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NOTICE OF APPEAL.

Filed March 8, 1929.

New Jersey Supreme Court

ESSEX COUNTY.

10

SAMUEL ROSEN,

Plaintiff,

vs.

ROYAL INDEMNITY COMPANY, a
corporation,

Defendant.

*Action
at Law.*

*Notice
of Appeal.*

To Riker and Riker, Esqs., attorneys of plaintiff,
24 Commerce street, Newark, New Jersey.

20

SIRS:

PLEASE TAKE NOTICE that the defendant, Royal Indemnity Company, appeals to the Court of Errors and Appeals of New Jersey from the whole of the judgment rendered against it in the above-entitled action on February 9, 1929.

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant.

30

Dated March 6, 1929.

Service of the within notice is hereby acknowledged this sixth day of March, 1929.

RIKER & RIKER,
Attorneys of Plaintiff.

40

GROUND OF APPEAL.

Filed March 8, 1929.

New Jersey Court of Errors and Appeals

10	SAMUEL ROSEN, <i>Plaintiff-Respondent,</i> <i>vs.</i> ROYAL INDEMNITY COMPANY, a corporation, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i> <i>On Appeal.</i> <i>Ground of Appeal.</i>
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20 To Riker and Riker, Esqs., attorneys of plaintiff-respondent, 24 Commerce street, Newark, N. J.

SIRS:

TAKE NOTICE that the defendant-appellant, Royal Indemnity Company, a corporation, hereby sets down its ground of appeal in the above stated cause as follows:

1. Because the Trial Court failed and refused to grant the motion for non-suit made by the defendant, Royal Indemnity Company, a corporation, at the close of the plaintiff's case.

30

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant-Appellant.

Service of the within ground of appeal is hereby acknowledged this seventh day of March, 1929.

RIKER & RIKER,
Attorneys of Plaintiff-Respondent.

40

SUMMONS.

The State of New Jersey to Royal Indemnity Company, a corporation.

(SEAL) YOU ARE SUMMONED to answer the annexed complaint of Samuel Rosen in an 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 Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, New Jersey, this fourth day of December, Nineteen Hundred and Twenty-six. 20

EDWARD J. KELLEHER,
Clerk.

RIKER & RIKER,
Attorneys.

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COMPLAINT.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

10 SAMUEL ROSEN,

*Plaintiff,**vs.*ROYAL INDEMNITY COMPANY, a
corporation,*Defendant.**Action
at Law.**Complaint.*

20 Plaintiff, Samuel Rosen, residing in the City
of Newark, in the County of Essex and State of
New Jersey, says that:

1. On July 1, 1925, defendant, Royal Indemnity Company, was, and still is a corporation duly incorporated, with power to insure risks, among others, by burglarly, larceny and theft.

30 2. On or about said 1st day of July, 1925, in consideration of the payment by the plaintiff to the defendant of a premium of \$45.19, said defendant executed to plaintiff a policy of insurance, No. BTL 79978, for all loss by burglarly, larceny or theft of property from within the interior of premises occupied by plaintiff at No. 152 Scheerer avenue, Newark, New Jersey, and by damage, except by fire, to said property and to the premises, caused by any such person while in or upon said premises with the intent to commit burglarly, larceny or theft; said policy to remain in effect for twelve months from July 1, 1925, which policy is in the possession of plaintiff and ready to be produced by him.

40

Complainant.

3. Said policy insured for all loss by burglarly, larceny or theft of the following property from the interior of the above-mentioned premises, committed by any person whose property is not covered under said policy:

Section A—On jewelry, precious stones, watches, articles of gold, platinum and sterling silver, furs and articles made entirely or principally of fur. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections B, C and D hereof\$2,000.00 10

Section B—On money, securities and stamp and coin collections, to an amount not exceeding \$50.00; and on wearing apparel, laces, rugs, tapestries, pictures, paintings, plated ware, and all other household goods and personal property common in residences generally, including professional instruments, electric light, plumbing, gas and water fixtures. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections A, C and D. 1,000.00 20

Total amount of insurance\$3,000.00

4. Said policy provides that upon the happening of any event given rise or likely to give rise to a claim under said policy the plaintiff shall give immediate written notice thereof to the office of the company at which the policy was issued, and like notice to the public police authorities having jurisdiction; and within sixty days after such happening, file with the company a complete and affirmative proof of loss on the forms used, and to be provided by the company on demand of the insured; shall render all assistance, at demand of company, etc.; and at the re- 30
40

Complainant.

quest and expense of the company take legal action to secure the arrest and prosecution of the offenders and the recovery of the property.

10 5. On March 1, 1926, some unknown person entered the home of said plaintiff, at the address above-mentioned, and stole therefrom the following articles and money:

3 \$20 bills and 9 \$10 bills in money	\$150.00
1 ladies platinum wrist watch	300.00
1 ½ k. platinum engagement ring	550.00
1 ½ k. platinum engagement ring	600.00
1 platinum brooch 4 diamonds in center and 30 small ones	1,100.00
	<hr/>
Total	\$2,700.00

20 6. Plaintiff complied fully with the terms of said policy of insurance, by giving the written notice of said loss to said company; notifying the proper police authorities, and has been and now is holding himself ready to take whatever steps said defendant may request and has performed all conditions precedent to be performed on his behalf.

30 7. Plaintiff has demanded of said defendant the payment of the above sum of \$2,700.00 under his said policy of insurance, but said defendant has failed, neglected and refused to pay the same, or any portion thereof.

Plaintiff demands as damages the sum of \$2,700.00, together with lawful interest thereon.

RIKER & RIKER,
Attorneys for Plaintiff.

Complainant.

To the Within Named Defendant:

TAKE NOTICE that if the within summons and complaint be served upon you personally and you intend to make defense, then you must file an affidavit of merits within ten days of such service and must file an answer within twenty days of such service; and that in default thereof, judgment will be entered against you. Lawful service upon a corporation is deemed personal service. 10

RIKER & RIKER,
Attorneys for Plaintiff.

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30

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ANSWER.

Filed December 29, 1926.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

10

SAMUEL ROSEN,

*Plaintiff,**vs.*ROYAL INDEMNITY COMPANY, a
corporation,*Defendant.**Action
at Law.**Answer.*

20

THE ANSWER OF THE DEFENDANT,
ROYAL INDEMNITY COMPANY.

The defendant, answering the complaint filed by the plaintiff in the above-entitled cause, says:

30

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted except that portion thereof which states the contents and provisions of said policy for the determination of which defendant prays reference to the policy itself.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted but defendant prays reference to the policy itself for determination of its contents.
5. Paragraph 5 is denied.
6. Paragraph 6 is denied.
7. Paragraph 7 is admitted.

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant.

40

POSTEA.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

SAMUEL ROSEN, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 20px;"><i>vs.</i></div> ROYAL INDEMNITY COMPANY, a corporation, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Action at Law. Postea.</i>	10
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This action was tried before his Honor, Nelson Y. Dungan (a Circuit Court Judge sitting in the Essex County Circuit of the New Jersey Supreme Court), with a jury, at said Essex County Circuit of the New Jersey Supreme Court on February 7th and 8th, 1929. 20

The jury rendered a general verdict against the defendant, Royal Indemnity Company, a corporation, and in favor of the plaintiff, Samuel Rosen, for the sum of two thousand three hundred and seventy-eight dollars (\$2,378.00).

NELSON Y. DUNGAN, 30
Circuit Court Judge sitting in the Essex
County Circuit of the New Jersey Supreme
Court.

JUDGMENT.

NEW JERSEY SUPREME COURT.

STATEMENT.

10

SAMUEL ROSEN,
<i>vs.</i>
ROYAL INDEMNITY Co.

*Action
at Law.*

Judgment entered Feb. 9, 1929.

Damages\$2,378.00

COSTS.

20

Attorney	37.00
Disbursements	21.52

\$2,436.52

FRED L. BLOODGOOD,
Clerk.

30

40

Opening.

TESTIMONY.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

SAMUEL ROSEN, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> ROYAL INDEMNITY COMPANY, a corporation, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Action at Law.</i>	10
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December T., 1928.

Thursday, February 7, 1929.

20

Before Nelson Y. Dungan, *J.*, and a jury.

For the plaintiff appear Riker & Riker, (by Andrew Van Blarcom).

For the defendant appears John W. McGeehan, Jr. (by Luke Kernan).

A jury is called and sworn, and by consent of counsel the case proceeds with eleven jurors.

Mr. Van Blarcom opens the case in behalf of the plaintiff. 30

Mr. Kernan opens the case in behalf of the defendant.

The Court: I observe by reading the transcript in this case that paragraphs one, two, three, four and seven of the plaintiff's complaint are admitted by the defendant except, however, it refers to the policy itself as to the provisions mentioned in paragraphs three and four; that it is only paragraphs five and six which are de- 40

Opening.

nied—that is, that some unknown person entered the home of the plaintiff and stole the articles therein mentioned, and second that the plaintiff has fully complied with the terms of the policy of insurance by giving the notice therein required and performing all the conditions precedent.

10 Mr. Van Blarcom: The old practice, I don't know whether it has changed or not, of course they had to specify any conditions precedent that had not been performed. I do not think there is any change on that rule.

The Court: So I think the case can be shortened by those admissions.

Mr. Van Blarcom: Yes. I think it comes to just the issue of what happened.

The Court: Do you agree to that?

20 Mr. Kernan: Yes, sir. That is true.

Mr. Van Blarcom: I offer in evidence a policy of insurance, which is No. P T L 79987, issued by the Royal Indemnity Company of New York, insuring Samuel Rosen, living at 152 Sheerer avenue, Newark, New Jersey, for two thousand dollars on jewelry and furs and silver and things of that kind, and fifty dollars for cash. This policy is dated, the effective date, July 1, 1924,
30 for one year, and then the two renewal receipts continuing them for the further years ending 1925 and July 1, 1926.

(The policy referred to is received in evidence and marked Exhibit P. 1.)

(The renewals referred to are received in evidence and marked Exhibit P. 2.)

Samuel Rosen, direct.

SAMUEL ROSEN, the plaintiff, sworn in his own behalf.

Direct examination by Mr. Van Blarcom.

Q Where do you live, Mr. Rosen? A 152 Sheerer avenue. 10

Q Newark, New Jersey? A Newark, New Jersey.

Q How long have you lived there? A I lived there for the last eight years.

Q With whom do you live at that place? A My family.

Q Your family consists of whom? A My wife and four children.

Q How old are your children? A Well, the oldest is twelve years. 20

Q At the present time? A At the present time.

Q Tell us the other's ages. A And the others is nine years next one, and one is six years, and I got a baby just ten months old.

Q How long have you lived in Newark? A Well, that is about the time I lived in Newark, about eight years.

Q How long have you lived at 152 Sheerer avenue, Newark, New Jersey? A Since I bought the property there, it is five years. 30

Q Do you own that house? A I own the property, yes.

Q That is a two-family house, is it not? A Two-family house.

Q You have owned that for how many years? A It is five years.

Q What is your business? A I am in the laundry business.

Q Under a company or in your own name? A No, under a company. 40

Samuel Rosen, direct.

Q Who is in the company with you? A I got my three brother-in-laws with me.

Q One of your brother-in-laws lives in that two-family house with you? A Yes.

Q What is his name? A Leo Hantman.

10 Q Where is your business? A Laundry business.

Q Where? A Over in New York in the Bronx.

Q What is the street number? A It is 589 Eagle avenue.

Q How long have you been in the same business? A For the last fourteen years in the same business.

20 Q Are you an officer of the company? A Yes, I am the secretary of this company.

Q Is Mr. Leo Hantman here? A No, he is not here.

Q Can you both be away at the same time? If you are here does he have to stay at the business? A He has got to stay in the business.

Q Did you have this policy of insurance with the Royal? A Yes.

Q Against burglary and theft? A Burglary and theft, yes.

30 Q And you renewed it from time to time? A Yes.

Q Paid the premiums asked for? A Yes.

Q On or about March 1st, I think the year is 1926? A I think it was.

Q On March 1, 1926, where did you sleep that night? A In one of the bedrooms.

Q At 152 Sheerer avenue? A At 152 Sheerer avenue.

40 Q Who was sleeping with you? A The little boy was about six years old, or seven.

Samuel Rosen, direct.

Q Were the children well or were they sick?

A No. The whole family was sick. The wife was in the hospital and the children, all of them had measles at that time.

Q They had the measles? A Yes.

Q Were you sleeping with one of the children? A Yes, one of the boys, yes.

10

Q Which one was that? A The oldest was sleeping with me.

Q How old was he at that time? A About six years old.

Q Did you have any jewelry and money in the house that night? A Yes. My wife when she left for the hospital, she left her jewelry with me.

Q Where did she get that jewelry from, if you know? A I gave it to her.

20

Q From time to time? A From time to time.

Q What did the jewelry consist of? A She had two diamond rings and one brooch and a wrist watch.

Q Did you have any cash? A Yes. I had one hundred fifty dollars in cash at that time.

Q Where had you kept this jewelry during the day time? A During the day time I used to have it in a china closet and that night, you know, at night I always used to place it under the pillow in order I should have it near me anything would happen.

30

Q And you had it that particular night whereabouts? A I always used to have it under the pillow, whether it was cash or jewelry, I always had it under my pillow at night.

Q On the bed that you were sleeping in? A Yes.

40

Samuel Rosen, direct.

By the Court.

Q You have not yet answered the question as to where you had it that night. A Yes, under the pillow.

By Mr. Van Blarcom.

10

Q In the bed you were sleeping on? A In the bed I was sleeping on.

Q You have mentioned about diamond rings and a brooch. A Yes.

Q Was there any other piece of jewelry? A I had a wrist watch, too.

Q Where had you purchased these different articles of jewelry? A Over in New York.

20 Q Covering what period of time? A Well, the rings I bought the time I was married, that is about fourteen years ago, between fourteen and fifteen years ago, and the brooch I purchased about, I should say about ten years ago, and the watch I only bought, well I will say about five years ago.

Q Did you buy these articles all from the same person? A Yes, from the same person.

Q Who was that person? A A fellow by the name Hurwitz.

30 Q Is that a firm or is that a man? A Well, it was a firm. No, he was himself in the business.

Q Has he got a partner? A He did have a partner.

By the Court.

Q Where was his place of business? A His place of business was a 87 East Broadway, New York City.

40

Samuel Rosen, direct.

By Mr. Van Blarcom.

Q 87 East Broadway. Is this wrist watch that you bought, the most recent piece—have you a check which you gave in payment of that?

A Yes. I paid him by check.

Q About how long ago do you think you bought that? A Well, I think it is about five years I should say. 10

Q Look at this check. It seems to be dated December 30, 1921. See if that is the check that you paid, or some other check? A No.

Q Or was that for some other piece of jewelry? A No. That is a different check that I paid him at the time I bought the brooch.

Q How did you pay for this brooch? A I paid him in parts. I didn't pay him exactly in one amount. 20

Q What did that cost you altogether? A The brooch was about \$1,100.

Q What kind of piece of jewelry was it? Tell the jury what it was like. A It was a brooch with four stones in the center.

By the Court.

Q What do you mean by four stones? A Four stones set. 30

By Mr. Van Blarcom.

Q Were they cobble stones or what? A No. Diamond stones.

Q Go on. Tell us what else. A There was about thirty-five little diamonds set all around.

Q And you got that and presented it to your wife as a present? A Presented it to my wife, yes. 40

Samuel Rosen, direct.

Q You think you bought that when? A Well, I said about ten, but I think it was about eight or nine or something like that.

Q You think this check dated December 30, 1921, for two hundred dollars is a part payment you made on account of that? A That is the one, \$290. Yes, that is a part of the diamond. I paid it, yes.

The Court: What is the date of it?

Mr. Van Blarcom: December 30, 1921.

Q How were the rest of the payments made for this piece of jewelry? A It was all made by checks.

Q Have you looked for your checks? A I looked for them, but I didn't find them. I just found a few of them.

Q Could you find any check other than this one you have looked at in payment of the brooch? A No.

Mr. Van Blarcom: I offer this in evidence.

Mr. Kernan: What is the amount of the check, please?

Mr. Van Blarcom: \$290.

(The same is received in evidence and marked Exhibit P. 3.)

(A recess is taken from one to two o'clock P. M.)

Samuel Rosen, direct.

SAMUEL ROSEN, resumed.

Direct examination (continued) by Mr. Van Blarcom.

Q Now, did you buy the two diamond rings from the same person? A Yes. 10

Q You remember what you paid for them? A Yes, sir.

Q What was paid for them? A Well, one was six hundred dollars and one \$550.

Q And one what? A \$550.

Q And they were purchased at the time of your marriage? A At the time of my marriage.

Q Have you any receipt or check showing the payment for those rings? A No, I don't think so. 20

Q Have you looked for them? A I have been looking for the checks, but it is a long time, and I didn't find them.

Q When did you buy this wrist watch? A About five years ago.

Q Do you remember about what you paid for that? A Well, \$260 or something like that.

Q I show a check dated October 19, 1925, to the order of Hurwitz and Sakalov for \$250, and ask you if that check represents any part of this jewelry? A Yes. 30

Q What does it represent? A Yes, sir; that is the check.

Q Check for what? A For the wrist watch what I bought.

By the Court.

Q Is that what you paid for it then? A \$250, yes, sir. 40

Samuel Rosen, direct.

By Mr. Van Blarcom.

Q You paid \$250 for it? A Yes.

Mr. Van Blarcom: I offer the check in evidence.

10 (The same is received in evidence and marked Exhibit P. 4.)

Q Do you remember how much the diamond stones were in the two diamond rings? A I think they were about a caret and a half.

Objected to unless the witness knows.

By the Court.

20 Q The question is whether you know? A I don't know exactly, but I think it was a caret and a half, because I never bought them on the weight.

By Mr. Van Blarcom.

Q What? A I didn't weigh them.

Q Well, it is worth what it is worth, I assume. What kind of wrist watch was it? A It was a watch set with diamonds all around.

30 Q Little diamonds I suppose? A Little diamonds.

Q Besides this jewelry you had one hundred fifty dollars cash? A One hundred fifty dollars in cash, yes.

Q Who was your broker in New York who took charge of the settlement of the matter with the Royal? A A fellow by the name of Jacob Strahl.

40 Q Did he have charge of this matter in your behalf to enter settlement with the Royal on account of this theft?

Samuel Rosen, direct.

Mr. Kernan: I object to that, if your Honor please. I do not think the settlement in this case—there is nothing in the evidence of a settlement.

The Court: I suppose he means proofs of loss.

Mr. Kernan: Oh, I do not deny the proofs of loss. 10

Mr. Van Blarcom: I want to offer this letter.

Mr. Kernan: That is satisfactory.

Mr. Van Blarcom: This is offered in evidence, then. This is a letter from the Royal Indemnity Company dated March 24, 1926, addressed to Mr. J. Strahl, 1440 Broadway, New York. 20

(The same is received in evidence and marked Exhibit P. 5.)

Mr. Van Blarcom: This is on the letter-head of the Royal Indemnity Company, 84 William street, New York, under the department of burglary, addressed to Mr. J. Strahl, 1440 Broadway, New York City, re claim No. 10861. "We have completed an investigation—" 30

Oh, I have the wrong letter.

Mr. Kernan: I object to the withdrawal of that particular letter from the evidence. I do not think it is proper for the plaintiff in this case to withdraw this particular letter from the evidence after it is consented to that it be marked in evidence.

Mr. Van Blarcom: I got hold of the wrong letter.

Mr. Kernan: It is material to this case. 40

Samuel Rosen, direct.

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

Mr. Van Blarcom: I do not care to offer it, no.

The Court: All right. It may be withdrawn.

10

(The marking on the letter referred to, which was marked Exhibit P. 5, is eliminated by the stenographer.)

Mr. Van Blarcom: I offer this letter in evidence.

The Court: That takes the place of the previous one?

Mr. Van Blarcom: Yes, sir.

20

(The letter referred to is received in evidence and marked Exhibit P. 5.)

30

Mr. Van Blarcom: This letter is dated March 9, 1926, and it is on the same letter-head and addressed to the same person under the same heading, claim 10861, B. T. L. 79, 978. "We are in receipt of your letter of March 1st, reporting loss sustained by the insured. We have completed an investigation of the claim and find the insured's loss is in the sum of \$2,650. We would thank you to arrange with the insured to secure bills verifying the place of purchase and the original cost of the articles alleged to have been stolen. Kindly give this matter your immediate attention. Yours very truly, J. B. Franklin, adjuster."

Mr. Van Blarcom: Have you got those bills from the jewelers in New York?

Mr. Kernan: The bills from the jewelers?

40

Mr. Van Blarcom: That were sent to you by Mr. Strahl.

Samuel Rosen, direct.

Mr. Kernan: I have looked through the file. I do not seem to have any bills. I have some correspondence.

Mr. Van Blarcom: Have you a letter from Mr. Strahl dated March 17, 1926?

Mr. Kernan: What does the letter refer to? We apparently do not have it in the file. I have a complete file of the company.

10

Mr. Van Blarcom: Well, apparently they didn't get it. Have you got a letter from Mr. Strahl dated March 1, 1926?

Mr. Kernan: I am sorry. I do not have that letter.

Mr. Van Blarcom: Have you a letter from Mr. Strahl dated March 12, 1926?

Mr. Kernan: With reference to what is that letter?

20

Mr. Van Blarcom: Have you a letter from them?

Mr. Kernan: The proof of loss? Yes.

Mr. Van Blarcom: Have you got the proof of loss too?

Mr. Kernan: Yes, I have that.

Mr. Van Blarcom: I offer in evidence the proof of loss.

30

Mr. Kernan: No objection.

The Court: It will be received.

Mr. Van Blarcom: And also the letter which accompanied the same dated March 12, 1926.

(The same are received in evidence and marked Exhibit P. 6.)

Mr. Van Blarcom: This letter, which is brief, is addressed to the Royal Indemnity Company and dated March 12, 1926, from

40

Samuel Rosen, direct.

Mr. Rosen's agent in New York, his insurance agent. It says, "Enclosed please find proof of loss on the above captioned claim. Bills verifying the place of the purchase, the original cost of the articles, will be forwarded within the next few days."

10

Now, this loss contains two diamond rings as described by Mr. Rosen, also the brooch and the diamond-set wrist watch and the cash. You say you have no letter from Mr. Strahl dated March 17, 1926?

Mr. Kernan: If I said so a minute ago I do not suppose I have. I have one more letter.

By Mr. Van Blarcom.

20

Q What time did you go to bed on the night of this robbery? A It must have been about eleven o'clock.

Q This little boy was already in bed, I presume? A Yes, sir.

Q Where was your wife? A She was in the hospital.

Q What hospital was she in? A New York Hospital.

30

Q Did she have an operation? A Yes, she was operated.

Q What was the nature of it? A She had a goiter.

Q How long after this theft or robbery did she return home? A Must have returned about a week or ten days.

Q Now, on the night in question I understood you to say that you had placed the jewelry and the one hundred fifty dollars and the cash under your pillow? A Yes.

40

Samuel Rosen, direct.

Q What was it contained in, if anything? A
What?

Q The jewelry and the cash. A In what?

Q What was it in? In a pocket-book or what?

A No. It was tied up in a handkerchief.

Q Tied up in a handkerchief? A Yes.

10

Q Was it there in the morning? Was the
jewelry and the cash there in the morning? A
No, it wasn't.

Q What time did you wake up in the morning?

A I woke up in the morning six o'clock and
it was gone.

Q What did you find about the house, if any-
thing? A Well, the door was open. Otherwise
I didn't find anything else.

Q What door was open? A Leading from 20
the kitchen.

Q To where? A To the downstairs hall.

Q What kind of lock was it on that door?

A It was only a plain ordinary lock.

Q It wasn't one of the locks that require
a Yale key or a key of that nature to open it?

A No. A plain lock.

Q When you went to bed at night, do you
know whether or not that kitchen door was
locked? A I am not positive. 30

Q You don't know whether it was locked
or not? A I am not positive.

Q Was it standing open when you went to
bed? A It might be. It might be I forgot
to close it. It might.

Q Where was this kitchen door with refer-
ence to your bedroom where you slept? A How
far it was?

Q Yes. A Oh, it was about fifteen feet
away. 40

Samuel Rosen, direct.

Q How many rooms did you have in your apartment? A Six rooms.

Q After you discovered this loss, what did you do? A I called Police Headquarters and notified them a robbery had happened.

10 Q What Police Headquarters did you call?
A I called Police Headquarters.

Q In Newark, New Jersey? A In Newark, New Jersey.

Q What precinct, if any, were you connected with? A I really don't know what precinct I was connected I think it was the sixth precinct.

Q What happened as a result of this telephone call? A What happened?

20 Q Did any officers come? A Yes; three officers came.

Q How long after you telephoned? A About fifteen minutes later.

Q Did you describe to them the burglary and what was taken? A Yes.

Q Did you ever know a man named Denning? A Yes, I know him.

Q At the time did you have any suspicion about anybody? A No. I didn't suspect anybody, no.

30 Q At that time didn't you know a man named Denning? A Yes, I knew him that time for about a month.

Q What was his business? A He was a radio specialist. That was what he claimed.

Q Did he ever give you a card of his? A Yes. He gave me a card.

40 Q At that time did he occupy a couple of rooms in the attic of your house? A Yes, I had two rooms there which I didn't use for myself, and he occupied them.

Samuel Rosen, direct.

Q For how long before this trouble had he been there? A Well, I think it was about a month or six weeks before.

Q Did he rent these two rooms? A Yes, sir.

Q Now, did he ever have occasion to come down to your apartment while he wasn't there in the house? A Yes. Usually he used to come to use the telephone or fix my radio one time. 10

Q Did your wife ever wear this jewelry? A Yes, many a times.

Q Did he ever give you his card? You said he did. A He did, yes.

Q Is this the card he gave you? A Yes, sir; that is the card.

Q In what connection did he give you this card? A At the time he paid the rent and he was short five dollars, so he promised. He marked on this card, on the other side. He promised me to pay me five dollars on a certain date. 20

Q How long did this man remain at the house? A He was there for about five months, I think five or six months.

Q And then he left? A Then he left.

Q After he left did you get any checks, returned checks from the West Hudson Trust Company? 30

Objected to as immaterial.

The Court: Returned checks?

Mr. Van Blarcom: Yes.

The Court: His returned checks, you mean. The question may be answered.

A Yes, I got returned checks. 40

Samuel Rosen, direct.

Q Did you get any checks purporting to be signed by you made out to the order of H. Denning? A Yes, I got those checks.

Q Were those checks signed by you? A No, not all of them.

10 Q Were the ones made out by Mr. Denning signed by you? A Yes, I never give him any checks.

Q I show you these three checks. Look at these and see if you signed those checks? A No, sir; no, sir.

Q Did you ever make out checks to the order of H. Denning? A I never did.

Q Did you ever know anybody named Denning except this Denning that lived at your house for a short time? A No, I did not.

20 Q After you had these checks returned to you by your bank, did you then renew this investigation? I mean, did you go to the police again and tell them about these checks? A Yes. I went to the Police Headquarters and I told them about it, and the second time he also got away with my watch and chain.

Q You lost your watch and chain when? A At the time when he forged these checks. When he got the checks out of my house he got away with the watch and chain.

30 Q You don't actually know whether he got these checks at the time in your house or not, do you? A Well, he must have.

Objected to.

The Court: That will be stricken out.

Q Did you have checks that looked like this in your house? A Yes.

40 Q About when was it that your watch and chain disappeared? A That is the time I dis-

Samuel Rosen, direct.

covered these here checks. I went to look for it because I had it locked in the drawer and I didn't find it. I suspected the man.

Q Had he left your house at the time you discovered that the watch and chain were gone?

A He was gone.

10

Mr. Van Blarcom: I offer these checks in evidence, your Honor.

The Court: They will be received.

(Three checks referred to are received in evidence and madked Exhibit P. 7.)

Q And in your drawer of your bureau, and so forth, around the house, were there any cancelled checks bearing your genuine signature?

A Yes, sir. There was always cancelled checks in the house.

20

Mr. Van Blarcom: These checks, Gentlemen of the Jury, are dated respectively August 10, 1926 and the 26th and the 27th of August, 1926, for the sums of \$109, \$22, and \$120, all made out to H. Denning, purporting to be signed by Mr. Rosen here and bearing Mr. Denning's indorsement.

30

By Mr. Van Blarcom.

Q After you received these checks from your bank, the West Hudson Trust Company, were they subsequently reccredited to your account by them? A Yes. A couple of months later they were credited to my account, yes, sir.

Q In other words, the bank gave you the money back that they had paid out? A Yes, sir.

40

Samuel Rosen, cross.

Q Have you seen Denning since that time?

A No, I did not.

Q Have you tried to find him? A Tried to look for him. I was over his father-in-law's house a couple of times.

10 Q You looked for him there? A I looked for him there.

Q You cannot tell what was said unless counsel wants it in. I guess he does not. Anyway, you could not find him there? A No.

Q Where did his father-in-law live? A 110 Mapes avenue.

Q Did you tell the police that? Did you give them that information? A Yes.

20 Q Did you sign this proof of loss that has been offered in evidence? Is that your signature on that? A Yes, sir.

Q And the goods as described in the proof of loss are what you lost? A Yes.

Q Look at it and see. A There is one item not correct, two hundred fifty or something like that.

Q In other words, the wrist watch is in here as two hundred sixty and as a matter of fact it turns out that only \$250 was paid for it? A That is right.

30 Q How many trips did the police make to your house after you called them that night? A A few times. I don't remember exactly how many times.

Cross examination by Mr. Kernan.

Q Mr. Rosen, you say that the rings were bought at the time of your marriage? A Yes.

40 Q And the brooch was bought about ten years ago? A Not exactly ten; about eight or nine, something like that.

Samuel Rosen, cross.

Q And subsequent to the time you purchased them you gave them to your wife as a gift, did you? A Yes, sir.

Q Then at the time this loss occurred you weren't the actual owner? A I owned them.

Q You gave them to your wife as a present? **10**
A Yes.

Q And they belonged to your wife? A I don't know how you call them.

Mr. Van Blarcom: That is covered by the policy if you want to make any point of it. Excuse me for interrupting. If you read the policy you will find the wife is covered as well as the plaintiff.

Mr. Kernan: I would like to continue my examination. I had something else in mind. **20**

The Court: The policy reads the insured and any member of the family.

Mr. Van Blarcom: Yes, sir.

Mr. Kernan: I had in mind, however, that in a case of this kind it might be necessary to join as a party plaintiff the person who actually sustained the loss. I think the policy does cover the member of the family, but if it be shown that Mr. Rosen sustained no loss at all and the loss was sustained by his wife, I think she is the proper party. **30**

The Court: You may pursue your inquiry along that line.

By Mr. Kernan.

Q So that at the time these goods were lost or disappeared they actually belonged to your **40**

Samuel Rosen, cross.

wife, didn't they? A Well, I don't know what you call it, but I gave it to my wife; yes, sir.

Q You gave them to her as a gift? A Yes, sir.

Q Now, what kind of building is this, Mr. Rosen, or was it? A Frame building.

10 Q Who lived on the first floor, did you say?

A My brother-in-law lived on the first floor.

Q Mr. Hantman? A Mr. Leo Hantman.

Q You occupied the second floor? A Yes.

Q How many rooms on the second floor? A Six rooms.

Q You say on this particular night that your son slept with you? A Yes, sir.

Q And this door which leads from the kitchen to the lower portion of the building—that had
20 been left open, had it? A Well, I am not sure whether I left it open.

Q Did you lock it? A I usually lock it.

Q You weren't in the habit of locking that particular door, were you, Mr. Rosen? A Yes, always.

Q Do you know whether or not you locked it on this particular night? A I am not sure I think I did.

Q How long had you been putting these jewels
30 under your pillow? A You see, my wife always used to take care of them.

Q How long had you been putting them under the pillow? A Since she was away in the hospital.

Q How long was that? A About ten days.

Q Where did you put these jewels during the day time? A I had it in a closet, a china closet.

Q Was that closet locked? A Locked.

40 Q Locked during the day time? A Yes.

Samuel Rosen, cross.

Q And you carried the key around with you, didn't you? A The key, yes, sir.

Q You say you purchased these articles from a man by the name of Hurwitz? A Hurwitz.

Q And he had his business in New York, did he? A Yes, sir.

Q And you paid for the wrist watch by check, didn't you? A By check; yes, sir. 10

Q You said you purchased the wrist watch five years ago? A I think about five years ago.

Q The check which has been offered in evidence, which I take it is dated 1921, that was in part payment of the wrist watch?

The Court: Dated in 1925.

Q 1925; all right. But that was in part payment of the wrist watch? A No. That check was the full amount paid. 20

Q Full amount paid? A Yes.

Q The brooch—that was paid on installments, wasn't it? A Yes.

Q And bought from the same people or same person? A Same person, yes.

Q How did you pay for that? A Well, I paid it in parts. I think it was paid by checks. 30

Q You don't have those checks, of course? A No. They are all lost.

By Mr. Van Blarcom.

Q This one check—did that relate to the brooch? A One check, yes.

By Mr. Kernan.

Q And that one check was in part payment? A Part payment, right. 40

Samuel Rosen, cross.

Q And you don't have the others. Now, you say your son was sleeping with you on this particular night? A Yes, sir.

Q You got up at what time in the morning?

A Six o'clock in the morning.

10 Q What time did the boy get up? A He gets up later. He did get up. Well, he was six that time and he was in bed during the day too.

Q Your wife, as you said, had been in the hospital for two weeks, is that right? A I think yes.

Q And she was undergoing an operation in the hospital? A Operation, yes.

20 Q What was your bill for that operation? A Well, I don't remember. I paid the doctor two hundred dollars, that made the operation.

Q What did the whole thing cost you? A The hospital must have cost me also about two hundred dollars, something like that.

Q And your children had all been sick at that time, you said? A The children were sick, yes, sir.

Q How many other children did you have at that time, Mr. Rosen? A I had three children.

30 Q Where were the other children sleeping? A They were sleeping in the next room.

Q In what business were you engaged at that particular time? A Same line of business, laundry business.

Q Lumber? A No, not lumber, laundry.

Q And that business was in New York? A Yes.

40 Q The door which was open, the door leading from the kitchen to the lower floor—that door would also lead to the upper floor, would it?

A No.

Samuel Rosen, cross.

Q And just how would one get to the attic from the second floor? From a stairway? A Yes, from the outside stairway.

Q You got home that night what time? A Well, I was home that night all the time.

Q What time did you get home? A I was home. 10

Q You were home that evening? A I was home that evening.

Q You went to bed about twelve? A About eleven o'clock, something like that.

Q Did you see Mr. Denning that night? A No, I don't think so.

Q You don't know whether he was even upstairs at the time you went to bed, do you? A I don't know.

Q You don't know whether or not he came home at all that night? A Whether he came home? 20

Q Yes. A Oh, he used to come and sleep there.

Q Do you know whether or not he came there that particular night? A No, I don't know.

By the Court.

Q If I understand you, he wasn't living at that time upstairs. A Oh, yes; that is the time he was there. 30

Q He was sleeping upstairs at the time this jewelry disappeared? A Yes, sir.

By Mr. Kernan.

Q How often would Mr. Denning come down to your apartment, Mr. Rosen? A Well, sometimes every day, and sometimes—Usually was with the telephone. He always used to come 40

Samuel Rosen, cross.

into telephone, but he usually used the telephone.

Q And he repaired that radio, didn't he, at different times? A Yes.

By the Court.

10

Q How long after this jewelry disappeared did he continue to live in the attic? A For four or five months.

Q After? A After the jewelry disappeared.

By Mr. Kernan.

Q When did he move into that place, Mr. Rosen? A He moved in on the first of February, something like that.

20

Q Did you ever speak to Mr. Denning between the time the articles are alleged to have been taken and the time when he left? A Yes, sure.

Q What did you say to him at that time? A He just met me a few times and he paid me rent. He didn't say anything.

Q But you didn't speak to him about this during that time, did you? A No.

30

Q You didn't say a word to him about this alleged burglary from the time that it occurred, the time he moved out, which was five or six months after it occurred? A No, I didn't speak to him.

Q Never said a word to him about it, although you saw him a number of times? A I saw him a couple of times.

40

Q Now, when you got up in the morning did you notice anything about things having been thrown around or strewn around the room? A No, it wasn't.

Samuel Rosen, cross.

Q There was nothing upset in the room? A No, it wasn't.

Q And there was nothing else missing in the room, was there? A No, nothing else.

Q Now this door which leads from the kitchen to the lower floor—that would lead right out to the street, wouldn't it? A Right out to the street; yes, sir. 10

Q Now, the jewelry disappeared on what date, did you say? A On the first of March.

By the Court.

Q I think you have already answered this question, but I am uncertain about it, whether or not the door of the attic opened into your apartments. A That door from the attic? 20

Q Yes. A Well, there was a door from the front in the hallway that came into my apartment too.

Q No, but did the door from the attic open directly into your apartment, or did it open into the hall outside? A To the hall outside.

By Mr. Kernan.

Q Mr. Rosen, do you recall Mr. Donahue of the Royal Indemnity Company going up to see you about this matter? A Yes. 30

Q Did you at that time speak to him about a Mr. Denning having been living up in the attic or sleeping there? A I don't remember whether I told him about it. I don't remember that.

Q Did you at that time suspect Mr. Denning? A No, I didn't suspect him at all. He looked to be a nice man, and I didn't have no suspicion.

Q How many times did you see Mr. Donahue up there? A One time I think. 40

Samuel Rosen, cross.

Q You gave him a statement, didn't you?

A Yes, sir.

Q And you didn't sign it? A I did sign it.

Q You signed the statement? A I think I did; yes, sir.

10 Q These goods of course as you say belonged to your wife. Now, you of course yourself didn't use or wear any of this jewelry, did you?

A No, sir.

Q And where had you kept this jewelry before your wife went to the hospital, at night? A She used to take care of it.

20 Q Where would she leave it? A Well, she must keep in a place I didn't know, in a closet, and the rings she wore. You see the two rings she always used to wear, and the wrist watch and the brooch she used to put on when she used to go out.

By the Court.

Q Do you know where she kept them at night, this jewelry? I say, do you know? A No; I am not sure.

By Mr. Kernan.

30 Q Mr. Rosen, of course you say you left this jewelry in the china closet during the day time.

A Yes, sir.

Q Why didn't you leave it there at night?

A Well, I was kind of afraid; I don't know.

Q You had a lock to the china closet, didn't you? A It was with a key, yes.

40 Q And you knew the door leading into that particular room and from the kitchen to the lower floor was unlocked on that night? A I wasn't sure.

Samuel Rosen, cross.

Q You don't remember locking it, do you? A You see during the night I went down a couple of times to see the fire because I had to keep the apartment warm on account of the sick children, so it might be that I forgot to lock it during the night.

10

By the Court.

Q Were heating arrangements in the cellar?

A Yes, heating arrangements in the cellar.

By Mr. Kernan.

Q Mr. Denning was in the radio business, was he not? A He wasn't in the business. He was only a mechanic repairing. He works.

Q He worked at it? A He worked at it.

20

Q He repaired your radio for you a number of times, didn't he? A Yes.

Q And he submitted bills to you for the repair of that radio? A No. He only repaired it once and I paid him cash. That was fifteen dollars I remember, and I paid him cash.

Q He only repaired it once? A That is all.

Q I thought you said that he repaired it a number of times? A No, no. I didn't. He repaired it once, and I paid him fifteen dollars in cash.

30

Q Did you speak to your son about this thing in the morning, Mr. Rosen? A When the police came in in the house in the morning my son woke up. He got frightened right away; so they quieted him down, and they asked me if he did notice anybody at night, whether they asked him or I said it myself, if he seen somebody in the rooms, but he was afraid to say

40

Samuel Rosen, cross.

anything. Of course I didn't pay much attention to it.

Q What time do you say you got up? At six o'clock? A At six o'clock.

10 Q What time did the police get there? A About quarter after six, half past six, something like that.

Q Upon discovering the disappearance of your jewelry, you didn't waken your son immediately, did you? A No. It was only a kid. I wouldn't wake him up.

Q You put these jewels under your pillow that night, did you not? A Yes.

Q During the night you didn't hear anyone in that room, did you? A No, I didn't.

20 Q Mr. Rosen, were you at the time of this occurrence suffering from a malady of any kind? A What?

Q Were you sick at the time of this occurrence? A No, I wasn't. I wasn't sick that time, no, sir.

Q You weren't doctoring at that time, were you? A No, sir.

Q Had you been before that time? A No, sir.

30 Q When was the first time you saw Mr. Denning after this occurrence took place? A When was the first time?

Q Yes. A I think it was the same week. He said hello to me and that is all that happened. I passed by him.

40 Q Did you mention to the police at that time that Mr. Denning had been sleeping in the attic? A I don't remember whether I did or not, whether they asked me about it, because I didn't suspect him at all.

Samuel Rosen, cross.

Q Did you look for Mr. Denning on that particular morning when you discovered the jewelry gone as you say? A No, I didn't look, no.

Q He never even entered your head, did he? A No, absolutely not; didn't suspect him.

Q Now, when was it that you first received notice of these checks signed by you? A Well, I was away for Labor Day for a couple of days for the week-end to the shore, and when I got back on a Sunday, or whether it was a Monday, on Labor Day, I got into a delicatessen store or a grocery there on the block to buy something and the woman in the store told me, she says, "Mr. Rosen, is that fellow living in your house?"

Q Just a minute now. That was around September 30th, wasn't it? A No. The third; that was around Labor Day. She told me that the police—

Q Just a minute now. What day did Mr. Denning leave your place? A He left the place I think, I don't know, some time in August. I have been looking for him already in August.

Q He left there in August? A Yes.

Q The same year? A The same year.

Q You say that you phoned the police and they got there about fifteen minutes after, is that right? A About half an hour.

Q Did they inquire as to who the tenants were in the other parts of the house? A I think they did.

Q Did you mention Mr. Denning's name? A Well, I don't remember that exactly; I don't remember.

Q You don't know whether the police saw him from the time this thing occurred to the time he moved out? A The police saw him?

Samuel Rosen, re-direct.

Q That is, questioned him on this particular thing. A I don't think so.

Re-direct examination by Mr. Van Blarcom.

10 Q I understand that anybody that had a room in this attic could open his door and go where? A Open my door and he goes into my apartment.

Q I know, but he could come out of his apartment upstairs, out of these rooms in the attic, and where would he be then as he opened his door and stepped out? A If he opens his door?

Q Yes. A He goes into the hallway.

Q And that hallway leads downstairs? A That hallway leads downstairs.

20 Q And as it goes downstairs, does it pass your kitchen door? A No. He don't have to pass the kitchen door.

Q He passed some door of your place? A He passes the front door leading to the downstairs.

Q And then how would anybody living in the attic get into your kitchen door? A He didn't use the kitchen door.

30 Q If anybody were living in your attic, could they get into your kitchen door by going downstairs and coming in the back way? A That is the way he could come in the front.

Q He could come in the front door of your place? A Yes.

Q If he came in the front door of your place, then your doors are open, aren't they? A Yes.

40 Q And if the kitchen door that leads into, do you say a hall—is that a private hall or a hall for all the tenants? A Just for myself and the tenant on the lower floor.

Samuel Rosen, re-direct.

Q It doesn't connect with the attic then? A No.

Q You say you have to go down the cellar and come up the back way in order to get in your kitchen door? A Yes.

Q That is, if you don't come in the front way? A That is right. 10

Q Counsel on the other side referred to a Mr. Donahue that came up to see you. I presume that he was from the Royal Indemnity Company. When did he come up to see you? A A couple of days after this thing happened.

Q At that time you say you didn't suspect Denning at all? A No, I didn't suspect him until I got the forged checks. That is the time I suspected him.

Q Did you get these forged checks after Labor Day? A I got it, yes, when it was returned from the bank just after Labor Day. 20

Q You got them with the monthly statements you received from the bank after you came home from the shore, on Labor Day? A Yes.

Q How long after that did you tell the police about the forgeries, if you told them at all? A I think it was the same week I got in touch with the police. 30

Mr. Van Blarcom: I offer in evidence this memorandum or card which purports to be signed by Denning, your Honor.

Mr. Kernan: I have no objection.

The Court: It will be received.

(The same is received in evidence and marked Exhibit P. 8.)

Mr. Van Blarcom: This is a card. On the front of it it says, "Arthur 'Doc' Den- 40

Samuel Rosen, re-direct.

ning." "Doc" is in quotation marks. "Radio expert, phone, Terrace 3028, 105 Hobson street, Newark, N. J.," and on the back is, "I promise to pay on January 23d, 1926, five dollars to Mr. Rosen for balance of rent." Signed Arthur Denning.

10

By the Court.

Q I understand you to say, Mr. Rosen, that he moved in on the first of February? A Yes, sir.

Q This appears to be a promise to pay you on January, 1926, five dollars. A He paid the rent in advance, you see. He only got the apartment in January and he only moved in the first of February.

20

Q And he did afterward pay that five dollars? A He paid it.

By Mr. Van Blarcom.

Q Did Denning ever come down to your apartment after this occurred, as he did before? A I think he did.

Q Wasn't anything said or this thing mentioned in any general talk? A No.

30

Q Why was that? A He mentioned once, he says, "I understand that you was robbed." That is the only few words he mentioned to me.

Q What did you say? A I said, "Yes, sir. It happened."

Q That is all that you remember of any conversation about the robbery? A That is all I remember.

40

Samuel Rosen, re-cross.

Re-cross examination by Mr. Kernan.

Q Mr. Rosen, are you familiar with Mr. Denning's signature? A Well, I did see it on the card.

Q Are you familiar with his handwriting? A To a certain extent; not very much, because **10**
when I see when he gave me the card.

Q That purports to be Mr. Denning's signature, doesn't it? A Yes, he made out that card.

Q And that "Mr. Rosen" there is your name, isn't it? A That is my name; yes, sir.

Q Whose handwriting is that, if you know? A That is not my handwriting, no.

Q Is it Denning's handwriting? A I think it is. **20**

Q I want you to look at the signature on the checks which are in evidence and look at the signatures of Mr. Denning's there, and I ask you whether or not they are similar? A No. It is not.

Q They are not similar? A This signature on the check was forged by him. That is my name. He got it, I suppose.

Q That is Mr. Denning's writing there? A This here, yes. **30**

By the Court.

Q You saw him write that, didn't you? A This card? Yes, I did.

By Mr. Kernan.

Q That you say is also Mr. Denning's handwriting? A It must be his.

Q Do you know whether or not it is, as a matter of fact? A According to my investigation, **40**

Samuel Rosen, re-cross.

absolutely, the investigation that the American Surety Company made.

Q Do you know whether or not that was written by Denning? A This check was forged by Denning.

10 Q How do you know that? Did you see him sign it? A I didn't see him sign it.

Q How do you know? A I will bring as a witness—

Q How do you of your own knowledge that he signed this thing? A He was the one that forged these checks. He indorsed these checks and I never gave him any checks.

Q Did you see him sign that check? A I didn't. If I would have seen him sign it I would break his head.

20 Q So that you don't know of your knowledge whether or not Denning signed that, do you? A I didn't see him sign it. I didn't see him sign it, but I know that he forged these checks.

Q Are you familiar with his handwriting? A I am familiar with it according to the card.

Q Does the signature on the card appear the same as the signature on that check?

30 The Court: He has already said it does not.

A It does not.

Mr. Van Blarcom: When you speak of the signature on the card, you are speaking of Denning, aren't you, Mr. Kernan?

Mr. Kernan: Oh, yes.

40 Q Now, Mr. Rosen, I show you a proof of loss which has not been signed and ask you

Samuel Rosen, re-cross.

whether or not Mr. Donahue ever showed you that proof of loss.

Mr. Van Blarcom: It has not been signed by him.

Mr. Kernan: It has not been signed by him. The question is whether or not he ever saw it. 10

A I don't remember if I did or not. I didn't sign it.

Q Do you remember Mr. Donahue asking you to sign this proof of loss? A I think he did ask me to sign a proof of loss and I signed it.

Q Did you sign it? A I didn't sign this one. I signed some of them. I signed one.

Q The one he asked you to sign the day he went up there to interview you on this case, he tried to have you sign or allow you to sign a proof of loss, didn't he? A I remember that I signed. I don't remember whether exactly that same date or not. 20

Q Do you remember Mr. Donahue asking you to sign a proof of loss? A I think he did.

Q Do you remember refusing to sign this proof of loss? A I refused.

Q Yes. A Never did. I had no business to refuse. 30

Mr. Van Blarcom: What is the date of this paper that you have been talking about, this proof of loss?

Mr. Kernan: March appears on it; the third day of March.

William C. Vaill, direct—cross.

WILLIAM C. VAILL, sworn in behalf of the plaintiff.

Direct examination by Mr. Van Blarcom.

10 Q Where do you live, Mr. Vaill? A Irvingto, New Jersey.

Q You are connected with the West Hudson Trust Company? A Yes.

Q In what capacity? A Assistant secretary.

Q How long have you worked there? A Nine years.

Q Do you know Mr. Rosen, Samuel Rosen, as a depositor in your bank? A Yes, sir.

20 Q How long has he had an account there?
A A number of years. I can't tell the exact number.

Q Has he had one there as long as you have been there? A Yes.

Q I show you three checks which have been marked Exhibit P. 7, and ask you if they were checks drawn on your bank and cashed by your bank, paid by your bank? A Yes, sir; they were.

30 Q And in the course of business would they be charged against Mr. Samuel Rosen's account?
A They would.

Q Subsequent to their being charged to Mr. Rosen's account, were they recredited? A They were, yes.

Q On account of what? A That they were forged.

Cross examination by Mr Kernan.

40 Q Mr. Vaill, what did you say your position at that bank was? A Assistant secretary.

Jacob Strahl, direct.

Q Just what duties do you have there? A I am looking after collateral loans mostly, demand collateral loans.

Q Are you in contact or familiar with the checks which are deposited daily? A A great many of them, yes, sir.

Q Not all of them, however? A No. 10

Q You don't know, Mr. Vaill, of your own knowledge, whether or not those checks were forged, do you? A Not of my own knowledge, no, sir.

Re-direct examination by Mr. Van Blarcom.

Q You mean you didn't see Denning write the name on? A No, sir.

Q Who sent these checks to you recently, if any one? A Recently? 20

Q Yes, yesterday or the day before? A We received them from the American Surety Company.

Q That is a bonding company in New York or Newark? A Yes.

Q Was that the bonding company that bonded your bank against loss or forgeries? A Yes.

Q And you in return had been reimbursed by the American Surety Company for this forgery? That is correct. 30

JACOB STRAHL, sworn in behalf of the plaintiff.

Direct examination by Mr. Van Blarcom.

Q Where do you live, Mr. Strahl? A 1549 St. Marks avenue, Brooklyn, New York. 40

Jacob Strahl, direct.

Q What is your business? A Insurance.

Q How long have you been in that business?

A Eleven years.

Q Were you the agent for Mr. Samuel Rosen in connection with the burglary policy he had with the Royal Indemnity Company? A Yes.

10 Q Did you attend to writing that policy for him? A I did.

Q In the month of March, early in March, 1926, was there reported to you a loss of his at his house in Newark? A There was.

Q In pursuance of that, you did what? A Reported it to the insurance company.

Q After that did you have correspondence back and forth with the Royal Indemnity Company? A I did.

20 Q Did you file the proof of loss? A I did.

Q Look at Exhibit P. 6 and see if that is the letter you sent to the Royal Indemnity Company and also the proof of loss which was enclosed therein? A It is.

By the Court.

30 Q I observe by that letter, as Mr. Van Blarcom read that, that there seemed to be some kind of promise on your part to furnish additional information. Was that ever furnished by you? A I believe it was.

Mr. Van Blarcom: I will come to that in a moment.

By Mr. Van Blarcom.

Q Then did you receive a letter marked Exhibit P. 5 from the Royal? A I did.

40 Q And I notice in one sentence in the letter it says "We will thank you to arrange with the

Jacob Strahl, direct.

insured to secure bills verifying the place of purchase and the original cost of the articles alleged to have been stolen." That is correct?

A It is.

Q As a matter of fact, doesn't the proof of loss give that information, the address of the person they were purchased from and the amount paid? A It does.

10

Q But to comply with their request did you on March 17th, write a letter to them? A I did.

Mr. Van Blarcom: Have you got that letter, Mr. Kernan?

Mr. Kernan: What date?

Mr. Van Blarcom: March 17th, purporting to enclosed bills.

20

Q There is a letter from the Royal. Did you receive that? A I sent that.

Q That is what you sent to the Royal. That is dated March 17th? A Yes. I enclosed in there the bills.

Mr. Van Blarcom: I will offer that in evidence.

30

(The same is received in evidence and marked Exhibit P. 9.)

Mr. Van Blarcom: I will read this, may it please your Honor. This is addressed to the Royal Indemnity Company, Mr. J. B. Franklin. It states claim number and the number of the policy, and it then goes on: "Enclosed herewith please find bills showing the purchases of the jewelry in the above-captioned claim."

40

Jacob Strahl, direct.

Q And with this letter was there any enclosure? A There was.

Q What was the enclosure? A The bills from the jewelers showing the purchases.

Q Do you remember the name of the jewelers? A I think it was something like Hurwitz.

10 Q You don't know the people personally? A Never met them.

Q Do you remember how you got the bills? A I think I got them through Mr. Rosen, if I am not mistaken.

Q Look at this sheet and see if you recall whether or not that is what you sent to the Royal or whether it was something else. A I think that is what I sent to the Royal. This is a copy of it.

20 Mr. Van Blarcom: I offer in evidence the letter of March 7th, from Mr. Strahl, and also a copy of the enclosure which I understand counsel said is not in his file.

Mr. Kernan: I do not have the bill in the file. I know that a notice to produce was served upon us. It may be marked in evidence.

30 Mr. Van Blarcom: That will accompany this Exhibit P. 9.

(The same is received in evidence and marked Exhibit P. 10.)

By Mr. Van Blarcom.

Q Look at Exhibit P. 5 and see if that is the letter you received from the indemnity company?

A Yes, I did.

40 Q How many years have you been Mr. Rosen's broker in connection with insurance of one kind and another? A Oh, about eight years.

Jacob Strahl, cross.

Q What? A About eight years, I guess.

Q Is there anything else that the Royal Indemnity Company in connection with this loss has asked you to present to them or assist them? A Well, I have complied with every request they have made.

10

Cross examination by Mr. Kernan.

Q Mr. Strahl, you are the sub-broker in this case, aren't you? Wasn't there a Mr. Forman?

A He is the general agent with the company.

Q Just what connection did you have with him, if any? A It was placed through his office. He has got the general agency for the company. Policies I think were signed by Mr. Forman.

20

Q Did you receive a notice, Mr. Strahl, from the Royal Indemnity Company, either from the Royal Indemnity Company or through Mr. Forman, requesting that the policy of insurance covering these particular premises and having as its insured Mr. Rosen, be cancelled?

Mr. Van Blarcom: I object. It is admitted it was in force at that time. What difference does it make whether after that it was cancelled?

30

Mr. Kernan: I think that counsel has opened the door to negotiations between the Royal Indemnity Company and the broker, and I think it is proper.

The Court: I will sustain the objection.

40

Helen Rosen, direct.

HELEN ROSEN, sworn in behalf of the plaintiff.

Direct examination by Mr. Van Blarcom.

10 Q Where do you live, Mrs. Rosen? A 152
Sheerer avenue.

Q That is Sheerer avenue? A Yes.

Q In Newark, New Jersey? A Yes.

Q You are the wife of the plaintiff, are you not? A Yes.

Q How long have you been married? A Fourteen years.

Q You have four children? A Yes.

Q Now, did you ever have any jewelry? A What?

20 Q Did you ever have any jewelry? Did you ever have any diamonds or watch or anything? A Sure, I have diamonds.

Q Now, did you have a couple of rings? A I have two rings and a bar pin and a wrist watch.

Q When did you get the rings? A Well, one I think I got when I was engaged, and then I got the other one, too.

30 Q Then you got the other one after you were engaged? A Yes.

Q After you were engaged? A Yes, something a year or so.

Q Who gave them to you? A My husband.

Q Did he give you anything else, any other piece of jewelry? A A pin and a wrist watch.

Q What do you mean by a pin? Will you tell the jury what that pin looked like? A It was a bar pin.

40 Q How about the pin? A It was four diamonds, big ones, and thirty-five small ones.

Helen Rosen, direct.

Q Four large diamonds, and thirty-five small ones? A Thirty-five small ones.

Q Did your husband give you anything else? A A wrist watch and two rings and the pin.

Q Do you remember being in the hospital in 1926? That is about three years ago? A About three years ago. 10

Q What hospital was that? A New York Hospital.

Q How long were you there? A I was there about ten days, I think.

Q When you left to go to the hospital, did you take your jewelry with you? A Oh, no. I left my husband the jewelry.

Q What did you leave with your husband? A Two rings and the bar pin and the wrist watch.

Q When you speak of the pin, do you mean what they call a brooch? A A brooch; a brooch pin, yes. 20

Q Have you ever seen that jewelry since? A Well, I did not.

Q You have not? A No.

Q When did you learn that something happened to the jewelry? A Well, a couple of weeks later. I asked my husband where is the jewelry, so he didn't know what to tell me. He was afraid to tell me because I was very sick that time. 30

Q Where were you when you asked your husband for the jewelry? A In the dining room. We had dinner.

Q How long had you been back from the hospital then? A Somewheres about two weeks.

Q Did you finally learn that the jewelry was gone? A Yes. Then my husband told me.

Q He told you what had happened? A Yes.

Q And you haven't seen the jewelry since? A No. 40

Helen Rosen, direct.

Q Now, was there a man named Denning who lived in the attic of your house there for a short period? A Yes. He used to come to call up some time.

10 Q No. Did he live in the attic for a short period? A Oh, he was in the attic for a couple of months I think.

Q Do you know whether he was there when you left to go to the hospital? A In my house?

Q Yes. A You mean upstairs?

Q Was he in the attic when you went to the hospital? A Well, I don't know. I didn't see if he was there or not.

20 Q I don't mean the exact date, but had he been living in the attic? A Yes.

Q When you came back was he still in the attic? A Yes.

Q When you gave the jewelry to your husband, before you went to the hospital, where had you kept it before that time? A Before I kept it in a closet.

30 Q Did you wear any of the jewelry during the day? A Well, I used to wear two rings and the bar brooch and the wrist watch when I used to go out, so I used to put them on.

Q You wore your two rings regularly? A Not always, but I used to wear them.

Q You sometimes wore them around the house, you mean? A Yes.

Q When you went out you put on the brooch and your wrist watch also? A Yes.

40 Q Did this man Denning, who lived in the attic, did he ever have occasion to come down in your rooms? A Yes, he was a couple of times.

Helen Rosen, cross.

Q What did he do down there? A He used to pay rent some time to me.

Q Did he ever do anything about the radio?

A Yes. He fixed once the radio.

Q Anything else? Did he have occasion to do anything else in the apartment? A He used to call up some times.

10

Q You mean he used the telephone? A Yes.

Q On these different occasions when you had been down there, did you ever have on any of your jewelry, do you remember, when he was down there? A I don't know.

Q You don't remember that? A No.

Cross examination by Mr. Kernan.

Q Mrs. Rosen, you say you gave your jewelry to your husband when you went to the hospital? 20

A Yes.

Q What did you tell your husband to do with it? A He should watch it.

Q You told him to put it in a safe deposit box? Did you tell him at that time to put it in a safe deposit box? A Well, I didn't tell him nothing, just I give it to him; that is all.

Q Mrs. Rosen, during the daytime, of course, you keep this jewelry in the china closet, wouldn't you? A No. I used to keep it in a different place. I used to keep it in a closet.

30

Q But you wouldn't wear it around the house, would you, while you were in the house having no intention of going out? A I used to wear just the ring, and these two things I used to wear when I used to go out.

Q You wear them when you go out? A Yes.

Q What did you wear when you went out?

A Just the bar pin and the wrist watch.

40

Helen Rosen, cross.

Q Outside of the two rings you generally kept the rest of the jewelry in some place of security, didn't you? A In a closet.

Q When Mr. Denning came down there, of course, the jewelry was secreted away somewhere, wasn't it? A Sure.

10 Q So that he never had any opportunity to see this jewelry, did he? A I don't know.

Q He wouldn't have if you had put it away. A I don't know if he saw it or not. I don't think so.

Q The jewelry was put in a closet or some other safe place? A I used to put it in the closet.

20 Q So that if he did come down there two or three times, he naturally wouldn't see it unless he went into the drawers of this closet? A What is that?

Q I say, if you kept the jewelry in your closet or secreted somewhere, some safe place in the house and Mr. Denning came down there, he naturally wouldn't see these articles unless he went into the drawers or into your closet? A I suppose he saw just the rings, but these two things I don't think so he saw them, because I used to put it away.

30 Q Mr. Denning never spoke to you about your jewelry, did he? A No.

Q You say Mr. Denning was down in your apartment a couple of times? A Yes. He used to come to call up sometimes.

Q That was before you went to the hospital? A Yes.

Q Did you see him down there after you came from the hospital? A After I came from the hospital?

40 Q Yes, after you came from the hospital. A In my house?

Irving Hantman, direct.

Q Yes, in your apartments. A I don't remember.

IRVING HANTMAN, sworn in behalf of the plaintiff.

10

Direct examination by Mr. Van Blarcom.

Q Where do you live? A 80 Sheppard avenue, East Orange.

Q How long have you lived in East Orange? A About eight years.

Q Do you own your own home? A Correct, yes.

Q Are you married? A Yes.

Q How many children have you? A Well, it is only one I have now, last week, sixteen years I am married. 20

By the Court.

Q This week? A Yes, sir. Unfortunately, I didn't have no children.

By Mr. Van Blarcom.

Q Your sister is Mr. Rosen's wife? A Correctly. 30

Q What is your business? A Well, fixing up houses. Well, once in a while, if I can get a customer.

Q How long have you been in business in East Orange? A About eight years.

Q Have you ever visited Mr. and Mrs. Rosen, and have they visited you? A Yes, sir.

Q There has been something said about some jewelry. Have you ever seen jewelry worn by Mrs. Rosen? A Yes. 40

Motion for a Non-suit.

Q What had you ever seen? A Two rings and a brooch and a wrist watch.

Q In how many years would you say she had those pieces? A Well, she have since she married the rings, and then a few years later he bought her another wrist watch and the brooch.

10 Q You saw her have the pieces on? A Correctly, yes.

Q When would you say you last saw her wear this jewelry? A I used to come three or four times.

Q When is the last time you saw her wear them? A Before she went to the hospital.

Q Have you seen that jewelry since she went to the hospital? A Never.

20 *Cross examination by Mr. Kernan.*

Q You say, Mr. Hantman, that you saw Mrs. Rosen wearing all this jewelry in the house? A Correctly; not always. She used to wear always the rings, but the brooch and the wrist watch she used to wear when she used to go out, a party or a wedding.

30 Q Did you ever see the rest of the jewelry on while she was in the house? A Yes, sir; sure.

Q She was wearing it all at different times? A Surely.

PLAINTIFF RESTS.

40 Mr. Kernan: I desire at this time to make an application on behalf of the defendant for a non-suit upon the ground that the evidence in behalf of the plaintiff shows that the plaintiff, Samuel Rosen, was not

Motion for a Non-suit.

the owner of the jewelry in question, but that the wife was the owner of it. There is no evidence here to show that Mr. Rosen has sustained the loss by reason of this occurrence even if we admitted it happened the way he says.

(Argument.)

10

The Court: There are two views in this case which I think would prevent a non-suit. One is that in answer to your question Mrs. Rosen said that she gave this jewelry to her husband when she went to the hospital. Now, assuming that she does not mean that she transferred the ownership to him and that she had the ownership in her as the one who received the gifts, she certainly constituted him the bailee of that property by giving it to him while she was away at the hospital. She was not at that time even an occupant of the house, which I think would give him such a right and title in that property at that time as to entitle him to bring suit on this policy; and the motion will therefore be denied and an exception may be noted.

20

I might add to that there appears nowhere in the pleadings to be any defense raised but that the property is the property of the plaintiff, Samuel Rosen, and paragraph three of the complaint states that said policy insured for all loss by burglary, larceny or theft the following property from the interior of the above-mentioned premises, committed by any person whose property is not covered under said policy, and then is described the particular property which ap-

30

40

Joseph M. Donahue, direct.

pears to be covered by this policy. So I think by reason of the condition of the pleadings and the proofs in the case the motion is to be denied.

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

10

Exception noted as ground of appeal.

JOSEPH M. DONAHUE, sworn in behalf of the defendant.

By the Court.

20 Q Your address? A 289 8th street, Jersey City.

Q And your business? A Claims examiner.

Q For what company? A The Globe Indemnity Company.

By Mr. Van Blarcom.

Q With what company? A The Globe Indemnity Company.

30 Q That is at the present time? A Yes.

By the Court.

Q Is that related in any way to the Royal Indemnity Company? A I do not believe there is any connection.

Q Were you with the Royal at that time? A I was employed by the Royal at the time of this case, at the time of this burglary.

40 Q In what capacity? A As investigator and adjuster.

Joseph M. Donahue, direct.

Direct examination by Mr. Kernan.

Q Mr. Donahue, you were employed by the Royal in March, 1926? A I was.

Q In what capacity? A Investigator and adjuster.

Q Do you know the plaintiff, Mr. Rosen, in this case? A I do. 10

Q Do you recall this incident which took place around March, 1926? A I do.

Q And you investigated that case, that matter, didn't you? A I did.

Q Did you go up to see Mr. Rosen after this thing occurred? A I did.

Q Did you see Mr. Rosen? A I did.

Q What did your investigation reveal?

Objected to. 20

Objection sustained.

Q Did you have a conversation with Mr. Rosen at that time? A I did.

By the Court.

Q Can you give us the time, Mr. Donahue? A I believe on March 3rd. I am not so sure of the date; a few days after this alleged occurrence. 30

By Mr. Kernan.

Q And you had a conversation with Mr. Rosen, you say? A Yes.

Q What was that conversation? A I questioned Mr. Rosen in connection with a loss he had reported to the Royal Indemnity Company by means of its agent. I asked him what was 40

Joseph M. Donahue, direct.

missing. He gave me a list of the articles that were missing. I then asked him when he last saw the jewelry. He said the previous night he had taken the jewelry from a locked closet in the kitchen and placed the jewelry together with the one hundred fifty dollars in cash under his pillow in his bed and went to sleep with his head on the pillow. He also stated he had a child of about six years of age sleeping in the same bed with him. He also said his wife at that time was in the hospital undergoing an operation. He further stated he had two other children sleeping in another room. He said the following morning he arose; I don't recall the time, six or seven A. M., and discovered his jewelry missing from under his pillow. I asked him if he notified the police authorities, which he said he did. And I asked him if the police had come to make an investigation, and he said they did. I asked him if he had found or the police had found any evidences of force into the premises. He said he did not, and he said the police authorities told him that they did not. I also asked him what else he found the following morning when he arose that might give rise to a burglary or theft or larceny. He stated that he found nothing missing, nothing disturbed, only the fact that his young child after getting out of bed had stated that he had listened or heard a noise in the night, that the child had told him that he had heard a noise in the night but had paid no attention to it and went to sleep again. I asked him if that was all that he had to say in connection with anybody coming into the apartment. He said that was all. I made an examination of the premises and found no evidence of force in the premises. I asked him who occupied

Joseph M. Donahue, direct.

the apartment. He stated he and his wife and his three children, and I asked him if he had any servants. He said he had a servant working, a young colored girl, perhaps nineteen or twenty. I have the name and address in the investigation report. And at the time the girl was in the apartment, and I questioned the girl, and she stated that she had been working for the assured for eleven months or twelve from nine to twelve each morning. I asked her if she had even seen any jewelry in the apartment.

10

By Mr. Van Blarcom.

Q Was Mr. Rosen there at the time? A Mr. Rosen was present when I examined the girl.

Q When you were asking the girl? A When I was questioning the girl Mr. Rosen was present.

20

Q All right. A And the girl was present when I was questioning Mr. Rosen.

Q Was Mr. Rosen there when you were talking to the colored girl?

Mr. Kernan: He said she was.

A I answered the question, yes.

30

Q All right, proceed. A Incidentally, I asked the girl if she had seen the jewelry in the house at any time. She said she never saw any jewelry in the house belonging to the assured. I asked her for her name and address and her connections, previous employment, and found that the girl was—

Mr. Van Blarcom: Wait a minute. I object to what he found.

40

Joseph M. Donahue, direct.

Mr. Kernan: I will bring that out in a minute.

By Mr. Kernan.

10 Q Are you through with your answer? A Yes.

Q Well, you say you did have the name and address of this colored girl? A Yes.

Q Did you try to locate her?

By Mr. Van Blarcom.

20 Q Wait a minute. Where was it? A I don't recall. The investigation was made three years ago, and I can't recall it. It is in the investigation report which I made at the time.

By the Court.

Q Which is here? A Which is in the file.

By Mr. Kernan.

Q And she gave you her address at that time, didn't she? A She did, yes.

30 Q Do you recall whether or not you went to that particular address? A I didn't go. They had another man for that purpose.

Mr. Van Blarcom: Wait a minute. I object to what anyone else did.

The Court: "I didn't go" will remain. From there on will be stricken out.

By Mr. Kernan.

40 Q Mr. Donahue, did Mrs. Rosen ever speak to you about a Mr. Denning living in the attic or sleeping in the attic? A No.

Joseph M. Donahue, cross.

Q How many times did you go up to see Mr. Rosen? A Once.

Q How long was that after the occurrence took place? A A few days.

Q I show you a proof of loss which is not signed but dated, and ask you whether you gave that to Mr. Rosen. A Yes. I filled this out and gave it to Mr. Rosen to sign. 10

Q What did he do? A He refused to sign it.

Q Did he say why? A He said he didn't know what he was signing and he didn't wish to sign it.

Q Did you explain it to him? A I explained to him what it was, that it was necessary to file a proof in order to prove a claim. 20

Q Did Mr. Rosen volunteer any information in this thing to you, Mr. Donahue? A No, he didn't. Mr. Rosen answered questions only when I asked him.

Cross examination by Mr. Van Blarcom.

Q When did you go there? A A few days after the burglary. I don't recall exactly.

Q What time of day did you go there? A Around noon, I believe. 30

Q Was that on a holiday or a Sunday? A No. I went on a weekday.

Q You went what? A On a weekday.

Q Who was in the house besides you and Mrs. Rosen that you saw? A A colored girl and I believe one little boy.

Q Mrs. Rosen wasn't there? A She wasn't there.

Q Where was the colored girl? A She was in the apartments doing cleaning. 40

Joseph M. Donahue, cross.

Q You didn't tell us all that Mr. Rosen said to her? A I told you that Mr. Rosen stated that he had a colored girl in his employ, this particular colored girl, for the last eleven or twelve years, as far as I know.

10 Q Years or months? A Eleven or twelve months, I am sorry, and as far as he knew he had no suspicions of the girl and had no reason to suspect her.

Q Did you investigate this girl at all to find out where she lived and how she lived and whether she was of good character or not? A That investigation was made—

Q Wait a minute. Did you investigate? A I did not investigate.

20 Q Was there an investigation made, if you know? A I didn't make it and I don't know whether there was one made.

Q Did you ever go to see if she lived at the address? Did you personally ever go to the address that she gave and verify her statement that she lived there? A No, I didn't go.

Q Did you ever call her name or address to the attention of the police? A I discussed it with the police. I did, yes.

30 Q You gave them her name and address? A They already had it.

Q Wait a minute. Did you give them her name and address? A I didn't give them the name and address, no.

Q Did you personally mention her to the police? A Yes.

Q And it seemed they already had her name and address? A Exactly.

40 Q Did Mr. Rosen say whether the girl stayed in the apartment at night or went home? A She slept home. Perhaps I am a little wrong on

Harry Morley, direct.

that. I think he stated that since his wife was in the hospital the girl had changed her hours from nine to twelve to nine to five. I don't recall whether he said she slept in or not.

Q If she changed her hours from nine to five, she certainly didn't stay there after five o'clock then? Is that what you assume? A Perhaps that is right. Perhaps she did sleep home. I am not certain on that point. 10

Q Did the list Mr. Rosen gave you correspond to the proof of loss that was finally filed? A I made no comparison.

Q Did you take a list of the pieces he said were taken? A I did.

Q But you haven't compared that with the proof of loss? A I made no comparison. 20

HARRY MORLEY, sworn in behalf of the defendant.

Direct examination by Mr. Kernan.

Q You are connected with the Newark Police Department, Mr. Morley? A Yes, sir.

Q Are you a detective? A Yes, sir. 30

Q Were you working in that capacity at the time of this incident, March, 1926? A Yes, sir.

Q Did you go to the home of Mr. Rosen after this report was made? A I did.

Q How long after? A The report was made at 5:40 on that morning and I got there about ten, quarter-past ten.

Q What did you find in the particular room when you got there? A In regard to what furniture? 40

Motion for Direction of a Verdict.

Q Yes, the room itself, the condition of the furniture, and so forth. Was it upset or not?

A There was nothing upset.

Q Did you speak to Mr. Rosen when you got there? A I did.

10 Q Did you look around over the premises after you arrived there, also? A Yes, sir.

Q Did Mr. Rosen speak to you about a Mr. Denning that lived there? A No, sir.

Q He never said anything to you about it? A Not at that time.

Q Did you speak to Mr. Rosen's son that morning? A No, sir.

Q Did Mr. Rosen tell you when you got there that his son had heard someone, that he heard someone around the house during the night? A
20 No, sir.

Q Did you meet Mr. Donahue of the Royal Indemnity Company there? A No, sir. Where do you mean? At the house?

Q Yes. A No, sir.

Q Did you meet him anywhere else? A I think I spoke to him a Police Headquarters.

Q Did he speak to you about the colored girl that was in the house? A No, sir.

30 Cross examination waived.

DEFENDANT RESTS.

Mr. Van Blarcom: I want to make a motion, your Honor, for a direction of a verdict in favor of the plaintiff upon the theory that there is nothing in this case to show that no robbery had been completed, that the jewelry was not lost by either theft or larceny or burglary. The direct proof is that the
40 jewelry was in existence the night before,

Motion for Direction of a Verdict.

and in the morning it was gone. There is ample proof to show by the letter of the Royal that it was worth more than can be recovered under this policy, and while of course there is nothing to be shown that any window was broken or any door was forced with a jimmy or some other instrument, or that the bureau drawers were crumpled, the direct proof is that there has been no direct attempt to deny that this man had this jewelry, and also that it is gone. It does not seem to me that the jury ought to pass on the subject, and therefore there should be a direction. 10

(Argument.)

The Court: I think I must deny the motion. I will deny the motion for a direction of a verdict. 20

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

Exception noted as ground of appeal.

Mr. Kernan sums up the case in behalf of the defendant.

Mr. Van-Blarcom sums up the case in behalf of the plaintiff.

(A recess is taken until Friday, February 8, 1929, at ten o'clock A. M.) 30

Charge to Jury.

SECOND DAY

Friday, February 8, 1929.

Met pursuant to adjournment.

10

CHARGE.

The Court charges the jury as follows:

DUNGAN, J.

Gentlemen, the proofs in this case establish the fact that on or about the 26th of June, 1924, the defendant company, the Royal Indemnity Company, issued its policy of burglary, theft and larceny insurance to the plaintiff in this case, Samuel Rosen, and in consideration of the premiums therein named and the statements contained in the schedule, the company agreed to indemnify the insured, who is Mr. Rosen, for all loss by burglary, larceny or theft of property from within the interior of the premises, committed by any person whose property is not covered hereunder.

This policy was for one year, but by subsequent renewals of the policy the policy was in force on the first day of March, 1926, so that if on that date Mr. Rosen lost any of the property which was covered by the policy by burglary, larceny or theft, he is entitled to be indemnified and paid the amount of such loss not exceeding the amount for which the company agreed to become liable. That amount is this: On jewelry, precious stones, watches, two thousand dollars; on money, securities, and stamp and coin collections to an amount not exceeding fifty dollars; and on other articles included in this section B a total of one thousand dollars. Section A,

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Charge to Jury.

which was for two thousand dollars and covered the jewelry, precious stones and watches, provided that the insurance granted by that section should not apply to the next section B, which relates to money, wearing apparel, and so forth. So in its application to this case the insurance upon the jewelry, precious stones and watches is limited to two thousand dollars. The insurance on money is limited to fifty dollars. So the largest amount which the plaintiff in this case may recover under this policy is \$2,050. I think that correctly states that.

10

Mr. Van Blarcom: That is correct, unless interest is to be considered, your Honor, from the time the suit was started.

The Court: I mean for the articles themselves.

20

Now, it is contended on behalf of the defendant that the evidence fails to show that the articles claimed to have been lost, which were one hundred fifty dollars in money, a lady's platinum watch, two platinum diamond rings and a platinum brooch, were lost by burglary, larceny or theft. I have copied definitions of these three words. Burglary consists in entering a house with intention to commit grand or petit larceny or any felony. Larceny is the felonious taking and carrying away of the personal property of another with intent to convert it to the use of the taker without the consent of the owner. The definition of theft is substantially the same as that of larceny, and is the fraudulent taking of personal property from another with intent to appropriate the same to the taker's own use.

30

Now, with these definitions in mind you will consider the evidence given by Mr. Rosen and his witnesses as to the circumstances under which

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Charge to Jury.

these articles disappeared. He says that this jewelry and the watch were articles which he in the course of their married life, and perhaps as to one engagement ring before their marriage, had given to his wife. His wife says she kept these articles of jewelry and the watch sometimes
10 upon her person and at other times in a locked closet.

At the time this happening occurred his wife was in the hospital for an operation for goiter and had been there for some days, and he was at home with his children. His wife says before she went to the hospital she gave him this jewelry and the watch—we will assume for safe-keeping, because it does not appear that she means by that that she intended to transfer to him the own-
20 ership in the goods if she was the owner of them. He says that after his wife had gone to the hospital and had transferred to him this jewelry he kept it in the daytime locked in a closet downstairs, but that at night he wrapped it up in a handkerchief; and on this night in question he wrapped up with it one hundred fifty dollars in money and put it under his pillow in the bed where he slept with his six-year-old son, the other children sleeping somewhere else. They
30 had four children. He says that in the morning when he arose this package was gone and that a kitchen door leading to the outside of the house was found standing open. He does not know, he says, whether he left that door open himself or not. He says he had to go down to the furnace during the night and admits that he himself may have left his door open, but except for that there appears to have been absolutely nothing disturbed in the house. He says there was nothing
40 disturbed which would indicate a breaking into

Charge to Jury.

the house, but in the morning these articles and the money were gone and have never since been returned to him.

As a possible explanation, or probable, as you may conclude, it appears that at this time there was a man living on the floor above, the attic floor, by the name of Denning. He had rented this attic floor from Mr. Rosen about a month before. He rented it in January and took possession on the first of February. He had been in Mr. Rosen's house a number of times for the purpose of paying rent, I think only one payment of rent before that time however, but after that he was in Mr. Rosen's house; and he continued to remain in that house for some months after this occurrence. In August of that year Mr. Rosen learned that three checks, which were forged checks, had been presented to his bank by a man named Denning, the renter's name being Albert Denning or Alfred Denning and the name on the checks being H. Denning, but Denning was the name.

There seems to be no question but that these were forged checks—that is, that the signature of Mr. Rosen was forged—the amount being something over \$350. I say there seems to be no doubt about it because the bank subsequently returned to Mr. Rosen's account in the bank the money which they had paid out from his account upon those checks, and the indemnity company which had indemnified the bank repaid the bank the amount of those checks and now have the checks in their possession.

These were on Mr. Rosen's own checks, which he says he kept in the house; and he says that there were in the house at that time a number of cancelled checks bearing his signature, so that

Charge to Jury.

whoever did make out these checks had the benefit, if he was in the house and knew where these cancelled checks were, of the genuine signature of Mr. Rosen from which to copy it upon the checks; and the person who obtained these checks, if you believe Mr. Rosen's testimony, must have obtained them from his apartment surreptitiously. It is suggested that probably this man Denning, who was the renter of the premises above and who had been in the premises, knew something about it, and that he might have seen the jewelry there, particularly that portion of it which was worn by Mrs. Rosen, and took this jewelry.

Now, the plaintiff, as he was obliged to do under his policy, notified the police immediately. The detective who was there said the notice came into Detective Headquarters about half-past five in the morning, although Mr. Rosen himself thinks it was not until about six that he discovered it. He went there and investigated, and the investigator for the defendant company went there and investigated, and the defendant mentions it as a suspicious circumstance that at the time the investigation was made, to neither of these men was anything said about any suspicions of Denning; and if the plaintiff suspected Denning at that time, that might be a strong circumstance for you to consider; but he says that at that time and until August, 1926, when he knew of these forgeries, he had no suspicion at all of Denning.

Another suspicious circumstance mentioned by the defendant is the fact that when the investigator went there he found that the plaintiff had in his employ a colored girl who came in daytime, and he questioned this colored girl and the

Charge to Jury.

colored girl said she had never seen any jewelry, although she had been in that house for ten or eleven months.

Now, Mr. Rosen testified that the jewelry was there and he testified what it was. Mrs. Rosen testified to having had the jewelry, and that she left it with her husband when she went to the hospital. Her brother-in-law is produced here, who testified to having seen the jewelry around the house.

10

Now, the burden of proof is upon the plaintiff to establish the fact that this jewelry disappeared through burglary, larceny or theft under the definitions I have given you. If that appear by the greater weight of the evidence, then the plaintiff is entitled to recover the value of the jewelry not exceeding the amount for which the policy was issued upon the jewelry, namely two thousand dollars, and the money to the extent of fifty dollars.

20

Mr. Rosen says that he paid, when he purchased this jewelry, for the brooch \$1,100, for one diamond ring six hundred dollars, for the other diamond ring \$550, and for the wrist watch \$250. That altogether makes \$2,500, which is in excess of the amount of the policy. There is in evidence here a letter from the defendant company in which they seem to admit that the loss was \$2,650. That would be the \$2,500 and the one hundred fifty dollars in money. But as I have already stated to you, the most which the plaintiff can recover in this case is two thousand dollars for the jewelry and fifty dollars for the loss of the money, which would be \$2,050. This policy provides that the amount of insurance is payable sixty days after the proofs of loss are filed. The proof of loss in this case was filed—

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40

Charge to Jury.

Mr. Van Blarcom: March 12, 1926. I presume they got it on say the 15th.

The Court: Say the first of April.

Mr. Van Blarcom: All right.

10 The Court: The proofs of loss were dated the 12th day of March. Assuming that they were received by the first day of April, sixty days from that date would be approximately the first day of June, 1926. These are rough figures, of course, and are not accurate. If you find that the plaintiff is entitled to your verdict you may add interest at the rate of six per cent. to such amount as you find due from the defendant to the plaintiff from the first of June, 1926, to this eighth day of February, 1929, at the rate of six per cent.

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Exhibit P. 1.

Exhibit P. 1.

**BURGLARY, THEFT AND LARCENY IN-
SURANCE POLICY
ROYAL INDEMNITY COMPANY
Head Office: New York**

Policy No.
BTL 79978

10

IN CONSIDERATION OF the Premium named, and of the Statements contained, in the Schedule endorsed hereon and made a part hereof, the ROYAL INDEMNITY COMPANY (hereinafter called "the Company")

DOES HEREBY AGREE TO INDEMNIFY the Insured named in the Schedule

FOR ALL LOSS

20

- (a) BY BURGLARY, LARCENY, OR THEFT, of property from within the interior of the premises, committed by any person whose property is not covered hereunder;
- (b) BY DAMAGE, except by fire, to the property and to the premises, caused by any such person while in or upon the premises with the intent to commit Burglary, Larceny, or Theft;

30

but not exceeding the amount of insurance specified in any of the several sections of Statement 11 of the Schedule, nor exceeding in all during the term of this Policy the amount specified in such Statement as the total amount of insurance. The foregoing Agreement is subject to the following

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Exhibit P. 1.

CONDITIONS

Definitions.

1. The terms, "Property," "Premises" and "Occupied," when used in this Policy, shall mean, respectively, as follows:

10 Property.

(a) "PROPERTY," as used in this Policy is limited to those articles designated in statement 11 of the Schedule, belonging to the Insured or any permanent member of the household of the Insured who does not pay board or rent, or to a relative of the Insured permanently residing with him, but shall not include such articles owned by domestic servants or other employes; Premises.

20 (b) "PREMISES," within the meaning of this Policy, is limited to that portion of the building described in the Schedule which is occupied exclusively by the Insured as a dwelling; Occupied.

(c) The premises shall be deemed to be "OCCUPIED" when the Insured or any member of his household is actually on the premises or when one of his domestic servants or authorized representatives remains in the premises over
30 night. Under all other conditions the premises shall be deemed "UNOCCUPIED."

Risks not covered.

2. The Company shall not be liable under this policy for any loss:

(a) Of articles carried or held as samples, or for sale, or for delivery after sale;

(b) If the premises are used in whole or in part as a boarding or lodging house or for any
40 business or professional purposes unless it is so stated in the Schedule;

Exhibit P. 1.

(c) Caused, or contributed to by, invasion, insurrection or war;

(d) From any stable, garage, outbuilding, porch, veranda or piazza, whether connected with the interior of the premises or otherwise;

(e) Unless occurring while this policy is in full force and effect; 10

(f) Of any property separately valued in and specifically covered by any other policy;

(g) If the interest in this policy is assigned without the consent of the Company.

Tenancy.

3. While the premises are used by a tenant of the Insured as a residence and not for use as a boarding or lodging house or for any business or professional purposes, this policy shall cover property, excluding money, securities, jewelry, watches, precious and semi-precious stones and articles made in whole or in part of gold or platinum. In no event shall this policy cover loss of any property of any such tenant or any member of his household nor loss caused by any such person. Knowledge possessed by any such tenant or any member of his household respecting any loss occurring in the premises shall be considered knowledge of the Insured, and the Company shall not be liable for loss under such circumstances, unless notice thereof is furnished the Company and police authorities as provided in this Policy. 20 30

Unoccupancy.

4. The Insured is permitted to leave the premises unoccupied for not more than four (4) months in all, in any policy year, without prejudice to the insurance, provided loss, if any, shall be reported to the Company immediately on dis- 40

Exhibit P. 1.

covery, in no event later than fifteen (15) days after the termination of such four months, in the manner required by Condition No. 6. The Company shall not be liable for any loss occurring during any other unoccupancy, except as provided in Condition No. 3.

10

Storerooms.

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5. If the premises are located in a building in which more than two (2) families reside, the insurance under this Policy shall apply to property (excluding money, securities, stamp and coin collections, jewelry, watches, precious or semi-precious stones, articles made in whole or in part of gold or platinum, wines, liquors and other alcoholic beverages) insured hereunder up to \$50. during the policy term, while contained in one or more locked storerooms provided by the landlord for the use of the Insured, and located in the building specified in the Schedule.

Proceedings in Case of Claim.

6. Upon the happening of any event given rise or likely to give rise to a claim under this Policy, the Insured shall:

30

(a) Give immediate written notice thereof to the office of the Company at which this Policy is issued, and like notice to the public police authorities having jurisdiction; and within sixty (60) days after such happening, file with the Company a complete and affirmative Proof of Loss on the forms used, and to be provided, by the Company on demand of the Insured;

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(b) Give immediately, upon demand by the Company, all reasonable assistance (other than pecuniary), produce any and all books, papers, records and vouchers, re-

Exhibit P. 1.

requested by the Company, and submit himself, his Associates in interest and employes to examination under oath, when and as required by the Company;

- (c) At the request and expense of the Company, take legal action to secure the arrest and prosecution of the offenders and the recovery of the property. 10

The Company shall not be held to have waived any of its rights under this Policy or any forfeiture thereof by any act taken or requirement made, as aforesaid, in connection with any such event.

Payments and Replacements.

7. The Company shall not be liable for more than the actual cash value of the stolen or damaged property at the time of the loss, with due allowance for depreciation however caused. The Company may repair any damage to the property or replace any stolen or damaged property with property of like quality and value or pay for the same in money as the Company may elect. In the event of the recovery of stolen property for which the Insured has been indemnified under this Policy, the Insured shall be entitled to such recovery up to the amount required to secure full reimbursement for loss if beyond the amount of insurance carried, but if the Insured has already been fully reimbursed for loss, such recovery shall belong to the Company. Any sum which may be paid or expended under this Policy by way of indemnity to the Insured shall diminish the amount of insurance applicable to the loss, and shall also diminish the total amount of insurance, by the amount so paid or expended. 20 30 40

Exhibit P. 1.

Diminution of Insurance.

Subrogation.

10 8. The Company shall be subrogated to all rights of recovery which the Insured may have against any person or other entity for loss to the extent that payment therefor is made by the Company, and the Insured shall execute all papers necessary and convenient to secure to the Company such rights.

Other Insurance.

20 9. If other insurance is carried against loss covered by this Policy, the Company shall not be liable for a larger proportion of the entire loss than the amount insured hereunder bears to the total amount of all valid and collectible insurance covering such loss.

Cancellation of Insurance.

30 10. This Policy shall be cancelled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this Policy, refund the excess of paid premium above the short rates for the expired time, according to the table attached hereto. This Policy may be cancelled at any time by the Company by mailing registered notice to the Insured to the address given in the Schedule, with or without tender of the excess premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand. The check of the Company, or of the Company's authorized agent, mailed to the Insured to the address mentioned in the Schedule, shall be a sufficient tender of any unearned premium due the Insured.

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Exhibit P. 1.

Alterations in Policy.

11. No alteration in the terms of this Policy or its Conditions shall be valid unless the same be signed or initialed by an official thereunto authorized in writing by the Company; nor shall knowledge or information possessed by any Agent or any other person, whether before or after the issuance of this Policy, be held to effect an alteration in this Policy, or any part of it. 10

Legal Proceedings.

12. Legal proceedings for recovery hereunder shall not be brought before the expiration of ninety (90) days from the date of furnishing Proof of Loss as required herein, nor brought at all unless begun within two years after the occurrence of the loss. 20

Conflicting Statutory Provisions.

13. If any limitation of time for notice of loss or for any legal proceeding herein contained is at variance with any specific statutory provision which would otherwise inure to the benefit of the Insured, such specific statutory provision shall be substituted for such limitation.

SCHEDULE—(Statements of the Insured)

Statement 30

No.

1. The name of the Insured is Samuel Rosen
If married woman, husband's name is.....
2. The building in which the Insured resides is located at 152 Scheerer Avenue Newark New Jersey
3. The building in which the Insured resides is fully described as follows: (State whether private dwelling, two-family dwelling, housekeeping apartment, non-house- 40

Exhibit P. 1.

- keeping apartment, flat or summer or winter residence). Two Family Dwelling
4. Is there a regular front door, hall or elevator attendant? no
- 10 5. The portion of the building occupied by the Insured is Lower Portion (If an apartment or flat house, state apartment number and floor on which said apartment or flat is located.)
6. The portion of the building described in statement 5 of this schedule is occupied for private dwelling purposes only, except as herein stated:* no exceptions
7. The business address of the Insured is 587-9 Eagle Avenue, Bronx, N Y
- 20 8. The occupation of the Insured is Secretary
9. The name of the firm of which the Insured is†.....is as follows:
Pretty Wet Wash Laundry Company
10. The insured has not sustained any loss by burglary, theft or robbery, nor received indemnity for loss by burglary, theft or robbery, nor been declined Burglary, Theft, or Robbery Insurance, nor has such Insurance been cancelled within the last five years, except as follows:* no exceptions
- 30 11. The insurance granted by this Policy and the premium therefor shall apply:

Amount
of
Insurance Premium

Section A.

- 40 On jewelry, precious stones, watches, articles of gold, platinum and sterling silver, furs and articles made entirely or

Exhibit P. 1.

principally of fur. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections B, C, and D hereof; \$2000.00 \$33.00

10

Section B.

On money, securities, and stamp and coin collections, to an amount not exceeding \$50.00; and on wearing apparel, laces, rugs, tapestries, pictures, paintings, plated ware, and all other household goods and personal property common in residences generally, including professional instruments, electric light, plumbing, gas and water fixtures. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections A, C and D;..... \$1000.00 \$ 6.19

20

Section C.

On articles separately and specifically described and insured as follows: \$ nil \$ nil

30

Section D.

On wines, liquors and other alcoholic beverages acquired by the Insured prior to July 1, 1919, and lawfully owned by him at the time of the loss or damage. The amount actu-

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Exhibit P. 1.

	ally paid by the Insured for such property shall determine the liability of the Company, within and subject to the in- surance limit under this Sec- tion	\$	nil	\$	nil
10					
	Total Amount of Insurance		3000.00		39.19

The premium for this Policy is Forty-five and 19/100 Dollars (\$45.19)

The term of this Policy is 12 months from the 1st, day of July 1924, at noon, standard time, at the place where the premises are located.

This Policy shall not be valid until counter-
signed by a duly authorized Agent of the Com-
pany.

20 IN WITNESS WHEREOF, the Company has caused
this Policy to be signed by

M. E. Jewett
President.

Countersigned at Ridgewood, N J
June 26th 1924 by

30 Leslie D. Forman
Authorized Agent
Exd. H. Stanley Barnes

*If no exceptions, write "no exceptions." †Write
"a member" or "an employee."

Exhibit P. 1.

Valid only if attached to a Residence Burglary,
Theft and Larceny Policy.

No. 33158

Effective Date

July 1st, 1924

Personal Hold Up Endorsement

10

(SEAL)

IN CONSIDERATION OF an additional premium of Six and 00/100 Dollars, the Company hereby agrees with the Insured that IF, before the expiration of the period of insurance specified in the undermentioned Policy, the property or any part thereof described below in Special Condition b hereof, shall be lost or damaged by ROBBERY (Commonly known as "HOLD UP") as hereinafter defined, committed, within the United States or Canada, upon the person of the Insured or any member of his immediate family who resides with him, THEN THE COMPANY WILL PAY or make good to the Insured such loss and/or such damage to the extent of the then cash value of the property so lost or damaged, but not exceeding in any one period of insurance the sum of One Thousand Dollars.

20

PROVIDED ALWAYS, that the Insurance hereby made is and shall be subject to the following special conditions and memoranda which shall be construed as co-ordinate with the conditions endorsed on the policy and compliance with such conditions and memoranda, and each of them, shall be a condition precedent to the right of recovery hereunder.

30

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Exhibit P. 1.

SPECIAL CONDITIONS

a. "Robbery" means the unlawful taking of property by force and violence from any person insured by this endorsement, or by putting such person in fear of violence.

10 b. The insurance granted by this endorsement covers money and securities up to but not exceeding Fifty Dollars (\$50.00), and other personal property consisting of jewelry, watches, clothing and articles of personal adornment, owned by the Insured or by a member of his immediate family who is permanently residing with him, BUT EXCLUDES any articles carried as samples or for sale or for delivery after sale.

20 c. This endorsement does not cover loss from the person of any one under eighteen years of age.

d. Period of this insurance Twelve months ending July 1st, 1925 at noon, standard time, at the place where the premises are located.

Nothing herein contained shall be held to waive, alter, vary or extend any of the conditions, agreements or limitations of this Policy, other than as above stated.

30 This Endorsement, issued by the ROYAL INDEMNITY COMPANY, when countersigned by a duly authorized Official or Agent of the Company, and attached to Policy No. BTL-79978 issued to Samuel Rosen of Newark, N J. shall be valid and shall form part of the Policy.

M. E. Jewett
President.

Countersigned at Ridgewood, N J
this 26th day of June 1924

40 Leslie D. Forman
Authorized Agent.

Exhibit P. 2.

BURGLARY, THEFT AND
LARCENY INSURANCE POLICY

(SEAL)

Head Office: New York
Milford E. Jewett, President

Policy No. BTL 79978
Insured Samuel Rosèn
Premium \$45.19
Effective Date July 1st, 1924
Stamp

10

Phone Cortlandt 5516

J. Strahl Insurance
200 Broadway New York
Please Read Your Policy

20

Exhibit P. 2.

(SEAL)

Burglary, Robbery or Check Forgery Insurance
Renewal Certificate

ROYAL INDEMNITY COMPANY

Head Office: New York

Burg Theft & Lar. 30
Amt. 3,000. H. U 1,000.

Renewal No. B 108098 Policy No. BTL-79978

Name of Insured Samuel Rosen
Location of Premises 152 Scheerer Avenue, New-
ark, New Jersey.

IN CONSIDERATION OF Forty-five and 19/100
DOLLARS (\$45.19) the above numbered Policy
is, subject to all its terms and conditions, con-
tinued in force for twelve months ending July
1st, 1926 at noon (standard time).

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Exhibit P. 2.

This certificate is not valid until countersigned
by an official or agent duly authorized in writing
Countersigned at Ridgewood, N. J.
by Leslie D. Forman Authorized Agent.
Date July 1st, 1925.

10

DUPLICATE

Copy of Original—Not Valid

(SEAL)

Burglary, Robbery or Check Forgery Insurance
Renewal Certificate

ROYAL INDEMNITY COMPANY

Head Office: New York

20

Burg Theft & Lar.

Amt. 3,000. H. U 1,000.

Renewal No. B 108098 Policy No. BTL-79978

Name of Insured Samuel Rosen

Location of Premises 152 Scheerer Avenue, New-
ark, New Jersey.

30

IN CONSIDERATION OF Forty-five and 19/100
DOLLARS (\$45.19) the above numbered Policy
is, subject to all its terms and conditions, con-
tinued in force for twelve months ending July
1st, 1926 at noon (standard time).

This certificate is not valid until countersigned by
an official or agent duly authorized in writing

M. E. Jewett

President.

Countersigned at Ridgewood, N. J.

by Leslie D. Forman Authorized Agent.

Date July 1st, 1925.

John Pirke

Atty

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Exhibit P. 5.

Exhibit P. 5.

ROYAL INDEMNITY COMPANY
 Head Office: New York
 Milford E. Jewett, President
 84 William Street New York

10 In Reply, Please Refer to
 Burglary Department

March 9, 1926.

Mr. J. Strahl,
 1440 Broadway,
 New York City.

Dear Sir:—

20 RE: Claim #10861 BTL-79978
 Samuel Rosen.

We are in receipt of your letter of March 1st reporting loss sustained by the insured.

We have completed an investigation of the claim and find the insured's loss is in the amount \$2650.00. We would thank you to arrange with the insured to secure bills verifying the place of purchase and the original cost of the articles alleged to have been stolen.

30 Kindly give this matter your immediate attention.

Yours very truly,

J. B. Franklin
 Adjuster.

JBF:C

*Exhibit P. 8.***Exhibit P. 8.**

ARTHUR "DOC" DENNING

Radio Expert

105 Hobson Street

Phone Terrace 3028

Newark, N. J.

I promise to pay on Jan. 23-1926 \$5.00 to Mr 10
Rosen for Balance on rent.

Arthur Denning

Exhibit P. 9.

J. STRAHL

INSURANCE

1440 Broadway

NEW YORK

20

March 17, 1926.

Royal Indemnity Co.

84 William Street,

New York City,

ATT: Mr. J. B. Franklin

Gentlemen:—

RE: Claim #10861 BTL-79978

Samuel Rosen.

30

Enclosed herewith please find bill showing the
purchase of the jewelry, in the above captioned
claim.

Very truly yours,

J. Strahl

JS/ES

40

*Exhibit P. 10.***Exhibit P. 10.**

March 11, 6,

To Whom It May Concern:—

10 This is to certify that Mr. Samuel Rosen of
152 Scheerer Ave. Newark, N. J. has purchased
the following articles, from us.

1	Diamond ring li/2 kar. plat. set	\$600.
1	“ “ “ “	550.
1	Brooch 4 large stones, 35 small	1100.
1	Diamond set wrist watch	260.

Hurwitz & Sokoloff

By

20

30

40

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

<p>SAMUEL ROSEN, <i>Plaintiff-Respondent,</i> <i>vs.</i> ROYAL INDEMNITY Co., a cor- poration, <i>Defendant-Appellant.</i></p>	}	<p><i>On Appeal from Su- preme Court.</i></p>
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BRIEF OF DEFENDANT-APPELLANT.

This is an appeal taken by the defendant from a verdict in favor of the plaintiff returned in the suit instituted by the plaintiff to recover under an Indemnity Policy issued by the defendant, for the loss by theft of certain jewelry and money. The action was maintained upon the Policy, Exhibit P. 1 (p. 79, S. C.), issued by the defendant to Samuel Rosen, the plaintiff, and at the trial, the defendant put the plaintiff to his proofs as to the facts under which he sought to recover concerning the theft and what was stolen, there being no questions raised with respect either to the issuance of the Policy or to due Notice thereunder, etc. At the end of the plaintiff's case, it appeared from the evidence of the plaintiff, that all of the alleged stolen property belonged not to the plaintiff, but to his wife, at the time of the theft, and accordingly the defendant moved for a non-suit (p. 60, S. C.), upon the ground:

"that the plaintiff, Samuel Rosen, was not the owner of the jewelry in question, but that the wife was the owner of it," and that "There is no evidence here to show that Mr. Rosen has sustained the loss by reason of this occurrence."

Statement of Facts.

That the evidence did show that plaintiff, Samuel Rosen, was not the owner but that his wife was at the time of the theft, is conclusively shown by the evidence of Mr. Rosen himself, on page 31:

“Q And subsequent to the time you purchased them you gave them to your wife as a gift, did you? A Yes, sir.

Q Then at the time this loss occurred you weren't the actual owner? A I owned them.

Q You gave them to your wife as a present? A Yes.

Q And they belonged to your wife? A I don't know how you call them.

Q So that at the time these goods were lost or disappeared they actually belonged to your wife, didn't they? A Well, I don't know what you call it, but I gave it to my wife; yes, sir.

Q You gave them to her as a gift? A Yes, sir.”

The sole ground of appeal is (p. 2, S. C.), because the Trial Court failed and refused to grant the motion for non-suit made by the defendant, Royal Indemnity Company, a corporation, at the close of the plaintiff's case.

ARGUMENT.

It is contended by the defendant that the Trial Court erred in refusing to grant a non-suit upon the ground urged in the motion. In so far as the plaintiff, Samuel Rosen, was concerned, the defendant undertook in its policy only to indemnify *him* for all loss arising by reason of the burglary, larceny or theft of the property in question, and it is admitted that if he sustained a loss by reason of the theft of the same, even though owned by another, he could recover. On the other

hand, it is contended by the defendant that if he, himself, did not sustain any loss by reason of the theft of the articles in question, that he is not entitled to recover. There is no evidence whatever in the case that he, himself, sustained any loss or damage whatever, directly or indirectly, by reason of the theft of the articles in question, either through loss of any of his property or by reason of a liability established against him by reason of the loss of such property by another. Under these circumstances, the very nature of an Indemnity Policy or Agreement, the very meaning of the word indemnify, would seem to preclude a recovery in his favor. It is true that the Policy included in the Schedule of Property covered thereby, property belonging to others than the named Insured, and if, in any way, he sustained a loss by the theft of such property of others, under such circumstances as would render him liable and such liability had been established and he had paid the liability thus established then a situation would arise wherein an indirect loss as the result of such theft of such property, would result to him and he would be entitled to be indemnified. But to "indemnify" him for a loss sustained only by another, without any resultant loss or damage to him whatever, would be a contradiction in terms and a departure from the decisions under all Agreements or Policies of Indemnity. Whether or not the wife of the plaintiff, who owned the personal property in question, and who suffered its loss by theft, could have maintained an action under the Policy herself is not necessary to consider, as she was not a party to this suit, and whether she could or not would not affect the rights of the plaintiff who did bring the action in his own name. The only bearing that such question could have upon the present case is its

consideration in determining the intent of the Policy in question, and an examination of the Policy might indicate that its reference to property owned by persons other than the Insured constituted a contract for the benefit of such third persons, enabling them to bring an action for the loss of their property occurring under the conditions named in the Policy. In fact, in the case of *Smolensky v. Massachusetts Bonding and Insurance Company*, (120 Misc. Rep. N. Y. 346), the Supreme Court of New York sustained a recovery by a wife who owned property included in the Schedules in exactly the same kind of a Policy as in this case. In the *Smolensky* case, the husband was insured against loss by theft, etc. of certain articles, and it was agreed that the insurance should apply to all such property owned by the Assured or by any permanent member of his household who did not pay board or rent, or by a relative of his permanently residing with him. HELD,

“that the premises occupied by the husband and his wife having been burglarized and property belonging to her taken therefrom, she was entitled to maintain an action on the policy though he, not having presented proofs of loss within the requisite time, could not.”

But certainly in so far as the contract is expressed as between Mr. Rosen, the plaintiff and the Company, it is one of pure indemnity for any loss sustained by him, and not an Agreement to pay him for what some other person might lose. That the Policy contemplated merely an indemnity for actual loss sustained by him is shown, in addition to the express wording of the contract clause, by the other provisions in

the Policy. Thus in Paragraph 7 (p. 83, S. C.), the following provision is made:

“In the event of the recovery of stolen property for which the Insured has been indemnified under this Policy, the Insured shall be entitled to such recovery up to the amount required to secure full reimbursement for loss if beyond the amount of insurance carried, but if the Insured has already been fully reimbursed for loss such recovery shall belong to the Company.”

Also, in Paragraph 8 (p. 84, S. C.):

“The Company shall be subrogated to all rights of recovery which the Insured may have against any person or other entity for loss to the extent that payment therefor is made by the Company, and the Insured shall execute all papers necessary and convenient to secure to the Company such rights.”

Of course, these provisions contemplate that if the Insured is paid under the Policy by reason of a theft from him, the Company shall be subrogated to his rights upon the recovery of the property, and the Insured would possess such rights to the recovered property if he owned it when it was stolen. But if the Insured were to receive payment under this judgment for the property of another person, which was stolen, that other person could then recover his or her property and be under no obligation whatever to execute a transfer of the property to the Insurance Company to the extent of its payment, so in this case, if Mr. Rosen owned the property and this judgment were sustained and the property were recovered, the Insurance Company would receive its right of subrogation, but under the facts presented by the plaintiff in the case, he did not own the property in question, but his wife did, and if it were now recovered and this judgment were sustained, the plaintiff would

have his money and the other person, his wife, would have the recovered property, and the Insurance Company would be out its money and Rosen would be in pocket to this extent, and his wife would hold on to her recovered jewelry. Certainly the Policy contemplates no such condition. On the other hand, if Mrs. Rosen had brought suit under the Policy as a third person for whose benefit it was made, she would be subject to this right of subrogation possessed by the Company, and she would have proven at the trial a loss for which she would claim recovery under the Indemnity provisions of the Policy. Also, if she had recovered judgment against her husband, or a Decree for the accounting for the loss of the jewelry by her husband as Bailee or otherwise, this might have constituted a loss to him as contemplated by the Policy, for which he might be entitled to recover, but no such even indirect loss is shown to have been sustained by him by the evidence in the case. Of course it cannot be contended that the ownership and loss by his wife was his ownership or loss under the present state of the law giving to married women full right of ownership of her separate property and full right to sue and be sued as if she were a *feme sole*. In the plaintiff's evidence, he showed conclusively that the articles in question were owned outright by his wife, they having been an absolute gift by him to her.

The decisions are uniform in holding that an Agreement to "Indemnify" for "Loss" requires as a condition precedent to recovery, proof of actual loss sustained by the indemnitee. The definition of the word INDEMNITY, as applied

to a contract or Policy, is contained in Corpus Juris (31 C. J., p. 419, Paragraph 1), as follows:

“The word ‘INDEMNITY’ means protection or exemption from loss or damage past or to come; it signifies to reimburse, to make good and compensate for loss or injury, to make sure, to protect from injury etc.”

And as to indemnity against loss or damages, see 31 C. J. 439, Paragraph 35, where it is stated:

“Where the contract is strictly one of indemnity, that is, one against loss or damages, the indemnitee cannot recover until he has made payment or otherwise suffered an actual loss or damage, against which the covenant runs”; and “under such a contract of indemnity a mere legal liability to pay or the mere fact that judgment has been obtained against the indemnitee is not sufficient to raise a cause of action on the contract, although it has been held that a liability to a loss, if attended with convenience, constitutes a breach of the covenant. Wherever loss or damage indemnified involves a payment, it is not sufficient that the indemnitee is under liability to pay, to entitle him to recover, but he must make an actual payment of the loss or damage.”

And in line with this are numerous decisions in this State. Thus, in *Miller v. Fries*, (66 N. J. Law 377), it was held in effect that there must be an actual loss within the provisions of the Bond or contract to entitle a plaintiff to recover under a contract “to save and keep harmless.” In that case, the condition of the Bond was “to save and keep harmless” from certain existing debts and liabilities, and the only fact assigned and proved as a breach was that one of those debts had passed into judgment against the

plaintiff. The Supreme Court held in an opinion by Justice Dixon:

“It is settled in this court that the mere existence of debts, even in the form of judgments against the covenantee, does not legally constitute the breach of a covenant to indemnify and save harmless. *Jeffers v. Johnson*, 1 Zab. 73. Such a covenant is not equivalent to a covenant to PAY existing debts. Consequently no damages could lawfully be awarded on such an allegation of breach, and the plaintiff was entitled only to nominal damages, and that merely because no demurrer or true plea was interposed.”

The case of *Jeffers v. Johnson* (21 N. J. Law, p. 73), above referred to, was an action on a covenant to indemnify and save harmless the plaintiffs, who were sureties for an official, for the faithful discharge of his duties as Post Master, from all damages, costs and charges which they may or shall be put to, or any wise called upon to pay for or on account of being security as aforesaid. The plaintiffs proved a judgment recovered against them by reason of having been such sureties. Upon this evidence, the Court charged the jury that in order to recover on the covenant of indemnity, the plaintiffs must show that they had been compelled to pay the debt against which the covenant was intended to indemnify. Upon a verdict for the defendant, an appeal was taken, based upon his charge of the Court. The Supreme Court, in the decision by Justice Whitehead and the concurring opinion by Justice Randolph, sustained the judgment and held:

“In the present case the jury rendered a verdict for the defendant, and I think correctly. There was no proof of payment, or of actual damage. The covenant is not to pay money at a certain time, 2 T. R. 100; 8 Bar. & Cress. 11; but is to indemnify and

save harmless from paying. So that a mere liability, or even a judgment for debt and costs will not be sufficient to maintain an action for breach of covenant. The plaintiff was bound to prove an actual payment before he would be entitled to recover, and then only for the amount of payment or actual damage, 2 Wend. 481."

It is observed that the covenant in this case was to indemnify for "damages, costs and charges," while in the present case it was an indemnity to the insured, plaintiff, for all loss. So also in the case of *North v. North & Son* (93 N. J. Law 438), the Court of Errors and Appeals very pointedly indicated the distinction between a contract for indemnity against "loss" and one for indemnity against "liability," the Court saying:

"The cases, therefore, generally recognize a clear distinction between contracts to indemnify against 'liability' and contracts to indemnify (as it is sometimes expressed) against the result of liability * * * that is, against 'loss.' In the former the contract is a contract to pay should the liability arise and the right of action springs into existence with the liability and the failure to forthwith discharge it; in the latter actual loss or damage is a *PREQUISITE*." (Italics ours.)

As the specific wording of the contract or policy in the present case is that the Company "does hereby agree to indemnify the insured named in the Schedule for all loss (A) by burglary, larceny or theft of property, etc.," it is respectfully submitted that this case comes directly within the distinction drawn in the foregoing cases and that proof of actually sustaining a loss by the plaintiff himself was a necessary pre-requisite to recovery. Nowhere in the entire case is there any evidence of this whatever, the proofs of the

plaintiff merely being that the jewelry in question was stolen and that it belonged to his wife, he merely having possession of it for the wife in the house during her absence at the time it is alleged to have been stolen.

In denying the motion, the Trial Court said:

“Now, assuming that she does not mean that she transferred the ownership to him and that she had the ownership in her as the one who received the gifts, she certainly constituted him the bailee of that property by giving it to him while she was away at the hospital. She was not at that time even an occupant of the house, which I think would give him such a right and title in that property at that time as to entitle him to bring suit on this policy; and the motion will therefore be denied and an exception may be noted.”

In answer to this, it is respectfully urged that even if he were the bailee, as he undoubtedly was, that would not constitute a “loss” to him unless he were sued and a judgment obtained against him and paid by him, and then and only then, would the loss of the wife’s property constitute a loss to him to which he could be indemnified under the Policy.

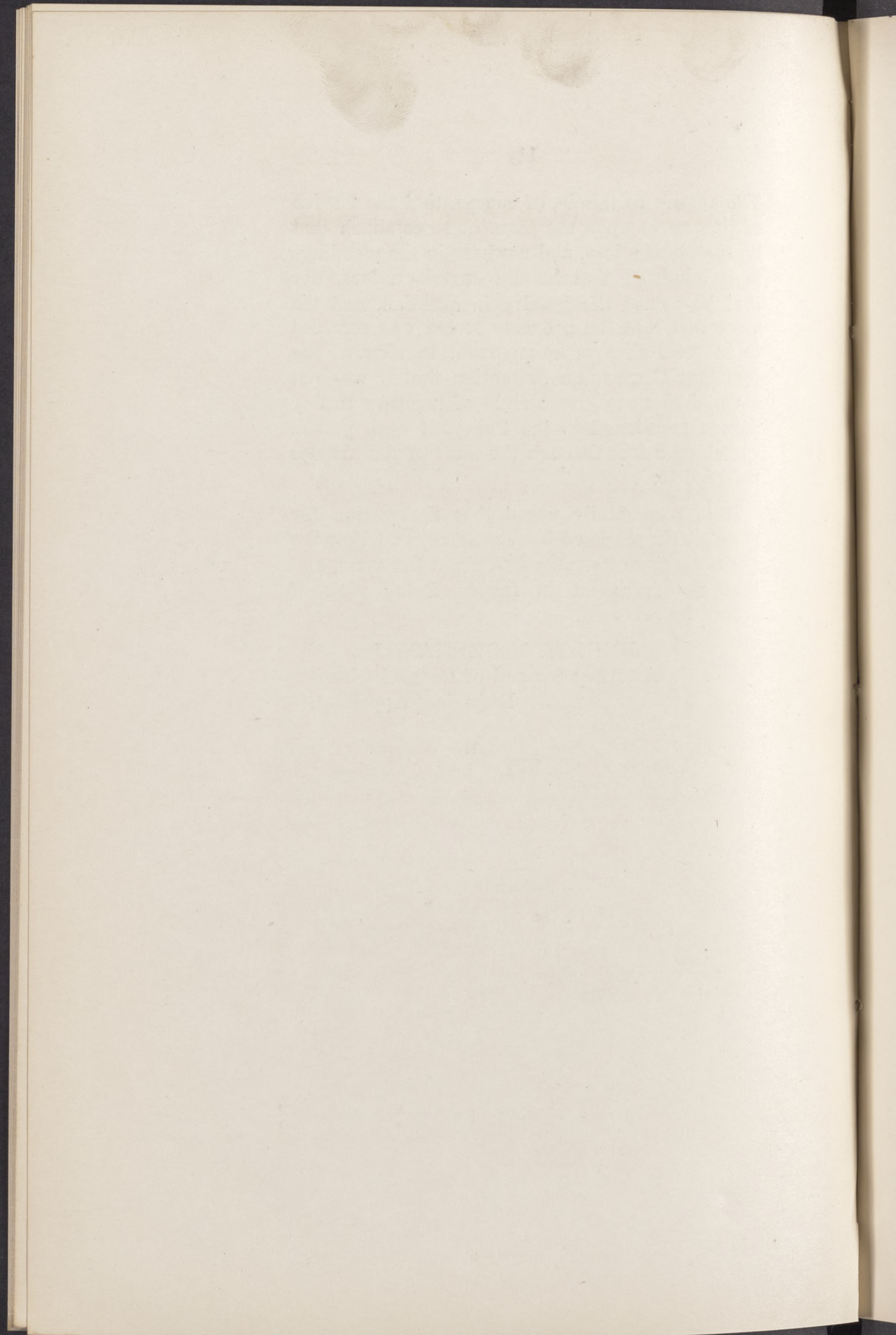
The Court added:

“I might add that there appears nowhere in the pleadings to be any defense raised but that the property is the property of the plaintiff, Samuel Rosen, and paragraph three of the complaint states that said policy insured for all loss by burglary, larceny or theft the following property from the interior of the above-mentioned premises, committed by any person whose property is not covered under said policy, and then is described the particular property which appears to be covered by this policy.”

The answer to this is, of course, that the burden of proof was upon the plaintiff to establish that he sustained a loss, and nowhere in the pleadings is it admitted that he did sustain a loss, nor that he owned the jewelry in question, and the mere fact that the property stolen was referred to in the Policy is unimportant in view of the fact that there is no contention that it was not covered so as to give a right of recovery to any person mentioned in the Policy, if such person sustained a loss through the theft of the articles referred to.

It is respectfully urged that the motion for non-suit should have been granted, and that the Court erred in its refusal to grant the same, and that the judgment in favor of the plaintiff should be reversed.

JOHN W. MCGEEHAN, JR.,
Attorney for and of Counsel with
Defendant-Appellant.



New Jersey Court of Errors and Appeals

SAMUEL ROSEN, <i>Plaintiff-Respondent,</i>	}	<i>On Appeal from Supreme Court.</i>
<i>vs.</i>		
ROYAL INDEMNITY Co., a cor- poration, <i>Defendant-Appellant.</i>		

BRIEF FOR PLAINTIFF-RESPONDENT.

This is an appeal by the defendant from a verdict entered in favor of the plaintiff for loss sustained under a burglary, theft and larceny insurance policy issued by the defendant to the plaintiff. There were no requests to charge by either party nor were any exceptions taken by either party to the Judge's charge to the jury. The jury by its verdict of \$2,378.00 in favor of the plaintiff found that there was a loss sustained under the policy.

The sole ground of appeal is that the Trial Judge refused defendant's motion for a judgment of non-suit.

Facts.

The motion for a non-suit was based upon the ground "that the plaintiff Samuel Rosen was not the owner of the jewelry in question, but that the wife was the owner of it" and that "there is no evidence here to show that Mr. Rosen has sustained the loss by reason of this occurrence" (Case, p. 60, ll. 36 to 40; Case, p. 61, ll 1 to 9). The policy provides in part as follows:

"In Consideration of the Premium named, and of the Statements contained, in the

Schedule endorsed hereon and made a part hereof, the ROYAL INDEMNITY COMPANY (hereinafter called 'the Company'). DOES HEREBY AGREE TO INDEMNIFY the Insured named in the Schedule
FOR ALL LOSS

(a) BY BURGLARY, LARCENY, OR THEFT, of property from within the interior of the premises, committed by any person whose property is not covered hereunder; (Case, p. 79, ll. 12 to 25)."

The Court's attention is directed to the fact that the word "property" used in the foregoing quotation is not limited to property of the insured.

The word "property" is defined in the policy and the Court is referred to the policy (Case, p. 80, ll. 1 to 19).

"Definitions.

1. The terms, 'Property,' 'Premiums' and 'Occupied,' when used in this policy, shall mean, respectively, as follows:
Property.

(a) 'PROPERTY,' as used in this Policy is limited to those articles designated in statement 11 of the Schedule, belonging to the Insured or any permanent member of the household of the Insured who does not pay board or rent, or to a relative of the Insured permanently residing with him, but shall not include such articles owned by domestic servants or other employees;" (Case, p. 80, ll 1 to 19).

Statement 11 of the schedule in the policy referred to in the definition of property is as follows:

“11. The insurance granted by this policy and the premium therefor shall apply:

Amount of
Insurance Premium

Section A.

On jewelry, precious stones, watches, articles of gold, platinum and sterling silver, furs and articles made entirely or principally of fur. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections B, C and D hereof.....\$2000.00 \$33.00

Section B.

On money, securities, and stamp coin collections, to an amount not exceeding \$50.00; and on wearing apparel, laces, rugs, tapestries, pictures, paintings, plated ware, and all other household goods and personal property common in residences generally, including professional instruments, electric light, plumbing, gas and water fixtures. In no event shall the insurance granted under this Section apply to articles mentioned in or insured under Sections A, C and D:..\$1000.00 \$6.19”

(Case, p. 86, ll. 31 to 41; Case, p. 87, ll. 1 to 28).

The testimony presented on the part of the plaintiff shows that there was a loss of \$150.00

in cash belonging to the plaintiff, recovery for which under the policy was limited to \$50.00, and jewelry belonging to the plaintiff's wife, Helen Rosen, but which plaintiff had in his possession as bailee of his said wife of the value of \$2,510.00, recovery for which under the policy was limited to \$2,000.00.

In reference to the stolen property, the Court is referred to the testimony of the plaintiff (Case, p. 15, ll 15 to 30):

Q Did you have any jewelry and money in the house that night? A Yes. My wife when she left for the hospital, she left her jewelry with me. * * *

Q Did you have any cash? A Yes. I had one hundred fifty dollars in cash at that time.

and at page 20, line 31:

Q Besides this jewelry you had one hundred fifty dollars cash? A One hundred fifty dollars in cash, yes.

Mrs. Rosen, the plaintiff's wife, was in the hospital undergoing an operation at the time of the burglary. The following is quoted from her testimony (Case, p. 55, l. 15):

Q When you left to go to the hospital, did you take your jewelry with you? A Oh, no, I left my husband the jewelry.

and at page 57, line 20:

Q Mrs. Rosen, you say you gave your jewelry to your husband when you went to the hospital? A Yes.

Q What did you tell your husband to do with it? A He should watch it.

The foregoing quotations are made from the testimony to call the Court's attention to the fact that Mrs. Rosen when she went to the hospital left her jewelry in the custody of her husband, thereby making him a bailee, and further

to show that while Mrs. Rosen owned the jewelry Mr. Rosen was robbed of \$150.00 of his own money, which bears upon the question of a non-suit upon the ground that the jewelry belonged to Mrs. Rosen.

The Court will observe that on the motion to non-suit the attorney for the defendant based his motion upon the fact that the jewelry did not belong to the plaintiff, apparently losing sight of the fact that the plaintiff, himself, regardless of the jewelry had sustained a loss of \$150.00, which loss was limited to \$50.00 under the terms of the policy.

POINT I.

It was not necessary that plaintiff be the owner of the jewelry to recover under the policy for the loss thereof.

Paragraph 2 of Section A of the policy above quoted insures for all loss of *property*, and property is defined in the policy as "those articles * * * belonging to the insured or any permanent member of his household. * * *"

The jewelry in question had been purchased by the plaintiff and given by him to his wife (Case, p. 30, ll 36 to 41; Case, p. 31, ll. 1 to 10), and she was a permanent member of his household (Case, p. 13, ll. 9 to 18). We submit, therefore, that the plaintiff proved a case for the loss of the jewelry within these provisions of the policy.

The policy having been prepared by the defendant should be construed more favorably for the plaintiff than for the defendant.

POINT II.

The motion for non-suit was properly denied because plaintiff had proved a loss to himself under the policy.

The motion for a non-suit was based on the ground that the plaintiff was not the owner of the jewelry in question (Case, p. 61, ll. 1 to 9). The proof showed that the plaintiff had lost \$150.00 in cash for which under the policy he was entitled to recover \$50.00 (see testimony previously quoted).

From the plaintiff's testimony it clearly appears that there was a loss not only of Mrs. Rosen's jewelry, but also of the sum of \$150.00 which was the property of the plaintiff, and for which he was unquestionably entitled to maintain his action irrespective of who might be entitled to recover for the loss of the jewelry.

In the case of *Troiano v. Baker*, 86 N. J. L. (Errors and Appeals), 288, the Court held that where the plaintiff has established a prima facie case as to any part of a divisible cause of action a motion to non-suit cannot prevail, even if a part of the claim is barred by an unquestioned rule of law, for the plaintiff is entitled to have the verdict of a jury on the case made.

POINT III.

The plaintiff as bailee of his wife's jewelry was entitled to maintain an action for its loss.

The proofs show that Helen Rosen, the plaintiff's wife, at the time of the loss was confined in a hospital and that before she went to the hospital she gave the jewelry in question to her husband (Case, p. 15, ll. 1 to 19; Case, p. 24, ll. 25 to 30; Case, p. 55, ll. 1 to 40). The learned

Trial Judge in denying the motion for non-suit said:

“The Court: There are two views in this case which I think would prevent a non-suit. One is that in answer to your question Mrs. Rosen said that she gave this jewelry to her husband when she went to the hospital. Now, assuming that she does not mean that she transferred the ownership to him and that she had the ownership in her as the one who received the gifts, she certainly constituted him the bailee of that property by giving it to him while she was away at the hospital. She was not at that time even an occupant of the house, which I think would give him such a right and title in that property at that time as to entitle him to bring suit on this policy; and the motion will therefore be denied and an exception may be noted.” (Case, p. 61, ll. 12 to 29).

We submit that the evidence on the part of the plaintiff showed that he was the bailee of his wife's jewelry and that in view of the following cases the ruling of the Trial Judge was correct.

Preziaso v. Union City Cleaning & Dyeing Co., 140 Atl. 394, where it was held that the plaintiff as bailee of a coat was entitled to recover the value thereof from the defendant who lost it.

Central Railroad Co. v. Bayway Co., 81 N. J. L. (Errors and Appeals), 456, where it was held that the plaintiff as bailee of certain railroad cars was entitled to maintain an action against the defendant for the entire amount of injury to said cars.

POINT IV.**Amendment.**

In this case it is not denied that the policy sued on was in effect at the time of the loss or that the plaintiff gave due notice of said loss in accordance with the terms of said policy.

A fair and impartial trial on the merits was had by the defendant in the Court below.

We, therefore, respectfully ask this Court that if we are wrong in our contention that the Trial Judge properly ruled on the motion to non-suit, that the plaintiff be permitted to amend these proceedings by adding as a party plaintiff his wife, Helen Rosen; or permit the plaintiff to sue in his name for the use and benefit of his wife. This practice, we submit, is sanctioned by the case of *Giardini v. McAdoo*, 93 N. J. L. (Errors and Appeals), p. 138.

It is respectfully submitted that there was no error in the refusal of the Trial Judge to grant the motion to non-suit, and that the judgment in favor of the plaintiff should be affirmed.

RIKER & RIKER,

Attorneys for Plaintiff-Respondent.

ANDREW VAN BLARCOM,

Of Counsel.



