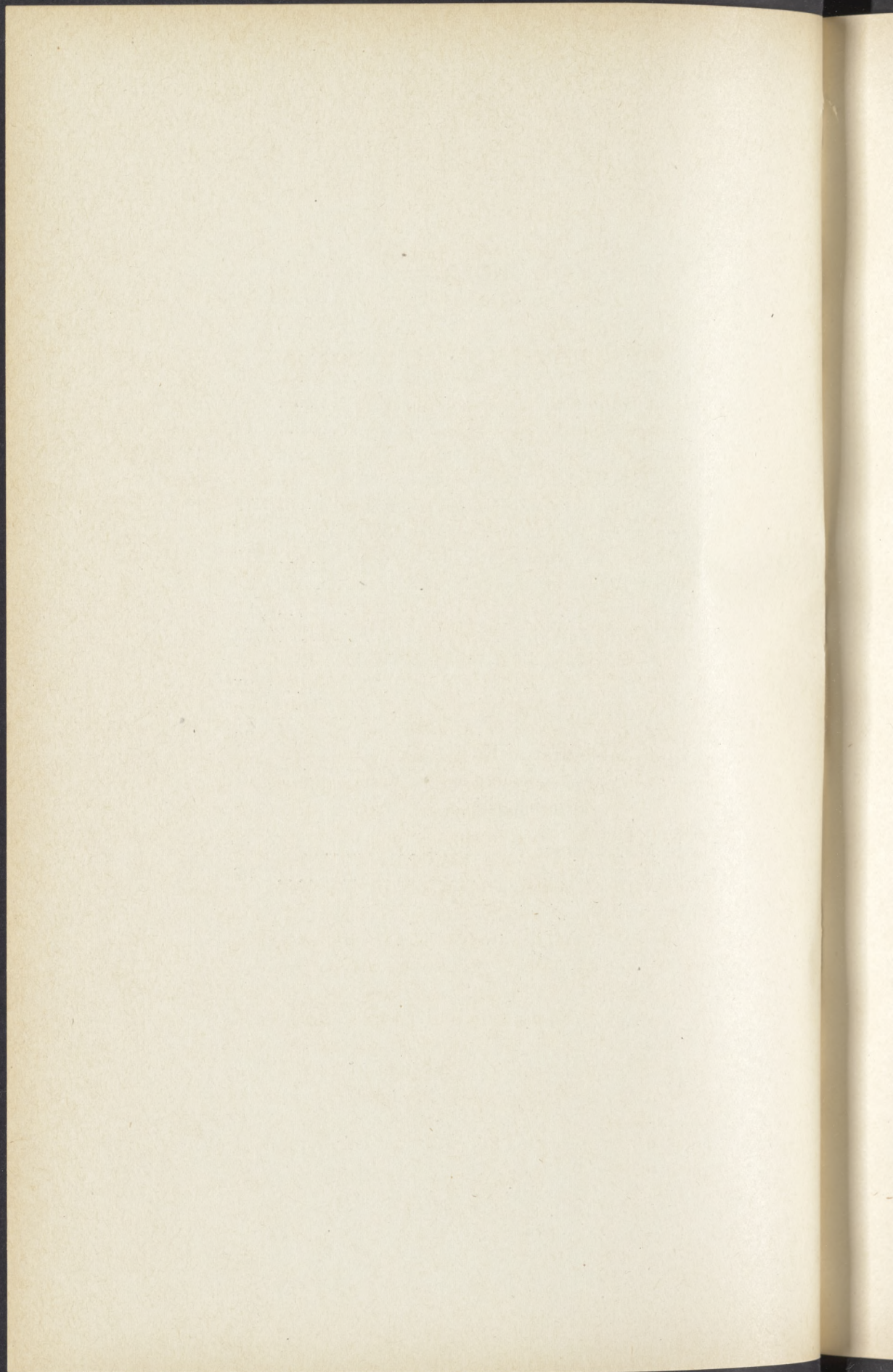


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## Bill of Complaint.

Filed Aug. 17, 1929.

### In Chancery of New Jersey.

To the Honorable EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey:

10

Complainants, The Pennsylvania Fire Insurance Company, a Pennsylvania corporation, and The Fidelity-Phenix Fire Insurance Company of New York, a New York corporation, respectfully show that:

1. On January 19, 1926, complainant The Pennsylvania Fire Insurance Company by its policy of insurance insured Teodoro Rinaolo for the period of three years, in the sum of \$8,000, against loss or damage caused by fire to premises known as 177 Everett Place, East Rutherford, New Jersey; loss payable first to East Rutherford Savings Loan and Building Association as first mortgagee and second to William Gramlich and Alfred Gramlich, second mortgagees, as interest may appear.

20

2. On June 20, 1926; complainant The Fidelity-Phenix Fire Insurance Company of New York, by its policy of insurance insured Teodoro Rinaolo for the period of three years, in the sum of \$7,000, against loss or damage caused by fire to premises known as 177 Everett Place, East Rutherford, New Jersey; loss payable first to East Rutherford Savings Loan and Building Association as first mortgagee and second to William Gramlich and Alfred Gramlich, second mortgagees, as interest may appear.

30

40

*Bill of Complaint.*

3. On January 23, 1927 said premises were damaged by fire to the extent of \$16,149.06.

4. Complainants thereafter were notified by Robert V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, that they claimed a lien of \$1500. for fees as attorneys upon any funds due to said Teodoro Rinaolo from complainants upon said policies.

5. Complainants thereafter were notified by Meier Chernin that he claimed a lien of \$1,291. for services as referee upon any funds due to said Teodoro Rinaolo from complainants upon said policies.

6. By reason of said fire mentioned in paragraph 3 there became due from complainant The Pennsylvania Fire Insurance Company under its said policy to the said mortgagees East Rutherford Savings Loan and Building Association, William Gramlich and Alfred Gramlich, the sum of \$3,896.90, and to said Teodoro Rinaolo the sum of \$338.92. On or about January 9, 1928, said complainant paid said sum of \$3,896.90 to said mortgagees, but still retains said sum of \$338.92, which is claimed by said Robert V. Kinkead, David M. Klausner, Meier Chernin and Teodoro Rinaolo.

7. By reason of said fire mentioned in paragraph 3 there became due from complainant The Fidelity-Phenix Fire Insurance Company of New York under its said policy to the said mortgagees East Rutherford Savings Loan and Building Association, William Gramlich and Alfred Gramlich, the sum of \$3,409.80, and to said Teodoro Rinaolo the sum of \$296.54. On or about January 9, 1928, said complainant paid said sum of \$3,409.80 to said mortgagees, but still retains said sum of \$296.54, which is claimed by said Robert V. Kinkead, David

*Bill of Complaint.*

M. Klausner, Meier Chernin and Teodoro Rinaolo.

8. On February 21, 1929, complainant The Pennsylvania Fire Insurance Company drew its draft payable to Teodoro Rinaolo, Meier Chernin, attorneys Kinkead & Klausner, and others in the sum of \$338.92.

9. On May 20, 1929, Conrad Deuchler, Sheriff of Essex County, by virtue of a writ of execution issued out of the New Jersey Supreme Court in a cause wherein said Meier Chernin was plaintiff and Teodoro Rinaolo was defendant levied upon and attached said draft. 10

10. The said Teodoro Rinaolo still claims to be entitled to said sum of \$338.92 due him under the terms of said policy issued by said The Pennsylvania Fire Insurance Company, and to the sum of \$296.54 due him under the terms of said policy issued by said The Fidelity-Phenix Fire Insurance Company of New York, and threatens to bring suits against the complainants to collect said sums. 20

11. Complainants have been and are unable to determine to which of the aforesaid claimants the said sums rightfully belong.

12. Complainant, The Pennsylvania Fire Insurance Company, has always been willing, and still is willing, to pay said sum of \$338.92 to such person or persons as is or are lawfully entitled to receive the same and to whom it can pay with safety, and it hereby offers to pay said sum of \$338.92 into this court. 30

13. Complainant, The Fidelity-Phenix Insurance Company of New York, has always been willing, and still is willing, to pay said sum of \$296.54 to such person or persons as is or are lawfully entitled to receive the same and to whom it can pay 40

*Bill of Complaint.*

with safety, and it hereby offers to pay said sum of \$296.54 into this court.

10 14. Complainants have not nor has either of them in anywise colluded and do not in anywise collude with the said Teodore Rinaolo, Robert V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, and Meier Chernin, or with any of them, respecting the afore-  
said matters, and said complainants have not, nor has any of them been indemnified by said defend-  
ants or any of them, and bring this suit of their own free will and to avoid being molested or in-  
jured touching the matters contained in this bill of complaint.

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

20 1. That Teodoro Rinaolo, Robert V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, Meier Chernin, Conrad Deuchler, Sheriff of Essex County, East Rutherford Savings Loan and Building Association, a corporation, William Gramlich and Alfred Gramlich, who are the defendants to this suit, may answer this bill of complaint and each statement therein made, and that they interplead and deter-  
30 mine their rights to said sums of \$338.92 and \$296.54.

2. That complainant, The Pennsylvania Fire Insurance Company, may be ordered to pay said sum of \$338.92 into this court.

3. That complainant, The Fidelity-Phenix Fire Insurance Company of New York, may be ordered to pay said sum of \$396.54 into this court.

40 4. That the said Conrad Deuchler, Sheriff of Essex County, and Meier Chernin may be enjoined and restrained from proceeding further against

*Bill of Complaint.*

complainants or either of them under any execution heretofore or hereafter issued out of the New Jersey Supreme Court in said suit wherein Meier Chernin is plaintiff and Teodoro Rinaolo is defendant, and that the defendants Teodoro Rinaolo, Robert V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, Meier Chernin, East Rutherford Savings Loan and Building Association, a corporation, William Gramlich and Alfred Gramlich may be enjoined and restrained from instituting any action or actions, suit or suits, or other proceedings against complainants or either of them to recover the foregoing sums. 10

5. That complainants upon payment into this court of said foregoing sums and upon procuring the said defendants to interplead and settle their rights to the said sums of money according to law and the practice of this court, may be ordered, adjudged and decreed to be discharged from all liability to said defendants or any of them arising out of the transactions in this bill of complaint set forth. 20

6. That complainants may be paid out of said fund composed of the total of the foregoing sums their costs of these proceedings. 30

7. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

ARTHUR T. VANDERBILT,  
Solicitor for Complainants.

REYNOLDS C. MASSEY,  
Of Counsel.

*Bill of Complaint.*

State of New York, }  
 County of New York, }<sup>ss.</sup>:

A. R. Thommasson, of full age, being duly sworn according to law, upon his oath deposes and says:

10 I am the Vice President of The Pennsylvania Fire Insurance Company, a Pennsylvania corporation, complainant in the foregoing bill of complaint named. Said The Pennsylvania Fire Insurance Company has filed this bill of interpleader against the defendants in this cause without any fraud or collusion between it and the said defendants or any of them; and it has not exhibited its said bill at the request of the said defendants or any of them, and has not been indemnified by the said defendants or any of them, but has exhibited its said bill with no other intention than to avoid being sued or molested by the said defendants touching the matters in said bill of complaint contained.

A. R. THOMMASSON.

Subscribed and sworn to before me  
 this 8th day of August, 1929.

(LS) W. W. Apgar  
 (W. W. Apgar)  
 Notary Public,  
 Suffolk County.

30 Certificate filed in New York County.  
 Clerk's No. 316, Register's No. 0-218.  
 Commission expires March 30, 1939.

(Clerk's certificate annexed—not copied)

*Bill of Complaint.*

State of New York, }  
 County of New York, } ss.:

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

I am the Secretary of The Fidelity-Phenix Fire Insurance Company of New York, a New York corporation, complainant in the foregoing bill of complaint named. Said The Fidelity-Phenix Fire Insurance Company of New York has filed this bill of interpleader against the defendants in this cause without any fraud or collusion between it and the said defendants or any of them; and it has not exhibited its said bill at the request of the said defendants or any of them, and has not been indemnified by the said defendants or any of them, but has exhibited its said bill with no other intention than to avoid being sued or molested by the said defendants touching the matters in said bill of complaint contained. 10  
20

VERNON HALL.

Subscribed and sworn to before me

this 12th day of August, 1929.

(LS) H. D. Hyer,

Notary Public,

Queens Co. No. 834.

Certificate filed in New York County. 30

Clerk's No. 439, Register's No. 1H 328.

Commission expires March 30, 1931.

(Clerk's certificate annexed—not copied)

**Writ of Subpoena.**

Filed Sept. 6, 1929.

*New Jersey*, to wit, *The State of New Jersey*, to  
 Robert V. Kinkead and David M. Klausner,  
 partners under the firm name of Kinkead and Klausner,

10

(Seal)

*Greeting*: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by The Pennsylvania Fire Insurance Company, et al., to be relieved touching the matters therein contained.

20

Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the fifth day of September, 1929, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his Honor, EDWIN ROBERT WALKER, our Chancellor, at Trenton, the 26th day of August, in the year of our Lord one thousand nine hundred and twenty-nine.

30

FERD GARRETSON,  
 Clerk.

ARTHUR T. VANDERBILT, Sol'r.

Service of a copy of within subpoena is hereby acknowledged this 27th day of August, 1929.

KINKEAD & KLAUSNER,  
 Solicitors of Defendants, Robert  
 V. Kinkead and David M. Klausner.

40

**Affidavit of Harvey W. Keough.**

IN CHANCERY OF NEW JERSEY.

Between

THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation,  
Complainant,

and

TEODORE RINAOLO,  
Defendant.

On Bill to  
Foreclose.  
Affidavit.

10

State of New Jersey, }  
County of Essex, } ss.:

Harvey W. Keough, of full age, being duly sworn upon his oath, deposes and says: 20

1. I am personally acquainted with Conrad Deuchler, Sheriff of the County of Essex.

2. Said Conrad Deuchler, Sheriff of the County of Essex acknowledged service of the annexed subpoenas to answer in the above entitled cause by affixing his signature thereon, in the presence of the deponent.

HARVEY W. KEOUGH

30

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

Alfred C. Walker,  
Notary Public of N. J.

40

**Writ of Subpoena.**

Filed Sept. 6, 1929.

*New Jersey*, to wit, *The State of New Jersey*, to  
 Conrad Deuchler, Sheriff, Meier Chernin  
 and Teodoro Rinaolo,

10

(Seal)

*Greeting*: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by The Pennsylvania Fire Insurance Company, et al., to be relieved touching the matters therein contained.

20

Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 31st day of August, 1929, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his Honor, EDWIN ROBERT WALKER, our Chancellor, at Trenton, the 20th day of August, in the year of our Lord one thousand nine hundred and twenty-nine.

30

FERD GARRETSON,

Clerk.

ARTHUR T. VANDERBILT, Sol'r.

Service of a copy of the within Subpoena is hereby acknowledged this 24th day of August A. D. 1929.

CONRAD DEUCHLER,

Sheriff.

Service of a copy of the within Subpoena is hereby acknowledged this 21st day of August, 1929.

40

G. M. BELFATTO,

Solicitor for Teodoro Rinaolo.

*Writ of Subpoena.*

Service of a copy of the within Subpoena is hereby acknowledged this 23rd day of Aug. 1929.

ABRAHAM LAUB,  
Solicitor for Meier Chernin.

**Writ of Subpoena.**

10

Filed Oct. 3, 1929.

*New Jersey*, to wit, *The State of New Jersey*, to  
East Rutherford Savings Loan and Building  
Association, a corporation, William  
Gramlich and Alfred Gramlich,

*Greeting:* Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by The Pennsylvania Fire Insurance Company, et al., to be relieved touching the matters therein contained. 20

(Seal)

Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 27th day of September, 1929, and in default thereof such order or decree will be made against you as the Court shall think equitable and just. 30

Witness, his Honor, EDWIN ROBERT WALKER, our Chancellor, at Trenton, the 10th day of September, in the year of our Lord one thousand nine hundred and twenty-nine.

FERD GARRETSON,  
Clerk.

ARTHUR T. VANDERBILT, Sol'r.

40

*Affidavit of Service.*

On Sept. 18th, 1929 duly served the within sub ad resp on the defendant East Rutherford Savings Loan and Building Association, a corporation, by serving Mr. Mille, Secretary, at his place of business R. R. Ave., Rutherford, N. J., personally.

10 On Sept. 20th, 1929 duly served the within sub ad resp on the defendant William Gramlich, at his place of business Park Ave., Rutherford, N. J., personally.

On Sept 20th, 1929 duly served the within sub ad resp on the defendant Alfred Gramlich, at his place of business, 104 Hackensack St., Woodridge, N. J. Personally.

HARRY C. HARPER,  
Sheriff.

By THOMES S. MACKEY,  
Deputy Sheriff.

20

30

40



*Statement of Claim of Defendants, Robert V. Kin-  
kead, partners, etc.*

said Teodoro Rinaolo as a result of the fire which occurred at the premises 177 Everett Place, East Rutherford, N. J. on January 23, 1927 a reasonable value for their services. The defendants, Kinkead and Klausner, rendered the services necessary for the adjustment of the said loss.

10

2. As a result of the said services, the defendant, Teodoro Rinaolo, entered into an agreement with The Fidelity-Phenix Fire Insurance Company of New York, North River Insurance Company, The Pennsylvania Fire Insurance Company, Rhode Island Insurance Company, United States Merchants and Shippers Insurance Company, who insured the said Teodoro Rinaolo against the said loss, whereby the said Teodoro Rinaolo and the said insurance companies agreed to each appoint an appraiser and the appraisers to appoint an umpire who should make an award of the damage resulting from the said loss. The said appraisers and umpire made the said award to the effect that under the terms of the policies of the above insurance companies, the said loss to the said Teodoro Rinaolo amounted to the sum of Sixteen Thousand One Hundred and Forty-nine Dollars and Six (\$16,149.06) Cents. Payments have been made on account of the moneys due under and by virtue of the above mentioned award, and there is now in the hands of the Fidelity-Phenix Fire Insurance Company of New York the sum of Two Hundred and Ninety-six Dollars and Fifty-four (\$296.54) Cents, and in the hands of The Pennsylvania Fire Insurance Company the sum of Three Hundred and Thirty-eight Dollars and Ninety-two (\$338.92)

20

30

40

*Statement of Claim of Defendants, Robert V. Kin-  
kead, partners, etc.*

Cents, as set forth in the bill of complaint filed herein.

3. A reasonable value for the above mentioned services rendered by the defendants, Kinkead and Klausner, as attorneys of the said Teodoro Rinaolo, is the sum of Fifteen Hundred (\$1500) Dollars. 10

4. On or about January 12, 1928, the defendants, Kinkead and Klausner, notified the above mentioned insurance companies that they claimed a lien for the said sum of Fifteen Hundred (\$1500) Dollars for the above mentioned services upon the moneys due and owing as a result of the above mentioned loss and award. 20

5. The defendant, Teodoro Rinaolo, has never paid to the said defendants, Kinkead and Klausner, nor has any other person on behalf of the said defendant, Teodoro Rinaolo, paid to the defendants, Kinkead and Klausner, the said sum of Fifteen Hundred (\$1500) Dollars due to them, or any part thereof, and the said defendants, Kinkead and Klausner, claim an attorney's lien upon the above mentioned sums of Two Hundred Ninety-six Dollars and Fifty-four \$296.54 Cents and Three Hundred Thirty-eight Dollars and Ninety-two (\$338.92) Cents, set forth in the bill of complaint. 30

KINKEAD & KLAUSNER,  
Solicitors *Pro se.*

**Statement of Claim of Teodoro Rinaolo.**

Filed Sept. 20, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation, and THE FIDELITY-PHOENIX FIRE INSURANCE COMPANY OF NEW YORK, a corporation, Complainants, and TEODORO RINAOLO, <i>et als.</i> , Defendants.	On Bill of Interpleader. Statement of claims of Theodore Rinaolo.
20		

Pursuant to Rule 69 of this Court the following statement of claim is made by Theodore Rinaolo, one of the defendants in this suit.

1. On July 11, 1928 this defendant filed a bill in this Honorable Court, to set aside an award of \$16149.06, made by James Billington, umpire, as damages sustained by this defendant for the destruction of his building by fire at No. 177 Everett Place, East Rutherford, N. J., on January 23, 1927.

2. On January 23, 1927 said premises were insured as follows:

Fidelity Phoenix Ins. Co.	\$7000.00
North River Ins. Co.	5000.00
Pennsylvania Fire Ins. Co.	8000.00
Rhode Island Ins. Co.	500.00

*Statement of Claims of Teodoro Rinaolo.*

## U. S. Merchants and Shippers

Ins. Co.	10000.00
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Total	\$30500.00
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3. At the expiration of 60 days from January 23, 1927 this defendant demanded payment of the insurance from said companies, but they refused to pay the same and afterwards the matter was submitted to arbitration, resulting in the award above-stated. 10

4. Said building before its destruction was incumbered by three mortgages, one for \$6000, reduced to \$5100, held thereon by the East Rutherford Building and Loan Association, the second for \$9000, held by William Gramlich and Alfred Gramlich, and the third for \$1000 reduced to \$500 held by Max Slaff. 20

5. The following is the respective amounts due to this defendant from said insurance companies:

U. S. Merchants Ins. Co.	\$423.58
Pennsylvania Ins. Co.	338.92
Fidelity Phoenix Ins. Co.	296.54

Total	\$1059.04	30
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6. On January 21, 1929, the suit was heard and the bill dismissed. The defendants therein promised to pay their respective balances within a few days thereafter, but failed so to do.

7. As to the claim of Kinkead and Klausner, Attorneys, etc., this defendant says, that shortly after the destruction of said premises, he retained 40

*Statement of Claims of Teodoro Rinaolo.*

them to institute legal proceedings against said five insurance companies to recover the damages sustained, but they failed to do so, and that the only service rendered by them for this defendant was to draw up the proof of loss for which this defendant has offered to pay \$50.

10 8. As to the claim of Meyer Chernin, this defendant says that the same is the amount of a Judgment obtained against him in the New Jersey Supreme Court on the 14th day of March 1929.

9. The East Rutherford Building and Loan Association, and William Gramlich and Alfred Gramlich, have no claim against said balance, they having been paid long before this suit was started, all  
20 of which complainants had knowledge.

10. This defendant further states that the sum of \$1059.04 and not \$634, should have been deposited with the Clerk of this Court.

11. This defendant owes to G. M. Belfatto, Esq., the sum of \$750 for legal services rendered as his solicitor in the suit against said five Insurance companies, which sum should be paid first out of  
30 said sum of \$1059.04.

G. M. BELFATTO,  
Sol. of Defendant  
Teodoro Rinaolo.

**Statement of Claim of Meier Chernin.**

Filed Oct. 3, 1929.

IN CHANCERY OF NEW JERSEY.

Between

THE PENNSYLVANIA FIRE INSUR-  
ANCE COMPANY, *et als.*,

Complainants,

and

TEODORO RINAOLO, *et als.*,

Defendants.

On Bill, etc.

10

Statement  
of Claim.

Statement of claim of the defendant, Meier Chernin, of the City of Newark, in the County of Essex and State of New Jersey.

20

1. On or about the 21st day of March 1929, a judgment for this defendant was entered in the New Jersey Supreme Court against the defendant Teodoro Rinaolo, for \$450.00 damages and \$65.90 costs.

2. By virtue of a writ of execution issued on the aforementioned judgment, the Sheriff of Essex County levied on the monies and drafts belonging to and payable to the defendant Teodoro Rinaolo, in possession of Arthur T. Vanderbilt, Esq., solicitor for complainants.

30

3. The defendant, Teodoro Rinaolo, has never paid to this defendant, nor has any person on behalf of said defendant Teodoro Rinaolo, paid to this defendant the amount due under said judgment, or any part thereof.

ABRAHAM LAUB,  
Solicitor for Defendant  
Meier Chernin.

40

## Order of Reference.

Filed Nov. 27, 1929.

## IN CHANCERY OF NEW JERSEY.

10	Between THE PENNSYLVANIA FIRE INSUR- ANCE COMPANY, a corporation, <i>et als.</i> ,  Complainants,  and  TEODORO RINAOLO, <i>et als.</i> , Defendants.	}	On Bill of Interpleader.  Order of Reference.
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20 This matter being opened to the Court by Abraham Laub, solicitor of the defendant, Meier Chernin, and it appearing that by an interlocutory decree made in the above entitled cause on the Thirtieth Day of November, Nineteen Hundred and Twenty-nine;

30 And it further appearing that the defendants, Teodoro Rinaolo, Robert V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, and Meier Chernin, have duly filed with the clerk of this court statements in writing of their several claims to the fund deposited with the clerk of this court in this cause; and it appearing that the defendants have duly consented to the making of this order;

40 It is, on this 27th day of November, Nineteen Hundred and Twenty-nine, ORDERED that the above entitled cause be referred to the Honorable M. L. Berry, one of the Vice Chancellors of this court,

*Order of Reference.*

to hear the same for the Chancellor and to report to him and advise what order or decree should be made therein.

E. R. WALKER,  
C.

Respectfully advised,

We hereby consent to the making of the above  
Order. 10

G. M. BELFATTO,  
Solicitor for Defendant,  
Teodoro Rinaolo.

KINKEAD & KLAUSNER,  
Solicitor for Defendant,  
Kinkead and Klausner.

ABRAHAM LAUB,  
Solicitor for Defendant,  
Meier Chernin. 20

30

40

**Final Decree.**

Filed June 17, 1930.

## IN CHANCERY OF NEW JERSEY.

10	Between THE PENNSYLVANIA FIRE INSUR- ANCE COMPANY, a corporation, <i>et als.</i> ,  Complainants,  and  TEODORO RINAOLO, <i>et als.</i> , Defendants.	}	On Bill of Interpleader.  Final Decree.
----	---	---	--

20 This cause being opened to the Court by Abraham Laub, solicitor of the defendant, Meier Chernin, and it appearing that by an interlocutory decree made in the above entitled cause, on the Thirtieth day of October, Nineteen Hundred and Twenty-nine, it was ordered that this interpleader suit was properly instituted as to the fund deposited with the Clerk of this court, in this cause, by the complainants; and it appearing that the said defendants, Meier Chernin, Teodoro Rinaolo, Robert

30 V. Kinkead and David M. Klausner, partners under the firm name of Kinkead and Klausner, thereafter duly filed with the clerk of this court statements in writing of their several claims to the said fund; and this cause coming on to be heard in the presence of Abraham Laub, Solicitor of the defendant, Meier Chernin, Kinkead & Klausner, by David M. Klausner, and Gaetano Belfatto, Solicitor of the defendant Teodoro Rinaolo, and the

40 court having examined the pleadings, and having

*Final Decree.*

taken proofs orally and in open court, and heard and considered the arguments of counsel thereon; and it appearing to the satisfaction of the Court that the defendant, Meier Chernin, is first entitled to be paid out of the fund put into the court in this suit, and the defendant, Teodoro Rinaolo, is entitled secondly to be paid the surplus, if any, subject to his solicitor's lien for his reasonable fees and costs; 10

And it further appearing that the said fund, amounting to the sum of Six Hundred Thirty-five Dollars and Forty-six (\$635.46), Dollars, was, at the time of the filing of the bill of complaint, in this cause, paid by the complainant to this Court, and that the same, together with accumulated interest thereon since accrued, but less the costs of said complainant, still remains deposited in this court, subject to the order and direction thereof; 20

It is, thereupon, on this 17th day of June, Nineteen Hundred and Thirty, ORDERED, ADJUDGED, and DECREED, that the said defendant, Meier Chernin, now is entitled to the sum of Five Hundred Seventy-two dollars and Seventy Cents (\$572.70), of the monies so paid into this Court; and that the balance, after deducting costs and the lawful commissions of the Clerk of this Court of said sum paid into this court as aforesaid, and now remaining deposited therein, together with all interest accumulated thereon, be paid to the Solicitor of defendant, Teodoro Rinaolo, subject to the solicitor's lien for his reasonable fees and costs. 30

E. R. WALKER,  
C.

Respectfully Advised

MAJA LEON BERRY

V. C.

40

**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

10	Between THE PENNSYLVANIA FIRE INSUR- ANCE COMPANY, a corporation, <i>et als.</i> , <div style="text-align: right; margin-right: 20px;">Complainants,</div> <div style="text-align: center; margin: 5px 0;">and</div> TEODORO RINAOLO, <i>et als.</i> , <div style="text-align: right; margin-right: 20px;">Defendants.</div>	} On Bill of Interpleader. Notice of Appeal.
----	---	--

20 The defendant Teodoro Rinaolo hereby appeals from the final decree and from the whole and every part thereof made in this cause by the Chancellor upon the advice of the Honorable Maja Leon Berry, Vice Chancellor, as declares that the lien of the judgment of the defendant Meier Chernin is prior to the lien of G. M. Belfatto for services rendered as solicitor for the defendant Teodoro Rinaolo in the suit wherein said Teodoro was complainant and the complainants in this suit were defendants under which suit \$636. was brought into Court and as denies the relief asked for by said defendant Teodoro Rinaolo to the Court of Errors and Appeals in the last resort in all causes.

30 Dated June 18, 1930.

G. M. BELFATTO,  
Solicitor for defendant  
Teodoro Rinaolo.

I conceive there is a good cause for appeal in the above stated cause.

40 G. M. BELFATTO,  
Of Counsel.



*Petition of Appeal.*

10 “And it further appearing that the said fund amounting to \$635.46 was at the time of the filing of the bill of complaint in this cause paid by complainants to this court and that the same together with accumulated interest thereon since accrued, but less the costs of said complainants still remains deposited in this court subject to the order and direction thereof.

20 “It is thereupon, on this 17th day of June Nineteen Hundred and Thirty, Ordered, adjudged, and decreed, that the said defendant Meier Chernin, now is entitled to the sum of Five Hundred Seventy-two Dollars and seventy cents (\$572.70) of the monies so paid into this Court; and the balance after deducting costs and the lawful commissions of the Clerk of this Court of said sum paid into this court as aforesaid, and accumulated interest thereon, be paid to the solicitor of the defendant, Teodoro Rinaolo subject to said solicitor’s lien for his reasonable fees and costs.”

30 And your petitioner humbly appeals from said decree of the Chancellor, upon the ground that the same is erroneous for that the said decree should have ordered and directed that the said sum of \$635.46 should be paid to the defendant Teodoro Rinaolo subject to the lien of his solicitor G. M. Belfatto, amounting to \$750 for legal services rendered in the suit wherein said Teodoro Rinaolo was complainant and the complainants in this interpleader suit were defendants, said sum of \$635.46 having been paid into court as the result of said suit.

40 Your petitioner therefore prays that the said decree of the Chancellor may be reversed set aside

*Answer to Petition of Appeal.*

and for nothing holden and that your petitioner may have such relief in the premises as this Honorable Court shall seem meet.

G. M. BELFATTO,  
Solicitor for and of Counsel with  
defendant Teodoro Rinaolo, appellant.

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**Answer to Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation,  
*et als.*,

Complainants,  
and

TEODORE RINAOLO,  
Defendant Appellant,

and

MEIER CHERNIN,  
Defendant-Respondent.

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On Appeal  
from the  
Court of  
Chancery.

Answer to  
Petition  
of Appeal.

30

The answer of Meier Chernin, the above named respondent, to the petition of appeal of Teodoro Rinaolo, the above named appellant.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the Seventeenth day of June,

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*Answer to Petition of Appeal.*

Nineteen Hundred and Thirty, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

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This respondent is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this respondent.

ABRAHAM LAUB,  
Solicitor for and of Counsel with  
Defendant-Respondent.

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## Memorandum.

May 24, 1930.

Abraham Laub, Esq.,  
60 Park Place,  
Newark, N. J.

G. M. Belfatto, Esq.,  
194 Market Street,  
Newark, N. J.

10

Kinhead & Klausner,  
586 Newark Avenue,  
Jersey City, N. J.

Dear Sirs:

In the matter of Pennsylvania Fire Insurance Company v. Rinaolo, which was tried before me on March 25th last, I have reached the conclusion that the judgment creditor, Meier Chernin, is entitled to be first paid out of the funds paid into court in this suit. If there is any surplus, which is doubtful, that surplus would be payable to Rinaolo or his solicitor in this suit and such surplus would be subject to his solicitor's lien for his reasonable fees and costs.

20

This is an interpleader suit in which the complainant has paid into the court the sum of \$635.46, representing the amount due Rinaolo for fire loss. Chernin claims to be first entitled to be paid out of the fund the amount of his judgment entered March 21, 1929, under which a levy has been made on the fund by the Sheriff of Essex County. Kinhead & Klausner claim to be entitled to an attorney's lien on the fund and to be entitled to priority as to that claim over all other claimants. Mr. Belfatto also claims a lien upon the fund. It seems clear that if the attorneys have any lien it is either a common law lien or a statutory lien.

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*Memorandum of Vice Chancellor.*

Obviously the statute (P. L. 1914, p. 410) does not apply and the common law lien will not attach unless the fund comes into the hands of the attorney. In the instant case no part of the fund has yet come into the hands of either Kinkead & Klausner or Mr. Belfatto. Chernin's claim under his levy is therefore prior to that of the attorneys. Belfatto's claim would be next because he would be entitled as solicitor of Rinaolo to receive the balance of the fund after the payment of Chernin's claim and having possession of it would be entitled to enforce his lien. The following authorities, cited by counsel for Chernin, are pertinent: 6 Corpus Juris, P. 765, Sec. 326; page 766, Sec. 364; page 770, Sec. 368; 37 Corpus Juris, p. 307, Sec. 3b; page 325, Sec. 33; Stansbury v. Patent, 5 N. J. Law 433; Delaney v. Husband, 64 N. J. L. 275. See also Lanterman v. Luby, 96 N. J. L. 255 at page 257, where Judge White for the Court of Errors and Appeals discusses the character and incidents of a lien. The cases of Cicalese v. Fortunato, 93 N. J. Eq. 329 and Ferraro v. City Hall Garage, 94 N. J. L. 209 have no application to the present controversy as the fund here involved does not arise as the result of any suit instituted by the attorney claimants. I will advise a decree in accordance with this memorandum.

Very truly yours,

MAJA LEON BERRY.

**Testimony.**

IN CHANCERY OF NEW JERSEY.

Between

THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation,  
and THE FIDELITY-PHOENIX FIRE INSURANCE COMPANY OF NEW YORK, a corporation,  
Complainants,

and

TEODORO RINAOLO, *et als.*,  
Defendants.

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APPEARANCES:

ARTHUR T. VANDERBILT, ESQ., for complainants.

GAETANO M. BELFATTO, ESQ., for defendant Teodoro Rinaolo.

MESSRS. KINKEAD & KLAUSNER, counsel *pro se.*

ABRAHAM LAUB, ESQ., for Meier Chernin.

20

Court: The only question which I ought to decide—the only legal question—is whether the levy under the execution has priority over your lien for attorneys' fees. 30

I don't know whether that is a question which has ever been decided in this state or not. It never arose before, before me, I know. Have you any authority on it?

Mr. Belfatto: That has been decided by Judge Kalisch in favor of the counsel fee.

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*Argument.*

Mr. Klausner, your claim is \$1500. Mr. Laub, \$400. I think I should receive \$750.

Court: When was your bill filed?

Mr. Belfatto: My bill was filed January 11, 1928. \$16,149.06 was the amount of the award.

Court: What was the date of the levy?

10 Mr. Klausner: We filed proofs of loss for Mr. Rinaolo in this case under date of November 1, 1927. After the award was made, then on behalf of Mr. Rinaolo we filed the proofs of loss. I have a copy of those proofs of loss which we filed.

Court: The award was made prior to November 1, 1927. The date of the levy was about December, 1929.

Mr. Belfatto: Judgment was entered March 21, 1929.

20 Court: Judgment is not binding until levy is made.

It seems to me that this matter can be disposed of very easily on the question of priorities. The whole matter resolves itself into a question of priority. There is nothing else to be decided by me, because if the attorneys' fees are a lien prior to the levy made, the attorneys' fees would certainly wipe out the fund.

30 On the other hand, if the levy is first in priority, Chernin's claim under that levy, plus Kinkead's claim for a lien of attorneys' fees, would certainly shut out Mr. Belfatto.

Mr. Belfatto: May I suggest this compromise—

40 Court: If you have a right to compromise with his consent. If your client consents to a compromise arrangement by you three attorneys, that is all there is to it. If he won't consent, you may submit me your authorities on the question, and I

*Argument.*

will dispose of it strictly according to priorities. I don't know which is first.

I have the dates when the different liens are claimed to attach. Give me your authorities in support of that, and I will soon dispose of them.

The claims on this interpleader suit are three. They are based, respectively, upon a claim for a lien for attorneys' fees by Kinkead & Klausner, claim for attorneys' fees by Mr. Belfatto, and a levy under a judgment obtained by Mr. Chernin for his appraiser's fees. 10

Kinkead & Klausner's claim is alleged to have been proved, or the lien to have accrued not later than November 1, 1927, by reason of the fact that the award was made not later than that time.

Mr. Belfatto claims that his lien attaches as of the date of the issuance of the subpoena on his bill, which was on January 11, 1928. 20

Mr. Chernin claims that his lien attaches as of the date of the levy, which was December, 1929. That proposition is undoubtedly correct, but Mr. Chernin claims that his levy is prior to the attachment of the liens of the respective counsel.

That is the only question for me to dispose of. If counsel will submit to me their authorities on this one point, upon receipt of these authorities I will dispose of the question of priorities. 30

There is no question in which the owner is very much interested. He will not get anything out of this, and if you gentlemen cannot agree among yourselves as to what the reasonable fees are for these attorneys, you may now proceed to put on the record, by testimony, what you have done.

*David M. Klausner—Direct.*

DAVID M. KLAUSNER, sworn.

Court: Just make your statement on the record.

Witness: Mr. Rinaolo came to our office on February 8, 1927, and submitted to us a statement with reference to the fire loss at 177 Everett Place, East Rutherford, New Jersey.

10 Mr. Rinaolo told me at that time that the premises were occupied by four different families, and that at the time he purchased the property, it was in bad condition, and he had put in a whole lot of improvements, and that the fire had occurred on January 23, 1927, early in the morning.

Court: What I am interested in is what you did.

20 Witness: We then forwarded letters to the people who had the insurance policies, and asked them to forward us necessary papers with reference to the loss, particularly to a Mr. Frank R. Edwards, of East Rutherford, and to Miss Annie L. Gramlich, of Woodridge. We also notified the building companies with reference to the fact that Mr. Rinaolo had placed this matter in our hands for adjustment, the Pennsylvania Fire Insurance Company, the Fidelity-Phenix Fire Insurance Company, the United States Merchants & Shippers Insurance Company, and the North River Insurance Company. That was done on February 8, we communicated with Edwards and Gramlich, and on February 9, the following day, we communicated with these different insurance companies.

30 We learned by letter from Mr. Edwards that we had to take the matter up with Messrs. Windle, Burlingame & Dargan, Inc., 100 William Street, and accordingly, we took it up with them on March 1, 1927. They advised us they were general ad-  
40 justers and appraisers, and I see here that in ad-

*David M. Klausner—Direct.*

dition to taking this up, later I must have had a telephone conversation. They advised us that it was advisable to obtain from a reliable builder an itemized estimate for the repair to this building, and to forward it to a Mr. Groves of the General Adjustment Bureau of Newark. We then took the matter up with Mr. Rinaolo and his daughter, who came to our office, while this was going on, every few days. Sometimes he came alone, and sometimes with his daughter. He doesn't speak English well and I had a little difficulty to understand him, and also saw my partner with reference to the fire loss. We explained to Mr. Rinaolo that it was necessary to get this estimate, and that he should get some reliable builder, or get a man by the name of Mr. Chernin, and at the same time I noticed that the borough clerk of the Borough of East Rutherford and the building inspector of East Rutherford had taken the matter up with Mr. Rinaolo to have the part of the building remaining after the fire removed.

This loss was not a total loss, but I would say that perhaps between three-fourths or a little bit more of the building was destroyed. The municipal authorities of East Rutherford wanted the balance of the building destroyed. Subsequently we took this matter up with the municipal authorities on several different occasions, to have them wait until the fire loss was determined, because we felt that it would be to Mr. Rinaolo's advantage, that when the appraisers and umpire would come to this building, if they saw the part of the building that was standing there, they would have a better idea of what the whole building consisted of. Mr. Rinaolo did obtain this estimate from Mr. Chernin,

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*David M. Klausner—Direct.*

and we forwarded that to the General Adjustment Bureau, to the attention of Mr. Groves on March 10. At the same time we forwarded copies of the same estimate, together with copies of the letters from the Borough Clerk of the Borough of East Rutherford and from the Building Inspector to  
 10 Windle, Burlingame & Dargan, Inc. At the same time we took the matter up again with Mr. Rinaolo, and found there was a second mortgage on this property. The first mortgage was held by the Building and Loan Association.

Court: I am not interested in all of the detail of facts. I want to know what you actually did.

Witness: I merely do this to bring out to this Court the enormous—

20 Court: Let us don't argue about it. If you want to do it that way, go ahead.

Witness: I might summarize, unless you want more detail.

Summarize it in this way, that under the policy it was necessary to have appraisers appointed and an award made before the damages could be ascertained and before they could get any money from the insurance companies. That is necessary under the standard fire insurance clause.

30 After numerous conferences with Mr. Rinaolo and the insurance companies, and so forth, we finally arranged to have this appraiser, Mr. Cherrin, appointed.

Then the question came up with reference to obtaining an unbiased umpire and there was quite a lot of difficulty about that, and after a whole lot of trouble we finally had them arrange to agree upon a certain Mr. Billington, of Jersey City. Mr.  
 40 Rinaolo, when the award was finally given, after that was done, he was dissatisfied with it, and be-

*David M. Klausner—Direct.*

fore we had that signed, in order to protect ourselves we had Mr. Rinaolo sign for us a paper that he was willing to accept the award. Then when he did sign that, we prepared the proofs of loss. I think the award amounted to \$16,149.06. The companies said that they were willing to pay that to us. We told that to Mr. Rinaolo, but he was dissatisfied with that, and he wanted us to try to set aside the award. We advised him that that could not be done, although he could take it to court; that he would not get anywhere with that, and recommended to him the taking of that money, and he was dissatisfied, and then he went to Mr. Belfatto, as we later learned, about setting aside the award, and I understand the decision in the case was against Mr. Rinaolo. 10

Court: When did you say Mr. Rinaolo first came to you? 20

Witness: February 8, 1927, and I dare say that from February 8, 1927, until November 1, 1927, he and his daughter were to visit us every couple of days.

Court: Have you a record of the days that they called at your office?

Witness: I haven't an exact record, except from my recollection, remembering how often they did come. 30

Court: How many letters did you estimate that you have written? You have the file before you there. You have counted half of them?

Witness: I cannot say; I have counted about a quarter. I daresay there are over one hundred letters there.

Court: Over one hundred letters which you have written? 40

*David M. Klausner—Direct.*

Witness: No.

Court: How many letters have you written?

Witness: Between fifty and seventy-five.

Court: How many letters did you receive?

Witness: Probably around twenty-five or thirty.

10 Court: What other papers did you prepare beside the letters?

Witness: I didn't prepare the appraisal agreement, but had charge of seeing with reference to the appraisal agreement. There was a special form.

Court: That was furnished by the insurance companies?

20 Witness: Yes, we had to come out here to Newark. I was out to Newark, I daresay, about five to ten times on that, and then prepared the proofs of loss in addition to that. I think if you will just glance at the dates of these letters, you could see how many times Mr. Rinaolo was in our office.

Court: I can see that your file is voluminous. What do your proofs of loss consist of? What did you have to prepare in the form of proofs of loss?

30 Witness: They were rather simple; they were based upon the award, and the exact figures with reference to that were prepared by the insurance companies. It was necessary to apportion that, and the figures were prepared by the insurance companies. But it was some task to go over it, and I think that Rinaolo was in our office probably five to ten times after we had prepared the proof of loss, to try to make him understand, and trying to have him sign it, because we felt that from what Mr. Chernin told us, that that was a very fair award.

40 Court: You say that Mr. Rinaolo was in your

*David M. Klausner—Direct.*

office every couple of days from February until November?

Witness: Yes.

Court: Would you say that he consulted with you one hundred times during that period?

Witness: I daresay he did; not only with me, but with my partner as well—he and his daughter, and I think once—I am not sure, but I think some other relatives came in. 10

Court: Did you have any expenditures in connection with the matter?

Witness: Just carfares and telephone.

Court: Keep any account of them?

Witness: Just in our petty cash book.

Court: Have you made up any statement of expenses?

Witness: No, I just made a general statement. It was one of those cases we got into it and we had to finish it. 20

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GAETANO M. BELFATTO, sworn.

Mr. Rinaolo, the owner of the premises which were destroyed by fire, called at my office at the beginning of December, 1928, and told me that his house had been destroyed by fire and was a total loss; that he called at the office of Kinkead & Klausner, of Jersey City, and retained them to represent him in the matter; the amount of insurance was \$30,000. The house apparently had not been totally destroyed, but in reality was beyond repair, and because it was heavily encumbered, Mr. Rinaolo felt that he could not accept the offer which had been made by the company after the appraiser having been appointed. In other words, that was 30 40

*Gaetano M. Belfatto—Direct.*

nothing but an amicable settlement which was proposed by the companies. He also told me that he called at Kinkead & Klausner's office several times about the matter, but the matter had been delayed and neglected for seven or eight months and no result had been obtained. I told Rinaolo that under the law if he had waited another month before filing the papers against the company, he would have lost all his rights under the policies; and on the eleventh of December, 1928, just about twenty days before the statute of limitation would expire, I filed a bill in this court for the purpose of setting aside the award, because it was a partial loss, and not a total loss.

Court: What did you do after filing the bill?

Witness: I saw Mr. Rinaolo many times at my office, at least half a dozen, before preparing the bill. I had to bring into court all the six insurance companies. I called them on the phone to see whether we could get some results without going to court, but without any results.

I wish to further state that Mr. Rinaolo told me that he could not get even the award of \$16,400, or whatever it was, and some odd dollars, in an amicable manner, because the companies were investigating the case, the cause of the fire, and they were under the impression that it was an incendiary origin. Then I reached the conclusion that there was no time for me to lose, and I filed the bill in this court. After filing the bill the companies began to pay up the money, leaving a balance of nearly \$1500, and I demanded some reason why that balance was held up by the companies, and they said because Mr. Chernin had filed a notice that he was entitled to \$1250 for services rendered

*Gaetano M. Belfatto—Direct.*

as an appraiser for Mr. Rinaolo. That is why the company didn't pay.

Court: The case was finally tried before me?

Witness: Yes.

Court: It took a day or the better part of a day?

Witness: Yes.

Court: You were in court a couple of times on the signing of the decree? 10

Witness: Yes, I came here twice before you. I waited for Mr. Vanderbilt to turn the balance over to me. I didn't suppose there would be any difficulty about paying the balance due.

Court: About how many days do you figure you spent on the case, Mr. Belfatto?

Witness: I think I spent two weeks absolutely, because at first when he came to my office, we talked the matter over. I had to tell him what to do, and see the appraiser, and then see the insurance office, and then go to see Mr. Klausner, which took two or three hours; then I went to East Rutherford to examine the property. 20

*Examination by Mr. Laub:*

Q. When Mr. Rinaolo came to you, did he say that he had been to Kinkead & Klausner? A. Yes.

Q. Did you communicate with Kinkead & Klausner to find out what they had done in the matter of adjusting it with the insurance company? A. No. They went there. 30

Q. You knew that Kinkead & Klausner had handled the matter? A. Yes.

Q. You didn't inquire of them before you instituted your suit, to find out what had been done, and see whether it would be necessary to start suit to set aside the award? A. They went there; I did not go there. 40

*David M. Klausner—Direct.*

Q. You instituted suit to set aside the award without knowing whether the award had been made, or whether it was a proper award; is that right? A. I knew that the award was improper.

Q. You said you didn't know the award was made. A. It was just on a partial loss.

10 Q. You didn't know the award had been made; is that right? A. I knew that the award had been made.

Q. Where did you get that information? A. From my client, and from the papers which were in my possession.

Q. You did not consult with Kinkead & Klausner, whom you knew were employed as attorneys in the matter, to find out what had been done, to find out from what point you had to go, or if anything were necessary? A. No, because my client  
20 told me to go right ahead.

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DAVID M. KLAUSNER, resumes the stand:

May I add: I just noticed from my file, that we did examine into the law with reference to the question of this partial loss and the rights of the  
30 municipal authorities, and I have here a copy of what we found the law to be, and we spent quite a lot of time in finding out what the rights were with reference to that, and I think the decision agreed, your Honor, substantially with our views in the matter.

Court: If you will submit me your authorities on the question of priority, I will then decide on this record whether or not the fees  
40 are reasonable.

## New Jersey Court of Errors and Appeals

Between

THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation,  
*et als.*,

Complainants,

and

TEODORE RINAOLO,  
Defendant Appellant,

and

MEIER CHERNIN,  
Defendant-Respondent.

On Bill of  
Interpleader.

On Appeal  
from the  
final decree  
of the Court  
of Chancery.

### BRIEF OF DEFENDANT-APPELLANT.

#### Facts.

On January 23, 1927 a two story frame building known as 177 Everett Place in the Township of East Rutherford, N. J., owned by the appellant was destroyed by fire. A part of the building remained up. (Page 34, lines 1-20).

The building was insured by complainants Companies and other Companies for different amounts aggregating \$30,500 (Page 16, lines 20-40).

A dispute arose between the appellant and said Companies—as to the extent of the damages to the building. Two appraisers were appointed, Meier Chernin, the respondent to represent the appellant and Benjamin Robinson to represent the Companies. Chernin first estimated the damages at \$28,682 based on a total loss (Page 14, lines 30-40), and afterwards at \$21,000 based on the cash value

of the building on the day of the fire. Robinson did not agree with these estimates. Said appraisers appointed James Billington to act as umpire, (Page 36, lines 30-40) and he on October 7, 1927 estimated the damages at \$16,149.56 based on partial loss (Page 2, lines 1-10; page 37, lines 1-20).

The Companies refused to pay the umpire's award and stated that the fire was of incendiary origin and the Prosecutor of Bergen County was investigating the case. Kinkhead & Klausner, who were then acting as attorneys for the appellant did not start any action against said Companies (Page 40, lines 30-40).

Afterwards the undestroyed part of the building was declared by the Township authorities of East Rutherford to be a nuisance and it was razed, (Page 35, lines 10-20).

On January 11, 1928, or twelve days before the appellant's right to sue under the policies would expire the appellant through G. M. Belfatto filed in the Court of Chancery his bill of complaint to set aside the award of the umpire and compel the Companies to pay \$21,000 which was the estimated cash value of the building at the time of the fire. (Page 16, lines 20-40).

While the suit was pending the Companies paid to the East Rutherford Bldg. & Loan Ass'n and to Gramlich Bros. \$14,613.99 in payment of a first and second mortgages; held by them respectively on said property, leaving a balance under said award of \$1525.57.

On January 21, 1929 the suit was heard before Vice Chancellor Berry at Newark and the bill of complaint was dismissed. The Companies refused to pay said balance, and in the month of March following they paid to Gramlich Bros. \$900 alleged to be due for interest on their mortgage. The

remaining sum of \$735.46 was deposited with the clerk of the Court of Chancery in this suit.

The appellant agreed to pay to G. M. Belfatto for his services as his solicitor in said suit \$750. On March 21, 1929, said Meier Chernin obtained a judgment in the New Jersey Supreme Court against the appellant for \$450. for his services rendered as appraiser aforesaid.

The Vice Chancellor held that said judgment was a first lien on the fund deposited in Court; and the lien of the appellant's solicitor was second in point of priority.

The appellant's contention is that although the bill of complaint was dismissed; yet the fund deposited in Court was the direct result of the suit, the companies having refused to pay at least the umpire's award in an amicable manner.

#### Law.

It is respectfully submitted that:

In the case of *Wilson vs. Seeber*, 72 E. 523, the Court held that "Where an attorney contracted with his client that, as compensation for conducting the suit, he should receive one-third of the proceeds of the action, the contract gave him an equitable lien upon the proceeds when they took form.

In the case of *Cicalese vs. Fortunato*, 92 E. 329, it was held that the attorney's fee is prior to the claim of a judgment creditor and that on interpleader the Court of Chancery may fix the amount due to complainant's solicitor.

In *Levi vs. Public Service Railway Co.*, 91 L. 183 it was held "An attorney who acquires a lien on his clients cause of action by virtue of the attorney's lien act is not obliged to exhaust his remedy

against his client to recover his fees before proceeding against the defendant in the suit.

In the case of Ferrara vs. City Hall Garage, 94 E. 209, it was held that upon filing a bill of complaint the solicitor acquires a lien on his client's cause of action (Laws 1914, page 410). That the solicitor becomes a party in interest in the litigation, and this interest cannot be successfully ignored by the litigants.

The decree of the Court of Chancery should be reversed and the claim of the appellant's solicitor be decreed to be a lien prior to the lien of the respondent's judgment and to be paid first out of said fund.

Respectfully submitted,

G. M. BELFATTO,  
Solicitor for and of Counsel  
with Defendant-Appellant.

## New Jersey Court of Errors and Appeals

*Between*

THE PENNSYLVANIA FIRE INSURANCE COMPANY, a corporation, *et als.*,

*Complainants,*

*and*

TEODORE RINAOLO,  
*Defendant-Appellant,*

*and*

MEIER CHERNIN,  
*Defendant-Respondent.*

*On Bill of Interpleader.*

*On Appeal from Court of Chancery.*

### BRIEF OF DEFENDANT-RESPONDENT.

#### Facts.

This is an interpleader suit in which the complainants have paid into the court the sum of Six Hundred Thirty-five Dollars and Forty-six Cents (\$635.46), representing the amount due to Theodore Rinaolo, defendant-appellant, arising in the following manner:

On January 23, 1927, the defendant-appellant, Theodore Rinaolo, suffered a fire loss on premises owned by him (page 2, lines 1-2), and on which he held fire insurance policies written by the several complainants herein (page 1, lines 18-40).

On February 28, 1927, the defendant-appellant, Theodore Rinaolo, employed Robert V. Kinkead, Esq., and David M. Klausner, Esq., to represent him in his negotiations for settlement with the complainants (page 13, lines 30-40; page 14, lines 1-10).

In accordance with the terms of the several policies, the defendant-respondent, Meier Chernin, was appointed by the defendant-appellant, Theodore Rinaolo, as his appraiser, to negotiate with the complainants as to the proper amount of the award (page 36, lines 30-34).

On July 11, 1928, Gaetano M. Belfatto, the attorney of the defendant-appellant, Theodore Rinaolo, filed a bill in the Court of Chancery to set aside the award made by the appraisers and umpire under the terms of the policies (page 16, lines 27-28), without making any inquiry to Kinkead & Klausner, Esqs., whom he knew were employed by the said defendant-appellant in that matter, in order to get the necessary information to find out if such a step were necessary (page 42, lines 16-21). That suit was heard on January 21, 1929, and the bill dismissed (page 17, lines 33-34), with costs and a counsel fee of One Hundred Fifty Dollars (\$150.00) taxed against the defendant-appellant, Theodore Rinaolo.

On March 14, 1929, the defendant-respondent, Meier Chernin, recovered a judgment in the Supreme Court against the defendant-appellant, Theodore Rinaolo, for services rendered as appraiser in the fire loss aforementioned (page 18, lines 10-14), and on May 20, 1929, the Sheriff of Essex County caused a levy to be made on the funds in the hands of the complainants due to the defendant-appellant, Theodore Rinaolo (page 3, lines 10-15).

Prior claim in the funds in the hands of the complainants was claimed by the following:

Kinkead & Klausner, Esqs., for services rendered in negotiating with the complainants; the defendant-appellant, Theodore Rinaolo, as the proceeds of his insurance policies; and Meier

Chernin, defendant-respondent, by virtue of the judgment and levy.

The complainants filed a bill of interpleader on August 17, 1929, and put the funds in its hands into the Court of Chancery (page 1, lines 1-10).

Kinhead & Klausner, Esqs., are not parties to this appeal.

It is the contention of the defendant-respondent that:

1. The solicitor of the defendant-appellant, who claims an attorney's lien in the fund, has no standing in this court, because he appears nowhere as a party to this suit; and

2. Even if he were, he still has no lien for any services in the fund deposited into the court, prior to that of the defendant-respondent.

## LAW.

### POINT I.

An attorney's lien must be one based on either Common Law or by Statute. 37 Corpus Juris, page 307, Section 3B. (*Stansbury v. Patent*, 5 N. J. L. 433)—“A common law lien is the right to retain the possession of personal property until some debt due on, or secured by such property is paid or satisfied. Originally, the word ‘lien’ at common law was used to signify the rights which certain mechanics and artisans had to retain the chattel on which they had performed labor or had given it some particular care at the request of the owner, directly or impliedly, until they had been paid for the labor performed.” The essential element of a common law lien seems to be that the person claiming the

lien must have actual possession of the personal property upon which the lien is claimed. This principle seems to be more thoroughly illustrated in the following:

37 *Corpus Juris*, page 325, Section 33:

“Since a lien upon personal property at common law is founded upon possession, actual or constructive, or the right to detain the property until the claim in which the lien originates is satisfied or discharged, it follows that it is indispensable to the existence of such a lien that a claimant shall have an independent and exclusive possession, actual or constructive, of the property; and the right of lien does not exist while the person against whom it is claimed has actual custody of the property, except under exceptional circumstances.”

6 *Corpus Juris*, page 765, Section 362:

“An attorney’s lien is of two kind: one is called the general, retaining, or possessory lien, and the other, special, particular, or charging lien. The general or retaining lien extends to any general bill that may be due to any attorney for professional services, whether in the particular matter in connection with which he came into possession of the money, papers, etc., or in any other matter, while the special or charging lien is strictly confined to fees and costs due for services rendered in the particular suit wherein the judgment was recovered or the fund impounded.”

6 *Corpus Juris*, page 770, Section 368:

“The lien (retaining lien) does not attach unless the property has come into the possession of the attorney in the course of his professional employment and not for some special purpose in employ; nor does it attach to money until it is actually collected and paid to the attorney. It does not extend to a judgment until the money is paid to the attorney as it is rendered effective by possession and only by possession.”

6 *Corpus Juris*, page 766, Section 364:

“The special or charging lien of an attorney is an equitable right to have the fees and costs due to him for services in a suit secured to him out of the judgment or recovery in that particular suit, the attorney to the extent of such services being regarded as an equitable assignee of the judgment.”

In *Delaney v. Husband*, 64 N. J. L. 275 on page 276, the Court says:

“So, after a judgment or order for payment of money in favor of his client, he has what is sometimes called a lien thereon for his costs. \* \* \* But this right does not attach until an order or judgment in favor of his client is rendered.”

It is conceded that none of the defendants had the actual possession of the fund. Hence, they never had a common law lien therein (*Lanterman v. Luby*, 96 N. J. L. 255 at page 257). It has been held that an attorney's lien may not be enforced against real estate which is the subject of a certiorari proceeding, upon the theory that such real estate is the “proceeds thereof,” because it is impossible for real estate to actually come into the possession of the attorney (*Matter of Hasbrouck*, 153 App. Div. 394, 138 N. Y. S. 729).

## POINT II.

Pamphlet Laws of New Jersey, 1914, page 410, provides that the attorney or counsellor at law of record shall have a lien on the proceeds that flow as a result of his labors only when he has instituted a suit or filed a counter-claim. It appears that Mr. Belfatto instituted a suit by filing a bill in the Court of Chancery, to set aside the award arrived at through the efforts of the defendant-respondent, Meier Chernin. It appears

from the testimony he offered in this suit, that he bases his lien for services rendered in that suit. That matter was heard by the Honorable Maja Leon Berry, Vice-Chancellor, who advised a decree on January 29, 1929, wherein the suit was not only dismissed with costs, but the defendant-appellant was decreed to pay counsel fee of One Hundred and Fifty Dollars (\$150.00) to the defendant in that suit. It is apparent that, instead of there being some proceeds as the fruit of services of Mr. Belfatto, if any, his labors resulted in costing his client an additional One Hundred and Fifty Dollars (\$150.00), plus costs. In any event, no lien, either statutory or otherwise, can result in the favor of Mr. Belfatto.

### POINT III.

The testimony given by Mr. Belfatto would seem to indicate that he claims a lien in the fund for his services. There is nothing of record to show that Mr. Belfatto is a party to this interpleader suit, nor has he ever petitioned the Court to be made a party. His interest in this suit seems to be limited to being retained as solicitor in this suit, for the defendant, Teodore Rinaolo, in whatever funds that might remain after the other defendants have been satisfied.

The defendant-respondent respectfully submits that the decree of the Court of Chancery should be affirmed with costs taxed to the defendant-appellant.

Respectfully submitted,

ABRAHAM LAUB,  
Solicitor for and of Counsel with  
Defendant-Respondent, Meier Chernin.

