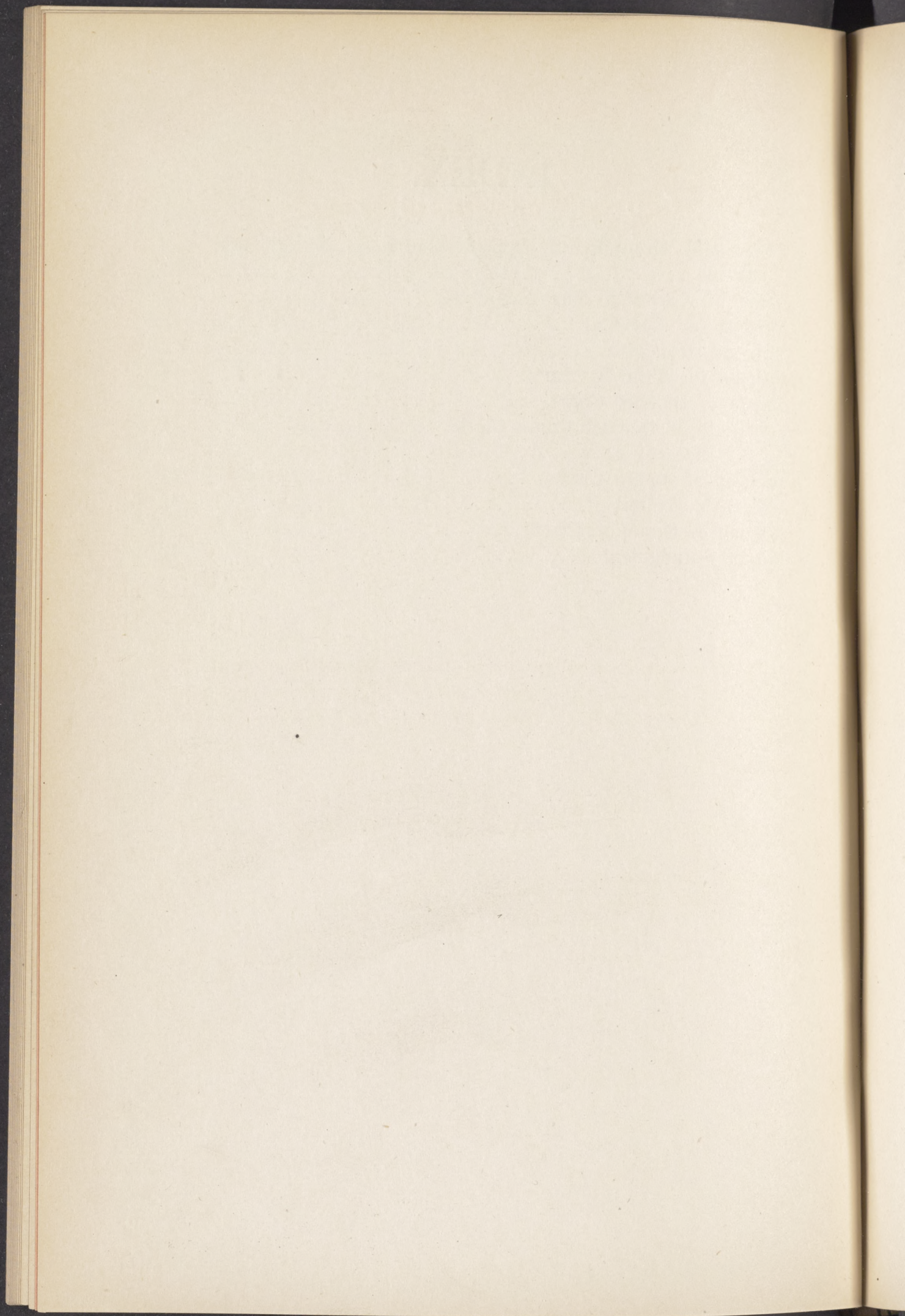


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*Notice and Grounds of Appeal.*

**NOTICE AND GROUNDS OF APPEAL.**

Filed April 20, 1920.

**New Jersey Supreme Court**

10

NICHOLAS RAMOS,

*Plaintiff-Appellee,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant-Appellant.*

*Notice of Appeal  
to Court of Errors  
and Appeals.*

*To the above-named plaintiff-appellee or to Nathan H. Berger,  
Esquire, his attorney.*

20

*Sirs:*

Take notice that the defendant-appellant hereby appeals to the New Jersey Court of Errors and Appeals from the judgment of the New Jersey Supreme Court affirming the judgment of the District Court of the City of East Orange, for the following grounds:

First: Because the New Jersey Supreme Court erred in affirming the judgment of the District Court of the City of East Orange.

30

Second: Because the New Jersey Supreme Court should have reversed the judgment of the District Court of the City of East Orange for the reasons set forth in the reasons for reversal filed by the defendant-appellant in the New Jersey Supreme Court.

FREDERIC M. P. PEARSE,  
*Attorney of Defendant-Appellant.*

Dated: March 4th, 1920.

40

Service acknowledged this 12th day of March, 1920.

NATHAN H. BERGER,  
*Attorney for Plaintiff-Appellee.*

**New Jersey State Library**

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed July 18, 1919.

DISTRICT COURT OF THE CITY OF EAST ORANGE.

10

NICHOLAS RAMOS,

*Plaintiff,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant.*

*On Contract.*

*Notice of Appeal.*

20

*To Mr. Nicholas Ramos, or*

*To Nathan H. Berger, Esq., his attorney.*

Sir:

Take notice that the defendant, Hartford Fire Insurance Company, hereby appeals to the New Jersey Supreme Court, from the judgment of the District Court of the City of East Orange, rendered in the above-stated action on the 15th day of July, 1919.

July 18, 1919.

30

FREDERIC M. P. PEARSE,

*Attorney of Defendant.*

40

*Reasons for Reversal.*

**REASONS.**

Filed.

**New Jersey Supreme Court**

10

NICHOLAS RAMOS,

*Plaintiff-Appellee,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant-Appellant.*

*On Appeal from  
District Court.*

*Reasons for  
Reversal.*

The following is a specification of the determinations of the District Court with which appellant is dissatisfied in point of law.

20

1. The Court erred in giving judgment for the plaintiff because there was no loss or damage by fire as contemplated by the policy of fire insurance.

2. Because the facts proved that the damage to the boiler in question did not occur through a fire as provided for in the policy of insurance, but such damage occurred through the absence of water in the boiler.

3. Because it was not proven that the damage was caused by fire arising from any cause whatsoever as contemplated by the policy of insurance.

30

4. Because there was no evidence upon which the Trial Court could base a judgment for plaintiff.

5. Because the judgment for plaintiff upon the uncontradicted evidence in the case is erroneous.

6. Because the judgment should have been for the defendant and not for the plaintiff.

7. Because the judgment is in divers other respects illegal and void.

40

FREDERIC M. P. PEARSE,  
*Attorney of Defendant-Appellant.*

*State of Demand.*

**STATE OF DEMAND,**

Filed November 26, 1919.

**EAST ORANGE DISTRICT COURT.**

10	NICHOLAS RAMOS,  <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>On Contract.</i>  <i>State of Demand.</i>
	<div style="text-align: center;"><i>vs.</i></div> HARTFORD FIRE INSURANCE COMPANY, a foreign corporation,  <div style="text-align: right;"><i>Defendant.</i></div>		

**FIRST COUNT.**

- 20 1. On December 27, 1918, the defendant, hereinafter referred to as the Company, issued a policy of insurance, insuring to the plaintiff herein, the sum of \$1,900 to cover any damage which might be done to the plaintiff's automobile, described as Stanley Steamer touring car, arising from fire caused by any cause whatever.
2. The plaintiff paid to said company as a consideration for said insurance a premium of \$38.00.
- 30 3. Since the issuance of said policy of insurance the boiler in said automobile was damaged by fire beyond repair, and the plaintiff was obliged to furnish for said automobile the parts set up in the schedule annexed hereto and marked "Schedule A," as well as the labor that was necessary to repair said car and expended for said labor and materials the sum of \$67.53, for which amount plaintiff claims judgment against the defendant.

**SECOND COUNT.**

- 40 1. On or about December 27, 1918, the defendant issued to the plaintiff a policy of insurance in consideration of a premium of \$38.00, which plaintiff paid, and in consideration of said premium the defendant insured to the plaintiff the sum of \$1,900 to cover any damage to plaintiff's automobile, described as a Stanley Steamer touring car. Through various causes and for an additional sum of \$23.80 the said policy was also made to

*State of Demand.*

cover damage to said automobile through accidental collision with any other automobile, vehicle or object.

2. Since the issuance of said policy and while the same was in force, the automobile of plaintiff was damaged through collision with another automobile, vehicle or object, which caused the burning out of the boiler in said automobile and other parts thereof, which boiler and parts were replaced by plaintiff at a cost to the plaintiff of \$467.53, an itemized statement of which damage is set forth in a schedule annexed hereto and marked "Schedule A." 10

Plaintiff suffered damages in the sum of \$467.53 and demands judgment in said amount.

NATHAN H. BERGER,  
*Attorney for Plaintiff.*

20

## SCHEDULE A.

96 $\frac{3}{4}$ hrs. labor at \$1.	\$ 96.75	
7 $\frac{1}{2}$ " " " \$0.75	5.63	
13 " " " \$0.60	7.80	
1 New Boiler #15513	325.00	
1 Perch rod bolt	1.00	
1 23" Vaporizer	12.00	
3 $\frac{1}{2}$ yds. sheet asbestos at .50	1.75	
1 Fender repaired	2.00	30
Boiler paint	.35	
1 New rear water pump	6.00	
Expressage on boiler	8.00	
External brake band inside link & busing	1.25	
	<hr/>	
	\$467.53	

40

*Demand for Trial by Jury.*

**DEMAND FOR TRIAL BY JURY.**

Filed December 19, 1918.

EAST ORANGE DISTRICT COURT.

10

NICHOLAS RAMOS,

*Plaintiff,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY, a  
foreign corporation,

*Defendant.*

*On Contract.*

*Demand for  
Trial by Jury.*

20

Arthur G. Smith, Clerk,  
East Orange District Court,  
City Hall, East Orange, N. J.

Sir:

Take notice that the plaintiff in the above-entitled cause hereby demands trial of the said action by a jury of twelve men, on December 26th, 1918. This demand is intended to apply to any day whereon the above case should come on for trial and is not to be limited in its application to December 26th, 1918, should this case be adjourned on that day.

30

Yours respectfully,

NATHAN H. BERGER,  
*Attorney for Plaintiff.*

40

*Record of District Court.*

**RECORD OF DISTRICT COURT.**

17662 DISTRICT COURT, EAST ORANGE, N. J.

Nathan H. Berger, plaintiff's attorney.

NICHOLAS RAMOS,	}	<i>Plaintiff,</i>	Pltff's	Deft's	10	
<i>vs.</i>			Costs.	Costs.		
HARTFORD FIRE INSURANCE COM- PANY, a corporation,			<i>Defendant.</i>	Summons 2.10	Order filed 1.00	
				Mileage .24	" " 1.00	
				Listing 1.50		
			Jury 5.75			

C/o Mr. Spaulding, 38 Clinton St., Newark.

20

A summons in the above-stated cause was issued on the ninth day of November, 1918, returnable on the nineteenth day of November, 1918, wherein the plaintiff demands of the defendant the sum of five hundred dollars.

The plaintiff filed state of demand November 26, 1918.

The summons was served and returned as follows:

I served the within summons Nov. 12, 1918, on Jos. Spaulding, he being the Secy. of Essex Co. Agency & agent of said Hartford Fire Ins. Co., by reading it to him and giving him a copy thereof.

A. S. OVERMILLER,  
*Sergeant-at-Arms.*

Dec. 19, 1918. Demand for jury filed.

11/19/19 This case was adjourned various times to 3/6/19.

3/6/19 The plaintiff and the defendant appearing, the cause was tried and determined at this time. Jury sworn Nicholas Ramos. M.-D. sworn for plaintiff. Ins. Policy mkd. P. 1. Mrs. Anna Ramos and Fred C. Jenkins sworn for plaintiff. Repair bill mkd. P. 2. Miss Annie Morgan, Adelaide Ramos and Robert A. Giuliano, M. D., sworn for plaintiff, John Hankin and Everett B. Hopwood sworn deft.

40

*Certificate of District Court Clerk.*

The evidence being closed the Court charge the jury who thereupon retired to consider of their verdict, a constable being sworn to attend upon them, when having returned into the court they say they have disagreed and cannot agree upon a verdict.

10

New trial granted and Court reserved decision on same facts as presented at former jury trial.

7/15/19

The Court rendered judgment in favor of the plaintiff and against the defendant in the sum of four hundred sixty-seven 53/100 dollars, damages with costs, whereupon judgment is entered in favor of the plaintiff and against the defendant in the sum of \$467.53 damages with costs.

Jul. 18, 1919. Notice of appeal filed.

20 Sept. 16, '19. Order filed extending time.

Oct. 2, 1919. " " " "

Aug. 4, 1919. Bond filed.

**CERTIFICATE OF DISTRICT COURT CLERK.**

## EAST ORANGE DISTRICT COURT.

30 NICHOLAS RAMOS

*vs.*

HARTFORD FIRE INS. Co., a Corp.

I, Arthur G. Smith, Clerk of the East Orange District Court, do hereby certify that the foregoing is a true and correct copy of the docket entries and copies of papers on file in this court in the above-entitled cause.

40

Dated October 9, 1919.

(SEAL)

ARTHUR G. SMITH,  
*Clerk.*

*Agreed State of Case.*

**AGREED STATE OF CASE ON APPEAL.**

The parties hereby by their respective attorneys submit the following as the state of case for appeal:

The action was first tried before the Court and a jury, and the jury disagreed. The second trial was had before the Court without a jury, the parties submitting, by a stipulation in open court, the testimony taken at the first trial. 10

The Court found for the plaintiff in the sum of four hundred sixty-seven dollars and fifty-three cents (\$467.53).

The facts proven were as follows:

The plaintiff's automobile was insured by the defendant against "direct loss or damage by fire arising from any cause whatsoever."

The automobile is a Stanley Steamer, the motive power of which is created by steam, the boiler being placed directly under the hood in the front of the car. The water is fed automatically to the boiler from a water tank. 20

The steam is generated by heat from a burner throwing up numerous small jets of blue flame directly beneath the boiler. The fuel is kerosene oil supplied to the burner through a tube running from a tank in the rear of the car. The boiler is of the "fire tube water level type" shaped like a drum consisting of 780 vertical tubes one-half inch in diameter wound about with piano wire, then covered with a galvanized iron covering, all of which, together with the boiler and burner beneath, is completely encased in an asbestos covering. 30

The car was being driven by a chauffeur and had as passengers the wife of plaintiff and two other ladies who testified it came to a sudden stop, that steam arose and also flames to a height of about the height of the ceiling in the trial court room (about fifteen feet). That after they alighted from the car they saw flames on the ground under the car. They also testified that the heat was intense; that it was too hot to open the metal hood over the boiler.

There was no damage done to the car, except to the boiler hereinafter described, and the charring of the paint over the hood. 40

The mechanic called by the plaintiff testified that the water tank on the car was filled before this trip was undertaken with a supply of water sufficient to run 125 miles, and lubricating oil put in wherever it was necessary, and the car generally

*Agreed State of Case.*

overlooked at a service station. At the time when the fire and the resultant damage occurred, the car had traveled about thirty to forty miles; that the boiler was without water when he examined it, sometime after the accident, that the tubes were melted and sagging; that the crown head of the boiler was pushed up; that the wire wrapping around the boiler was without temper and crumbled; that the boiler, including the asbestos covering, was cracked, and on cross examination he stated that absence of water from the boiler while the burner was burning could cause the damage which was done.

The expert boilermaker called by the defendant, a man of forty years' experience, testified that he examined the boiler two weeks after the accident, found the tubs stretched and expanded, the crown head pushed up and the brass couplings pulled apart by warping; that in his opinion the damage was done through overheating when there was no water in the boiler.

That in his opinion the flames seen by the witnesses were caused by the ignition of the fuel from the pilot light after the couplings had been pulled apart and the boiler damaged through warping caused by the overheating of the boiler; that in his opinion the boiler was ruined from the heat generated from the burner beneath the boiler when there was no water in it, and thereby causing the expansion, warping, stretching and pulling apart of the couplings.

He further testified, that the injury could not have been done from the outside flames, in his opinion, because of the asbestos covering, and that if there had been water in the boiler the heat from the outside flames would not have been intense enough to cause the damage, and that the damage was caused from within the boiler, and not from without, which was evidenced by the condition of the tubes as well as the bottom and crown head of the boiler.

On this state of facts the Court rendered the following opinion.

Dated Oct. 6, 1919.

40

NATHAN H. BERGER,  
*Attorney of Plaintiff.*

FREDERIC M. P. PEARSE,  
*Attorney of Defendant.*

*Decision of Judge.*

**DECISION OF JUDGE CLANCY.**

EAST ORANGE DISTRICT COURT.

RAMOS

*vs.*

HARTFORD FIRE INS. Co.

*Memorandum.*

10

The above-entitled action was brought to recover for damage done to the plaintiff's automobile as the result of a fire.

The testimony of the witnesses who actually witnessed the spectacle is clear that there was a fire, and the policy under which the plaintiff was insured reads as follows: "Fire arising from any cause whatsoever and lightning." I am of the opinion that it was clearly intended under said policy to insure the plaintiff against any loss which may have been sustained as the result of a fire, irrespective of the cause of the fire, and I shall find that there was a fire and that the damage done was the result of fire, and render judgment in favor of the plaintiff for the sum of \$467.53.

20

CHARLES B. CLANCY,  
*Judge of East Orange District Court.*

Dated July 15, 1919.

30

**PLAINTIFF'S EXHIBIT P. 1.**

(Part of Exhibit P. 1.)

Policy of Insurance between Plaintiff and Defendant.  
Perils insured against.

(Except as hereinafter provided)

(A) Fire arising from any cause whatsoever, and Lightning.

40

*Opinion of Supreme Court.*

**OPINION OF SUPREME COURT.**

Filed February 13, 1920.

**NEW JERSEY SUPREME COURT.**

November Term, 1919. No. 412.

10

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NICHOLAS RAMOS,

*vs.*

HARTFORD FIRE INSURANCE CO.

---

Before Justices Swayze and Parker.

20 *Per Curiam:*

We think there was evidence to warrant the finding in favor of the plaintiff. The question is one of fact, and we cannot reverse the action of the Trial Judge. Let the judgment be affirmed with costs.

30

40

*Rule for Judgment.*

**RULE FOR JUDGMENT.**

Entered February 14, 1920.

NEW JERSEY SUPREME COURT.

NICHOLAS RAMOS,

*Plaintiff-Respondent,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant-Appellant.*

10

The above-entitled action, having been duly submitted on briefs at the November Term, 1919, of this court by Frederic M. P. Pearse, attorney for Hartford Fire Insurance Company, defendant-appellant, and Nathan H. Berger, attorney for Nicholas Ramos, plaintiff-respondent, and the Court having duly considered the same, and finding no error in the judgment of the East Orange District Court of Essex County, it is thereupon

20

Ordered and adjudged that the judgment of the East Orange District Court of Essex County in this cause be confirmed with costs, and that the records be remitted to the said East Orange District Court to be proceeded with in accordance with the judgment, and the practice in such case made and provided.

Entered February 14, 1920.

30

On motion of

NATHAN H. BERGER,

*Attorney for Plaintiff-Respondent.*

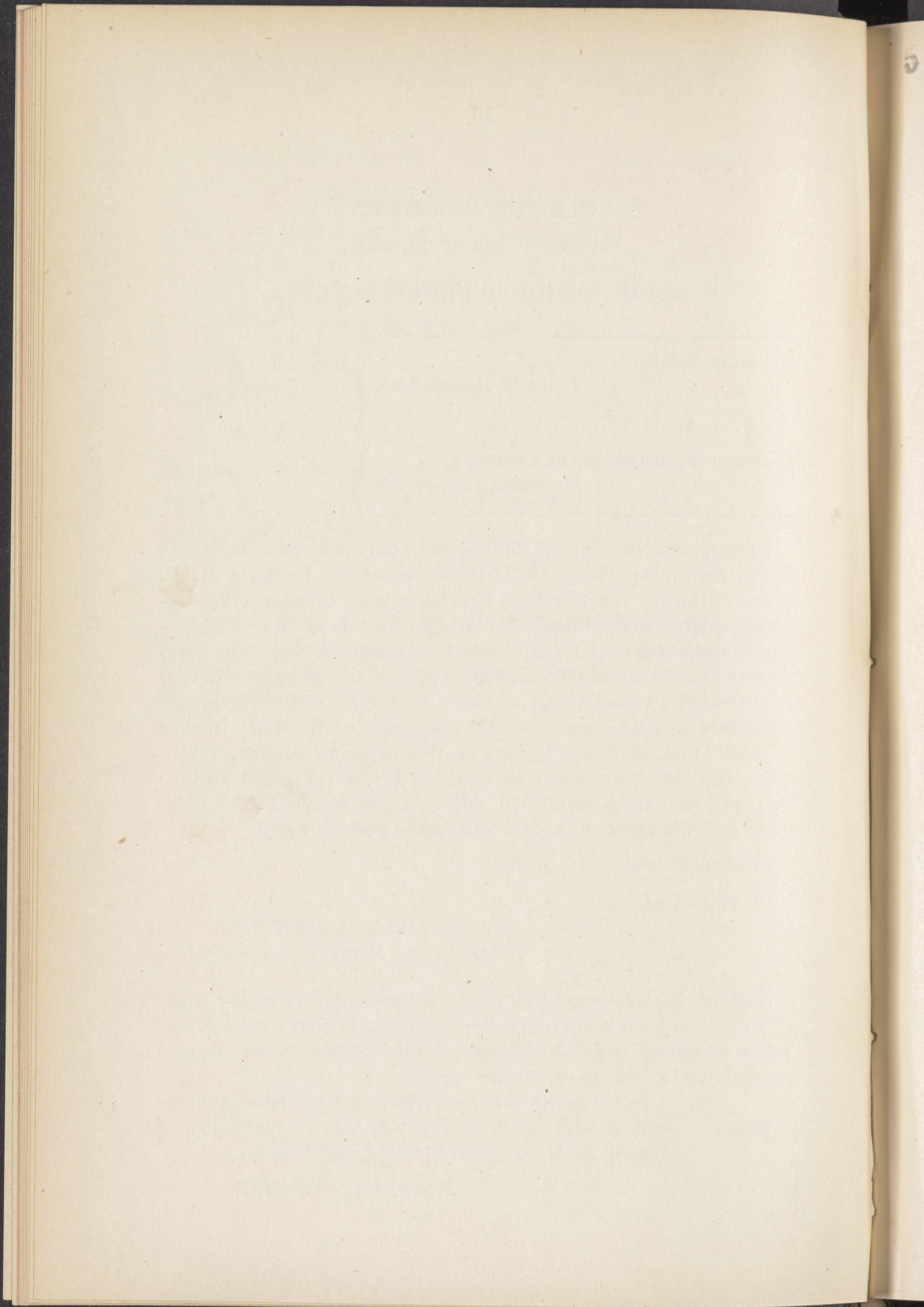
I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the court in the above-entitled cause.

(SEAL) In testimony whereof I have set my hand and the seal of said court at Trenton, this fifteenth day of March, A. D. nineteen hundred and twenty.

40

ENOCH L. JOHNSON,

*Clerk.*



## New Jersey Court of Errors and Appeals

NICHOLAS RAMOS,

*Plaintiff-Appellee,**vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant-Appellant.**On Contract.**On Appeal**from the**Supreme Court.***BRIEF FOR PLAINTIFF-APPELLEE.****Facts.**

The plaintiff's automobile was insured by the defendant against "direct loss or damage by fire arising from any cause whatsoever."

The automobile is a Stanley Steamer, the motive power of which is created by steam, the boiler being placed directly under the hood in the front of the car. The water is fed automatically to the boiler from a water tank.

The steam is generated by heat from a burner throwing up numerous small jets of blue flame directly beneath the boiler. The fuel is kerosene oil supplied to the burner through a tube running from a tank in the rear of the car. The boiler consists of 780 vertical tubes one-half inch in diameter wound about with piano wire, then covered with a galvanized iron covering encased in an asbestos covering.

The car was being driven by a chauffeur and had as passengers the wife of plaintiff and two other ladies who testified it came to a sudden stop, that steam arose and also *flames to a height of about the height of the ceiling in the trial court room (about fifteen feet). That after they alighted from the car they they saw flames on the ground under the car. They also testified that the heat was intense; that it was too hot to open the metal hood over the boiler.* (State of case, page 9.)

The mechanic called by the plaintiff testified that the water tank on the car was filled before this trip was undertaken with a supply of water sufficient to run 124 miles, and lubricating oil put in wherever it was necessary, and the car generally overlooked at a service station. At the time when the fire and the resultant damage occurred, the car had traveled about thirty to

forty miles; that the boiler was without water *when he examined it, some time after the accident*; that the tubes were melted and sagging; that the crown head of the boiler was pushed up; that the wire wrapping around the boiler was without temper and crumbled; that the boiler, including the asbestos covering, was cracked.

The only evidence offered by the defendant was the testimony of an expert on boilers, whose testimony was solely opinion testimony as to what might have caused the damage in question, and he quite naturally disagreed with the testimony offered by plaintiff that the damage in question was caused by fire.

The Trial Court found that there was a fire that caused the damage complained of and rendered judgment for the plaintiff-appellee, which judgment was affirmed by the Supreme Court, on the ground that the case involved a pure question of fact, and the action of the Trial Judge was affirmed.

## LAW.

### POINT I.

**If a fire in anyway contributed to the damage, plaintiff's judgment must stand.**

If the peril insured against is found in the chain of cause and effect, the law will not look back for antecedent contributing causes, although without them the disaster would not have occurred.

*Louisville Underwriters v. Pence*, 93 Ky. 96;

*Fire Association v. Brewing Association*, 75 So. 196.

In the case at bar, if the fire on the road caused the damage to the car, it makes no difference that the lights maintained on this car may have been an antecedent contributing cause to this fire, and the Trial Court was justified in finding that the fire caused the damage.

In *re Way v. Abbington Mutual Fire Insurance Company*, 156 Mass. 67, it was held that where a fire in a stove ignited soot in the chimney and smoke from the chimney spoiled cigars in the premises insured, the damage so occasioned was covered by a policy insuring against damage by fire. This case was approved in *re Collin v. Insurance Company*, 9 Pa. Supreme Court 576.

In re *O'Connor v. Queen Insurance Company*, 140 Wis. 388, a servant of plaintiff built a fire in a furnace with highly inflammable material, which filled the house insured with smoke and its intense heat damaged personal property therein. A judgment for the assured against the insurance company for this damage was upheld.

In the case at bar, the fire was extraordinary, unusual, unsuitable for the purpose intended, and in a measure uncontrollable. The usual fire used to generate steam consists of small jets of blue flame underneath the boiler (state of case, page 9, folio 23). The fire that caused the damage consisted of flames which rose to a height of 15 feet, which were on the ground under the car, the heat created thereby being intense, making it too hot to open the metal hood over the boiler (state of case, page 9, folio 34).

#### POINT II.

**Negligence of plaintiff or his agents will not relieve defendant from liability.**

Defendant attempted to escape liability on the ground that there was no water in the boiler when the mechanic examined it *some time after the accident*, there being nothing to indicate the time when the examination was made, and what happened to the water in the boiler in the meantime. However, negligence in operating this car, not amounting to fraud, though the direct cause of the fire is covered by the policy, one of the principal objects of insurance being to guard against negligence, and the insurer is not relieved from liability by negligence or carelessness of the insured or his servants.

*Bouchard v. Insurance Company*, 96 Atl. 244;

*May on Insurance*, par. 402;

*Johnson v. Insurance Company*, 4 Allen, 388;

*Gates v. Insurance Company*, 5 N. Y. 469;

*Cumberland Mutual Co. v. Douglas*, 58 Pa. Stat. 419.

#### POINT III.

**On the weight of the evidence judgment for plaintiff was proper.**

The only evidence of defendant was the expert testimony of a boiler maker, who based his opinions on observations of the car long after the damage occurred.

In re *Black v. Black*, 30 N. J. Eq. 224, V.-C. Van Fleet says, an opinion of experts, based on comparison alone, is evidence of low degree and has been regarded by eminent judges to be uncertain, even when only slightly opposed, to afford a safe foundation for judicial opinion, citing numerous authorities in support of his statement of the law.

In the case at bar plaintiff proved by eye witnesses that there was a fire on the road under the car causing intense heat, flames rising to a great height, with a resultant damage, and the only logical inference that could be drawn was that the flames caused the damage.

In re *Miller v. Thomas*, 98 At. 193, our Court of Errors held that a plaintiff is not bound to prove his case beyond a reasonable doubt to recover damages. In the case at bar, the plaintiff adduced sufficient testimony to prove that there was terrific fire unquestionably beyond the limitation and independent of the usual fire used to generate steam, and the Court was justified in taking judicial notice of the fact that this fire was destructive, 16 Cyc. 356, and in view of the evidence of the resultant damage, that the fire caused said damage.

In re *Chester v. Cape May R. R.*, 78 N. J. L. 131, the Trial Court had no evidence to indicate which of two causes may have brought about the death of Chester. In the case at bar the evidence was clear and uncontradicted that the ordinary lights maintained on the automobile to generate motive power were not the cause of the damage complained of and that there was an extraordinary intense fire, hostile in its character and it was reasonable to infer that said fire caused the damage complained of.

In the case of *Cass v. Sanger*, 77 N. J. L. 412, the plaintiff depended entirely on the doctrine of *res ipsa loquitur*, there being no evidence of the cause of the damage complained of other than the fact that water was coming down from a ceiling in the store, without direct proof as to where the water came from. In the case at bar eye witnesses testified that fire was seen by them on the road underneath the car, and it was quite reasonable to infer that these flames of intense heat rising fifteen feet high could have caused the damage complained of.

In the case of *Kennedy v. Netherlands-Amer. Co.*, 76 N. J. L. 618, Chief Justice Gummere in his opinion for this Court says in part:

“In the absence of direct evidence the law requires that she (the administratrix of a person who met death by falling through an open hatchway on a vessel owned by the defendant) must show the existence of such circumstances that would justify the inference that this death resulted from a neglect of duty by the defendant.”

In other words, if from the evidence in the case the inference can be drawn that a given effect was produced by a specified cause, the Trial Court may by law draw such an inference. It is urged that in the case at bar the evidence supported the strongest possible inference that the flames seen by the witnesses in the case caused the damage complained of.

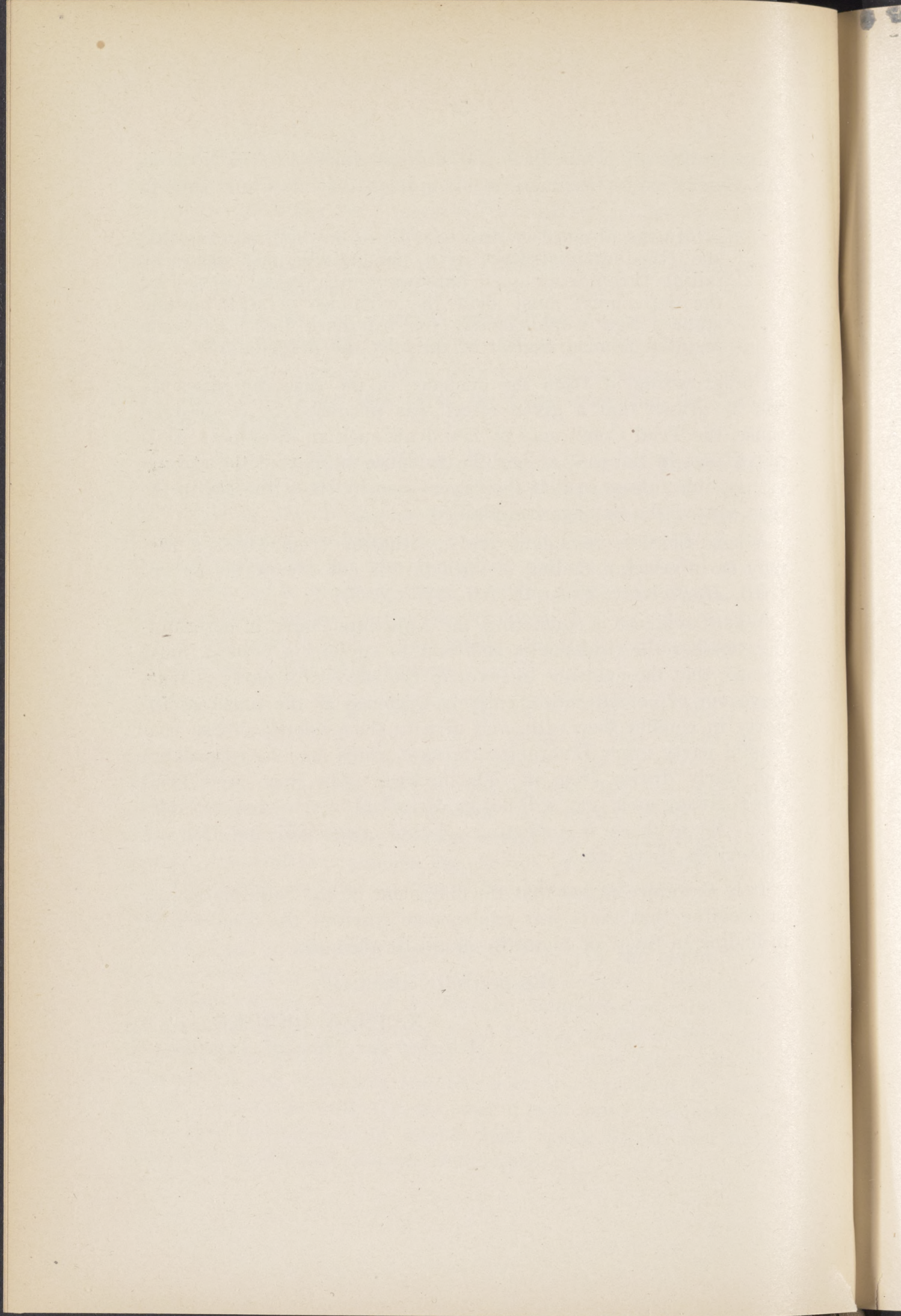
Where there is testimony and a situation from which a fact may be inferred, a finding of such fact is not reviewable on appeal. *Hoffmier v. Trost*, 92 Atl., 277 (N. J.)

Where evidence is conflicting, the Appellate Court, in determining whether the evidence is sufficient to support a verdict, must assume that the evidence in favor of the successful party is true, leave out of consideration entirely evidence of the unsuccessful party in conflict therewith, and give to the evidence of the successful party every favorable inference which may be reasonably and fairly drawn from it. The findings of a jury or a Trial Court sitting as a jury will not be disturbed by a reviewing court where the evidence is conflicting. 4 C. J., pages 857 and 876, and authorities there cited.

It is therefore urged that the judgment of the Supreme Court in deciding that there was evidence to warrant the Trial Court in finding in favor of plaintiff should be affirmed.

Respectfully submitted,

NATHAN BERGER,  
*Attorney for Plaintiff-Appellee.*



## New Jersey Court of Errors and Appeals

NICHOLAS RAMOS,

*Plaintiff-Appellee,*

*vs.*

HARTFORD FIRE INSURANCE COMPANY,

*Defendant-Appellant.*

*On Contract.*

*On Appeal from  
the Supreme  
Court.*

### BRIEF FOR DEFENDANT-APPELLANT.

#### Facts.

Defendant insured plaintiff's automobile against "direct loss or damage by fire arising from any cause whatsoever" (state of case, p. 9, l. 15).

The motive power of the automobile was by steam generated in a boiler located in the same position as the gas engine in the usual automobile (*id.*, p. 9, l. 20).

The boiler consists of a large number of small vertical tubes wrapped about with wire like piano wire, then covered with a galvanized iron covering, all of which, together with the burner beneath, is encased in an asbestos casing (*id.*, p. 9, l. 25).

On the day in question the car came to a sudden stop, steam and flames arose, and there were flames on the ground (*id.*, p. 9, l. 32).

The heat was intense, so that it was too hot for anyone to open the metal hood over the boiler (*id.*, p. 9, l. 37).

No witness testified that the flames as seen did any damage to the car.

After the events above mentioned, the automobile was examined by a mechanic and an expert boilermaker. Both describe the boiler as they found it, and the mechanic said that the damage which he described could occur from absence of water in the boiler (*id.*, p. 10, l. 13). *It is significant that the mechanic, a witness for the plaintiff, did not state what caused the damage, although he had the opportunity to do so—but he did corroborate the expert for the defendant, who was the only witness who testified as to what actually caused the damage.*

The boilermaker, a man of many years' experience, affirmatively testified that the damage to the boiler was *not* from any

outside flames, but because of the absence of water in the boiler and the consequent overheating of it by the burner beneath (*id.*, p. 10, l. 20, *et seq.*).

A reading of the agreed facts fails to disclose that the flames seen by the witnesses caused any damage to the car or were to be connected with the injury to the boiler which was afterwards discovered.

The only positive testimony is that of the boilermaker, who explicitly sets forth the cause of the injury, and that the flames which were seen did not cause the damage and were not in any way connected with it.

From this testimony the Trial Court found that there was a fire and that the damage done was the result of fire and that defendant was liable under its policy of insurance, and the judgment was affirmed by the Supreme Court.

#### LAW.

**There was no evidence to support the finding of fact of the District Court.**

While it is undoubtedly true that if there is any legal evidence to support the findings of fact of the Trial Court, the Appellate Court will decline to disturb the findings, still we insist that in this case there was none. (*Blanchard Bros. v. Berendge*, 89 Atl. Rep. 992.)

Damage by heat was not insured against in terms and there can be no recovery under the policy, where the fire which caused the damage to the boiler was not misplaced. (*Gibbons v. German Insur. Co.*, 30 Ill. App. 265; *Joyce on Insurance*, 2nd Ed., p. 4719, Sec. 2779.)

There was no evidence in the case from which it could be inferred that the fire represented by the flames seen by the witnesses was the cause of the injury or damage to the boiler.

Without some evidence of that character, the judgment appealed from is not legally supported.

It is not sufficient to render the defendant liable under its policy to find that there was a fire. There must be evidence to support, and a finding of fact that this fire was the one which caused the damage.

*Cameron on Law of Fire Ins.*, p. 51;

*Richards on Insurance*, 3rd Ed., Sec. 231;

*Elliott on Ins.*, Sec. 221;

*Chester v. Cape May R. R. Co.*, 78 N. J. L. 131;  
*Cass v. Sanger*, 77 N. J. L. 412;  
*Kennedy v. Netherlands-Amer. Co.*, 76 N. J. L. 618.

From a reading of the conclusions of the Trial Court (state of case, p. 11) his view evidently was that a fire having occurred and damage having been suffered, the defendant was liable notwithstanding the fact that the fire was not the proximate or direct cause of the damage. The language of the latter part of his conclusions shows this, wherein he says, "I shall find that there was a fire and that the damage done *was the result of fire.*"

## II.

**Damage from over-heating by the burner under the boiler was not insured against.**

No matter how general the terms of the policy are, the plaintiff must prove a connection between the fire and the damage done, and this he failed to do, even inferentially.

The positive proof in the case was to the effect that the boiler was damaged because of the action of the burner beneath it over-heating the tubes when there was no water in them; and that absence of water in the boiler and not the flames seen by the witnesses for the plaintiff caused the damage (state of case, p. 10, l. 28).

Under these circumstances the defendant is not liable. (*American Towing Co. v. German Ins. Co.*, 21 Atl. Rep., p. 553.)

In the case last cited the question arose over damage from fire to the boiler in a tugboat. Both the boat itself and the boiler were damaged. The opinion of experts was that the boiler was injured by the fire in the furnace in contact with the boiler, the latter being without water to protect it. The tugboat itself was partially destroyed by fire.

The Appellate Court said that the burning or warping of the grate by the fire in the furnace could not be supposed to be within the risk, no matter how general were the terms of the policy, and if this were true of the grate it was equally true of the boiler itself. *see also 196 N.Y. 337; 229 N.Y. 54*

The boiler in the automobile, together with the burner beneath, were encased in a fireproof asbestos casing. There was no evidence to show that the flames outside in any manner penetrated this covering and did the damage complained of. The Trial Court in the absence of proof was not justified (if it did) in assuming this to be a fact.

Therefore, without proof that the flames seen did burn the boiler, and without justification for assuming that they did do so, the Trial Court had no facts upon which to base its conclusion or any legal evidence to support it.

We therefore feel that the Supreme Court erred in deciding that there was evidence to warrant the Trial Court in finding in favor of the plaintiff.

Respectfully submitted,

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DANIEL W. APPELATE,  
*On the Brief.*

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and Souther

There is no doubt that the Supreme Court has the power to  
issue writs of habeas corpus and other writs in cases where the  
Federal Court has no jurisdiction to issue the writs.

We believe that the Supreme Court should be authorized to  
issue writs of habeas corpus and other writs in cases where the  
Federal Court has no jurisdiction to issue the writs.

Respectfully submitted,

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