance, because they were absolutely—it was absolutely illegal for them to do business in the State of New Jersey.

Mr. Berry: I object to what someone else told him, and I move it be stricken out.

The Court: It does not prove the fact at all. He is giving the reason why he didn't take the reciprocal insurance.

A. That they did not have an office in the State of New Jersey.

Mr. Berry: I object to this. This is purely hearsay.

The Court: Of course it is.

A. So I investigated.

Q. What did you find out as the result of your investigation? A. I investigated the whole thing and found that the reciprocal companies had no office—

Mr. Berry: I object now.

By Mr. Berry:

Q. When you say you investigated, what did you do? A. Why, I took up with my attorney.

Q. Is he the one who gave you this information? A. That was afterwards.

Mr. Berry: I object.

A. The original information was brought to me by Boynton Brothers, Mr. Bartholomew."

The attractive proposition of their free coverage pending decision of the matter is further covered by the testimony of Mr. Covert, the fire insurance specialist of Boynton Brothers, who testified (state of the case, page 275):

"Q. Well, did you have any negotiating with Greenspan Brothers during the year of 1928 or early 1929 respecting insurance? A. In December, 1928.

Q. Whom did you do business with? A. Mr. Isidor Greenspan.

Q. Without detailing the conversation which you had with Mr. Isidor Greenspan, what, if anything, did you do? A. We wrote his insurance.

Q. I know, but when did you write his insurance? A. We wrote his insurance in January of 1929.

Q. That is, wrote it by binder or how? A. We executed binders for the period, and then executed contracts. Binders were in effect for perhaps thirty days and the policies afterwards issued.

Q. Prior to writing that insurance, or during the period the binder was in existence, did you make any application for rates? A. The reason that Mr. Greenspan gave us the insurance is because we promised to do certain things for him. One of those things was to secure a sprinkler system that would meet with the approval of the Schedule Rating Office. The second thing was that we agreed to secure from the Schedule Rating Office certain fixed rates."

As the foregoing shows, Mr. Greenspan found himself in somewhat of a quandary. His landlord and his landlord's friends, certain of his Perth Amboy business associates, men of the community in which he was doing business, urgently wanted him to make certain business arrangements with them—so urgently that they were willing to make sacrificial offers by way of inducement. On the other hand, Mr. Greenspan, after investigation, had already made a contract in which the other party to the contract, the plaintiff in this suit, had performed. He could not accept the Boynton Brothers proposition, unless he could get out of his first arrangement, and he was in considerable doubt as to the possibility of this. It was then here that Boynton Brothers came to his rescue, for as the testimony of Mr. Lyons shows in March when Mr. Greenspan had finally decided to repudiate his contract, he had spoken to Boynton Brothers and received assurance in this respect also. Mr. Lyons' testimony (state of the case, page 321) is as follows:

> "Q. That is what exhibit? A. Exhibit P-5. Well, I took that letter and I went down to see Mr. Greenspan, and I went in and I said—
>
> Q. What was that date? A. That was on March 9th of 1929.
>
> Q. Did you have a conversation with Mr. Greenspan there? A. Yes, I went in.
>
> Q. What did you say to him and what did he say to you? A. I took the letter out and I said, 'Mr. Greenspan, did you authorize that letter to be sent to us?'
>
> He said, 'Yes, indirectly.' He said, 'I have turned this whole matter over to the brokers and really indirectly I authorized that letter to be sent.'
>
> And I said, 'Well, now, what is the reason for all this?'

> He said, 'Well, as I told you, I have turned this whole thing over to these brokers, and,' he said, 'I have been assured,' he said, first of all, before that, he said, 'I think that perhaps there is a possibility of me—this might cost me some money, but I have been assured by them that they are going to give you a good run for your money.' "

This contract was then repudiated and this action was brought, and the defense of illegality interposed, the motive for which can readily be seen in the foregoing excerpts taken from the testimony. The contract upon which the plaintiff is suing here is not, however, a reciprocal insurance contract. It makes no mention of reciprocal insurance or any other kind of insurance other than to mention that a reduction in insurance premium as one of two alternative circumstances under which the defendant shall pay the rental for the plaintiff's equipment. It is certainly difficult for anyone to see in this a possibility of illegality by virtue of any of the various terms and conditions of the insurance act of New Jersey or of any other forum.

(B) Even though the contract by its terms did prescribe that the subscriber should take reciprocal insurance (which it does not) the New Jersey Insurance Act would not apply to this reciprocal insurance contract.

In the negotiations which led up to the signing of the contract by the plaintiff and the defendant, the plaintiff's agent, as the testimony clearly shows, told the defendant's agent, that if reciprocal organizations operating in New York were satisfied with the defendant company's financial standing, they might obtain a substantial reduc-

tion of more than 50% of insurance rate premium, provided the defendant company was willing to insure itself by means of reciprocal insurance contract. While under the parole evidence rule and the general principles of law with reference to the construction of contracts which we have considered previously in this brief, these oral representations and the sales talk as to future happenings, cannot be considered in any way as incorporated into the contract, *we will for the moment in arguing this present point* ASSUME *that the contract in question included in its terms some express provision that the defendant should make a reciprocal insurance contract with New York reciprocal organizations.* The testimony of Mr. Louis Senn, Vice-President of Ernest W. Brown, Inc. (state of the case, page 358) shows that the insurance contracts which Mr. Greenspan actually entered upon with New York reciprocal organizations were made and finally accepted in the State of New York. The testimony shows that Mr. Greenspan, in behalf of the defendant corporation, entered into negotiations with Ernest W. Brown, Inc., as agent of three reciprocal organizations namely: Affiliated Underwriters, Individual Underwriters, and Metropolitan Inter-Insurers (See Exhibit D-8, state of the case, page 428, and Exhibit D-9, state of the case, page 431, admitted in evidence, state of the case, pages 225-226).

These organizations are doing business in the State of New York in accordance with the law of the State of New York, a copy of which act is included on pages 120 to 143, inclusive, of the state of the case. These organizations have fully complied with the terms and provisions of the New York act and are legally doing business in New

York State (state of the case, pages 114 to 119, inclusive). The nature of the insurance contract entered into or to be entered into by the defendant with these organizations is shown by the reciprocal underwriters agreement of the Affiliated Underwriters which is printed in the state of the case on page 124, and also by the testimony of Mr. Senn as to the nature of reciprocal insurance (state of the case, pages 351-352). The defendant then in taking reciprocal insurance would have executed, in the State of New York, a valid and legal contract with an organization which had in all respects qualified to do business in the State of New York.

The defendant's agent, Mr. Greenspan, clearly knew that he was dealing with New York organizations as opposed to New Jersey companies, since the uncontradicted testimony of the plaintiff's agent (state of the case, page 303) shows that he told Mr. Greenspan so. Mr. Greenspan's knowledge in this regard is further shown by his statement to Mr. Bartholomew, his own witness, who says (state of the case, page 288):

> "* * * I asked him (Mr. Greenspan) where he was going to place it, and he told me he had a list of companies operating in New York State."

In addition to this, Exhibits D-1 through D-10 (state of the case, pages 410 to 434, inclusive) show protracted correspondence between the defendant and Ernest W. Brown, Inc., in New York.

It is a well-established rule that the nature, validly, construction and effect of a contract is governed by the law of the state where the contract is made. *Da Costa & Davis* v. *Davis & Hatch* (New Jersey Supreme Court 1854, 24 N.

J. L. 319, at 327 and 328); *Atwater* v. *Walker* (Court of Chancery 1863, 16 N. J. E. 42); *Columbia Fire Insurance Company* v. *Kinyon* (New Jersey Supreme Court 1874, 37 N. J. L. 33); *Northampton Mutual Live Stock Ins. Co.* v. *Tuttle* (New Jersey Supreme Court 1878, 40 N. J. L. 476); *Manhattan & S. Saving and Loan Association of* New York. v. Massarelli, et al. (Court of Chancery of New Jersey 1899, 42 Atl. Rep. 284.

In *Manhattan & S. Saving and Loan Association of New York* v. *Massarelli, et al.* (Court of Chancery of New Jersey 1899, 42 Atl. Rep. 284), a foreclosure bill was filed by a New York corporation to foreclose a certain mortgage on property located in the State of New Jersey. The defendant contended that the mortgage was illegal because complainant had not complied with certain of the provisions of the New Jersey corporation act. Vice-Chancellor Emery at page 285 holds that the mortgage contract was a New York contract *made and to be performed* in New York by the defendant, as a member of the New York association, and that, therefore, the contract was to be governed by the law of the State of New York under which the contract in question was perfectly legal. It is significant to note that although the land here mortgaged was in New Jersey, the court holds that the contract is to be performed in the State of New York. So in this present case if Greenspan Brothers Company had executed a reciprocal agreement in New York to cover their fire insurance risk on property in New Jersey, they would have made a New York contract legal in New York and there to be performed and similarly valid in New Jersey under this decision.

In *Columbia Fire Insurance Company* v. *Kinyon* (New Jersey Supreme Court 1874, 37 N. J. L.

33), a contract of insurance was made in the State of Pennsylvania on property in New Jersey. The plaintiff company had not complied with certain provisions of the New Jersey Insurance Act, and the defense of illegality was made to invalidate the contract. Mr. Justice VAN SYCKEL (page 34) in his opinion holds that the contract was good and enforceable.

> "Comity requires us to enforce a contract made in another State, and valid there, unless it is clearly prohibited by some provision of these enactments."

And again on page 36 Mr. Justice VAN SYCKEL says:

> "There is nothing in our statute which will make this case an exception to the general rule, that the law of the place where a contract is made or to be performed, is to govern as to the nature, validity, construction and effect of such contract; being valid in such a place, it is to be considered equally valid everywhere. It will be enforced here, not *pro prio vigore,* but *ex comitate.* My conclusion is, that a contract of insurance made out of this State, on property here situate, is valid."

Mr. Justice VAN SYCKEL goes on to discuss contract made in the State of New Jersey contrary to the provisions of the New Jersey Insurance Act. With regard to the intent of the legislature, he says that the acts (page 37):

> "* * * manifest very clearly the more important purpose of protecting the public against imposition, which might otherwise be practiced by wholly irresponsible companies * * *."

He goes on to say at page 37:

> "The agent, therefore, who acts without due authority, is not only liable to the penalty in such case prescribed, but the contract made in contravention of the law is itself void, so far as concerns the right of the foreign principal to sue upon it. Washington County Ins. Co. *v.* Dawes, 6 Gray 376; Williams *v.* Cheney, 8 Gray 206.
>
> In such cases it may be required by public policy, that the party insured shall be permitted to enforce the agreement, but no opinion is expressed on this point."

So here in the present case had Greenspan Brothers Company executed *in the State of New Jersey* a reciprocal insurance contract contrary to the New Jersey statute, the New Jersey court would have afforded to Greenspan Brothers Company relief should it have been necessary for the defendant, Greenspan Brothers Company, to subsequently sue on the contract. The effect of the New Jersey Act would have been to preclude the reciprocal organizations from relief in our courts but not the defendant.

Again in *Northampton Mutual Live Stock Ins. Co.* v. *Tuttle* (New Jersey Supreme Court 1878, 40 N. J. L. 476), the plaintiff insurance company of the State of Pennsylvania gave a policy on property in the State of New Jersey. The defendant, Tuttle, made an application in the State of New Jersey to the plaintiff's agent resident in the State of New Jersey for insurance on property in this state, and paid the premium, taking an agreement that the policy would be issued when the application was approved by the company. The application was taken to the company's office in Pennsylvania and the policy was issued

and mailed to the defendant. The court held that the contract was made in Pennsylvania and not in New Jersey and would by comity be enforced in New Jersey, although the agent had not complied with the statute of this state concerning foreign insurance companies.

Mr. Justice Van Syckel, in the opinion, says (state of the case, pages 478-479 and 480):

> "If the contract of insurance was made in the State of Pennsylvania, and was valid there, comity requires us to enforce it here. Columbia Ins. Co. *v.* Kinyon, 8 Vroom 33.
>
> This case, therefore, turns upon the question whether it was made in this State.
>
> Thatcher acted as the agent of the company, with authority to receive applications. He received the defendant's application, with the premium, which he transmitted to the company at its place of business in Pennsylvania. By the express terms of the receipt given by the agent to the defendant, the company had the option to approve the application and issue a policy, or to reject it and refund the premium. It was a mere proposition, from which the parties might have receded, and not a contract. Approval by the company was necessary to ripen it into a contract. Not until then did the minds of the parties come together, and invest the transaction with the attributes of a valid agreement. The contract of insurance must be regarded as having been made when the company approved the defendant's application, and issued and transmitted to him their policy. Hyde *v.* Goodnow, 3 N. Y. 266; Huntley *v.* Merrill, 32 Barb. 626.
>
> The contract must be held to have been made where the last act necessary to complete it was done.

Although there is some conflict in the cases, I think the weight of authority is, that when the offer of the insured was accepted, and the policy deposited in the post-office by the company, properly addressed to the insured, the contract was made. It did not remain incomplete until the insured, by receiving the policy, was notified of the acceptance of his proposal.

In McCulloch *v.* Eagle Insurance Company, 1 Pick. 278, the Supreme Court of Massachusetts, on the authority of Cooke *v.* Oxley, held that mailing a letter acceding to terms offered did not complete the bargain, but the view expressed by the court were modified in a later case, reported in 10 Pick. 330.

In Adams *v.* Lindsell, 1 B. & Ald. 681, the bargain was declared to be perfected when the letter was put in the mail, giving notice to the other party of the acceptance of his offer.

This question is ably reviewed by Justice Marcy, in Mactier *v.* Frith, 6 Wend, 103, in which the Court of Errors overruled the decision of Chancellor Walworth, that to make a valid contract it is not only necessary that the minds of the contracting parties should meet on the subject of the contract, but that fact must be communicated to each other.

The same rule prevails in the Supreme Court of the United States. Tayloe *v.* Merchants' Fire Insurance Company, 9 How. 390.

It has also the unqualified approval of Chancellor Kent. 2 Kent's Com. (6th ed.) 477.

The cases in this State are to the same effect. Houghwout *v.* Boisaubin, 3 C. E. Green 315; Potts *v.* Whitehead, 5 C. E. Green 55; Commercial Insurance Company *v.* Hallock, 3 Dutcher 645.

> In the case last cited, Justice ELMER says: 'It being well and satisfactorily established as law that the acceptance of a proposition, and the sending notice thereof by mail, complete the bargain, although the letter never reaches its destination, it follows that the company were bound by what they did on that day, and had no power afterwards to revoke it.'
>
> A bargain must be considered as closed when no mutual act remains to be done to entitle either party to enforce it.
>
> Under the adjudged cases it seems to be clear that if the assured had suffered loss the instant after the policy was mailed, he could have resorted to it for indemnity.''

This case is directly in point with the circumstances of the present case. The defendant company was to make a New York contract in New York, and this the court of New Jersey would recognize and enforce in accordance with the principles annunciated by Mr. Justice VAN SYCKEL.

As has been already stated, the argument which is advanced so far as this present case is concerned is an academic one, for the contract upon which this action is based does not by its provisions, expressed or implied, contemplate any contravention of any statute of the State of New Jersey. Assuming, however, that the negotiations which led up to the making of the contract in question necessitated the defendant's taking a New York reciprocal contract of insurance, in what way is the defendant involved in an illegal act? Under the decision herein referred to, the reciprocal insurance contract made in New York, to be performed in New York, and legal and valid there, would be legal, valid and binding everywhere and

respected and upheld by the courts of this state on principle of comity.

(C) The New Jersey Insurance Act is unconstitutional in so far as it would affect the validity of an insurance contract made outside of the State of New Jersey, which insurance contract is in all respects legal and valid where it is made.

In dealing with the constitutionality of the New Jersey Insurance Act as interpreted and construed by the holding of the court in this case, we wish to point out to this court that here again we are engaged in a discussion, which from the plaintiff's standpoint is wholly an academic question, or which at least should be wholly an academic question so far as the facts of this present case are concerned, inasmuch as the contract which this suit involves is not an insurance contract.

The defendant has introduced the defense of illegality by arguments derived from the testimony relating to the negotiations which led up to the making of the contract upon which this action is based. It would be well to consider, for a moment, the representations made in the negotiations as testified to. Mr. Lyons called on defendant as plaintiff's agent (state of the case, pages 300-301 and state of the case, page 217). Mr. Lyons was interested in securing a lease contract for a sprinkler system for his principal. The attractive features offered in this situation were (1) fire protection afforded by the equipment, and (2) possibility of reduction in insurance rate premium for the subscriber. Mr. Lyons' testimony is significant in this respect (state of the case, page 302) where he says:

> "* * * 'Now, Mr. Greenspan, there is a possibility of us giving you some fire protection in this building of yours, and we can effect, I think, fifty per cent. reduction in insurance, in the event that you place your insurance with an outfit known as "Ernest W. Brown, Incorporated". I think I introduced them as the New York reciprocals,' I said, 'New York reciprocals.' And I went on to explain the system right away."

He told Mr. Greenspan what little he knew about reciprocal insurance (state of the case, pages 303-304). Then he said (state of the case, page 305):

> "'Now,' I said, 'I don't know anything about insurance.' I said, 'I would like very much to bring down a representative of Ernest W. Brown, if you would like, and let him cover the thing fully.' He said he would be interested, and I left."

Mr. Lyons, subsequently did as he promised, and brought down to Perth Amboy a Mr. Stockwell from E. W. Brown, Incorporated, in order that Mr. Greenspan might understand exactly the nature of reciprocal insurance (state of the case, pages 305 to 311, inclusive). Mr. Stockwell mentioned to Mr. Greenspan some of the subscribers to reciprocal insurance and gave to Mr. Greenspan a list of people who had reciprocal insurance (state of the case, pages 310-311). Subsequent to the meeting at which Mr. Stockwell was present, Mr. Lyons again saw Mr. Greenspan and told him (state of the case, page 312):

> "Q. Yes, September 27, that is the date of that letter. A. Oh, yes. I went down on these different occasions, was usually about this same line. He said he hesitated about putting his insurance, as he said, all of his

eggs in one basket, I think he said he hated to put all of his insurance with one company. And I said, 'Well, there is one way you can find out just how good they are, just send out some letters to the subscribers, you have a whole list of them there, and surely that will bear some weight in your decision.' I said, 'Because it is absolutely necessary that you get sold on this proposition or we cannot do any business, that is all.' So he said he would.

Q. Did you see him after that? A. Yes, I did.

Q. When did you see him? A. I came in quite often and I would ask him if he had written to these subscribers, quite a few times he said he hadn't. He said he hadn't just gotten to it, he had been very busy, and so forth. So I believed him. I wouldn't stay around there long.

Q. What happened next? A. Well, it finally led along up until—I made a call just one month from the date we signed that contract, that was my last call, and then he said something about, well, I am going to put it off until after the first of the year. I didn't ask him why or anything else.

Q. Did you say anything about looking up subscribers? A. I asked him whether he had written and he said no, he hadn't, and he said, 'Well, I am going to put the thing off until after the first of the year.' So I didn't say a thing, and I left, and I came back after the first of the year.

Q. When? A. I came back on January 4.

Q. What happened then? A. I asked him whether he had come to any decision, and he said, 'Well, I don't know.'

I said, 'Well, don't you think this is a good line of insurance?'

He said, 'Well, I guess it is all right.'

I said, 'Have you sent out your letters as you promised and find out about these subscribers?'

He said he had. He said he got very favorable reports.

Q. Did he name any of them, who they were? A. I think he said Bamberger. I wouldn't swear to that that he did. He just said that he got favorable reports. And I asked him, I did ask him whether he had called up Sutsman in Paterson and asked him anything about the system.

He said, no, he hadn't. So then I said, 'Well, aren't you—don't you think this is a good line of insurance to be carrying, and don't you think it is satisfactory, isn't everything satisfactory to you?'

And he said, 'Well, yes, I think it is.'

So I asked him then to sign my contract.''

Mr. Greenspan in his cross-examination (state of the case, page 247) testified that he received a list of people who had reciprocal insurance, and (on page 250) he states that he did promise to investigate and look up the subscribers. Both the testimony of the witnesses of the plaintiff and defendant show that Mr. Lyons, plaintiff's agent, took the attitude that he knew nothing about insurance, that he was selling devices, that he knew that reciprocal organizations gave a reduction which could not be gotten with old line companies, and that he wished to make it possible for Mr. Greenspan to investigate reciprocal organizations and satisfy himself upon his own investigation as to their nature. Mr. Lyons further testified, as has already been set forth in this memorandum, that so far as reciprocal organizations are concerned in the State of New Jersey, he knew nothing about their legal status in the State of New Jersey and

made no representations concerning this (state of the case, pages 334-335).

On this showing of fact, it is respectfully submitted that nothing has been done by the plaintiff which in any way violated any of the provisions, then in force, of the New Jersey Insurance Act. The court, however, has found (state of the case, page 159) that:

> "(4) No person, firm, organization or corporation is authorized to do 'reciprocal insurance' in New Jersey, or to enter into contract, in or out of the State, for such 'reciprocal insurance' with residents of New Jersey on property of such resident in New Jersey, that is legally enforceable in New Jersey, since such business and such insurance in New Jersey is against the law and the avowed public policy of New Jersey."

This holding is probably based upon an interpretation of Section 88 of the New Jersey Insurance Act (Vol. 2 *Compiled Statutes of New Jersey,* page 2867) as applied to the facts above quoted from the testimony. Section 88 reads as follows:

> "No person or firm nor any company organized under the laws of this State or of any other State or foreign country, himself, itself, or theirselves, or by his, its or their brokers, agents, solicitors, surveyors, canvassers or other representatives of whatever designation, nor any such broker, agent, solicitor, surveyor, canvasser or other representative, shall solicit, negotiate or effect any contract of insurance of any kind, including all kinds of insurance described in this act, or sign, deliver or transmit, by mail or otherwise, any policy, certificate of membership or certificate

> of renewal thereof, or receive any premium, commission, fee or other payment thereon, on any property or thing, or on the life, health or safety of any person, or in any manner, directly or indirectly, transact the business of insurance of any kind whatsoever within this State, unless such company, person or firm, shall be authorized to do the same under the provisions of the laws of this State. (P. L. 1902, p. 445)."

The contract in this case was signed on January 4, 1928. On April 3, 1928, paragraph 88 above quoted was amended by Chapter 221 of the Laws of 1928 (P. L. 1928, page 396). The provision of this amendment could not be pertinent in this case since the amendment went into effect after the transactions complained of. Plaintiff admitted in open court that there is no law under which reciprocal organizations can be licensed to do business in New Jersey.

Mr. Lyons, as the testimony shows, knew nothing about reciprocal insurance and so stated. He knew nothing about the legal status of reciprocal insurance in the State of New Jersey. He was anxious to secure a lease for his principal and his sole activity was to put Mr. Greenspan in touch with representatives of New York reciprocal organizations so that Mr. Greenspan might himself thoroughly investigate and look into their status for his own protection. There is surely nothing in this which is a violation of the statute above quoted.

The holding of the court, however, goes very far and states that a contract for reciprocal insurance entered into in the State of New York, where it is in all respects legal and valid, is void and of no effect in the State of New Jersey if the

insurance is a coverage of New Jersey property. We have already treated this with respect to the question of comity. We respectfully submit that this decision of the trial court is unconstitutional. The 14th Amendment of the United States Constitution provides that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Corporations have, by mere implication of law and without any affirmative expression to that effect, the same power to make and take contracts within the scope of their purposes that natural persons have. They have, by necessary implication and incidentally the right to enter into contracts for the protection of their property and business, not being limited to such as are indispensable but including such as are appropriate, convenient, suitable and usual with the right of choice of means to be employed. And these rights are not restricted to the domicile of the corporation, but may be exercised in other jurisdictions by it, in the same manner as if a natural person, subject to legal regulations as a foreign jurisdiction may impose. The exchange of reciprocal or inter-insurance contracts is lawful whether the exchange is effected where there is a statutory law declaratory of such right, or where there is no statutory declaration on the subject. The police power of any state is limited to reasonable restrictions and it has been held that, although the statutory status of different forms of insurance may be different in different states, if the ex-

change of contract is effected in a state where such a contract is legal and valid, then that contract is legal and valid everywhere in the United States regardless of any state statute to the contrary and any state statute that would have the effect of denying this, is unconstitutional under the Fourteenth Amendment of the United States Constitution in that it deprives citizens of their liberty without due process of law. *Allgeyer* v. *Louisiana* (165 U. S. 578); *St. Louis Cotton Compress Co.* v. *Arkansas* (260 U. S. 346).

In *Allgeyer* v. *Louisiana* (165 U. S. 578) the action involved the constitutionality of a Louisiana statute which provided as follows:

> "*Be it enacted by the General Assembly of the State of Louisiana*, That any person, firm or corporation who shall fill up, sign or issue in this State any certificate of insurance under an open marine policy, or who in any manner whatever does any act in this State to effect, for himself, or for another, insurance on property, then in this State, in any marine insurance company which has not complied in all respects with the laws of this State, shall be subject to a fine of one thousand dollars, for each offence, which shall be sued for in any competent court by the attorney general for the use and benefit of the charity hospitals in New Orleans and Shreveport."

Defendant entered into a contract in the State of New York with the Atlantic Mutal Insurance Company, a New York corporation, for an open policy of marine insurance to cover cotton in bales purchased and shipped by defendant on which drafts might be drawn for the purchaser. The terms of the policy provided that insurance should

not cover cotton in charge of carriers on shore or during inland transportation. It required further that in connection with each insured shipment a letter should be addressed to the president of the insurance company giving details of the shipment. The specific complaint of the defendant was the mailing of such a letter within the state of Louisiana to cover insurance on cotton then also in the State. The court found in favor of the defendant and held that the statute was unconstitutional. The court through Mr. Justice PECK said:

> "The mere fact that a citizen may be within the limits of a particular State does not prevent his making a contract outside its limits while he himself remains within it." Citing Milliken *v.* Pratt, 125 Mass. 374; Tilden *v.* Blair, 21 Wall. 241.
>
> As the contract was valid in the place where made and where it was to be performed, the party to the contract upon whom is derived the right or duty to send the notification in order that the insurance provided for by the contract may attach to the property specified in the shipment mentioned in the notice, must have the liberty to do that act and to give that notification within the limits of the State, any prohibition of the State statute to the contrary notwithstanding.
>
> Any act of the State Legislature which should prevent the entering into such a contract, or the mailing within the State of Louisiana of such a notification as is mentioned in this case, is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the State."

Numerous state decisions following the *Allgeyer* v. *Louisiana* case have held state statutes which deprive state citizens of the right of entering into insurance contracts in a foreign jurisdiction unconstitutional. A number of these cases are quoted in 1 A. L. R., page 1665, which note at page 1666, by way of summary, states:

> "Notwithstanding the broad powers which the States enjoy in respect of the conditions which may be imposed upon foreign insurance companies seeking to do business within their borders, statutes which attempt directly or in effect to forbid or penalize the making of contracts of insurance outside the State, to be performed outside the State, upon property within the State or upon the lives of residents of the State, or to make such contracts a subject or source of taxation, have been quite consistently condemned as in violation of the 14th Amendment."

There is nothing in the contract in question in this suit which involved reciprocal insurance. Assuming, however, what this plaintiff most strenuously denies, that the basis for such a holding as the court has made in this case exists under testimony given, it is respectfully submitted that the holding, interpreting as it does the New Jersey Insurance Act with reference to the testimony, is unconstitutional and void at law.

POINT IV.

The contract in question is clear and plain in its terms and without any ambiguity and was signed by the defendant after extended consideration, and since the defendant has repudiated said contract, after full performance by the plaintiff, the plaintiff is entitled to full payment of the consideration of said contract by way of damages under the doctrine of anticipatory breach.

The findings of the trial court (state of the case, page 157) establishes the making of the contract by the parties to this suit, which is printed in the state of the case on page 391. The court likewise finds that pursuant to the terms of the contract, the defendant was to pay the plaintiff a rental of $885.00 which was due and payable upon (*a*) the licensing of the equipment by the Sypho-Chemical Sprinkler Corporation, or (*b*) upon the date when the defendant became entitled to insurance rate credit by virtue of the installation of service. The court further finds that the system was installed, that the system was duly licensed by the Sypho-Chemical Sprinkler Corporation, and that the defendant became entitled to a reduction of approximately 50% in its fire insurance rates through reciprocal insurance organizations, and that further, the defendant has made no payment to the plaintiff on account of the contract. In addition to this finding of the court, the testimony shows that the plaintiff in accordance with the terms of its contract offered to make the inspection provided for by the contract and was prevented from doing so by the defendant (state of the case, page

193). Exhibit P-5 and Exhibit P-6 (state of the case, pages 398-399), which were introduced into evidence (state of the case, page 197), show the circumstances under which the defendant repudiated the contract into which it had entered, and the defendant's agent and officer, Mr. Isidor Greenspan, has testified (state of the case, page 258) that the plaintiff's equipment has been removed from the defendant's place of business by the defendant. The plaintiff has in all respects complied with the terms of the contract. The defendant has repudiated the contract and made no payment or in any respect performed its part.

In the case of *O'Neill* v. *The Supreme Council American Legion of Honor* (70 N. J. L. 410, Supreme Court of New Jersey, 1904), the New Jersey Supreme Court adopted and approved the common law doctrine of *Hochster* v. *De La Tour* (1853), 2 El. & B. 678; 22 L. J., Q. B. 455; 17 Jur. 972; 6 Eng. Rul. Cas. 576. Mr. Justice Pitney, speaking for the court in opinion in *O'Neill* v. *The Supreme Council American Legion of Honor*, says at page 412:

> "Where a contract embodies mutual and interdependent conditions and obligations, and one party either disables himself from performing, or prevents the other from performing, or repudiates in advance his obligations under the contract and refuses to be longer bound thereby, communicating such repudiation to the other party, the latter party is not only excused from further performance on his part, but may, at his option, treat the contract as terminated for all purposes of performance, and maintain an action at once for the damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant."

This case has been followed by numerous decisions in the State of New Jersey. It received the approval of the Court of Errors and Appeals in the case of *Holt* v. *United Security Life Insurance and Trust Company* (Court of Errors and Appeals of New Jersey 1907, 74 N. J. L. 795 at 801) and again (Court of Errors and Appeals of New Jersey 1908, 76 N. J. L. 585, at page 595). See also *Wolff* v. *Meyer* (75 N. J. L. 181-185); *Samel* v. *Super* (New Jersey Supreme Court 1913, 85 N. J. L. 101 at 103); *Ferber* v. *Cona* (New Jersey Supreme Court 1916, 89 N. J. L. 135 at 137); *MacPherson* v. *Mackay* (91 N. J. L. 473); *Dubrow* v. *Hornstra* (New Jersey Supreme Court 1920; 95 N. J. L. 288).

Plaintiff has gone to a great expense in installing over a period of two and a half months an elaborate equipment in the plant of the defendant. That equipment the defendant has removed, but still has it in its possession. The plaintiff has gone to all the expense necessary to do and perform its part of the contract. Its expense and profits are measured by the return which was to be made by it by the rental payments provided for in the contract.

It is respectfully submitted that the defendant owes to the plaintiff by way of damages the sum of $8,850.00 or the aggregate rentals of its equipment for the term of the lease, together with costs of this action.

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On the Brief.

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New Jersey Court of Errors and Appeals

"Automatic" Sprinkler Corporation of America, a corporation of the State of Delaware, Plaintiff-Appellant, *vs.* Greenspan Brothers Company, a corporation of the State of New Jersey, Defendant-Respondent.	Action at Law. On Appeal from New Jersey Supreme Court.

BRIEF OF DEFENDANT-RESPONDENT.

Suit was brought in this case to recover damages for alleged breach of a contract made January 6, 1928, between "Automatic" Sprinkler Corporation of America as licensee, Sypho-Chemical Sprinkler Corporation as licensor, and Greenspan Brothers Company, the defendant herein. By this contract the plaintiff, "Automatic" Sprinkler Corporation of America agreed to install and service "an Automatic Sypho fire extinguishment equipment" in certain premises occupied by the defendant as lessee and situate at No. 226 Washington Street, Perth Amboy, New Jersey. The defendant agreed to pay an annual rental of Eight Hundred Eighty-five ($885.00) Dollars per year for a term of ten years, except that said contract might be terminated under paragraph three of the agreement in five and a half years should the defendant "vacate said premises after making five annual payments." The rental or annual payments were to become due "upon licensing the equipment by the licensor

or upon the date when subscriber first becomes entitled to insurance rate credit by reason of said service" (see Exhibit P-1, page 391).

Immediately upon the installation of the equipment it was licensed by the Sypho-Chemical Sprinkler Corporation. The licensing of the equipment was inevitable. A Mr. Bernard J. Reilly, the gentleman who actually licensed the equipment was in the employ of both the "Automatic" Sprinkler Corporation of America and the Sypho-Chemical Sprinkler Corporation (p. 175, State of Case):

> "Q. In what capacity are you employed by the Sypho Chemical Sprinkler Corporation? A. Chief inspector.
>
> Q. In what capacity are you employed by the Sypho Chemical Sprinkler Corporation? A. Chief inspector."

This witness then testifies that the Sypho-Chemical Sprinkler Corporation is a subsidiary company of the "Automatic" Sprinkler Corporation (p. 176, lines 1-5). On page 179 he testifies that he is paid by the "Automatic" Sprinkler Corporation but that part of his time is charged to the Sypho-Chemical Corporation. The feature of the contract requiring the licensing of the equipment is indeed a "joker clause". The plaintiff in effect licenses its own equipment.

The defendant by its answer and at the trial resisted plaintiff's claim on the three-fold theory: First, that the defendant was induced to sign the contract by fraud; second, that the defendant was not indebted to the plaintiff because there had been a total and absolute failure of consideration passing from the plaintiff to the defendant; third, that the contract between the plaintiff and defendant was tainted by illegality and was, therefore, void.

The case was tried before Mr. Justice Daly, then sitting as a Circuit Court Judge, at the Middlesex Circuit. A jury was impanelled to try the issue, but by stipulation of counsel, the Court concurring, the jury was withdrawn and the entire proposition, both as to law and fact, was submitted to Judge Daly for a decision.

Judge Daly found in favor of the defendant and against the plaintiff (see Findings and *Postea,* p. 157, State of Case).

The *Postea* does not embrace a finding on all disputed factual issues at the trial. The defendant contended at the trial that the plaintiff represented that immediately upon the installation of the sprinkler system, the defendant would become entitled to a reduction in insurance premiums of approximately fifty percent of what they were then paying in any insurance company authorized to do business in the State of New Jersey. The plaintiff, of course, denied that they made any such representation and on the contrary contended that they told the defendant that it could not get a reduction in insurance premium in the "old line companies", but that it could get a reduction in certain "reciprocal associations" of at least fifty percent in its insurance premiums. Judge Daly in paragraph two of the *Postea* (p. 158, State of Case) finds as a fact that "the plaintiff did not at any time promise or represent that the installation of this Sypho fire extinguishment equipment would enable the defendant to procure insurance from the 'old line' fire insurance companies at a rate of premium lower than they were charging it at the time of the contract." Since there was some evidence to sustain this conclusion, we regarded it as useless to challenge this finding. The defendant contended at the trial and still contends that plaintiff (having induced the defendant to sign the contract on the repre-

sentation that defendant would get reduction of fifty percent in its insurance premiums), should have made known to the defendants the shortcomings, objections to, and weaknesses of reciprocal insurance in the State of New Jersey. The failure of the plaintiff to do so was fraud. In this connection Judge Daly found (paragraph three of the *Postea,* p. 158):

> "The plaintiff did promise and represent to the defendant that if the defendant entered into the contract for the installation of this fire extinguishment equipment the installation of this equipment would immediately effect such reduction of fire hazard of the defendant's property that the defendant would be immediately able to obtain 'reciprocal insurance' at a rate premium of about fifty per cent. lower than he was paying without such equipment; that he would be able to obtain such insurance from organizations that could legally effect insurance on New Jersey property, and that in case of fire such 'reciprocal insurance', so obtained, would be as *good, legal* and *enforceable* in the State of New Jersey as the kind of insurance he was then carrying—insurance in the 'old line' companies admittedly authorized to do business in the State of New Jersey. That at the time such representations and promises were made no person, firm, organization or corporation was authorized to do such 'reciprocal fire insurance' business in New Jersey, and such 'reciprocal insurance' was not good, legal or enforceable in the State of New Jersey. That at the time of the making of said contract the defendant believed that such false representations were true and that its belief that they were true induced and persuaded the defendant to enter into said contract and was a consideration for entering of said contract."

After a thorough analysis and consideration of all the law and evidence in the case, Judge Daly

in paragraph five of the *Postea* (p. 159) found as follows:

> "Because of the illegality of the contract; because of the illegality of the consideration; because of the false representation that induced the contract the Court finds in favor of the defendant and against the plaintiff."

As heretofore stated, the contract was signed on January 6, 1928. The contract provided, however (p. 395, State of Case), that no equipment was to be delivered on the job until after August 1, 1928. The work of installing the equipment was completed on December 5, 1928 (p. 173, State of Case). Following the installation of the equipment the defendant company discovered that the Schedule Rating Bureau of New Jersey would not publish any new rate or allow any insurance rate credit for the installation of this system and that the only insurance organizations through which they might get a reduction in premiums were the reciprocal insurance associations which are barred from doing business in New Jersey. (We do not wish to mislead the Court in this statement. The plaintiff contended that they advised the defendant of these facts before the contract was signed.) The defendant then made further inquiry respecting reciprocal insurance and discovered other objections and weaknesses to this class of insurance on property in this State, which it is admitted, as will hereafter be pointed out by quotations from the testimony, were not disclosed to the defendant prior to the execution of the contract. The defendant then rescinded the contract and instructed the plaintiff to remove its equipment.

That defendant, in pursuing this course, was not endeavoring to avoid its obligations is demonstrated by the fact that the defendant immediately sought bids from a number of sprinkler com-

panies, including the plaintiff, to install a different system, a system that would result in a saving of insurance premium through companies authorized to do business in the State of New Jersey. Following receipt of bids on a new system defendant made a contract (p. 368, line 10; p. 371, lines 20-30) with the Globe Automatic Sprinkler Company for the installation of a new system at a cost of $5,700.00. This new system covered almost twice the area of the system installed by the plaintiff (see Exhibit D-12, p. 437, for copy of this contract).

Analysis of Evidence.

Plaintiff in its brief relies in large measure upon the so-called "joker clause" in their contract, namely, the clause which provides for the payment of the annual rental upon the licensing of the equipment. The actual and the true consideration moving from the plaintiff to the defendant, the consideration that induced the execution and delivery of the contract, was the promise and representation made by the plaintiff that the defendant immediately upon installation of this system would effect a saving of approximately fifty per cent. in its insurance premiums. The plaintiff cannot effectively dispute this statement because the witnesses produced by plaintiff and defendant both state this to be the fact. What is the evidence?

Mr. Isidor Greenspan, the Treasurer of the defendant company and the person who actually negotiated and executed this contract for the defendant, testifies (p. 219, line 15) that the defendant was paying insurance premiums of $7,200.00 per year prior to the execution of this contract. The contract was negotiated on behalf of the plaintiff by a Mr. Lyons. This gentleman immediately proceeded to prove to Mr. Greenspan that

he could save him large sums of money on his insurance premiums. Mr. Greenspan testifies (p. 218, line 25):

> "He explained to me very thoroughly that the reduction in rates, if I installed the sprinkler system, would be not less than fifty percent. of my present insurance rate."

On this subject Mr. Lyons, the star witness for the plaintiff, testifies (p. 309, lines 30-40):

> "He just said that he had a lot of insurance there on that warehouse, and his merchandise represented about all they had, and that he, as one of three brothers, I think it is, one of three brothers, was sort of obligated to the rest. He just wanted to watch his step and be sure that he got into a good thing because it involved a lot of money, naturally."

Mr. Lyons then testifies that the matter of a reduction in insurance premium was the sole inducement for entering into the contract (p. 322, line 40; p. 323, lines 1-30):

> "Q. You say that Mr. Greenspan informed you that practically everything they had in the world was in that storehouse, that is, in the way of their assets? A. Yes, sir.
>
> Q. Consequently insurance was a very important thing to him, isn't that true? A. That is right. I would imagine it would be.
>
> Q. Wasn't that what he said, they had to be very careful about insurance because all their worldly goods practically were invested in that business? A. That is right.
>
> Q. You made an affidavit in this case, did you not, for Mr. Berty, at one time? A. Yes, I did.
>
> Q. That affidavit is dated, I believe, the tenth of July, 1929? A. I don't know the date.
>
> Q. Just for the purpose of refreshing your recollection, look at this. A. Yes, sir.

New Jersey State Library

Q. In that affidavit you said, did you not, referring to this section right here, that I have underlined, 'He would be interested in procuring some form of sprinkler equipment that would effect a reduction in his insurance rate'? A. That is right.

Q. That was the basis and the cornerstone, was it not, of your discussion with Mr. Greenspan, reduction in insurance rate? A. After I introduced my system, I would think so, yes."

This same witness testifies (p. 324, line 5) that the matter of reduction in insurance premium "is our strongest selling point" in disposing of the sprinkler system.

We take it that it is not necessary to argue that a sprinkler system is not effective for the purpose of beautifying a structure; that it is not installed as a matter of decoration or to delight the aesthetic senses. The only reason for the installation of a sprinkler system is to effect reduction in insurance rates. Mr. Greenspan testified that this was the inducing cause for signing the contract. Mr. Lyons, who negotiated the contract, testified to the same effect. There can be no dispute therefore when we say that the uncontradicted testimony is that the sprinkler system was installed to effect a reduction in insurance rates and that Mr. Greenspan was induced to sign for this and no other reason.

If we are correct in this line of reasoning, we think it follows as night the day that there has been an absolute and total failure of consideration if the defendant company did not receive a reduction in insurance premiums.

In fact, the witness, Lyons, who was plaintiff's agent in negotiating and effecting this contract, testifies that he told Mr. Greenspan before he signed the contract that he would not have to pay

the annual rental until he got a reduction in insurance premiums (p. 314, line 39):

> *"He said, 'When do I have to pay it?' I said, 'Just as soon as you get your credit reduction for your insurance from the New York reciprocals.'"*

George H. Spooner, a witness produced by the defendant, testified (pp. 199, &c.) that he was Superintendent of the Sprinkler Risk Department in the Schedule Rating Bureau of New Jersey; that he was familiar with the installation of the Sypho system in the defendant plant; that the New Jersey Schedule Rating Bureau would allow no reduction in insurance rates because of this installation. Page 200, lines 35, &c., of the testimony:

> "Q. That is, it was your particular function and duty as superintendent of the Sprinkler Risk Department in the New Jersey Schedule Rating Bureau to determine whether or not there would be any reduction in rates? A. Yes, sir.
>
> Q. And you determined that there would be no reduction of rates? A. Yes, sir."

The Schedule Rating Bureau publishes rates for stock companies and some mutuals in New Jersey. None of these companies would allow any reduction in rate because the system in question was not approved by the Schedule Rating Bureau. We do not think there is any controversy on this subject. The plaintiff practically admitted that it could obtain no reduction in any of the "old line" companies or in any company authorized to do business in the State of New Jersey. This admission is made by Mr. Lyons in his testimony and also by other witnesses produced by the plaintiff.

The only companies in which defendant might obtain a reduction in insurance premiums were the

reciprocal companies. We do not use the term "company" in the sense that these organizations were incorporated societies. The fact is they were not. Mr. Senn, the representative of Ernest W. Brown, Inc., through whose office the alleged insurance was negotiated, testified (p. 361, line 22) that none of the reciprocal organizations were incorporated. This witness indicated (p. 351, lines 25-40) that the reciprocal organizations are nothing more nor less than "aggregations" whereby various persons agreed to insure and indemnify each other against loss, agreeing to share the loss pro rata, based on the premium he pays.

The reciprocal associations were represented by Ernest W. Brown, Inc. with offices at one Park Place, New York City. The plaintiff company also has its address at the same place. Mr. Lyons testified (p. 324, line 30 &c.) that it is impossible to obtain a reduction in insurance rate upon the installation of a Sypho system in the State of New Jersey in any insurance company other than the reciprocals.

> "Q. It is a difficult thing, is it not, to sell a Sypho system in this State? A. Yes, it is. Q. What is the reason for that? A. Because we must depend on reciprocal insurance, or there are a few other small mutuals, that are not so good, they have to take, in order to get this system."

The witness testified (p. 326, lines 35-40) that whenever a Sypho system was installed in the State of New Jersey it was necessary to introduce Ernest W. Brown, Inc., to the prospective customer in order to obtain a reduction in insurance premiums.

> "A. Now, after I got through with that I told him, in order for us to install that system, and in order for him to enjoy a premium reduction, it would be necessary to write his insurance with Ernest W. Brown."

Walter J. Snedicker, a witness produced by the defendant, testified (p. 269) that he was employed by the State Department of Banking and Insurance as Chief of the License Division; that it was necessary under the law of the State of New Jersey for insurance companies, brokers, etc., to be licensed in order to do business in this State. The witness was then asked whether the organization known as Individual Underwriters, the organization known as Metropolitan Inter-Insurers, and the organization known as Affiliated Underwriters were authorized to do business in the State of New Jersey. The witness answered that none of these organizations were admitted to do business in this State. It was also admitted by counsel for plaintiff (p. 270, line 35) that none of these organizations were incorporated. These are the three organizations in which Ernest W. Brown, Inc., attempted to effect insurance for the defendant.

We would like at this point to call the Court's attention to the statement made by counsel for the plaintiff (p. 269):

> "Mr. Berry: We will save Mr. Toolan time, we will admit that they are not licensed. We will further admit that there is no law in the State of New Jersey which would permit any such license to be issued to a reciprocal organization.
>
> Mr. Toolan: Will you also admit that Ernest W. Brown, Incorporated, who solicited this insurance, are not licensed to solicit insurance in the State of New Jersey?
>
> Mr. Berry: Yes, we will admit that."

We take it, therefore, that it is admitted that neither Ernest W. Brown, Inc., who solicited this insurance, nor any of the reciprocal organizations at the time the insurance was solicited were authorized to do business in the State of New Jersey and further that there was no law in the State of

New Jersey that authorized such reciprocal organizations to do business in this State.

The same admission is made by Mr. Senn, the representative of Ernest W. Brown, Inc., who testified (p. 362, lines 15-20):

> "Q. You know you are barred from the State of New Jersey? A. As long as the present laws are in force, yes. As far as obtaining certificate of authority."

We believe the brief extracts above set forth from the testimony disclose clearly:

(a) That the defendant company was induced to sign the contract that is the subject matter of the suit by the representation that it would obtain a reduction of fifty percent in its insurance premiums.

(b) That no such reduction could be obtained in any company authorized to do business under the laws of the State of New Jersey.

(c) That the only organizations in which any insurance reduction could be obtained was in reciprocal associations.

(d) That reciprocal organizations are unincorporated associations wherein each party to the contract agrees to insure the other and bear a pro rata share of the loss based on his premium obligation.

(e) That reciprocal associations are not incorporated, are not licensed to do business in the State of New Jersey, and that there is no law in the State of New Jersey that permits them to do business in this State.

POINT I.

The only consideration moving from plaintiff to defendant for the execution of the contract in question was the reduction in insurance premium. Plaintiff failed to obtain any reduction in insurance premium for the defendant. There was, therefore, an absolute failure of consideration which absolves defendant from any obligation on the contract.

Is the fact that defendant might have obtained insurance in reciprocal associations sufficient consideration to support this contract?

It is our contention that insurance with a reciprocal organization violates the public law and the avowed public policy of this State and is, therefore, void and no consideration whatsoever to support this contract.

In 2 C. S., pp. 2838, &c., we find an act entitled, "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State". This statute in section one defines the purposes for which companies may organize to insure in this State. Section six indicates the capital requirements before a certificate of authority shall be issued. Section eight provides for the deposit of certain securities. Section sixteen regulates the investment of its capital, surplus, &c. Sections fifty-eight and fifty-nine indicate under what condition companies other than domestic companies may do business in this State. Section eighty-eight provides as follows:

> "Transacting insurance business without authority.—No person or firm nor any company organized under the laws of this state or of any other state or foreign country, himself, itself, or theirselves, or by his, its or

> their brokers, agents, solicitors, surveyors, canvassers or other representatives of whatever designation, nor any such broker, agent, solicitor, surveyor, canvasser or other representative, shall solicit, negotiate or effect any contract of insurance of any kind, including all kinds of insurance described in this act, or sign, deliver or transmit, by mail or otherwise, any policy, certificate of membership or certificate of renewal thereof, or receive any premium, commission, fee or other payment thereon, on any property or thing, or on the life, health or safety of any person, or in any manner, directly or indirectly, transact the business of insurance of any kind whatsoever, within this state, unless such company, person or firm, shall be authorized to do the same under the provisions of the laws of this state."

Section eighty-nine provides:

> "The penalty for each violation of this act, except any failure of any company to file an annual statement, shall be five hundred dollars and all costs of suit. . . ."

The insurance laws of the State of New Jersey are not placed upon the statute books for revenue. Time and experience have taught that it is necessary to protect the people of the State against questionable organizations and alleged insurance companies doing business in this State. The purpose of the statute is to protect the public. The statute is necessary as a matter of sound public policy. No insurance company can do business in this State unless it is able to meet the requirements of our statute and persuade the Commission of Banking and Insurance that it is in sound financial condition and able to afford the people of this State sufficient and adequate protection. At this point we desire to direct the Court's attention to the fact that throughout the statute the

word "company" is used. It does not refer to associations or organizations.

Let us pause for a moment to analyze section eighty-eight quoted in full above. This section of the statute stripped of all unnecessary verbiage reads as follows:

> "No person or firm nor any company . . . shall solicit, negotiate or effect any contract of insurance of any kind . . . or sign, deliver or transmit, by mail or otherwise, any policy, certificate of membership . . . or receive any premium, commission, fee or other payment thereon, on any property or thing . . . in this state, or in any manner, directly or indirectly, transact the business of insurance . . . within this state, unless . . . authorized to do the same under the provisions of the laws of this state."

It would be difficult to draft a more stringent statute. It would be difficult for the legislature to more clearly indicate that it was the avowed policy of this State to bar any and all companies or organizations from writing insurance on property located in this State unless and until they complied with our statute.

As evidence of the attitude of the legislature we desire to call the Court's attention to chapter 221 of the Laws of 1928, chapter 396, where a supplement was enacted to section eighty-eight above, providing:

> "Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor."

This provision, of course, went into effect after our contract was signed. We call the matter to the Court's attention simply to indicate that it is the policy of this State to strengthen its position rather than weaken it.

Suppose a contract of insurance were made in the State of New Jersey by a reciprocal company and the defendant. Would the courts of this State enforce such a contract? The universal rule as well as the rule in the State of New Jersey is that the courts will not enforce a contract that is contrary to public policy and in derogation of public statute.

The general proposition of law is stated in 13 C. J. 420, section 351, as follows:

> "Where a statute expressly declares that certain kinds of contracts shall be void, there is then no doubt of the legislative intention, and an agreement of the kind voided by statute is unlawful. The same is true where the contract is in violation of a statute, although not therein expressly declared to be void. It is immaterial whether the thing forbidden is *malum in se* or merely *malum prohibitum.*"

Section 352 of 13 C. J. 421 makes the further distinction:

> "Frequently a statute imposes a penalty on the doing of an act without either prohibiting it or expressly declaring it illegal or void. In cases of this kind the decisions of the courts are not in harmony. The generally announced rule is that an agreement founded on or for the doing of such penalized act is void. In accordance with the view of Lord Holt in an old case: 'Every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, tho' the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition, tho' there are no prohibitory words in the statute.' As a qualification of this rule it is stated that, if the penalty is imposed for the protection of the revenue, it may be presumed that the legislature only desired to make it expensive to the parties

> in proportion as it is unprofitable to the revenue, and that their contracts are not void. And it would seem that in all cases the true rule is that the question is one of legislative intent, and the courts will look to the language of the statute, the subject matter of it, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment; and if from all these it is manifest that it was not intended to imply a prohibition or to render the prohibited act void, the courts will so hold and will construe the statute accordingly."

The Courts of New Jersey have held since an early date that a contract which is contrary to a statute is void even though the statute does not expressly declare a contract made in violation thereof void, but merely provides a penalty. See *Sharp* vs. *Teese,* 9 N. J. L. 352. In this case a note was given by an insolvent debtor to two of his creditors in consideration of their withdrawing their opposition to his discharge under the Insolvent Act. Suit was subsequently brought to recover on the note. The Court held that the note was given for an illegal consideration and was, therefore, void. The Court further said:

> "An attempt to contravene the policy of a public statute is illegal though the statute contains no express prohibition of such attempt."

To like effect is *Brooks* vs. *Cooper,* 50 N. J. E. 761. In this case the editors of two competing newspapers in order to allay and stop the antagonism and rivalry existing between them, made an agreement that for a period of two years in case of the designation of either paper to publish the laws of this State that the amount received for the service after paying the expense of the publication should be equally divided between the two

newspapers and that their newspapers for and during said two years should be alternately selected and designated for the purpose of publishing the laws. The statute respecting the publication of the laws required that the Governor, Secretary of State and Comptroller, or a majority of them, should be empowered to select a certain number of newspapers in each county, reference being had to the paper or papers having the largest circulation for the publication of the laws. The Court held that the agreement contravened the provisions of the statute referred to, vesting the power and authority of such selection in the Governor, Secretary of State and Comptroller and was contrary to the policy of the statute which required the publication of the laws in the newspaper having the largest circulation in such county and thus was contrary to sound public policy and void. The Court will not aid in the enforcement of an illegal contract but will leave the parties to it where it finds them. On page 769 we find the following:

> "Whatever tends to injustice or oppression . . . whenever embodied in and made the subject of a contract, the contract is against public policy and therefore void and not susceptible of enforcement."

On page 771 we find the following:

> "Turning to those cases in which the contracts are charged to be contrary to public policy, because in contravention of the provisions of some public statute or of its policy, we find the illustrations of decided cases just as numerous and varied.
>
> "The general rule is, that all agreements or contracts, whether sealed or otherwise, in contravention of statutes, are void, and all contracts in contravention of the policy of an act of the legislature, are illegal and void.

Roger *v.* Kingston, 100 Mo. 102, 2 Bing. 441; Murray *v.* Reeves, 8 Barn. & C. 425; Hall *v.* Dyson, 16 Jur. 270, 21 L. J. Q. B. 224; Hills *v.* Mytoon, 8 Exch. 758; Cannon *v.* Cannon, 11 C. E. Gr. 316. Contracts having for their object the violation, defeat or evasion of a statute are illegal and void (Blasdell *v.* Towle, 120 Mass. 447), and when the object of the contract is to obstruct duty by defeating the letter or spirit of the law, the courts will not enforce the agreement. It must not contravene the provision or policy of a public law (Cannon *v.* Cannon, 11 C. E. Gr. 316; 9 Am. & Eng. Encycl. L. 907), and a contract may be illegal, although not in contravention of the specific directions of a statute, if it be opposed to the general policy and intent thereof. Staines *v.* Wainwright, 6 Bing. N. C. 174; Philpot *v.* St. George's Hospital, 6 H. L. Cas. 338; 1 Sm. Lead. Cas. pt. 1 p. 680. It is not necessary that the statute should contain words of positive prohibition. De Begnis *v.* Armistead, 10 Bing. 110."

See also the case of *Volney* vs. *Nickson,* 68 N. J. E. 605, where a contract was made between two persons wherein it was provided that in exchange for their joint properties one of them should secure from a corporation of this State an original issue of stock in an amount known by all the parties to be in excess of its actual value. The stock thus obtained was to be divided between them. The Court held that such a contract was illegal and the Courts of this State would not aid in its enforcement even though the objectionable feature has been accomplished by the actual issue of the stock. See cases cited on page 610 of the opinion.

In the case of *Smith* vs. *Applegate,* 23 N. J. L. 352, at 356, a promissory note was given by applicants for a public road in consideration whereof a caveator withdrew his opposition. Suit was

brought to recover on the note. It was held that a contract on the part of a caveator to withdraw his opposition to the laying out of a public highway is against public policy and, therefore, void. The Court did not permit any recovery on the note.

In the case of *Gregory* vs. *Jersey City,* 34 N. J. L. 391, a contract made by the City in contravention of the statute prohibiting any aldermen from performing any work for the City was held void.

In the case of *Lewis* vs. *Collins,* 1 Misc. 392, a suit was brought before Judge Newman in the Bergen Circuit by the plaintiff for services rendered as an architect. It appears that the plaintiff had not been licensed to practice architecture in this State. The question was presented squarely to the Court as to whether a violation of the statute would bar a recovery. The Court held on the theory of some of the cases heretofore cited that no recovery could be had. The decision was predicated on the theory that the statute requiring the licensing of architects was not merely for revenue but was for the protection of the public and that a person who performed services as an architect in violation of the provisions of that statute could not recover for his services. The statute respecting the licensing of architects does not expressly avoid any contract made by persons not licensed. It simply subjects the person violating the statute to a penalty.

In the case of *Lehigh Valley Railroad* vs. *United Lead Company,* 102 N. J. L. 545, the contract provided that the Lehigh Valley Railroad should have the exclusive track connection to the lead company's works and no other railroad company should be permitted to lay or maintain tracks thereto or within the same; that the Lead Company would ship all of its freight over the Lehigh Valley Railroad and that the Lead Com-

pany would give a preference to the lighterage lines of the Lehigh Valley system, &c. It was held that this portion of the agreement was contrary to the law of the State of New Jersey and the United States. Other parts of the contract were absolutely good. Suit was brought by the Lehigh Valley Railroad to recover damage to some of its equipment while at the Lead Company plant. Under the contract the Lead Company was obliged to pay for any such damage. The Court denied relief, holding:

> "Contracts which violate the provisions of a statute are illegal. *When there are a number of considerations, and one of them is illegal, the whole agreement is avoided, the doctrine being put upon the ground of the impossibility of saying how much or how little the void portion may have had as an inducement to the contract.*
>
> "The court will not aid either party to an illegal contract, but will leave the parties just where it finds them, unless the legal part is separable from the illegal part."

In light of this decision why should the contract in the instant case be sustained? Of course, it is argued by counsel for the plaintiff that the clause in the contract which provided that the rental should be paid by the defendant upon the licensing of the equipment is sufficient to sustain the contract. This decision is authority for the proposition that when any one of a number of considerations is illegal, the Court will declare the entire contract void. If the insurance in the instant case is illegal and void, then under the authority of this case the entire contract must fall.

We feel that the case of *Arotzky* vs. *Kropnitzky,* 98 N. J. L. 344, strongly supports the contention of the defendant. In this case an automobile was

sold but no bill of sale was delivered as required by the laws of 1919, page 357, which makes it unlawful to sell or purchase any motor vehicle except in the manner and subject to the conditions therein provided, among which are certain requirements for the delivery of the bill of sale. Upon delivery of the automobile the purchaser gave a check in part payment of the vehicle and suit was brought to recover on that check. The objection was raised that the transaction was an illegal one in that it was consummated in contravention to the statute. The Court said on page 346:

> "Touching the statute now before us, it is not necessary to search for legislative policy, because the legislature is the judge of its own policy; but it is not far to seek. The act is manifestly intended to discourage and prevent, so far as possible, the sale of stolen motor vehicles, and voids a sale made without compliance with its provisions, much as the common law refuses to recognize a sale of land without the delivery of a deed. More than this, the act penalizes by fine or imprisonment, or both, the violation of its provisions. *Consequently, if the courts should undertake to enforce contracts made in such violation, they would be aiding therein and encouraging the very mischief that the act was passed to prevent.*"

Applying the reasoning indulged in in this case by Judge Parker, would the courts of this State enforce a contract of insurance at the suit of either of the parties? If a suit were brought on this policy of insurance and the Courts of this State accorded relief to either of the parties, the Court in effect would be undertaking to enforce a contract in violation of the statute and to that extent would be aiding and encouraging the very mischief that the act was designed to prevent.

In the case of *Gregory* vs. *Wilson,* 36 N. J. L. 315, an arrangement was made between two real estate brokers that in the event either sent the other a customer for a loan and the loan was obtained that they would split the commission charged the customer. The brokers also had an arrangement whereby a usurious commission would be charged. One of the brokers sent the other a customer and a loan was placed. A usurious charge was made and suit was brought by the other broker for his share. The Court held that the contract or arrangement was in violation of public policy and contrary to the usury laws and was, therefore, illegal and the Court would not aid either of the parties.

We take it that the authorities here cited conclusively establish that the Courts of this State would not lend their aid to either of the parties if the insurance contract between the defendant and the reciprocal companies had been negotiated in the State of New Jersey in violation of the statute. The question that next presents itself is whether the Courts of this State would enforce the same contract merely because it was executed in the State of New York and was a legal contract in the State of New York. We are cognizant of the rule of comity by reason of which the Courts of one state will give effect to and consider contracts made in another state in accordance with the law of the state where the contract was executed. It is reasonable to inquire, however, whether the rule of comity will be extended to the point where the Courts of this State will enforce a contract made in another state and legal where made if said contract contravenes the public policy of this State and is contrary to its public law. It is our opinion and we believe that the authorities hereafter cited support the proposition that the rule of comity will not be extended to the point

where the Courts of a particular state must violate their own statutes in order to recognize this rule of law.

Counsel for the plaintiff contends that the rule of comity would compel our courts to recognize the contract made with a reciprocal insurance company because said contract was a legal contract in the State of New York. The only authorities cited in support of this proposition are the two cases of *Columbia Fire Insurance Company* vs. *Kinyon,* 37 N. J. L. 33, decided in 1873, and *North Hampton Mutual Live Stock Insurance Company* vs. *Tuttle,* 40 N. J. L. 476, decided in 1878. Both opinions are by Van Syckel, J. These cases do not go to the extent contended for by counsel for the plaintiff. The cases must be read in light of the statute in effect at that time. Both of the above cases are decided under statutes then in effect regulating insurance companies, the one entitled, "An act to regulate the business of fire insurance by companies or associations NOT INCORPORATED by this State", approved March 19, 1860, and "An Act to regulate the business of fire, life, accident, marine and live stock insurance by companies and associations NOT INCORPORATED by this State", approved April 9, 1867. See page 433, fourth edition, Nixon's Digest of the Laws of New Jersey. Each of said statutes provides in section two thereof that upon the foreign insurance company filing a statement setting forth its financial responsibility with the Secretary of State, the Secretary of State shall issue a certificate of authority "*allowing an agency to be established in the county where such agency is applied for*". It will be noted that the statute does not provide that the corporation as such shall be authorized to do business, but merely shall be authorized to establish agencies.

Paragraph seven of the Act of 1860 and paragraph eight of the Act of 1867 provide that if any agent in this State should act in negotiating any insurance policy that the agent shall be subject to a penalty mentioned in the act.

Now let us turn to pages thirty-four and thirty-five in the case of *Columbia Fire Insurance Company* vs. *Kinyon, supra,* where the Court in interpreting the statutes above referred to has the following to say:

> "Even if this section is not superseded by the act of 1867, it must, in connection with the subsequent provisions, be construed to inhibit any foreign company from transacting any business connected with insuring property situated in this state, *through agencies established here, without conforming to the requirements of our laws.*"

The Court then points out that the certificate of authority to be issued by the Secretary of State is for no purpose other than "to allow an agency to be established in the county where applied for, to transact business in this State. It is also to be observed, that the penalties denounced by the act are aimed only at the unauthorized agent acting within this state".

Again on page thirty-five the Court said:

> "Although it would be competent, by legislation, to invalidate in our courts an insurance contract made in good faith in another state on property located here, it would be so contrary to the comity which has been observed between the states, that such an intention will not be imputed to the law maker, unless the language used so clearly expresses that purpose as to bear no other reasonable interpretation."

These two cases are merely authority for the proposition that the statutes then under construc-

tion did not indicate an established public policy to bar foreign insurance companies from doing business in this State or to invalidate or make void contracts of insurance covering properties in this State. The Court clearly indicates that the legislative policy was merely to punish the agents and the Court would not, therefore, refuse to give its aid to either of the parties to the insurance contract. The Court, however, on page thirty-seven of the same case, indicates that the situation might be otherwise if the statute were more stringent:

> "The agent, therefore, who acts without due authority, is not only liable to the penalty in such case prescribed, but the contract made in contravention of the law is itself void, so far as concerns the right of the foreign principal to sue upon it.
>
> "In such cases it may be required by public policy, that the party insured shall be permitted to enforce the agreement, but no opinion is expressed on this point."

The last quoted paragraph contains the germ of the entire case at issue. A most casual reading of section eighty-eight of our insurance law indicates there has been a decided change of public policy since the enactment of the statutes of 1860 and 1867, under which these two cases were decided. The obvious purpose of section eighty-eight of the insurance law is to bar and prohibit any insurance company from doing business in this State unless they are authorized to do business here. The reciprocal insurance companies are not only not authorized but by admission of counsel for the plaintiff there is no statute on our books under which they may be authorized to do business in this State. That it is the legislative policy to bar reciprocals is further borne out by Chapter 204 of the Laws of 1915, 1 Cum. Sup-

plements, page 1606, Section 170, which was a statute authorizing Lloyds Associations to do business in this State upon certain conditions. Lloyds insurance in some respects is similar to the reciprocals. Section 170, however, provides, "Nothing herein contained shall apply to inter-insurers or reciprocal underwriters." New Jersey does not want and will not tolerate this type of insurance.

Would the Courts of New Jersey enforce one of these reciprocal insurance contracts merely because the contract was legal in the State where made? We say, "no." If a reciprocal insurance company by the simple expedient of having the contract of insurance signed in New York can avoid our statutes, then the statutes are indeed impotent. We think our Courts, if this matter was presented to them, would take the same point of view expressed by the Court in the case of *Arotzky* vs. *Kropnitzky*, 98 N. J. L. 344, where the Court said on page 346:

> "If the courts should undertake to enforce contracts made in such violation, they would be aiding therein and encouraging the very mischief that the act was passed to prevent."

The rule of comity, as the very words indicate, is merely a rule of courtesy. It is not a matter of right. See definition of the term, 11 C. J. 1235, as follows:

> "General complaisance, concession, courtesy, courtesy between equals, friendly servility, respect, reciprocity, a disposition to accommodate, good will, the granting of a privilege not of right but of good will, a willingness to grant a privilege not as a matter of right but out of deference and good will."

The Courts of this State will not as a matter of comity enforce a contract made in another

state and legal where made if said contract contravenes the public policy or public law of this State.

See *Watson* vs. *Murray*, 23 N. J. E. 257. In this case plaintiff and defendant were partners, owning lottery franchises granted by the States of Missouri, Virginia, Kentucky and Louisiana. The contract between the parties was a perfectly legal contract and to accomplish a legal purpose in the states where it was made. Suit was brought in the Court of Equity for an accounting and distribution of the proceeds of the partnership. The Court held that lotteries were contrary to the law and policy of the State of New Jersey and that a contract which, though valid and would be enforced in the state where it was made, is in violation of the public law of this State will not be enforced here on the grounds of comity. The plaintiff endeavored to avoid the effect of this rule by contending that his suit was not to enforce an illegal contract but simply to compel an accounting and a distribution of the proceeds already made. The Court would not tolerate this distinction and refused any relief. On page 260 the Court cites with approval the following quotation from 2 Kent's Comm. 475:

> "There is no doubt of the truth of the general proposition, that the laws of a state have no binding force beyond its territorial limits; and their authority is admitted in other states, not *ex proprio vigore*, but *ex comitate*. Every independent community will judge for itself how far the *comitas inter communitates* is to be permitted to interfere with its domestic interests and policy. It may be laid down as the settled doctrine of public law, that personal contracts are to have the same validity, interpretation, and obligatory force in every other country, which they have in the country where they were made. The admission of this principle is requisite to the safe intercourse

> of the commercial world, and to the due preservation of public and private confidence; and it is of very general reception among nations. *It is, however, a necessary exception to the universality of the rule, that no people are bound to enforce or hold valid in their courts of justice, any contract which is injurious to their public rights, or offends their morals, or contravenes their policy, or violates a public law.''*

The same principle is further shown to be the law of this State in the case of *Union Locomotive* vs. *Erie Railroad,* 37 N. J. L. 23. In this case a contract was made between a railroad company operating a railroad in this State under an act of the legislature and certain individuals, the effect of which was to give to the latter the exclusive right of transporting certain kinds of freight over the railroad. The contract was held to be void from considerations of public policy. This same contract had been recognized by the Courts of the State of New York and it was contended that under the comity rule the Courts of this State would have to give it like consideration and effect. Upon this question, however, the Court said on page 25:

> ''Upon questions of public policy, relating to our domestic affairs, depending upon our own legislation, the courts of this State alone are competent to determine. The opinion of a court of another state on a subject of this character in another proceeding will be treated with the greatest respect, but will not be yielded to as conclusive. A contract valid elsewhere will not be enforced if it is condemned by positive law or is inconsistent with the public policy of the country, the aid of whose tribunal is invoked for the purpose of giving it effect.''

We think the above cases are abundant authority for the proposition that the Courts of this

State under the comity rule will not give effect to a contract valid where executed if either of the parties thereto seeks to enforce it in the State of New Jersey, provided the enforcement of such contract violates one of the public laws of this State.

The case of *Rosenbaum* vs. *U. S. Credit System Co.,* 64 N. J. L. 34, is in many respects similar to the case at bar. In that case a contract was made with the plaintiff to act as agent for the defendant in the State of Massachusetts for a period of five years. The defendant agreed to pay the plaintiff certain commissions on all business obtained. Under the laws of the State of Massachusetts any agent acting for such credit insurance company was subject to be punished by a fine of not less than $100.00 or more than $500.00. The defendant company declined to pay plaintiff anything and plaintiff brought suit to recover on his contract. The Court held that where a contract is made to do an act in another state which is illegal and punishable there, no action will lie by either party for a breach of such contract, both parties having entered into it in ignorance of the law of such state. The Court cites with approval a House of Lords case, page 38, where it is held:

> "Where a contract is to do a thing which cannot be performed without a violation of the law, it is void whether the parties knew the law or not."

We think the case at bar is very similar to the situation in the Rosenbaum case. The plaintiff company at the time of executing the contract with the defendant knew that the only way that the defendant could obtain a reduction in insurance premium would be by making a contract in violation of the law of the State of New Jersey. The defendant was compelled to become a party

to an illegal transaction in order to obtain any value or consideration for the execution of said contract. Will the courts of this State support and sustain a claim on a contract which makes it mandatory for a New Jersey resident to commit a violation of the law of this State before he can obtain any benefit under the contract?

May we refer the Court to the very stringent provisions of section eighty-eight of the insurance law? This section forbids any company not licensed in this State to deliver or transmit, by mail or otherwise, any policy of insurance. Clearly this section had to be violated for defendant to obtain a reduction in insurance premiums. The courts of this State certainly should not sustain a contract which requires a party to it to avoid and circumvent the laws of the State.

Plaintiff further contends: (1) that the insurance laws of the State of New Jersey do not refer to or include reciprocal organizations; (2) that it would be unconstitutional to bar reciprocals from doing business in this State.

We will meet these propositions and indicate to the Court by argument and authority that plaintiff's arguments are not tenable.

The case of *Schenck* vs. *State,* 60 N. J. L. 381, reviews the history of the various titles to the insurance laws through 1875. The Court held that there was nothing in any of the acts up to that date that regulated the business of individual insurers. To like effect is the case of *Hickman* vs. *State,* 62 N. J. L. 499, decided in 1898 under an act entitled, "An act to provide for the incorporation and regulation of insurance companies." The Court held that the provisions as to individual insurers are not within the title of this act and that this act did not apply to individual insurers and that any provisions in the body of the statute

which might be so construed would be void and unconstitutional.

In the Hickman case suit was brought against an agent in this State for doing business without a proper license. The agent raised the question that the statute abridged his constitutional rights. The Court on page 504 said:

> "It is settled beyond controversy that one state may forbid an insurance company of another state from doing business at all within its territory, or may at pleasure impose conditions on such business and may punish individuals for acting as the agents of an interdicted company."

The present general insurance law is found in 2 C. S. 2838 and was enacted in 1902 under the title, "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State". This title, of course, is much broader than the title of the act when the Hickman case was decided.

It is, however, unnecessary for us to indulge in any protracted line of reasoning indicating that section eighty-eight of the insurance act applies to reciprocals. The Courts of this State have passed on the question. See *State* vs. *New Jersey Indemnity Company,* 95 N. J. L. 308:

> "A contract made by the New Jersey Indemnity Company as so-called attorney in fact of certain 'subscribers' to automobile insurance, whereby the company becomes the medium by which each subscriber fulfilled his obligation to indemnify each of his fellow subscribers who suffered a loss and received from each of his fellow subscribers the indemnity to which he was entitled, examined and held to be a contract of insurance by the New Jersey Indemnity Company, acting not as agent for the subscribers but as an insur-

> ance company; and it appearing that the company was thus doing a state-wide business with the public generally, it is held also that the company was engaged in the insurance business in violation of section 88 of the General Insurance act (chapter 134 of the laws of 1902, Comp. Stat., p. 2867); and it is further held that the enforcement of the penalty provided for in section 89 of the act for a violation of section 88 does not violate the fourteenth amendment of the constitution of the United States nor paragraph 1 of article 1 of the constitution of the State of New Jersey."

A reading of this case will indicate that the New Jersey Indemnity Company, the defendant, attempted to do business on the exact plan or basis upon which the reciprocal companies do business, according to the testimony of their own star witness.

Respecting the purpose and meaning of our present insurance law may we direct the Court's attention to page 314 of the above case where the Court said:

> "Moreover the insurance act was designed to protect the people of the state against imposition and fraud on the part of insurance companies, no matter what form the particular plan might assume. . . . The inhibition against the unlicensed transaction of insurance business was wisely couched in general terms and applies to the defendant, regardless of its singular method and routine of business, and even though it seems to confine itself to the insurance of motor cars."

On the constitutional question see also *Ferguson* vs. *Tuttle,* 95 N. J. L. 374, which holds that the statute enacted in 1919 which provides that no insurance company of another state, except a life insurance company, may transact business in this

State except through agents "whose principal place of business is located in this State is valid legislation and does not abridge any right guaranteed by the state or federal constitution."

The cases heretofore cited are clearly authority for the proposition that one who makes a contract to do something which is in violation of law cannot recover on the contract or obtain the aid of the courts to enforce the illegal contract. We think that section eighty-eight and the other sections of the insurance law clearly indicate a policy on the part of this State to bar from doing business any and all insurance companies that are not authorized to do business in this State. A contract made in violation of that statute which is the avowed policy of the State will certainly not be enforced by our courts.

POINT II.

The contract that is the subject matter of this suit is tainted with illegality and is, therefore, void.

We think that the testimony heretofore quoted establishes beyond dispute that the only consideration to support this contract and the solitary inducement for its execution was the promise of reduction in insurance premiums. No reduction in insurance premium could be obtained from or through any company authorized under our statutes to do business in the State of New Jersey. It is admitted by the plaintiff that the only reduction in insurance premium that the defendant could obtain was through effecting insurance in reciprocal associations. To effect insurance in reciprocal associations it was necessary to violate the criminal statutes of the State of New Jersey. The agent of the plaintiff, LeRoy Faust Lyon,

who negotiated this contract for the plaintiff, was required to and actually did violate our criminal statutes in order to induce Mr. Greenspan to believe that he would obtain a reduction in insurance premiums. Section 207 of our Crimes Act, 2 C. S., 1805, reads as follows:

> "Any person who, within this state, shall, directly or indirectly, transact any fire insurance business, for or on behalf of any fire insurance company or association, not authorized by the laws of this state to do business within this state; *or shall in any way, directly or indirectly, seek or effect, or cause, procure or assist to be made or effected, or attempt to procure or effect, any fire insurance on property within this state,* by or in behalf of any insurance company or association, or any company or person whatsoever, not authorized by the laws of this state and duly qualified thereunder to effect fire insurance on property within this state, or shall act as agent, surveyor, canvasser or other representative of or for any such company, association or person in or about any business not permitted by the laws of this state, shall be guilty of a misdemeanor."

We respectfully contend that the following factual situation, elicited from the lips of the plaintiff's own witnesses, proves conclusively that the plaintiff had to and did violate this statute in order to effect the execution of the contract that is the subject matter of this suit. The contract was solicited on behalf of the plaintiff by Mr. LeRoy Faust Lyons (p. 300, lines 10-20; see also Exhibit P-1, p. 394) in the latter part of August or early September, 1927. We have heretofore quoted Mr. Lyons' testimony in which the witness admits that in order to sell the sprinkler system, it was necessary to obtain a reduction in insurance premiums. On the very first occasion that he met Mr. Greenspan (p. 304, lines 18-28) he

spoke to Mr. Greenspan about the New York reciprocals:

> "Q. What did Mr. Greenspan say to all this? A. Well, I told him briefly the plan of the New York reciprocals in writing insurance, how they effect their saving. I said, 'Now, the New York reciprocals allow us a reduction of fifty per cent. in premium based on stock rates. Now, they give us a fifty per cent. for this sypho system. That is, they allow you fifty per cent. reduction for the sypho system'."

Again, on page 302, lines 35-40; page 303, lines 1-5:

> "I said, 'Now, Mr. Greenspan, there is a possibility of us giving you some fire protection in this building of yours, and we can effect, I think, fifty per cent. reduction in insurance, in the event that you place your insurance with an outfit known as Ernest W. Brown, Incorporated.' I think I introduced them as the New York Reciprocals. I didn't say 'Ernest W. Brown, Incorporated,' I said, 'New York Reciprocals.' And I went on to explain the system right away."

The witness, Lyons, apparently did not feel qualified to expound the virtues of reciprocal insurance so he told Mr. Greenspan that he would bring down a Mr. Stockwell, representing Ernest W. Brown, Inc., who were the agents in New York City for the reciprocal associations (p. 305, lines 5-10):

> "Q. Did you tell all this to Mr. Greenspan? A. I did. 'Now', I said, 'I don't know anything about insurance.' I said, 'I would like very much to bring down a representative of Ernest W. Brown, if you would like, and let him cover the thing fully.' He said he would be interested, and I left."

The witness described (bottom of page 305, top of page 306) how he made an appointment with Mr. Greenspan to meet Mr. Stockwell; how he telephoned one of his co-employees and said to him, "Be sure and get Mr. Stockwell down there so that we could keep my engagement with Mr. Greenspan on the afternoon of September 23." The witness then describes how he brought Mr. Stockwell to the Greenspan place of business and Mr. Stockwell inspected the entire plant. The witness then introduced Mr. Stockwell to Mr. Greenspan (p. 307, lines 15-25):

> "Q. Who did the talking while you were there? A. Why, I just introduced the two gentlemen that I had, Mr. Johnson and Mr. Stockwell, and introduced Mr. Stockwell as a representative of Ernest W. Brown, and Mr. Johnson, as one of my colleagues I work with in the Automatic Sprinkler Corporation of America, and I said, 'I am just going to let Mr. Stockwell carry on his own line in his own way, and tell you all about his insurance.' So I sat right down."

The witness was then asked this very pertinent question:

> "Q. Mr. Stockwell did most of the talking? A. Yes, Mr. Stockwell, he did most of the talking, *because it was a question of insurance entirely.*"

This witness testifies (bottom of page 319, top of page 320) that it was impossible to sell a Sypho system similar to the one mentioned in the contract in this case except by inducing the customer to buy reciprocal insurance.

> "The only reason that I went to—brought you Earnest W. Brown's representative down here was the only way that I could give you that sypho system, you had to take that insurance."

And again on page 324, lines 30-40, we find the following:

"Q. It is a difficult thing, is it not, to sell a sypho system in this State? A. Yes, it is.
Q. What is the reason for that? A. Because we must depend on reciprocal insurance, or there are a few other small mutuals, that are not so good, they have to take, in order to get this system."

Page 325, lines 30-40; page 326, lines 1-5:

"Q. Is there any alliance or connection between the Automatic Sprinkler Corporation and the Ernest W. Brown Company? A. I believe not, no, sir. Not to my knowledge. They are in an insurance field. We are in fire protection.
Q. I know, but whenever you installed a sprinkler system— A. Yes, sir.
Q. (Continuing) —that is, a chemical system— A. Yes.
Q. (Continuing) —was it your practice to immediately introduce the Ernest W. Brown to the man that you were going to sell the system to, in order to prove to him that he could get insurance? A. In the State of New Jersey, yes, it was absolutely necessary."

Again on page 326, lines 35-40:

"Q. All right. A. Now, after I got through with that I told him, in order for us to install that system, and in order for him to enjoy a premium reduction, it would be necessary to write his insurance with Ernest W. Brown."

Again on page 327, lines 20-30:

"Q. What I want to get from you now is what you told him, not all the arguments you thought of since. As I understand, you told him he had to insure through Ernest W. Brown? A. Right."

Louis Senn, Vice President of Ernest W. Brown, Inc., a witness produced by the plaintiff, testified that neither Ernest W. Brown, Inc., nor any of the reciprocal companies that they represent are authorized to do business in the State of New Jersey (p. 361, lines 30-40):

> "Q. Ernest W. Brown is not authorized to —is not an authorized broker in the State of New Jersey to solicit insurance? A. Is not.
> Q. And none of these companies that you attempted to write insurance for Greenspan in are authorized to do business in the State of New Jersey? A. They are not."

We consider that this testimony clearly establishes the following propositions:

(a) That neither Ernest W. Brown, Inc., nor any of the reciprocal organizations that they represent and with whom the defendant, Greenspan Brothers Company, was offered insurance at the reduced premium rate, are authorized to do business in the State of New Jersey.

(b) LeRoy Faust Lyons, the representative of the plaintiff company, who effected this contract, knew at the time he solicited the defendant company that the only medium through which he could obtain a reduction in insurance premium on installation of this sprinkler system was the reciprocal associations.

(c) That it was necessary for him to introduce the reciprocal organizations to the defendant company and then present a representative of those associations to the defendant for the purpose of inducing and persuading the defendant to insure with the reciprocal organizations.

(d) Plaintiff's representative, LeRoy Faust Lyons, solicited the defendant company to place its insurance with reciprocal organizations.

(e) Plaintiff's representative, LeRoy Faust Lyons, actually made an appointment with Mr. Isidor Greenspan, the Treasurer of the defendant company, to meet a Mr. Stockwell, a representative of the reciprocal companies; brought Mr. Stockwell to Mr. Greenspan's office and introduced him as a representative of the reciprocal organizations and actually sought and participated in a sales talk with Mr. Stockwell with the object in mind of inducing Mr. Greenspan to place his insurance in reciprocal organizations.

(f) The object and purpose of plaintiff, through its representatives, in inducing the defendant to accept reciprocal insurance was to sell its own sprinkler equipment and induce the defendant to execute and deliver the contract that is the subject matter of this suit.

We think these facts clearly establish that the plaintiff company, through its representative, LeRoy Faust Lyons, both directly and indirectly solicited and sought the defendant to make an insurance contract with an association "not authorized by the laws of this State and duly qualified thereunder to effect insurance on property within this State" in violation of Section 207 of the Crimes Act.

Counsel for the plaintiff has argued in his brief that Section 88 of the Insurance Act, heretofore quoted, would be unconstitutional if it attempted to bar a citizen of this State from making a contract of insurance in New York State with the reciprocal companies, in which State said reciprocals are authorized to do business. This argument is no answer to the factual situation here developed. The Legislature of this State has the authority to say what companies shall do business within our State, also to make it a misdemeanor for any person to solicit within this State business on be-

half of companies or associations not authorized to do business under out statute. The point we make is that this insurance was solicited and sold in the State of New Jersey. The mere fact that the contract of insurance was finally to be completed in New York State is no defense. See *Ferguson* vs. *Tuttle,* 95 N. J. L. 374, heretofore cited.

The pertinent question here is: Will the Courts of this State lend their aid to enforce a contract that has been effected through the commission of a crime by the party who seeks to have it enforced? We respectfully submit that the taint of illegality permeates the entire instrument and that relief should be denied the plaintiff. See *Cannon* vs. *Cannon,* 26 N. J. E. 316:

> "An agreement which involves the doing of anything which is a crime or an indictable offense at common law is illegal and void."

POINT III.

The Trial Judge, passing upon both law and fact, found as a fact that the plaintiff represented that insurance in reciprocal organizations would be as "good, legal and enforceable in the State of New Jersey" as the kind of insurance defendant was then carrying in the "old line" companies.

Isidor Greenspan, who negotiated this contract for the defendant company, testifies (p. 247) that on the occasion that Mr. Lyons brought Mr. Stockwell, the representative of the reciprocals, down to talk with him that Mr. Stockwell told him of the virtues of reciprocal insurance (p. 247, line 20):

"Q. What did he say? A. The benefits that reciprocal insurance could cause. That reciprocal insurance would be very saving and that reciprocal insurance was a low cost, and that they were very particular as to what accounts they gave reciprocal insurance to."

Page 247, line 35, Mr. Greenspan testified:

"Q. You understood it was a perfectly respectable form of insurance? A. Well, as far as I could see, the way they explained it to me it was very good insurance."

That the witness was justified in this conclusion is borne out by the voluminous correspondence that passed between Mr. Stockwell, the representative of the reciprocal organizations, and Mr. Greenspan (see Exhibit P-8 and Exhibits D-2-D-10).

Mr. Greenspan inquired of Mr. Stockwell respecting the possibility of an assessment in the event that substantial losses should be sustained by the reciprocal companies. Mr. Stockwell assured him (p. 309, line 30) that there had never been an assessment in forty or fifty years of existence of the company.

We have heretofore quoted testimony from the lips of Mr. Lyons, plaintiff's star witness, to the effect that Mr. Greenspan told him that he had to be very careful about his insurance because the stock of goods in the warehouse represented all their worldly assets. Mr. Lyons (p. 310, lines 10-30) extolling the virtues of reciprocal insurance told Mr. Greenspan that in order to obtain insurance with the reciprocals "it must be a preferred risk; that it would have to have some form of protection, it must be sprinklered." In other words that they were looking for preferred risks and for that reason they were able to write insurance at such a low rate. Mr. Greenspan then inquired for

the names of some persons covered by this class of insurance in New Jersey and Mr. Lyons informed him that L. Bamberger & Company and Hayne were subscribers to this form of insurance.

Mr. Greenspan actually signed the contract on January 4, 1928. On this very date Mr. Lyons testified (p. 313) that the following took place between Mr. Greenspan and himself:

> "Q. When? A. I came back on January 4. Q. What happened then? A. I asked him whether he had come to any decision, and he said, 'Well, I don't know.' I said, 'Well, don't you think this is a good line of insurance?' He said, 'Well, I guess it is all right'."

Mr. Lyons in describing the character of insurance testifies (p. 303, lines 10-20) as follows:

> "Ernest W. Brown, New York Reciprocals, as I spoke of them then. Told him that they were a very strong insurance outfit, as I had understood, and that they had a very conservative plan of writing insurance, told him that first of all, that they would not write a risk that was owned or occupied by anyone who didn't have a first-class rating, I think in Dun's they require something C-1½ rating."

That they even went beyond the finding of Judge Daly is borne out by the testimony of Mr. Johnson, another witness for the plaintiff, and a former employee of the "Automatic" Sprinkler Corporation. Mr. Johnson was in on the conference that took place between Mr. Greenspan, Mr. Lyons and Mr. Stockwell, representing the New York Reciprocals (p. 366, lines 35-40):

> "Q. What did he tell him about reciprocal insurance? A. I really didn't follow it. It is a long, long story. He told him, in effect, that it was good insurance, and attempted to explain to him and show him where it was economical, less costly to him than stock insurance.

> Q. What was that last? A. Less costly to him than stock company insurance. In other words, attempted to sell him or convince him *that that insurance was good insurance and better for his purposes.*"

While all the virtues of reciprocal insurance were extolled, nothing was said to Mr. Greenspan about the shortcomings or objections to this line of insurance. Mr. Greenspan was not told that these companies were not incorporated and were not authorized to do business in the State of New Jersey; nor was he told that there was no law in this State that permitted them to do business here, nor that in the event of fire these associations had no one in the State of New Jersey authorized to receive service of process and that it would be necessary for him to go to New York or some other state to litigate his claim. The testimony of this witness is set out quite fully in this regard on pages 18 and 19 of plaintiff's brief. There is no dispute or doubt that Mr. Greenspan was unacquainted with any of the weaknesses of this line of insurance. See colloquy between the Court and counsel (pp. 340-341) where counsel for the defendant at the trial endeavored to press Mr. Lyons further respecting what statements were made respecting the shortcomings of reciprocal insurance companies and the following took place after counsel for the plaintiff objected to the questions:

> "The Court: That is objected to and the objection is sustained, and the Court, for the present, sustains it on this ground: that the witness has already testified as to what he did say to Mr. Greenspan, and since he has limited himself, under thorough probing, as to what he said, that in itself leaves the proof that he said nothing else. Therefore any questioning along this line would be simply in the form of—or would be practically argu-

> ing the case through questions before the jury.
>
> Mr. Toolan: As I understand your Honor's ruling, your Honor thinks we have already negatively established that and it is not necessary for us to affirmatively establish it.
>
> The Court: That is it precisely. . . ."

The Court's finding as a matter of fact that the defendant company was induced to sign this contract by the representation that they could get a reduction in insurance rate premium, that that insurance would have to be effected in reciprocal organizations and that these reciprocal organizations would provide the defendant company with as good, legal, binding and effective insurance as then enjoyed in "old line" companies, is abundantly supported by the testimony. We can conceive of no greater fraud that could be perpetrated than to induce a person to effect insurance without disclosing to him that in the event of litigation he would have to go to some other jurisdiction to bring his suit and without diclosing to him that the particular insurance organizations were barred from doing any business in this State. Obviously reciprocal insurance is not as good, effective, legal and binding in this State as "old line" insurance written by companies that are authorized to do business within the jurisdiction.

This Court should not disturb the findings of the Trial Court in this matter. The findings in this regard are sufficient to support the verdict below. See *Heller-Rickards, Inc.* vs. *Berla,* 132 Atl. 482, where the Court said:

> "A reviewing court is not inclined to disturb the trial court's finding on a question of fact."

It is respectfully submitted that the plaintiff cannot question the finding of the Trial Court in

this regard and that they have no right of appeal on this question.

See *McBride* vs. *DeCozen,* 5 Misc. 552; *Michler* vs. *New Amsterdam Casualty Co.,* 104 N. J. L. 30.

POINT IV.

Defendant was induced to sign the contract by the fraud of the plaintiff and the entire contract is therefore void.

We think that the evidence introduced at the trial abundantly establishes that the plaintiff wilfully and with intent to deceive and defraud the defendant and for the purpose of inducing him to sign the contract withheld the following information which was within the knowledge of the plaintiff and not within the knowledge of the defendant and which it was the duty of the plaintiff to disclose:

(a) That reciprocal insurance companies were not authorized to do business in the State of New Jersey.

(b) That there was no law on the statute books of the State of New Jersey which authorized reciprocal insurance companies to do business in this State.

(c) That in the event of a fire loss the reciprocal insurance companies could not be sued in the State of New Jersey because there was no agent or person in the State of New Jersey upon whom process might be served.

(d) That it was contrary to the law of the State of New Jersey for any agent of a reciprocal company to solicit insurance in this State.

(e) That to negotiate insurance in reciprocal insurance companies was in violation of section

eighty-eight of the insurance law and section 207 of the Crimes Act of this State and insurance in such companies could not be written without violating these provisions of these statutes.

We do not think it necessary, in view of the testimony and admissions heretofore made by plaintiff's own witnesses, to cite further evidence of the fact that this contract was induced by the representation that the defendant could obtain a fifty percent. reduction in its insurance premiums. That this was the state of mind of both plaintiff and defendant is further indicated, however, by Exhibit D-11 (p. 435), a letter written by the plaintiff to the defendant under date of March 9, 1929, where we find the following sentence: "Certainly you are receiving the benefits of the reduced insurance on account of the Sypho protection and the terms of payment covering this rental are very clear in the contract."

That none of the shortcomings of reciprocal insurance were made known to Mr. Greenspan prior to the execution and delivery of the contract is abundantly established by the testimony heretofore quoted and also by the testimony set forth at length on pages 18 and 19 of plaintiff's brief. In this connection see also Exhibit P-8 (p. 404), a letter dated December 18, 1928, written by Ernest W. Brown, Inc., a representative of the reciprocal insurance companies which negotiated this contract. The contract in question was signed in January, 1928. A representative of Boynton Brothers & Company first communicated to Mr. Greenspan the weaknesses of reciprocal insurance companies in the latter part of December, 1928, and January, 1929. Mr. Greenspan apparently inquired of Ernest W. Brown, Inc. respecting reciprocal insurance companies. The opening paragraph of the letter of December 18, 1928, is as follows:

> "In view of our telephone conversation last evening, I am writing to advise that I expect to be able to call upon you Friday forenoon of this week."

Further on in the same letter we find the following:

> "While we are not licensed in the State of New Jersey as we are in nearly every other state, due to the fact that politicians in New Jersey influenced by stock companies have been able to prevent the adoption by the State Legislature of what is known as the uniform reciprocal law, *there is no law preventing us from operating there,* which means that there is no reason whatever why you should not do business with us from a legal standpoint."

This is the first and only reference in the voluminous correspondence passing between Ernest W. Brown, Inc. and Greenspan Brothers Company that makes any reference to this subject. This reference was apparently not made until Mr. Greenspan began to inquire about reciprocals. This letter is almost conclusive proof that up until this time they had withheld from Mr. Greenspan all information on the subject.

Objection is made by counsel for the plaintiff that the statements made to Mr. Greenspan are not fraud because they refer to matters that are to happen at some date in the future and subsequent to the execution the actual delivery of the contract. That statements and representations respecting future happenings are a sufficient basis for fraud has been held in this State in the case of *Roberts* vs. *James,* 83 N. J. L. 492. In this case a representative of a realty company sold lots on the representation that there was going to be a hotel near the spot, that there was to be a railroad station, cement walks and a park with swings. The Court held that if the representa-

tions are false, the vendee might avoid a contract induced thereby. The Court on page 495 cites with approval *Lord* vs. *Watson* when he said:

> "The respondent is not seeking to rescind the contract but he is merely resisting its enforcement by the party guilty of the fraud."

Again on page 497 we find the following:

> "There must be a misstatement of an existing fact but the state of a man's mind is as much a fact as the state of his digestion. It may be difficult to prove the state of a man's mind at a particular time but if it can be ascertained, it is as much a fact as anything else. A representation as to the state of a man's mind is, therefore, a misstatement of fact."

In the case of *Pouder* vs. *Smith,* 104 N. J. L. 148, suit was brought to recover money paid in the purchase of stock. The salesman represented that he could obtain three hundred shares of stock for plaintiff at thirty dollars a share; that defendant had signed certain papers with brokers to list this stock on the curb; that the papers had been signed and the stock would be listed within thirty days; that it was simply a matter of formality in listing stock. These representations, or some of them at least, were respecting matters in the future. Notwithstanding, they were held actionable fraud.

See also *Zuckerman* vs. *Geller,* 142 Atl. 344, in which case the defendant sold the plaintiff a certain shop for the manufacture of boys clothing. Defendant induced plaintiff to buy on the representation that he would supply plaintiff with business at the rate of not less than four hundred dozen pairs of pants a week in the slow season and six hundred dozen during the remainder of the season. The sale was consummated and de-

fendant gave the plaintiff work for a period of about three weeks, that is, two hundred dozen pairs for one week, three hundred dozen pairs the next week, and four hundred dozen pairs the third week. Suit was brought to rescind the contract. The Court held:

> "A contract is fraudulently procured when induced by a promise to do a thing in the future when there is an existing intention not to do it. A false promise is a misrepresentation of an existing fact and is actionable."

We think the above cases are authority for the proposition that a representation concerning something in the future may be fraudulent where it is affirmed as a fact quite as well as if made as a fact existing at the time of making said representation.

We have cited the above cases respecting the matter of future promises simply to indicate that matters to be performed in the future may be the subject of fraud. We do not, however, feel that the law of future promises applies in the instant case. The plaintiff admits that it absolutely stated to the defendant that upon installation of the sprinkler system, a reduction in insurance premium of approximately fifty percent. would immediately be obtained. If this statement was untrue, certainly it is a fraudulent representation. Just as much so as if I go to some one and say to him, "Give me a deed for your property and thirty days from today I will pay you $500.00." If I do not pay the money would any one contend that the party who delivered the deed could not rescind on the ground of fraud and recover back the property? Certainly it would be a promise to do something in the future but that would not prevent an action on the ground

of fraud. It might be difficult to prove that my intention was fraudulent at the time of making the promise or representation but the fact that I did not pay for the property as promised would be strong and almost conclusive evidence that the representation or promise at the time that it was made was fraudulent.

A party may be guilty of fraud either through actual and wilful misstatements of fact or by withholding information within their knowledge and failing to disclose it to another party to the contract when the information in question may be of some material proposition which materially affects the contractual relationship. It is our contention that the plaintiff was duty-bound to disclose to the defendant the true situation respecting reciprocal insurance companies, especially when plaintiff knew that the only inducement or consideration for this contract was the matter of insurance and particularly in view of the fact that Mr. Lyons admitted that Mr. Greenspan told him that he had to be very careful about insurance because all of the assets he had in the world were in the warehouse in question.

In the case of *Berkowitz* vs. *Lyons,* 98 N. J. L. 198, the Supreme Court in an opinion by Mr. Justice Minturn said:

> "In such a situation . . . actual representations of fact are not the sole basis of actionable fraud, since the deceit and fraud practiced can as well effectuate its baneful purpose by conduct as it can by words. '*Acta exteriora indicant interiora secreta.*' Indeed, the action for deceit had its origin in false impersonation."

This excerpt is quoted with approval in the case of *Pouder* vs. *Smith,* 104 N. J. L. 148, a Court of Errors and Appeals case. See bottom of page 150.

Likewise in the case of *Melick* vs. *Metropolitan Life Insurance Company,* 84 N. J. L. 437, affirmed by the Court of Errors and Appeals, 85 N. J. L. 727. This was a case where a certain party had made application for life insurance. The application contained a provision that if the assured had any other policy on her life at the time the present policy was taken out, then the policy for which application was being made would be void. The person who made the application failed to make known in the application that she had any other life insurance. At the time of making this application she actually had another policy in the same company. She paid her premiums on both policies. Upon her death the Insurance Company refused to pay the second policy on the ground that it was obtained by fraud. The Court held that the Insurance Company was duty-bound to make known and disclose the fact that it had another policy in existence at the same time. The Court, on page 443, said:

> "In order to establish a case of false representation, as was said in Lomerson *vs.* Johnston, 47 N. J. E. 312, it is not necessary that something which is false should have been stated as if it were true. If the presentation of that which is true creates an impression which is false, it is, as to him who, seeing the misapprehension, seeks to profit by it, a case of false representation."

See also the case of *Gordon* vs. *Schellbourne,* 95 N. J. E. 563. Complainant was induced to buy certain machinery from the defendant because the defendant promised complainant that he could have a lease on the building in which the machinery was located. It later developed that complainant could not get the lease and suit was brought in the Court of Chancery to rescind the contract. The Court on page 574 said:

> "If either party to a transaction conceals some fact which is material, which is within his own knowledge, and which it is his duty to disclose, he is guilty of actionable fraud."

The plaintiff company is as much responsible for the representations and statements made by Ernest W. Brown, Inc., as if they were made by their own agents and representatives. The testimony heretofore quoted discloses that the representative of the plaintiff company knew that defendant could get no reduction in insurance premiums except through reciprocal companies; that whenever they installed this particular sprinkler system it was necessary to introduce the customer to a representative of Ernest W. Brown, Inc. This was the procedure followed in this case. Mr. Lyons, representing the plaintiff company, brought representatives of the reciprocal company to Mr. Greenspan for the purpose of convincing him that they could give him reliable insurance at reduced rate. The plaintiff knew that it could not sell its product without reduced insurance premiums and the representatives of Ernest W. Brown, Inc., in persuading and convincing defendant that they could give defendant insurance at reduced rates were actually the agents and representatives of the plaintiff company.

What greater fraud could be perpetrated on the defendant than to induce him to sign a contract involving thousands of dollars on the representation that it could get a reduction in insurance premium and then foist upon the defendant an insurance organization that is not authorized to do business in this State, that is actually barred from doing business in this State, that could not be sued in this State, without disclosing to defendant these various objections and weaknesses of

the company in question? Another element that should be considered in this connection is the fact that Mr. Greenspan made known to the representatives of the plaintiff company that he had made an arrangement with his landlord whereby Mr. Greenspan would have the right to effect insurance for the landlord on the building and any saving in insurance premium to the landlord, resulting from the installation of the sprinkler system, would inure to the benefit of Mr. Greenspan (p. 219, lines 5-15). Mr. Johnson, one of plaintiff's witnesses, testified (p. 367):

> "He also wanted to get in touch with his landlord and find out if the landlord would be willing to switch his insurance from the stock companies to these reciprocal companies, and give Mr. Greenspan the savings that he would get by virtue of this protection towards paying the service charges for sypho."

The agents of the plaintiff knew that the defendant hoped to effect this further saving through placing the insurance for his landlord. Notwithstanding this knowledge, they failed to make known to the defendant the obvious objections to reciprocal insurance from the point of view of any property owner. As soon as the landlord learned what was meant by reciprocal insurance, he declined to permit the defendant to place his insurance with reciprocal companies (p. 228, lines 35-40):

> "Q. What information did you receive respecting the reciprocal company? A. The landlord of the building came back to me and told me he was very sorry that he couldn't let me do the insuring because his mortgagees, who held a mortgage on the building, would not stand for reciprocal insurance, because they were absolutely—it was absolutely ille-

gal for them to do business in the State of New Jersey."

The plaintiff company knew what it was doing. The defendant was in ignorance of the entire situation. As soon as defendant discovered the fraud, it rescinded the contract and notified the plaintiff to remove its equipment. This was the proper course. See *Koedar* vs. *Shapiro,* 98 N. J. L. 225.

It is respectfully submitted that the defendant company was victimized by the plaintiff, both through the medium of statements and representations made and also through the concealment of material facts and information that the plaintiff was duty-bound to disclose. Defendant received and could receive no benefit whatever by reason of this contract. Plaintiff knew this at the time it induced defendant to make the contract. Defendant did not know it. Both parties are in accord that the only reason for installing a sprinkler system is to obtain a reduction in insurance premiums. Had defendant been able to obtain the promised reduction, they would be happy to go through with this contract and meet the obligations which it imposes. That this is obviously so is proven beyond all doubt or dispute by the fact that immediately upon the removal of the equipment installed by the plaintiff company, defendant made another contract with the Globe Sprinkler Company to install a sprinkler system at a cost of fifty-seven hundred ($5,700.00) dollars. That system has been installed. That system produced a reduction of fifty percent. in insurance premiums. Surely, Greenspan Brothers Company was not seeking to avoid this contract. They bargained for a reduction in insurance premiums. The plaintiff failed to produce this reduction. Defendant rejected the sprinkler system installed by the plaintiff, made a contract with another con-

cern and installed a system that would entitle them to the benefits that they expected to derive from the contract made with the plaintiff. Certainly the plaintiff should not now be permitted to benefit by its own fraud, misrepresentation and wilful concealment.

It is respectfully submitted that on the law and the fact in this case, the verdict of the lower Court should be sustained.

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