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(Filed Jan. 3, 1928)

In Chancery of New Jersey

Between
Firemen's Fund Insurance Co., Scottish Union & National Insurance Co., Insurance Company of North America, Mercantile Insurance Co., London Assurance Co., National Fire Insurance Co., Star Insurance Company and Phoenix Assurance Co.
Complainants,
and
Harriet F. Snyder, William H. Snyder, Gladys Nicholson and Alexander G. Nicholson,
Defendants.

NOTICE OF APPEAL

To: Ward & McGinnis, Esqs.,
Solicitors of Defendants,
Alexander G. and Gladys Nicholson.

Sirs:

Please Take Notice that the complainants appeal to the Court of Errors and Appeals from the whole and every part of the interlocutory orders, final decree and order dismissing petition for re-hearing advised by the Honorable Vivian M. Lewis, Vice Chancellor and made by his Honor, Edwin Robert Walker, the Chancellor.

Dated Dec. 7th, 1927.

Joseph T. Lieblich,
Solicitor of Complainants.

(Filed Jan. 13, 1928.)

PETITION OF APPEAL

To the Honorable Court of Errors and Appeals in the last resort in all cases.

The petition of Firemen's Fund Insurance Company, Scottish Union & National Insurance Company, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company, National Fire Insurance Company, Star Insurance Company and Phoenix Assurance Company, the appellants in the above stated cause, respectfully show that:

1. Your petitioners find themselves aggrieved by the following proceedings in this cause, to wit:

(a) An order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date of March 20th, 1924, wherein it is adjudged:

"That the motion of complainants to strike out the answer and counterclaim of the defendants Gladys Nicholson and Alexander G. Nicholson be and the same is hereby denied."

(b) A final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date of September 19th, 1927, wherein the Court decreed:

"A true copy of this decree is hereto annexed and marked Exhibit "A".

(c) An order made by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, in the Court of Chancery, bearing date of November 21st, 1927, wherein it is adjudged:

"A true copy of this order is hereto annexed and marked Exhibit "B".

All of which have been made in the above entitled cause in the Court of Chancery, and your petitioners appeal from the said order of March 20th, 1924, the said final decree of September 19th, 1927 and the said order of November 21st, 1927, upon the ground that each and all of them are erroneous, in that:

POINT 1

THE COURT ERRED: 1. IN FAILING TO GRANT COMPLAINANTS MOTION TO STRIKE OUT THE ANSWER OF ALEXANDER G. NICHOLSON upon the ground that the same is not responsive, insufficient and the defendant has failed to fully answer all material allegations charged in the bill.

2. In that the defendant Alexander G. Nicholson has failed to make a full, frank and explicit discovery and disclosure of all matters necessary and materials to be answered.

3. In that the said answer is not in compliance with the rules and practice of the Court of Chancery with respect to the requisite of good pleading and making a full, frank and explicit discovery of all matters necessary and material to be answered.

POINT 2

THE COURT ERRED: 1. IN FAILING TO GRANT COMPLAINANTS MOTION TO STRIKE OUT THE ANSWER OF GLADYS NICHOLSON upon the ground that the same is not responsive, insufficient and the defendant has failed to fully answer all material allegations charged in the bill.

2. In that the defendant Gladys Nicholson has failed to make a full, frank and explicit discovery and disclosure of all matters necessary and material to be answered.

3. In that the said answer is not in compliance with the rules and practice of the Court of Chancery with respect to the requisite of good pleading and making a full, frank and explicit discovery of all matters necessary and material to be answered.

POINT 3

THE COURT ERRED IN REFUSING TO STRIKE OUT THE CROSS-BILLS OF THE DEFENDANTS ALEXANDER G. NICHOLSON AND GLADYS NICHOLSON FOR THE FOLLOWING REASONS:

1. The said cross-bills are predicated upon a written contract in which the defendants have an adequate remedy at law and the same does not disclose a ground for equitable relief.

2. That there was then and still is pending and undetermined in the United States District Court of New Jersey, an action at law wherein the said Alexander G. Nicholson and Gladys Nicholson are parties plaintiff and your appellants are parties defendant for the same cause of action as set forth in the alleged cross-bill.

POINT 4

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19, 1927, marked Exhibit "A" hereto attached, FOR THE FOLLOWING REASONS:

1. That the final decree as made and entered is not in conformity with the decision rendered by the Court as set forth in the letter to counsel, dated July 6th, 1927, a copy of which is hereto attached and marked Exhibit "C".

2. That the Court has failed to incorporate in the decree any decision with respect to the cross-bills filed in the cause by Alexander G. Nicholson and Gladys Nicholson.

3. That the testimony in this cause clearly and conclusively establishes that the shrubbery, if any, in and around the Jacobson Mansion had been burnt or destroyed by fire prior and previous to October 27th, 1922; that by reason thereof, the said Alexander G. Nicholson and Gladys Nicholson made a false and fraudulent claim against the National Fire Insurance Company of Hartford and that the decree should have been in favor of the said National Fire Insurance Company of Hartford.

4. That the testimony adduced in the cause has clearly and conclusively established that the personal property, if any, contained in the said Jacobson Mansion in Hackensack, was the property of Alexander G. Nicholson; that by reason thereof the said Gladys Nicholson made a false and fraudulent claim against the National Fire Insurance Company of Hartford and that the decree should have been awarded in favor of said National Fire Insurance Company of Hartford.

5. That under the terms, covenants and conditions of the policies of your appellants Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, National Fire Insurance Company and Phoenix Assurance Company and the testimony in this case, the defendants Gladys Nicholson and Alexander G. Nicholson have failed to establish liability for loss and damage and by reason thereof the decree should have been in favor of the said Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, National

Fire Insurance Company and Phoenix Assurance Company.

6. In awarding a counsel fee as against your complainants, notwithstanding complainants inability to move the Court in granting appellants relief prayed for, as the testimony clearly and conclusively establishes such a meritorious case as to have warranted the Court in a refusal to grant any counsel fee against appellants.

7. That the defendants Alexander G. Nicholson and Gladys Nicholson have failed to maintain, sustain or establish the allegations of their cross-bill and by reason thereof, the said cross-bill should be dismissed and the dismissal of the cross-bill, in view of all the facts and circumstances in the case would warrant the Court in refusing to grant the defendants Alexander G. Nicholson and Gladys Nicholson a counsel fee against appellants.

8. That there is no determination by this Court as to the consideration, if any, which Alexander G. Nicholson paid for the alleged mortgage of Twenty-five thousand dollars on the property.

9. That there is no determination by this Court of the consideration, if any, which passed from Gladys Nicholson or Alexander G. Nicholson to William H. Snyder or Harriet F. Snyder for the transfer of the property.

10. That this Court has not determined the value of the building on October 27th, 1922 as a determining factor with respect to the bona fides of the appellants application to this Court for relief.

11. That the form of the decree is erroneous, in that, this Court has failed to render any decision or opinion with respect to each or any of the separate defenses alleged and set forth in the replication of your appellants.

12. The form of the final decree, dated September 19th, 1927, and filed October 13th, 1927, is erroneous and prejudicial to appellants in the action at law by defendants Alexander G. Nicholson and Gladys Nicholson upon the same cause of action set forth in the cross-bills filed by them in this cause, wherein your appellants have pleaded by way of answer, each and everyone of the defenses set forth in the replications filed by your appellants in this cause and wherein these defendants Nicholsons have filed a reply, a copy of which is hereto attached marked Exhibit D, and wherein they specifically plead that this decree is res adjudicata of each and every special defense set forth in the replication filed in this cause.

13. That the Court erred in the exercise of discretion under the testimony and facts in awarding a counsel fee as against your appellants.

14. That the defendants Alexander G. Nicholson and Gladys Nicholson have failed to establish the cause of action set forth in the cross-bill, the same should be dismissed and if these defendants are entitled to a counsel fee as against appellants, appellants are also entitled to a similar counsel fee as against defendants.

15. That the said decree is erroneous, in the following language: "This Court believes that the damage so claimed by the defendants should be ascertained by a Court of law, "leaving it to inference that the Court has decided and ruled against appellants on each and all of the separate defenses set forth in appellants replication to the cross-bill and that the only defense afforded to your appellants in a law action is the measure of damages sustained by defendants Alexander G. Nicholson and Gladys Nicholson.

16. Appellants, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company and Phoenix Assurance Company have no interest in the controversy with the defendants Alexander G. Nicholson and Gladys Nicholson and should have been dismissed as party complainants, thus the Court erred in awarding a counsel fee as against them.

POINT 5

The Court erred in making the order of November 21, 1927, in that, the petition for re-hearing clearly discloses that the appellants, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company and Phoenix Assurance Company have no controversy with defendants Alexander G. Nicholson and Gladys Nicholson and should have been dismissed from the proceeding and relieved of the award of the counsel fee as against them.

Petitioners therefore pray that the said order of March 20th, 1924, the final decree of September 19th, 1927 and the order of November 21st, 1927, as made by the Chancellor, may be wholly reversed, set aside and for nothing holden, that your petitioners may have such other and further relief in the premises as to this Court shall deem proper.

Joseph T. Lieblich,
Solicitor and of counsel with Complainants.

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

Joseph T. Lieblich,
Counsel.

Service of a copy of the within is hereby acknowledged this 16 day of January, 1928.

Ward and McGinnis,
Solicitors of Defendants.

(Filed October 14, 1927.)

EXHIBIT A (IN PETITION OF APPEAL)

FINAL DECREE

Upon this matter being opened to the Court by Peter J. McGinnis, of Ward & McGinnis, solicitors and of counsel with defendants, Gladys Nicholson and Alexander G. Nicholson, in the presence of Joseph T. Lieblich, solicitors and of counsel with complainant, upon bill, answer, and cross-bill on behalf of the defendants, Gladys Nicholson and Alexander G. Nicholson, and answer thereto and replication, and it appearing by the pleadings that the complainants, Firemen's Fund Insurance Company, Scottish Union and National Fire Insurance Company, Star Insurance Company, and Phoenix Assurance Company, by their bill filed in this cause issued certain policies of insurance, in said bill particularly set forth to Gladys Nicholson, as owner and to Alexander G. Nicholson, as mortgagee, of the premises known as the Jacobson Mansion, in the City of Hackensack, County of Bergen and State of New Jersey, the buildings of which premises thereafter, on to with, the 27th day of October, 1922, was destroyed by fire, and the complainants having alleged that said policies were obtained by the said defendants, each or either of them by false representations and fraud as to the title to said premises, as to the consideration for the mortgage, and as to the true ownership of Gladys Nicholson of the prem-

ises, and as to the representations of the value of the building upon said premises, and as to the fact that said premises were alleged to be occupied, whereas the same were vacant and unoccupied, and as to the true physical condition of the building on said premises, and of the income thereof, all of which matters of fraud were denied by the defendants, Gladys Nicholson and Alexander G. Nicholson and the said defendants Harriet F. Snyder and William H. Snyder having been stricken out as party defendants, and the Court having considered the pleadings and proofs, and considered the argument of counsel, from all of which it appears that the charges of fraud, or misrepresentation, made against said Gladys Nicholson and Alexander G. Nicholson in said bill of complaint were not proved, and it further appearing by the cross-bill filed by the defendants, Gladys Nicholson and Alexander G. Nicholson, the said defendants set forth the issuance of the policies mentioned in the bill of complaint; the fact of a fire destroying the premises and that no insurance has been paid, and praying this Court for a decree to award them money compensation to the extent of the losses sustained by them as particularly prayed for in said cross-bill, but this court believing that the damages so claimed by the said defendants, Gadys Nicholson and Alexander G. Nicholson should be ascertained by a Court of Law:

It is thereupon on this 19th day of September, 1927, on motion of Ward and McGinnis, solicitors and of counsel with defendant, ordered, adjudged and decreed, that the charges of fraud and misrepresentation, having not been proved that the said bill be and the same is hereby dismissed.

It is further ordered that there be awarded to Ward and McGinnis, Solicitors and of counsel with Gladys Nicholson and Alexander G. Nicholson, a counsel fee of $1000.00 and costs to be taxed against the complainants.

Respectfully advised,

E. R. Walker, C.

Vivian M. Lewis, V. C.

EXHIBIT B (IN PETITION OF APPEAL).
ORDER

The complainants having applied to this Court by petition, on notice to defendants, on Monday, the 14th day of November, 1927, for an order to reopen the decree in the above entitled cause on the ground of newly-discovered evidence and other grounds, and coming on to be heard on said date, and the counsel for the complainants having applied for an adjournment to this date and having been directed to serve affidavits of the proposed witnesses upon the solicitors of the defendants, and having failed to serve said affidavits or to appear in Court to proceed with the hearing of this motion:

It is, on this 21st day of November, 1927, ORDERED, that the said application be and the same is hereby dismissed with costs to the defendants to be taxed.

Respectfully advised,

E. R. Walker, C.

Vivian M. Lewis, V. C.

EXHIBIT C (IN PETITION OF APPEAL).

COURT OF CHANCERY OF NEW JERSEY
VIVIAN M. LEWIS, Vice Chancellor,
Paterson, N. J.

July 6, 1927.

Joseph T. Lieblich, Esq.,
Counselor-at-law,
136 Washington St.,
Paterson, N. J.

My Dear Mr. Lieblich:

Referring again to the cause of the Firemen's Fund Insurance Company, Scottish Union and National Insurance Co., et als., Complainants,, and Harriet F. Snyder, William H. Snyder, Gladys Nicholson and Alexander Nicholson, Defendants.

I have given further consideration to the briefs and the testimony in this litigation and have reached the conclusion that I must dismiss the bill of the Insurance Companies. They have not established fraud.

In regard to the affirmative relief asked by the defendants, viz.; the damages for the loss sustained, I have concluded that their proper action should be at law. It is pre-eminently a question for the jury.

I have written you thus briefly in the matter so that there may be no further delay and am sending a copy of this letter to Messrs. Ward and McGinnis.

Yours very truly,
Vivian M. Lewis, V. C.

EXHIBIT D (IN PETITION OF APPEAL).

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

Gladys Nicholson, Plaintiff, vs. Phoenix Assurance Company Ltd. of London, Defendant.	Action at Law. REPLY

Plaintiff denies the matters contained in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth defenses of defendant's answer.

This plaintiff by way of reply to the matters contained in the said special defenses, and each and every one of them, avers that the said defendant is barred from asserting said defenses, because heretofore, the Phoenix Assurance Company, as complainant, filed a bill in the Court of Chancery of New Jersey, against the plaintiff herein, Gladys Nicholson praying for the cancellation and discharge of the policy of insurance upon which this action is founded, and charged and offered in evidence proof for the purpose of establishing each and every of the matters set forth in the said special defenses.

The plaintiff herein offered evidence in contradiction of said matters and thereafter such proceedings were had, and a final decree of the Court of Chancery was made on to wit, September 19th, 1927, wherein and whereby the Court of Chancery denied the relief sought for by the defendant herein, and

found in favor of the plaintiff herein and against the defendant herein on each and every of the matters and things referred to in said special defenses, and for greater certainty plaintiff refers to said final decree.

By reason of the premises plaintiff avers that the said defendant is barred from further proceeding or proving said special defense.

NOTICE

At the hearing of the trial in the above cause, we shall move to strike out each and every one of the said special defenses on the ground that same were litigated in the Court of Chancery of New Jersey, in a certain cause wherein Phoenix Assurance Company, was complainant, and Gladys Nicholson, the plaintiff herein, was defendant, and in such litigation, all matters were settled and adjudged between the parties by a final decree of said Court, dated September 19th, 1927, wherein and whereby said Court of Chancery denied the relief sought for by the defendnt herein, under said special defenses.

Ward and McGinnis,
Attorneys of Plaintiff.

Similar replies have been filed in the cases of Gladys Nicholson and Alexander G. Nicholson vs. Star Insurance Company, National Fire Insurance Company, Firemen's Fund Insurance Company and Scottish Union and National Insurance Company.

(Filed Jan. 30, 1928.)

ANSWER TO PETITION OF APPEAL.

The answer of the above named respondents, Gladys Nicholson and Alexander G. Nicholson, to the petition of appeal of the above-named appellants.

These respondents, Gladys Nicholson and Alexander G. Nicholson, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that an order was made in the Court of Chancery on the 20th day of March, 1924, as in the petition alleged, whereby a motion to strike out the answer and counterclaim was denied, but these respondents, Gladys Nicholson and Alexander G. Nicholson, say that no appeal was ever taken from said order. And these respondents further answering admit that a final decree was made in the Court of Chancery on the 19th day of September, 1927, and further admit that an order was made on the 21st day of November, 1927, by which the Chancellor refused to reopen the decree on the ground of newly discovered evidence, from which no appeal was taken. And these respondents aver that as to the substance and form of the final decree, these respondents pray to refer thereto, when the same shall be produced. And these respondents are advised and believe that the said decree and the said orders, are agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

Ward and McGinnis,
Peter J. McGinnis,
Solicitors of Counsel.

(Filed July 24, 1923.)

BILL OF COMPLAINT

TO THE HONORABLE EDWIN R. WALKER, Chancellor of the State of New Jersey.

The complainants, Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company, National Fire Insurance Company, Star Insurance Company and Phoenix Assurance Company, complaining against the defendants, respectfully show that:

1. The complainant, Firemen's Fund Insurance Company, of San Francisco, California, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of Feist and Feist Agency, Inc., at Newark, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said Feist and Feist Agency, Inc., which certificate is in the possession of the said Feist and Feist agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the

2nd day of August, 1921, execute and deliver to Alexander G. Nicholson certificate No. 1247847, insuring the "Jacobson Mansion" in the sum of $10,000; and that on or about the 7th day of July, 1922, did attach thereto a mortgagee clause making the loss, if any, payable to Alexander G. Nicholson.

2. The complainant, Scottish Union and National Insurance Company of Edinburgh, Scotland, a foreign corporation, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act", the appointment of Feist and Feist Agency, Inc., at Newark, as its uderwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said Feist and Feist Agency, Inc., which certificate is in the possession of the said Feist and Feist Agency, and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 2nd day of August, 1921, execute and deliver to Alexander G. Nicholson certificate No. 7142842, insuring the "Jacobson Mansion" in the sum of $10,000; and that on or about the 6th day of July, 1922, did attach thereto a mortgagee clause making the loss, if any, payable to Alexander G. Nicholson.

3. The complainant, Insurance Company of North America, a corporation of the State of Pennsylvania, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act", the appointment of I. V. Dorland Co., Agency, at Arlington, New Jersey, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said I. V. Dorland Co., which certificate is in the possession of the said I. V. Dorland Co., and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 3rd day of March, 1922, execute and deliver to William H. Snyder certificate No. 105127, insuring the "Jacobson Mansion" in the sum of $3000, and did attach thereto a mortgage clause making the loss, if any, payable to Harriet F. Snyder.

4. The complainant, Mercantile Insurance Company of America, a corporation of the State of New York, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance

business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act", the appointment of I. V. Dorland Co., Agency, at Arlington, New Jersey, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said I. V. Dorland and Co., which certificate is in the possession of the said I. V. Dorland and Co., and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 3rd day of March, 1922, execute and deliver to William H. Snyder certificate No. 936893, insuring the "Jacobson Mansion' in the sum of $8500 and did attach thereto a mortgagee clause making the loss, if any, payable to Harriet F. Snyder.

5. The complainant, London Assurance Corporation of London, England, a foreign corporation, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey,

in compliance with the "Act", the appointment of I. V. Dorland and Co., Agency, at Arlington, New Jersey, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said I. V. Dorland and Co., which certificate is in the possession of the said I. V. Dorland and Co., and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 20th day of December, 1921, execute and deliver to William H. Snyder certificate No. 5920386, insuring the "Jacobson Mansion" in the sum of $3000 and did attach thereto a mortgagee clause making the loss, if any, payable to Harriet F. Snyder.

6. The complainant, National Fire Insurance Company, through its Colonial Fire Underwriters Agency at Hartford, Connecticut, a corporation of the State of Connecticut, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the "Standard fire policy" and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of I. V. Dorland & Co., Agency, at Arlington, New Jersey, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority

to the said I. V. Dorland & Co., which certificate is in the possession of the said I. V. Dorland & Co., and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 11th day of November, 1921, execute and deliver to Alexander G. Nicholson certificate No. 289219, insuring the property in the sum of $15,000; and did attach thereto a mortgagee clause making the loss, if any, payable to Alexander Nicholson.

7. The complainant, Star Insurance Company of America, a corporation of the State of New York, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance business and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of Feist & Feist Agency, Inc., at Newark, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said Feist & Feist Agency, Inc., which certificate is in the possession of the said Feist & Feist Agency, and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without ter-

ritorial authority, on the 2nd day of August, 1921, execute and deliver to Alexander G. Nicholson certificate No. 6908, insuring Gladys Nicholson in the sum of $3600 on rental value.

8. The complainant, Phoenix Assurance Company of London, a foreign corporation, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of O'Gorman & Young, Agency at Newark, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said O'Gorman & Young, which certificate is in the possession of the said O'Gorman & Young Agency, and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation so made; did without territorial authority, on the 11th day of November, 1920, execute and deliver to William H. Snyder certificate No. 1895811, insuring Gladys Nicholson in the sum of $2000; and that on or about the 15th day of April, 1921, did attach thereto a mortgagee clause making the loss, if any, payable to Harriet F. Snyder. That on September 7th, 1921, the interest of the assured was transferred back to William H. Snyder as owner and loss, if any, payable as before.

9. The complainant, Phoenix Assurance Company of London, a foreign corporation, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance and in compliance with authority conferred by the Department of Banking and Insurance, is issuing policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of Halsey & Kent, Agency, at Marion, New Jersey, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said Halsey & Kent, which certificate is in the possession of the said Halsey & Kent, and the said agency, by reason of the false representation made to them by the alleged insured and mortgagee which they knew to be false; and relying upon the truth of the statements, inducements and representation as made; did without territorial authority, on the 7th day of September, 1922, execute and deliver to Alexander G. Nicholson certificate No. 224708, insuring the property in the sum of $6000 and did attach thereto a mortgagee clause making the loss, if any, payable to Alexander G. Nicholson.

10. The complainant, Phoenix Assurance Company of London, a foreign corporation, duly admitted to transact the business of fire insurance in the State of New Jersey, in compliance with an Act of Legislature in such case made and provided, has been and is transacting fire insurance and in compliance with authority conferred by the Department of Banking

and Insurance, is issuig policies of insurance known as and referred to by the "Insurance Act of 1902" as the 'Standard fire policy' and have designated to the Commissioner of Banking and Insurance of the State of New Jersey, in compliance with the "Act," the appointment of O'Gorman & Young, Agency at Newark, as its underwriting agents and in pursuance of said appointment, have issued a written certificate of authority to the said O'Gorman & Young, which certificate is in the possession of the said O'Gorman & Young Agency, and the said agency, by reason of the false representation made to them by the alleged insured which they knew to be false; and relying upon the truth of the statements, inducements and representation as made; did without territorial authority, on the 13th day of September, 1921, execute and deliver to William H. Snyder certificate No. 196765, insuring the property in the sum of $6000.

11. That prior to the 27th day of November, 1906, one Frank E. Fields and Louisa, his wife, were the owners of and seized of a large tract of land in the village of Hackensack, in the County of Bergen and State of New Jersey, more particularly described as follows:

"Beginning at a point in the Westerly side of the Polifly Road at the Northerly boundary of property now or late of Charlotte M. Kent and the Southeasterly boundary or corner of the promises hereby described; running thence (1) North forty-four degrees West, seven hundred and twenty-eight feet and eighty-eight hundredths of a foot (728.88); thence (2) continuing North forty-four degrees and forty minutes West, forty-nine feet and forty-five hundredths of a foot (49.45) to the Easterly line of Jacobson Street lately laid out by William E. Taylor; thence (3) along said Easterly line of Jacobson Street, North thirty-seven degrees and four minutes East, Four hundred and five feet and five-tenths of a foot (405.5) to the Southwesterly corner of lot No. 34 as laid down on "Map of property of William E. Taylor, the Jacobson Tract, Hackensack, N. J."; thence (4) South forty-six degrees and thirty-one minutes East, along lots Nos. 34, 33, 32, 31, 30, 29, one hundred sixty feet and three tenths of a foot (160.3) to land formerly belonging to the heirs of Peter S. Demarest, deceased; thence (5) South forty-four degrees and nine minutes East, Three hundred sixty-six feet and seventy-seven hundredths of a foot (366.77) to land of Mary E. Poor; thence (6) South forty-one degrees and thirty-five minutes West, along the Westerly Boundary of land of Mary E. Poor, Two hundred and seventy-eight feet and thirty-eight hundredths of a foot (278.38); thence (7) South thirty-six degrees and fifty-six minutes East, One hundred and sixty-five feet and sixty-nine hundredths of a foot (165.69); thence (8) South forty-five degrees and thirty-six minutes East, One hundred and thirty-eight feet and forty-five hundredths of a foot (138.45) along the Southerly boundary line of land of said Poor to the Westerly line of said Polifly Road; thence (9) South fifty-one degrees West and along the Westerly line of said Polifly Road, One hundred fourteen feet and two hundredths of a foot, (114.02) to the point or place of beginning.

and that a conveyance dated November 27th, 1906, acknowledged November 27th, 1906, and recorded April 18, 1909 in the County Clerk's Office of Bergen County, in book 690 of Deeds, on page 345, the said Frank E. Fields conveyed this property to William H. Snyder.

12. That the said Frank E. Fields was the father of Harriet H. Snyder and he desired to present this property to his daughter, Harriet H. Snyder, the wife of William H. Snyder, the grantee in the Deed mentioned in paragraph 11 hereof.

13. That out of love and affection which he held for his daughter and his desire to protect her, the said Frank E. Fields conveyed the property to his son-in-law, William H. Snyder in trust for his daughter, Harriet F. Snyder, but the Deed failed to contain such a recitation.

14. That on or about the 9th day of May, 1918, Mary T. Ward, of the Town of Rupert, County of Lincoln and State of Idaho, a sister of Alexander G. Nicholson, was presumed to be the owner of and holding in trust for Alexander G. Nicholson of the City of Brooklyn, County of Kings and State of New York, a certain piece of property, more particularly described as follows:

"All that certain lot, piece or parcel of land, with the building and improvements thereon erected, situated, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, and known and designated as part of Section 137 on a certain map entitled "Map of the Village of Greenfields on the land of the United Freeman's Land Association" and surveyed by Tunis G. Bergen April, 1852 and filed in the office of the

Register of the County of Kings on the 17th day of May, 1852.

Beginning at a point on the Northerly side of Foster Avenue, as shown on said map, distant sixty (60) feet Westerly from the corner formed by the intersection of the westerly side of Third Street and Northerly side of Foster Avenue, running thence Northerly and parallel with Third Street and part of the distance through a party wall, one hundred (100) feet; thence Westerly, parallel with Foster Avenue, twenty (20) feet; thence Southerly parallel with Third Street and part of the distance through a party wall, one hundred (100) feet; running thence Easterly, along Northerly side of Foster Avenue to the point or place of beginning.

Together with all fixtures and articles attached to and used in connection with said premises.

Together with all the right, title and interest of the party of the first part of, in and to Foster Avenue to the center line thereof. Being known as and by the street number 215 Foster Avenue, in the Borough of Brooklyn, City and State of New York.

which property on or about this time was presumed to be encumbered by a mortgage of $4500 and that a foreclosure proceeding had been instituted and was then pending.

15. That on or about the 9th day of May, 1918, the said Mary T. Ward by deed in writing, conveyed the property described in paragraph 14 of this complaint, to Harriet F. Snyder, or the consideration of

$100, which deed is dated May 9th, 1918, acknowledged May 9th, 1918, and recorded in the Register's office of Kings County, New York, in book 3753, page 33, block 5426 of Conveyance on page 54, on October 7th, 1918, and this conveyance was made by the direction of Alexander G. Nicholson, the presumed beneficial owner of this property for and in consideration of an exchange of property in Hackensack, which belonged to Harriet F. Snyder, as will be shown by subsequent allegations in this complaint.

16. On or about the time herein mentioned, the said Harriet F. Snyder had as part or portion of her property in Hackensack and which is contained in the deed as made by her father to her husband, in trust for her, a mansion house referred to and known in the neighborhood as the "Jacobson Mansion," which house was at least seventy years of age and was then vacant and which the said Harriet F. Snyder was desirous of selling and about this time the said William H. Snyder, the husband of Harriet F. Snyder, began negotiations with said Alexander G. Nicholson who owned the property described in paragraph 14 hereof and which stood in the name of Mary T. Ward, his sister, at Foster Avenue, Brooklyn, New York, which was then the subject of a foreclosure suit, for the purpose of exchanging any equity which the said Alexander G. Nicholson or his sister, Mary T. Ward might have in the Brooklyn property, for the Hackensack property, known as the "Jacobson Mansion," with about one-half acre of land, which land was to be measured out between the said Alexander G. Nicholson and William H. Snyder and it being agreed that the equity of Harriet F. Snyder in the "Jacobson Mansion" in Hackensack being far in excess of any equity which Alexander G. Nicholson or his trustee, Mary T. Ward might have in the Brooklyn property, the said Alexander G. Nicholson was to execute a purchase money mortgage in the sum of $6500 to Harriet F. Snyder for the property in question and by reason of the foreclosure which was then pending and the inability of the said Alexander G. Nicholson as cestui que trust and the said Mary T. Ward as trustee, to deliver title free and clear, the proceedings were held up until October of 1918 and that on or about the 10th day of October, 1918, said William H. Snyder as trustee of the property conveyed to him by the father of his wife, Frank E. Fields, attempted to reconvey the property to his wife, but in lieu thereof, executed a paper purporting to be a mortgage in the sum of $6500 to his wife, covering the following described property:

"Commencing at a post now placed on the top of a certain terrace and which post marks a line running northerly to Parker Avenue and being the easterly line of certain lots owned by William H. Snyder, one of the parties of the first part hereto, thence running easterly 246.9 feet along the northerly line of the property of said William H. Snyder to the center of the continuation of Second street (said continuation being a street or proposed street, commencing at Essex Street and running southerly to the northerly line of said Snyder's property) thence running southerly and parallel with the line of property owned by E. E. Poor, a distance of 280 line of said Snyder's property and within 125 feet of the northerly line of property owned by Henry Vogt; thence westerly and paral-

lel with the northerly line of said Vogt's property 246.9 feet; thence northerly 280 feet to the point or place of beginning, being part of lot 2 in block 124 in a certain map of the Township of Hackensack.

Together with the privilege of a right of way to old original driveway leading in from the Polifly Road to said property until the continuation of Second Street becomes a legal thoroughfare and is accepted by the city, then said right of way ceases."

which paper is dated October 10th, 1918 and recorded in the County Clerk's office of Bergen County on October 21st, 1918, in book 415 of mortgages, page 178, etc.

17. That the said William H. Snyder, under the direction of his wife, and by instructions of Alexander G. Nicholson, did then convey the property described in paragraph 16, to Gladys Nicholson, the daughter of the said Alexander G. Nicholson by deed of October 10th, 1918, which deed was recorded in the County Clerk's office of Bergen County on November 19th, 1918, in book 999, of Deeds, page 488; as will appear by paragraph 16, the paper purporting to be a mortgage made by William H. Snyder to Harriet F. Snyder, being in the sum of $6500 and the said William H. Snyder made and delivered to Alexander G. Nicholson a paper purporting to be a mortgage in the sum of $500 which paper is dated October 10, 1918 and recorded on the 19th day of November, 1918, Book 416 of Mortgages, on page 1.

18. That the property in question referred to as the "Jacobson Mansion" was at and before the time of these alleged conveyances insured by Harriet F. Snyder or her trustee, William H. Snyder in

the sum of $14,000, which was the value of the property at this time.

19. At the time of this exchange of property herein mentioned, by and between William H. Snyder and Alexander G. Nicholson, it was agreed that Alexander G. Nicholson was to pay the taxes encumbered on the Brooklyn property and the said William H. Snyder individually or as trustee of Harriet F. Snyder, was to pay the taxes on the Hackensack property and the said Alexander G. Nicholson failed to keep his agreement and pay the taxes for 1918 on the Brooklyn property. By reason hereof, the said William H. Snyder individually or as trustee, failed to pay the taxes on the property in Hackensack.

20. That the building in question, known as and referred to as the "Jacobson Mansion" in the village of Hackensack, at the time of the alleged conveyances by the said William H. Snyder, individually or as trustee for Harriet F. Snyder, to Alexander G. Nicholson or his agents or trustees, was valued by the said William H. Snyder, individually or as trustee of Harriet F. Snyder at the sum not in excess of $14,000 and that the market value of the said building at no time between the alleged conveyance and the institution of this suit, was in excess of $18,000.

21. And the said defendants, by their agents and servants, did on the respective days or dates alleged in this complaint as the date of issuance of the respective alleged certificates of the several complainants, represent to the agents and servants of the respective complainants, and for the purpose of inducing them to issue their respective certificates, that the value of the property known as and referred

to as the "Jacobson Mansion" and the title to which was in the name of the respective alleged insureds, to be worth the sum of $60,000 and they desired the respective certificate or certificates issued in the respective amounts and directed the attachments of mortgagee clauses in favor of existing mortgagees, all of which statements were false and untrue and were known to be untrue when made, and were made for the purpose of deceiving and defrauding the complainants and inducing them to issue their respective certificates.

22. The said Alexander G. Nicholson, well knowing the said property was vacant and unoccupied and for the purpose of deceiving and defrauding complainant, Star Insurance Company, purported to execute to one Mrs. Masterson, an alleged lease on the premises in question in the sum of $3600, well knowing that the premises were not to be rented and occupied by the said Mrs. Masterson and for the sole purpose of fraudulently obtaining the certificate of the complainant, Star Insurance Company, for the purpose of establishing a cause of action in the event the property be destroyed in order that the said Alexander G. Nicholson, by its agents and servants, might collect from your complainant, Star Insurance Company.

23. That the said Alexander G. Nicholson being well acquainted with the terms and conditions of the standard policy of the State of New Jersey, by reason of his experience in the insurance business as an adjuster and appraiser and in order to carry out the fraudulent intent conceived in the placing of several insurance on the property in question and for the purpose of securing himself after the destruction of the premises by fire and in the event

that his daughter in whom he had vested the legal title would set up a claim of ownership after the destruction of the property by fire, caused to be executed by his said daughter, Gladys Nicholson, a paper purporting to be a mortgage in the sum of $25,000, which alleged mortgage is dated June 17th, 1922, and recorded in the County Clerk's Office of Bergen County, in book 554 of mortgages, page 519.

24. On or about the 7th day of July, 1922, the said Alexander G. Nicholson, represented to each of your complainants herein that he was a bona fide mortgagee of the premises in question and directed the several complainants herein to attach to their separate certificates a mortgagee clause in the standard form of New Jersey, directing the loss, if any, to be payable to Alexander G. Nicholson as mortgagee, whereas in fact the said Alexander G. Nicholson was the true owner of the property in question and the alleged certificates of your complainants should have been made to him as the alleged owner.

25. And complainants further show that the said Alexander G. Nicholson and William H. Snyder knowing full well that the property was of a market value of less than $14,000 and had been vacant and unoccupied for a long period of time and had been sold for unpaid taxes and was a "white elephant" on their hands, and was not bringing any income, and was in a delapidated condition, and had been occupied by squatters who refused to vacate the same, and were unable to meet the expense of retaining the same, wilfully, deliberately and fraudulently concealed these facts from complainants for the purpose of obtaining $60,000 insurance.

26. That on the 23rd day of August, 1919, the property in question was sold by the collector of

taxes of the Town of New Barbadoes, commonly referred to as Hackensack, to the Harrington & Company for the sum of $202.70 and that subsequent thereto, the said Harrington & Company sold their interest in this property to William H. Snyder.

27. That on the 27th day of October 1922, the property referred to in the complaint was destroyed, by fire under suspicious circumstances will prove upon the hearing of this cause.

28. Complainants, after the destruction of the property, have repeatedly made demands upon the defendants, William H. Snyder and Harriet F. Snyder, Alexander G. Nicholson and Gladys Nicholson to comply with the terms, covenants and conditions of the alleged certificates and to make discovery and to return and deliver up to them each of the certificates of your complainants who stand ready and willing to abide by the decree of this Court for the surrender and delivery of any money or moneys which may have been paid as a consideration for the issuance of the alleged certificates, upon the false statements and representations made which induced complainants to issue and deliver their alleged certificates but the said defendants have refused and still refuses to deliver up for cancellation the alleged certificates of your complainants.

29. By reason of the false and fraudulent representations and the connivance of the defendants in obtaining the alleged certificates or policies of insurance of your respective complainants and the execution of the alleged mortgages, and the destruction of the "Jacobson Mansion", great harm and irreparable loss will result to your complainants which can only be determined and adjudged by the decree of this Honorable Court and particularly after the discovery as herein prayed for is made.

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

1. That the defendants, William H. Snyder, Harriet F. Snyder, Alexander G. Nicholson and Gladys Nicholson may answer this bill of complaint without oath and each statement therein made.

2. That the defendants, Alexander G. Nicholson, Gladys Nicholson, William H. Snyder and Harriet F. Snyder may set forth, disclose and discover the true consideration for the exchange of the "Jacobson Mansion" in Hackensack, New Jersey, with the property at 215 Foster Avenue, Brooklyn, New York.

3. That the said defendants, Alexander G. Nicholson and Gladys Nicholson may disclose the equity if any which they have or had and which the said Alexander G. Nicholson or Mary T. Ward had in the property at 215 Foster Avenue, Brooklyn, New York, and what interest, if any, the said defendants have in the property at Hackensack, New Jersey, and what interest, if any, the said Alexander G. Nicholson may have in the alleged mortgage on the property in Hackensack, which alleged mortgage is in the sum of $25,000.

4. That the said defendants, William H. Snyder and Harriet F. Snyder make a full, true and accurate disclosure of the title to the property in Hackensack, New Jersey, which was conveyed by Frank E. Fields to the said William H. Snyder and why the property was conveyed to the said William H. Snyder, if the same was to be the property of Harriet F. Snyder, and if the alleged mortgage to Harriet F. Snyder in the sum of $6500 was not intended as a reconveyance to her of the fee, what was intended to be reconveyed.

5. That the said Defendants, Alexander G. Nicholson and Gladys Nicholson may disclose the true and

correct name and address of Mrs. Masterson, the alleged lessee of the premises and how long, if any, at any time, the said lessee did live in the property and what rent, if any, the said lessee paid and what relation, if any, she is or was to the said Alexander G. Nicholson.

6. That this Honorable Court may inquire into the circumstances relative to the conveyance of Harriet F. Snyder to Gladys Nicholson and relative to the alleged mortgage of Gladys Nicholson to Alexander G. Nicholson and the alleged mortgage of William H. Snyder to Harriet F. Snyder and ascertain and determine what, if anything, the said papers are and that the said alleged mortgage in the sum of $25,000 be decreed to be a deed in favor of Alexander G. Nicholson and that the deed of Harriet F. Snyder to Gladys Nicholson be decreed to be a deed in favor of Alexander G. Nicholson and that the alleged mortgage of William H. Snyder to Harriet F. Snyder be declared to be a deed in favor of Harriet F. Snyder.

6a. That this Court may inquire into the circumstances and these defendants may disclose the total amount of insurance on the premises in question, by whom and with whom the same was placed and who ordered the mortgagee clauses attached to the policies, etc.

7. That the defendants, Harriet F. Snyder, William H. Snyder, Gladys Nicholson and Alexander G. Nicholson may be directed and ordered by this Honorable Court, by reason of the fraudulent acts and conducts of these defendants and in obtaining the alleged certificates or policies of insurance of these complainants, be decreed to cancel and deliver up to your complainants the several respective alleged policies of insurance of your complainants and that

your complainants upon the surrender and cancellation of the said alleged certificates of your complainants may be decreed to return to the defendants any money or moneys which they may have paid in obtaining the alleged certificates of the complainants and that complainants may have such other and further relief in the premises and which may be equitable and just.

8. That a writ of subpoena may issue, commanding the defendants to be and appear and answer this bill of complaint and to abide by such decree as this Court may make in the premises.

Joseph T. Lieblich,
Solicitors of Complainants and Counsel.

(Filed December 1, 1923.)

ANSWER AND CROSS BILL

THE ANSWER OF GLADYS NICHOLSON to the bill of complaint of the above named complainants This defendant for answer to the said bill avers:

1. She admits so much of the paragraph one that alleges that there was issued a policy of insurance by the Fireman's Fund Insurance Company, of San Francisco, California, bearing number 1247847 issued on the 2nd day of August, 1921 in the sum of $10,000.00, and which policy contained the usual mortgagee clause in favor of the defendant, Alexander G. Nicholson, as his interest might appear. The said policy of insurance covered the premises belonging to this defendant and more particularly described in the said policy and was known and designated as the Jacobson Mansion.

2. She admits so much of paragraph two that alleges that there was issued a policy of insurance by the Scottish Union and National Insurance Company of Edinburgh, Scotland, bearing number

7142842 issued on the 6th day of July, 1922 in the sum of $10,000.00 and which policy contained the usual mortgagee clause in favor of the defendant, Alexander G. Nicholson, as his interest might appear. The said policy of insurance covered the premises belonging to this defendant and more particularly described in the said policy and was known and designated as the Jacobson Mansion.

3. This defendant has no knowledge as to the matters contained in the third paragraph and is advised that it is not necessary for her to make answer thereto and therefore leaves the complainants to their proof.

4. This defendant has no knowledge as to the matters contained in the fourth paragraph and is advised that it is not necessary for her to make answer thereto and therefore leaves the complainants to their proof.

5. This defendant has no knowledge as to the matters contained in the fifth paragraph and is advised that it is not necessary for her to make answer thereto and therefore leaves the complainants to their proof.

6. She admits so much of paragraph six that alleges that there was issued to this defendant a policy of insurance by the National Fire Insurance Company bearing nnmber 289219 issued on the 11th day of November, 1921 in the sum of $15,000.00 and which policy contained the usual mortgagee clause in favor of the defendant, Alexander G. Nicholson, as his interest might appear. The said policy of insurance covered the premises belonging to this defendant and more particularly described in the said policy and was known and designated as the Jacobson Mansion.

7. She admits so much of paragraph seven that alleges that there was issued to this defendant a policy of insurance by the Star Insurance Company of America, bearing number 6908 issued on the 2nd day of August, 1921 in the sum of $3600.00 and which policy of insurance covered the premises belonging to this defendant and more particularly described in the said policy and was known and designated as the Jacobson Mansion.

8. This defendant has no knowledge as to the matters contained in the eighth paragraph and is advised that it is not necessary for her to make answer thereto and therefore leaves the complainants to their proof.

9. She admits so much of paragraph nine that alleges that there was issued to this defendant a policy of insurance by the Phoenix Assurance Company of London, bearing number 224708 issued on the 7th day of September, 1922 in the mortgagee clause in favor of the defendant, Alexander G. Nicholson, as his interest might appear. The said policy of insurance covered the premises belonging to this defendant and more particularly described in the said policy and was known and designated as the Jacobson Mansion.

10. This defendant has no knowledge as to the matters contained in the tenth paragraph and is advised that it is not necessary for her to make answer thereto and therefore leaves the complainants to their proof.

11. This defendant has no knowledge of the matters contained in paragraph eleven and leaves the complainants to their proof.

12. This defendant has no knowledge of the matters contained in paragraph twelve and leaves the complainants to their proof.

12. This defendant has no knowledge of the matters in paragraph twelve and leaves the complainants to their proof.

13. This defendant has no knowledge of the matters contained in paragraph thirteen and leaves the complainants to their proof.

14. This defendant has no knowledge of the matters contained in paragraph fourteen and leaves the complainants to their proof.

10 15. She denies the matters contained in the fifteenth paragraph.

16. She denies the matters contained in the sixteenth paragraph.

17. She denies the matters contained in the seventeenth paragraph.

18. She denies the matters contained in the eighteenth paragraph.

19. She denies the matters contained in the

20 nineteenth paragraph.

20. She denies the matters contained in the twentieth paragraph.

21. This defendant further answering avers that the matters contained in paragraphs 13, 14, 15, 16 17 and 18 are not material to the issue.

22. She denies the matters contained in the twenty-first paragraph.

23. She denies the matters contained in the twenty-second paragraph.

30 24. She denies the matters contained in the twenty-third paragraph.

25. She denies the matters in the twenty-fourth paragraph, but admits so much of the paragraph which avers that he is a bona fide mortgagee.

26. She denies the matters contained in the twenty-fifth paragraph.

27. She denies the matters contained in the twenty-sixth paragraph.

28. She denies the matters contained in the twenty-seventh paragraph.

29. She denies the matters contained in the twenty-eighth paragraph.

30. She denies the matters contained in the twenty-ninth paragraph.

31. All of which matters and things this de- 10
fendant is ready to aver, maintain and prove as this Court shall direct and prays to be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

AND THIS DEFENDANT BY WAY OF CROSS BILL against each of the above named complainants avers:

1. That at the time hereinafter set forth she was the owner of certain premises consisting of ground with a certain frame dwelling thereon, said 20
land premises being described under said policies of insurance hereinafter mentioned as 100 feet west of Second Street, about 200 feet south of Parker Avenue, known as Jacobson Mansion, Hackensack, New Jersey.

2. That for the purpose of idemnifying herself from loss or damage which might be occasioned by fire, she caused to be issued to her for the consideration therein set forth certain policies of fire insurance from the above named complainants, which 30
policies of insurance the dates thereof and amount of indemnity therein set forth are hereinafter described.

3. That on the 2nd day of December, 1921, for the consideration of the sum of $62.10 the complainant, National Fire Insurance Co., of Hartford,

issued and delivered to this defendant a certain contract of insurance bearing number 289219 whereby in consideration of the stipulations therein mentioned and the sum of $62.10 did insure this defendant, for the term of one year from the 11th day of November, 1921 to the 11th day of November, 1922, against all direct loss or damage by fire, except as thereinafter provided to an amount not exceedig the sum of $5000. upon the aforementioned described property while located and contained in the said policy and not elsewhere. On shrubbery and shade trees situate on grounds of above described premises. Also household furniture, including safe, and office furniture and fixtures, and other goods and chattels, the said amount of insurance being apportioned as follows $9000 on the frame dwelling, $3000 on shrubbery and $3000 on the household furniture.

4. That by the said policy of insurance so executed and delivered as aforesaid, the said National Fire Insurance Co. of Hartford, Conn., agreed to indemnify the defendant, Alexander G. Nicholson as mortgagee as his interest might appear from all loss or damage by fire, except as otherwise provided in the policy.

5. That on the 9th day of August, 1921 for the consideration of the sum of $50 the complainant, the Scottish Union and National Insurance Company of Edinburgh did issue to this defendant, a certain contract of insurance bearing number 7142-842 whereby in consideration of the stipulations therein named and of the said mentioned sum of $50 did insure the defendant, Gladys Nicholson for the term of three years from the 2nd day of August, 1921 at noon to the 2nd day of August, 1924, at noon

against all direct loss or damage by fire, except as thereinafter provided to an amount not exceeding the sum of $10,000.00 upon the following described property while located and contained in the said policy and not elsewhere said description being to wit: frame dwelling situate 200 feet west of Second Street about 200 feet south from Parker Avenue and known as the Jacobson Mansion, Hackensack, New Jersey.

6. By the said policy of insurance so executed and delivered as aforesaid, the said defendant agreed to indemnify the plaintiff for Alexander G. Nicholson as mortgagee as his interest might appear from all loss or damages by fire, except as otherwise provided in the policy.

7. That on the 7th day of September, 1922 for the consideration of the sum of $65.25 the complainant issued and delivered to this defendant a certain contract of insurance bearing number 224708 of the Phoenix Assurance Limited of London, whereby in consideration of the stipulations therein named and of the said mentioned sum of $65.25 did insure the defendant, Gladys Nicholson for the term of three years from the 7th day of September, 1922 at noon to the 7th day of September, 1925 at noon against all direct loss or damage by fire, except as thereinafter provided to an amount not exceeding the sum of $6000 upon the following described property while located and contained in the said policy and not elsewhere and said description being, to wit: frame dwelling situate 100 feet west of Second Street about 200 feet south from Parker Avenue and known as the Jacobson Mansion, Hackensack, New Jersey.

8. By said policy of insurance so executed and delivered as aforesaid, the said complainant, Phoenix Assurance Company Limited of London agreed

to indemnify the defendant, Alexander G. Nicholson as mortgagee as his interest might appear from all loss or damage by fire, except as otherwise provided in the policy.

9. That on the 9th day of August, 1921 for the consideration of the sum of $50, the said complainant, Fireman's Fund Insurance Company, of San Francisco, California issued and delivered to this defendant a certain contract of insurance bearing number B124787 whereby in consideration of the stipulations therein named and of the said mentioned sum of $50, did insure this defendant, Gladys Nicholson for the term of three years from the 2nd day of August, 1921 at noon to the 2nd day of August, 1924 at noon against all direct loss or damages by fire, except as thereinafter provided to an amount not exceeding the sum of $10,000.00 upon the following described property while located and contained in the said policy and not elsewhere, said description being to wit: frame dwelling situate 100 feet west of Second Street about 200 feet south from Parker Avenue and known as the Jacobson Mansion, Hackensack, New Jersey.

10. By said policy of insurance so executed and delivered as aforesaid, the said complainant agreed to indemnify the defendant, Alexander G. Nicholson as mortgagee as his interest might appear from all loss or damage by fire, except as otherwise provided in the policy.

11. That on the 9th day of August, 1921, defendant Gladys Nicholson had executed and delivered to her by the Star Insurance Company of America for the consideration of $9.90 a certain contract of insurance bearing date aforesaid and number K6908 whereby in consideration of the stipulations therein

contained and of the said mentioned sum of $9.90 did insure the defendant for the term of three years from the 2nd day of August, 1921 to the 2nd day of August, 1924, at noon, against all loss or damage by fire except as otherwise therein provided to an amount not exceeding $3600.00. Said insurance however being limited to loss or damage occasioned to the said plaintiff on the rents or rental income of the said property.

12. On the 27th day of October, 1922, the building upon the said described Lands and described in the said policies of insurance as aforesaid was destroyed by fire by a cause unknown to this defendant and also the shrubbery and household effects therein were destroyed.

13. The said fire and loss occasioned thereby to this defendant was within the provision of the said policy of insurance requiring the defendant to indemnify the plaintiff for the loss aforesaid, and was not within any exceptions or exclusions mentioned or set forth in the said policy.

14. This defendant thereupon notified each of the said mentioned companies, the complainants herein, of the said fire and loss and damage occasioned thereby, complying with the terms thereof and now is and at all times has been ready to do so.

15. This defendant further avers that by reason of the premises each of the above named complainants are indebted to her in proportion to the loss occasioned to her as their respective policies bear to the whole insurance.

16. That to institute said actions in Court of law would involve a multiplicity of suits and vexatious litigation, and that by reason of the fact and that the complainants have brought suit in this Honor-

able Court against this defendant in respect to the policies of insurance mentioned in this cross bill, this Court has obtained jurisdiction of the cause in all respects.

In consideration whereof, and to the end that the complainants may answer this cross bill, but without oath and that an accounting may be had as to the loss and damage occasioned by this defendant, and that the said complainants and each of them may be decreed to pay to this defendant loss and damage occasioned by her in such proportion as the policy of insurance may bear to the total loss and this defendant may have such further and other relief as may be equitable and just.

Ward and McGinnis,
Solicitors of Defendant, Gladys Nicholson.

(Filed December 1, 1923.)

ANSWER AND CROSS BILL

THE ANSWER OF ALEXANDER G. NICHOLSON to the bill of complaint of the above named complainants. This defendant to answer of the said bill avers:

1. That it is true as set forth in the bill of complaint that certain policies of insurance were issued to the defendant Gladys Nicholson on the premises known as the Jacobson Mansion, and to which policies of insurance was attached a mortgagee clause in favor of this defendant as mortgagee, as his interest might appear.

2. That the said policies of insurance so issued were issued by these complainants and which policies of insurance are set forth in the bill of complaint of the complainants.

3. This defendant further answering denies that the said policies of insurance issued, were issued by any reason of any false statement, inducement or representation but on the contrary thereof he avers that the said Gladys Nicholson was the bona fide owner of the said premises and this defendant, Alexander G. Nicholson was the bona fide mortgagee in the sum of Twenty-five thousand dollars ($25,000.00) on the said lands and premises and the said premises were in fact destroyed by fire occasioned by a reason unknown and causing loss to the said Gladys Nicholson and to this defendant to the extent of the sum of the said mortgage.

4. All of which matters and things this defendant is ready to aver, maintain and prove as the Court shall direct and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

AND THIS DEFENDANT BY WAY OF CROSS BILL against each of the following named complainants the Firemen's Fund Ins. Co., Scottish Union & National Ins. Co., and National Fire Ins. Co. avers:

1. That the said mentioned companies issued to Gladys Nicholson certain policies of insurance more particularly described in the Bill of Complaint and in which said polices of insurance was a certain mortgagee clause providing that all loss or damage occasioned by fire be payable to this defendant, Alexander G. Nicholson as his interest might appear.

2. This defendant by way of cross bill further avers that the premises described in the Bill of Complaint and policies of insurance and destroyed by fire on the 27th day of October, 1922 and that loss and damage was occasioned thereby to this defendant, Alexander G. Nicholson to the amount of twen-

ty-five thousand dollars ($25,000.00) being the amount of the said bona fide mortgage held by this defendant upon the said lands and premises in question.

3. This defendant thereupon notified each of the said mentioned companies, of the said fire and loss and damage occasioned thereby, complying with the terms thereof and now is and at all times has been ready to do so.

4. This defendant further avers that by reason of the premises each of the above named complainants are indebted to him in proportion to the loss occasioned to him as their respective policies bear to the whole insurance.

5. To institute said actions in Court of law would involve a multiplicity of suits and vexatious litigation, and that by reason of the fact and that the complainants have brought suit in this Honorable Court against this defendant in respect to the policies of insurance mentioned in this cross bill, this Court has obtained jurisdiction of the cause in all respects.

In consideration whereof, and to the end that the complainants may answer this cross bill, but without oath and that an accounting may be had as to the loss and damage occasioned by this defendant, and that the said complainants and each of them may be decreed to pay to this defendant loss and damage occasioned by him in such proportion as the policy of insurance may bear to the total loss and this defendant may have such further and other relief as may be equitable and just.

Ward and McGinnis,
Solicitors of the Defendant,
Alexander G. Nicholson.

Filed Mar. 14, 1925

NOTICE

To Alexander G. Nicholson, Defendant, and Ward and McGinnis, Esqs., Solicitors of Defendant.

Sirs:

Please take Notice that on Monday, December 24th, 1923, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, I will apply to the Chancellor at Chancery Chambers, No. 75 Montgomery Street, Jersey City, New Jersey, and move to strike out the Answer and Cross Bill upon the following grounds:—

1. The motion to strike out the answer is predicated upon the ground that the same is not responsive and insufficient and the defendant has failed to fully answer all material allegations and charges in the bill.
2. The motion to strike out the cross bill is predicated upon the ground:

(a) That it does not set forth any grounds for equitable relief since the alleged cross bill is predicated upon a written contract in which this defendant has an adequate remedy at law.

(b) That there is now pending and undetermined in our Supreme Court an action by the said Alexander G. Nicholson for the same cause of action as set forth in this cross bill.

Respectfully yours,
Joseph T. Lieblich,
Solicitor of Complainants.

Notice to Strike Out Answer

Filed Mar. 14, 1925.

NOTICE

To Gladys Nicholson, Defendant, and Ward and McGinnis, Esqs., Solicitors of Defendant.

Sirs:

Please take notice that Monday, December 24th, 1923, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, I will apply to the Chancellor at Chancery Chambers, No. 75 Montgomery Street, Jersey City, New Jersey, and move to strike out the cross bill and the following paragraphs of the answer:—

1. The motion to strike out the cross bill is predicated upon the ground:

(a) That it does not set forth any grounds for equitable relief since the alleged cross bill is predicated upon a written contract in which this defendant has an adequate remedy at law.

(b) That there is now pending and undetermined in our Supreme Court an action by the said Gladys Nicholson for the same cause of action as set forth in this cross bill.

2. The motion to strike out paragraphs seventeen and that part of paragraphs six, seven and nine which alleges, 'that there was issued to this defendant a policy of insurance' is predicated upon the ground:

(a) That the answers are not responsive, insufficient and not based upon any allegation in the complaint.

(b) Complainants will also move to strike out the answers upon the ground that this defendant has failed to make a full, frank and explicit discovery of all matters necessary or material to be answered; that the said answer is not a

Order

compliance with the requisite of good pleading in accordance with the rules and practice of this Court.

Respectfully yours,
Joseph T. Lieblich,
Solicitors of Complainants.

ORDER

This matter being opened to the Court by Joseph T. Lieblich, Esq., the solicitor of complainants and in the presence of Peter J. McGinnis, Esqs., the solicitors of Alexander G. Nicholson and Gladys Nicholson and after considering complainants' motion to strike out the answer and counter-claim and also considering the argument on complainants' motion to enjoin these defendants from prosecuting an action at law, it is on this 20th day of March, 1924,

Ordered That,

1. The action at law now pending and undetermined in the United States District Court for the District of New Jersey, between the complainants and Alexander G. Nicholson and Gladys Nicholson be and the same is hereby enjoined and restrained.

2. That the motion of complainants to strike out the answer and counter-claim of the defendants, Gladys Nicholson and Alexander G. Nicholson be and the same is hereby denied.

Respectfully advised,
Vivian M. Lewis, V. C.; E. R. Walker, C.

Filed Mar. 21, 1924.

REPLICATION AND ANSWER TO CROSS BILLS of defendants Alexander G. and Gladys Nicholson.

Complainants, by way of replication, deny each

and every allegation in said answers and join issue on the answers of the defendants, Alexander G. Nicholson and Gladys Nicholson.

Complainants, by way of answer in lieu of plea to cross bills of Alexander G. Nicholson and Gladys Nicholson, say:

1. On the 25th day of October, 1923, these defendants Alexander G. Nicholson and Gladys Nicholson, instituted an action in the New Jersey Supreme Court against complainants for a similar action as alleged in this cross bill which action is still pending and undetermined.

Complainants, by way of ANSWER TO THE CROSS BILLS of Alexander G. Nicholson and Gladys Nicholson, say:

1. They deny the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the cross bill of Gladys Nicholson, except as admitted in the original bill of complaint filed in this cause and if the said defendant is in possession of any alleged certificate of complaints, complainants crave oyer therefore and for certainty as to any of the terms, covenants and conditions therein and thereof, complainants refer to the said certificates.

2. They deny paragraphs 1, 2, 3, 4, and 5 of the cross bill of Alexander G. Nicholson except as admitted in the original bill of complaint filed in this cause and if this defendant is in possession of any alleged certificate of complaints, complainants crave oyer thereof and for certainty as to any of the terms, covenants and conditions therein and thereof, complainants refer to the said certificates.

3. Complainants further say that they have not received or been paid any of the premiums or consideration for any of the alleged certificates set forth

in the said cross bills upon which same is predicated.

Complainants, by way of FIRST SEPARATE DEFENSE TO THE CROSS BILLS, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"In consideration of the stipulation herein named and of $.....premium, does insure, etc."

2. The defendants, Gladys Nicholson and Alexander G. Nicholson have failed to pay to complainants any of the premiums or considerations set forth in the alleged certificates upon which these defendants are predicating their action in the cross bills, consequently the same is nudum pactum.

Complainants, by way of SECOND SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged from the undamaged personal property, put it in the best possible order, making a complete inventory of the same, stating the quantity and cost of each article and the amount of loss thereon."

2. That these defendants, Glady Nicholson and Alexander G. Nicholson, did not give complainants immediate notice in writing, wherefore the alleged certificates are null and void and no recovery can be had thereunder.

Complainants, by way of THIRD SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the

State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"If fire occur, the insured within sixty days after the fire shall render a statement to this company, signed and sworn to by the said insured, stating the knowledge and belief of the said insured as to the time and origin of the fire, the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon, all encumbrances thereon, etc."

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements."

1. Complainants have made due demand upon defendants, Gladys Nicholson and Alexander G. Nicholson to comply with this covenant but they have failed to comply therewith, wherefore the action is prematurely brought and cannot be sustained.

Complainants by way of FOURTH SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"In case of disagreement as to the amount of loss, the same shall be ascertained by two competent and disinterested appraisers, etc."

"No suit or action on this policy for the recovery of any claim shall be sustainable in any Court of law or equity until after full compliance by the insured with all the foregoing requirements."

2. That these defendants, Gladys Nicholson and Alexander G. Nicholson have made claim upon your complainants for loss and damage in the sum of $16,000; that complainants gave defendants due

notice that they disagreed with them as to the amount of the claim and duly demanded a compliance with paragraph 1 hereof but that defendants have failed to comply with this covenant, wherefore the action is prematurely brought and cannot be sustained.

Complainants by way of FIFTH SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"The insured, as often as required, shall submit to examinations under oath by any person named by this company and shall subscribe the same."—lines 81-85.

"If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions herinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto."

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements." 106-107

2. That the complainants made due demand upon the defendants, Alexander G. Nicholson and Gladys Nicholson to comply with the covenant recited in paragraph 1 hereof but these defendants have failed and refused to comply therewith and have failed to submit to examinations as often as required and have failed to subscribe the examination, wherefore

the alleged certificates upon which they predicate this cause of action, are null and void and no recovery can be had thereunder.

Complainants by way of SIXTH SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"The insured, as often as required, shall produce for examination all books of account, bills, invoices and other vouchers or certified copies thereof if originals be lost, and shall permit extracts and copies thereof to be made."

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements."

2. That the complainants made due demand upon the defendants that they comply with the covenants mentioned in paragraph one hereof, that the defendants have failed and refused to produce all books, records, bills, invoices, etc., or to permit an examination thereof, or to permit copies and extracts thereof to be made, wherefore the certificates upon which they predicate this cause of action are null and void and no recovery can be had thereunder.

Complainants by way of SEVENTH SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"This entire policy shall be void in case of any fraud or false swearing by the assured, whether before or after the loss."

2. That after the alleged loss and damage and due notice and demand upon these defendants, Alexander G. Nicholson and Gladys Nicholson and before the institution of the action at law in the New Jersey Supreme Court, these defendants made and delivered to your complainants a false and fraudulent statement, purporting to be made by the defendant Alexander G. Nicholson for and on behalf of the defendant Gladys Nicholson, in which statement these defendants falsely and fraudulently swore that the alleged insured property, to wit, the Jacobson Mansion, was of the value of $53,000 and had been damaged to the extent of $53,000, whereas in truth and fact, as these defendants well knew the alleged insured property, i. e., the Jacobson Mansion, was not of the value of $53,000 or the loss and damage thereof in the sum of $53,000 and these statements so made by these defendants were false and well known by these defendants to be false and were made with intent to deceive, defraud and to induce complainants to pay a greater sum than these defendants had actually lost or suffered, wherefore the alleged certificates upon which they predicate their cause of action are null and void and no recovery can be had thereunder.

Complainants by way of EIGHTH SEPARATE DEFENSE to the cross bills, say:

1. They repeat paragraph one of the Seventh Separate Defense to the cross bills, as if recited at length.

2. That after the alleged loss and damage and due notice and demand upon these defendants, Alexander G. Nicholson and Gladys Nicholson and before the institution of the action at law in the New Jersey Supreme Court, these defendants made and

delivered to your complainants a false and fraudulent statement, purporting to be made by the defendant Alexander G. Nicholson for and on behalf of the defendant Gladys Nicholson, in which statement these defendants falsely and fraudulently swore that the alleged insured property, to wit, the shrubbery was of the value of $3000 and had been damaged to the extent of $3000 whereas in truth and fact, as these defendants well knew the alleged insured property, i. e,. the shrubbery was not of the value of $3000 or the loss and damage thereof in the sum of $3,000 and these statements so made by these defendants were false and well known by these defendants to be false and were made with intent to deceive, defraud and to induce complainants to pay a greater sum than these defendants had actually lost or suffered, wherefore the alleged certificates upon which they predicate their cause of action are null and void and no recovery can be had thereunder.

Complainants by way of NINTH SEPARATE DEFENSE to the cross bills, say:

1. They repeat paragraph one of the Seventh Separate Defense to the cross bills, as if recited herein at length.

2. That after the alleged loss and damage and due notice and demand upon these defendants, Alexander G. Nicholson and Gladys Nicholson and before the institution of the action at law in the New Jersey Supreme Court, these defendants made and delivered to your complainants a false and fraudulent statement, purporting to be made by the defendant Alexander G. Nicholson, in which statement these defendants falsely and fraudulently swore that the alleged insured property, to wit, the household furniture was of the value of $3000 and had

been damaged to the extent of $3000 whereas in truth and fact, as these defendants well knew the alleged insured property to wit, the household furniture was not of the value of $3000 or the loss and damage thereof in the sum of $3000 and these statements so made by these defendants were false and well known by these defendants to be false and were made with intent to deceive, defraud and to induce complainants to pay a greater sum than these defendants had actually lost or suffered, wherefore the alleged certificate upon which they predicate their cause of action are null and void and no recovery can be had thereunder.

Complainants by way of TENTH SEPARATE DEFENSE to the cross bills, say:

1. They repeat paragraph one of the Seventh Separate Defense to the cross bills, as if recited herein at length.

2. That after the alleged loss and damage and due notice and demand upon these defendants, Alexander G. Nicholson and Gladys Nicholson and before the institution of the action at law in the New Jersey Supreme Court, these defendants made and delivered to your complainants a false and fraudulent statement, purporting to be made by the defendant Alexander G. Nicholson for and on behalf of the defendant Gladys Nicholson, in which statement these defendants falsely and fraudulently swore that the alleged insured property, to wit, the rental value was of the value of $3600 and had been damaged to the extent of $3600 whereas in truth and fact, as these defendants well knew the alleged insured property, to wit, the rental value was not of the value of $3600 or the loss and damage thereof in the sum of $3600 and these statements so made by these defendants were false and well known by these defen-

dants to be false and were made with intent to deceive, defraud and to induce complainants to pay a greater sum than these defendants had actually lost or suffered, wherefore the alleged certificates upon which they predicated their cause of action are null and void and no recovery can be had thereunder.

Complainants by way of ELEVENTH SEPARATE DEFENSE to the cross bills, say:

1. The standard fire insurance policy of the State of New Jersey, such as is issued by the complainants, provide, inter-alia:

"Policy is made and accepted subject to the foregoing stipulation and conditions."

2. That no officer, agent or representative of any of your complainants have by any agreement in writing or endorsement attached to any of the alleged certificates of your complainants.

Complainants by way of TWELFTH SEPARATE DEFENSE to the cross bills, say:

1. They repeat paragraph one of the Seventh Separate Defense to the cross bills, as if recited herein at length.

2. That the said defendant, Alexander G. Nicholson is the real beneficial owner of the property in question.

3. That the said defendant, Alexander G. Nicholson, was the person or persons who negotiated the alleged certificates upon which the cross bills are predicated.

4. That on or about the tenth day of October, 1918, and before the destruction of the premises as the 'Jacobson Mansion' by fire, the said defendant Alexander J. Nicholson, for the purpose of deceiving and defrauding these complainants and for the purpose of attempting to incur an individual li-

ability to him, caused the deed to the property in question to be made in the name of his daughter Gladys Nicholson and subsequently caused his daughter to re-assign to him an alleged mortgage in the sum of $25000 and then represented and alleged to your complainants that he was a bona fide mortgagee and requested the attachment of the mortgagee clause in his favor, whereas, in truth and fact as the defendant Alexander G. Nicholson well knew, the property in question belonged to him and his daughter had no right, title and interest therein and the mortgage was intended as a reconveyance to him and for the purpose of creating an individual liability on the part of the Insurance Companies and the representations and allegations as made by the said Alexander G. Nicholson were false and well known by him to be false and untrue and the entire scheme and representations were made with intent to deceive, defraud and to collect from complainants and to induce complainants to pay a loss and damage and a sum of money to the defendant Alexander G. Nicholson as mortgagee, whereas in truth and fact he is the real beneficial owner; wherefore the alleged certificates upon which this action is predicated are null and void and no recovery can be had thereunder.

Joseph Lieblich,
Solicitor and of counsel with complainants.

NOTICE OF DEPOSITIONS

To: Ward and McGinnis, Esqs., Solicitors of Defendants, Gladys Nicholson and Alexander G. Nicholson.

Sirs:

Take notice that I shall apply to the Honorable Vivian M. Lewis, Vice Chancellor at Paterson,

on the 27th day of March, 1926, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for a commission to examine as witnesses the following persons, to wit: A. L. Anderson, of 462 Bergen St., Brooklyn, N. Y., Harriet F. and William H. Snyder, 26 Schermerhorn St., Brooklyn, N. Y., and Andrew J. Corsa, 151 Hemsen St., Brooklyn, N. Y., and that I will nominate as Commissioner Leo H. Klugherz, Esq., whose office is at 299 Broadway, New York, in the Borough of Manhattan, City, County and State of New York.

Dated: Mar. 18th, 1926.

Joseph Lieblich,
Solicitor of Complainants.

DECREE, Filed Aug. 11, 1927

Upon this matter being opened to the Court by Peter J. McGinnis of Ward and McGinnis, solicitors and of counsel with defendants, Gladys Nicholson and Alexander G. Nicholson, in the presence of Joseph T. Lieblich, solicitor and of counsel with complainants, upon bill, answer, and cross-bill, on behalf of the defendants, Gladys Nicholson and Alexander G. Nicholson, and answer thereto and replication, and it appearing by the pleadings that the complainants, Firemen's Fund Insurance Company, Scottish Union and National Fire Insurance Company, Star Insurance Company, and Phoenix Assurance Company, by their bill filed in this cause issued certain policies of insurance, in said bill particularly set forth to Gladys Nicholson, as owner and to Alexander G. Nicholson, as mortgagee, of the premises known as the Jacobson Mansion, in the City of Hackensack, County of Bergen and State of New Jersey, the buildings of which premises thereafter, on to wit

the 27th day of October, 1922, were destroyed by fire, and the complainants having alleged that said policies were obtained by the said defendants, each or either of them by false representations and fraud, as to the title to said premises, as to the consideration for the mortgage, and as to the true ownership of Gladys Nicholson of the premises, and as to the cause and causes of fire, and as to the representations of the value of the building upon said premises, and as to the fact that said premises were alleged to be occupied, whereas the same were vacant and unoccupied, and as to the true physical condition of the building on said premises, and of the income thereof, all of which matters of fraud were denied by the defendants, Gladys Nicholson and Alexander G. Nicholson, and the said defendants, Harriet F. Snyder and William H. Snyder having been stricken out as party defendants, and the Court having considered the pleadings and proofs, and considered the argument of counsel, from all of which it appears that the said Gladys Nicholson and Alexander G. Nicholson were not guilty of any of the frauds or misrepresentations alleged in said bill of complaint, and it further appearing that by the cross-bill filed by the defendants, Gladys Nicholson and Alexander G. Nicholson, the said defendants set forth the issuance of the policies mentioned in the bill of complaint; the fact of a fire destroying the premises; and that no insurance had been paid, and praying this Court for a decree to award them money compensation to the extent of the losses sustained by them as particularly prayed for in said cross-bill, but this Court believing that the damages so claimed by the said defendants, Gladys Nicholson and Alexander G. Nicholson should be ascertained by a Court of Law:

It is, thereupon, on this fifth day of August, 1927, on motion of Peter J. McGinnis of Ward and McGinnis, solicitors and of counsel with the defendants, ordered, adjudged, and decreed, that the charges of fraud and misrepresentation, having not been proved, that the said bill be and the same is hereby dismissed with costs to the defendants to be taxed.

It is further ordered, that the question of counsel fee be deferred until further order of this Court.

It is further ordered, that the said answer by way of cross-bill which the said defendants seek to affirmative relief, be and the same is hereby dismissed without costs.

Respectfully advised,

Vivian M. Lewis, V. C.; E. R. Walker, C.

CAVEAT, Filed Sept. 8, 1927.

To the Honorable Thomas Barber,
Clerk in Chancery.

Sir:

Please take notice and let this be a caveat against the enrollment and signing the decree made by his Honor, the Chancellor, bearing the date the 11th day of August, 1927.

Witness my hand this 6th day of September, 1927.

Joseph T. Lieblich,
Solicitor and of Counsel with
Complainants.

NOTICE, Filed Oct. 6, 1927

To: Ward and McGinnis, Esqs., Solicitors of Defendants.

Sirs:

Please take notice that I will make application to the Honorable Vivian M. Lewis, Vice Chancellor, at

Chancery Chambers, Paterson, N. J., on Monday, September 19th, 1927, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, to settle the terms of the final decree in this cause. I annexed herewith copy of the form of final decree which I will submit to the Vice Chancellor for his consideration, a copy of which was submitted to you under date of August 2nd, 1927.

Joseph T. Lieblich,
Solicitors of Complainants.

Form of Final Decree as Submitted 8-2-27.

This cause coming on for final hearing in the presence of Joseph T. Lieblich, Esq., Solicitor and Counsel of complainants and Ward and McGinnis, Esqs., Solicitors and Counsels of the defendants, Gladys Nicholson and Alexander Nicholson, and the Court having read and considered the contents of the pleadings and depositions and having caused to be taken the testimony and evidence in open Court of the respective parties and the argument and briefs of the respective Counsels and having seriously deliberated thereon, have arrived at the conclusion that both the complainants and defendants have failed to establish the allegations of their respective Bill of Complaint and Cross-Bill, since there is a law action pending and undetermined between these parties wherein they have an adequate remedy, it is therefore, on this day of 1927, ordered, adjudged and decreed that this entire preceeding be and the same is hereby dismissed without prejudice to either and all parties.

Respectfully advised,

NOTICE, Filed Oct. 6, 1927.

To: Ward and McGinnis, Esqs., Solicitors of Defendants.

Sirs:

Please take notice that I will make application to the Honorable Vivian M. Lewis, Vice Chancellor, at Chancery Chambers, Paterson, New Jersey, on Monday, September 19th, 1927, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, to vacate, modify and set aside the decree heretofore entered upon the following grounds:

1. That the same was inadvertently entered.

2. That the same does not comprise the findings of the Vice Chancellor.

3. That the same states conclusions and findings which were not decided by the Court.

Joseph T. Lieblich,
Solicitor of Complainants.

(Filed Nov. 14, 1927.)

Petition for Re-opening the Decree and Re-hearing.

To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey.

Your petitioners, Mercantile Insurance Company, London Assurance Company, Insurance Company of North America and Phoenix Assurance Company, respectfully allege:

1. That they were parties to the preceeding originally instituted against the defendants William H. Snyder and Harriet F. Snyder.

2. That by an agreement of counsel, Messrs. Lindsbury, Depue and Faulks, the solicitors of William H. Snyder and Harriet F. Snyder, or about the 8th day of April, 1925, addressed the following letter to his Honor Vivian M. Lewis, Vice Chancellor:

April 8th, 1925.

Re: Insurance Companies vs. Snyder et als.

Hon. Vivian M. Lewis,
Paterson, New Jersey.

Dear Vice Chancellor:—

Mr. Lieblich and I have conferred about the above case and have come to an agreement that upon the production of Dr. Snyder at the trial of the case of the Insurance Companies against Nicholson, he will, at the conclusion of Dr. Snyder's testimony, move for a discontinuance of the case as against the Snyder interests, without costs or counsel fee to either party as against the other.

This is satisfactory to us and we suggest that you withhold your decision upon the motion now pending before you until the trial of the Nicholson case.

Very truly yours,
(signed by Mr. Ashmead)

3. That upon the final hearing in this matter and upon making and entering the decree, no order of discontinuance has been entered as against William H. Snyder and Harriet F. Snyder and eliminating as parties complainants in further participation of this matter your petitioners, Mercantile Insurance Company, London Assurance Company, Insurance Company of North America and Phoenix Assurance Company.

4. That these petitioners have no interest in the controversy with the defendants Gladys Nicholson and Alexander G. Nicholson except your petitioner Phoenix Assurance Company.

5. That the decree as herein entered would seem to impose liability upon your petitioners for a counsel fee whereas your petitioners should not be burdened in view of their having practically disposed of

the litigation by agreement of their respective counsels, notwithstanding the failure to enter the formal order of discontinuance.

Your petitioners Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, National Fire Insurance Company, Phoenix Assurance Company and Star Insurance Company, respectfully allege:

1. That they are parties complainants to this cause, having a direct controversy with the defendants Alexander G. Nicholson and Gladys Nicholson, as will appear by the bill of complaint, the cross-bill and replication filed in this cause.

2. Your petitioners further allege that from the testimony adduced in the cause, it has been established conclusively:

1. That the personal property, if any, contained in the Jacobson Mansion in Hackensack, was the property of Alexander G. Nicholson.

2. That the shrubbery, if any, in and around the Jacobson Mansion had been burnt and destroyed by a fire prior to October 27th, 1922, relieving your petitioner National Fire Insurance Company of any liability on the household furniture item and shrubbery item of their policy.

3. That under the terms, covenants and conditions of the policy of your petitioner Star Insurance Company and the testimony in the case, the defendants Gladys Nicholson and Alexander G. Nicholson have failed to make out any prima facia case of liability of loss and damage.

4. That according to the testimony in this case, the Jacobson Mansion was sixty to seventy years old, that the building was destroyed under suspicious circumstances as testified to by the firemen.

5. That since September 19th, 1927, your petitioner's agents and investigators have ascertained and located witnesses whom we are informed will testify:

(a) That the said Alexander G. Nicholson has threatened on divers dates to destroy this property by fire.

(b) That the said Alexander G. Nicholson was seen carting big cans which had the appearance of being either gasoline or paint cans into the Jacobson Mansion on the date preceding the fire.

(c) That two days prior to the fire, the said Alexander G. Nicholson was seen taking some of his personal belongings out of the Jacobson Mansion.

6. That the decree as entered is contrary to the decision of the Court, expressed in Exhibit A. hereto attached and might be construed to be decisive of questions which have not been determined by this Court, to wit:

(a) There is no determination by this Court as to the consideration, if any, which Alexander G. Nicholson paid for the mortgage.

(b) There is no determination by this Court as to the consideration, if any, which passed from Gladys Nicholson or Alexander G. Nicholson to William H. Snyder and Harriet F. Snyder for the transfer of the property.

(c) That this Court has not determined the value of the building on October 27th, 1922.

(d) That the said William H. Snyder and Harriet F. Snyder have not been stricken out as parties defendants.

(e) That this Court has not rendered any opinion or decision with respect to the charges of fraud or misrepresentation except that the complainants have

failed to prove the allegations of their complaint as required by law.

(f) That this Court has not rendered any decision or opinion with respect to the defenses alleged and set forth in the Replication of your complainants but on the contrary the intent of the decree, as viewed by your affiant, is that the complainants having failed to prove with that degree of certainty required by law in a proceeding in this Court, each and all of the allegations of their complaint, the Court has decided to dismiss the bill and as with respect to the crossbill filed, the defendants Gladys Nicholson and Alexander G. Nicholson having failed to establish a cause of action or the value of the property or a sufficient compliance with policy conditions, terms and covenants with that degree of certainty as required by law in a proceeding in this Court, each and all of the allegations in their crossbill, the Court has decided to dismiss the cross-bill and leave the parties to their respective remedy in a Court of law.

(g) That this Honorable Court in the opinion of your affiant, erred as a matter of law in awarding counsel fee as against each and all of the complainants for the following reasons:

1. The evidence, notwithstanding complainants failure to prove with that degree of certainty as required by law, each and every allegation of their complaint, have demonstrated considerable merit in seeking their relief in this court which would warrant the Court in the refusal to allow a counsel fee as against the complainants.

2. That while the complainants have not succeeded in establishing by a preponderance of evidence the allegations of their complaint, sufficient to warrant the Court in granting a decree in their favor, the defendants have also failed to establish a cause of action to warrant the Court in granting them the relief which they sought by way of cross-bill and the evidence adduced is such as to warrant the Court in coming to a conclusion that it would be inequitable to allow counsel fee and costs against complainants.

3. That the award made by way of counsel fee is not based upon any actual computation of time or services nor has there been proof adduced as to the reasonableness of the charge.

4. That the question of ability to pay counsel fee should not form part of the consideration which moves the Court in directing payment of counsel fees where the evidence would disclose that it would be inequitable to award counsels fees.

5. That the decree erroneously stated "buildings destroyed' whereas in fact it was only one dwelling house.

6. That the decree failed to make any recital with respect to the dismissal or the decision of the Court with respect to the cross-bill as filed.

7. That the decree recites that this Court believing that the damages so claimed by the defendants—shoud be ascertained by a Court of law, leaving it the inference that the Court might have decided and ruled against the complainants on each and all of the separate defenses set forth in complainants' Replication to the cross-bill.

Your petitioners therefore pray:

1. That the decree may be re-opened by this Honorable Court.

2. That the complainants Mercantile Insurance Company, London Assurance Company, Insurance Company of North America and Phoenix Assurance

Company be dismissed by a proper order of the Court as parties complainants from this proceeding, without costs in favor of them or the defendants Harriet F. Snyder and William H. Snyder, and without prejudice to the interest of William H. Snyder and Harriet F. Snyder.

3. That your complainants be permitted and given an opportunity to offer the additional testimony of witnesses heretofore referred to by your petitioners.

4. That your petitioner Star Insurance Company be awarded a decree in its favor.

5. That your petitioner National Fire Insurance Company be awarded a decree in its favor on the household furniture and shrubbery item of their policy.

6. That the entire decree be re-moulded so that there be no question of it being an adjudication on such matters as have not been actually determined by the Court in dismissing the bill of complaint and cross-bill.

7. That this Honorable Court may make and file an opinion so that the parties may be able to definitely learn, ascertain, and determine just what features of the case have been ruled upon by this Court to the end that should there be an action at law, the form of the decree would not be prejudicial to the interest of any of the parties other than in accordance with the direct finding and opinion of the Court.

And your petitioners will every pray, etc.

Joseph T. Lieblich,

Solicitor and of Counsel with Petitioners.

State of New Jersey, } SS
County of Passaic, }

Joseph T. Lieblich being duly sworn according to law, deposeth and says:

1. I am the solicitor and of counsel with the petitioners in this cause and have been since the institution of this action in this Court.

2. I have prepared this Petition for Re-hearing upon my knowledge and understanding of the law, facts, pleadings, testimony, exhibits and expression of his Honor Vivian M. Lewis, Vice Chancellor, and to the best of my knowledge, understanding and belief I have correctly set forth a true statement in the Petition for Re-hearing.

3. I have been instructed by my clients to follow this procedure in the hope of saving the expenses of an appeal in the Court of Errors both on the question of the form of the decree and the awarding of counsel fees and costs as against your petitioners.

Sworn and subscribed to
before me this 4th day
of November, 1927. } Joseph T. Lieblich

Bella Attshuler, a Notary Public of N. J.

ORDER

The complainants having applied to this Court by petition, on notice to defendants, on Monday, the 14th day of November, 1927, for an order to reopen the decree in the above entitled cause on the ground of newly discovered evidence, and other grounds, and coming on to be heard on said date, and the counsel for the complainants having applied for an adjournment to this date, and having been directed to serve affidavits of the proposed witnesses upon the solicitors of the defendants, and having failed to serve said affidavits or to appear in Court to proceed with the hearing of this motion;

It is, on this 21st day of November, 1927, ordered, that the said application be and the same is hereby dismissed with cost to the defendants to be taxed.

Respectfully advised,

Vivian M. Lewis, V. C.; E. R. Walker, C.

NOTICE

To: Ward and McGinnis, Esqs., Solicitors of Defendants.

Sir:

Please take notice that I will appear before the Chancellor at Chancery Chambers, in the City of Paterson, on Monday, Dec. 19th, 1927, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard and move to modify and correct an erroneous recital in the Order dated November 21st, 1927, to wit:

"And the counsel for the complainants having applied for an adjournment to this date."

since counsel for complainants did not make such an application but the Court upon the presentation and filing of the petition for re-hearing and after listening to the argument of counsel for defendant, instructed counsel for complainants to file additional affidavits verifying the facts set up in the petition for re-hearing.

Joseph T. Lieblich,
Solicitor of Complainants.

TESTIMONY

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the fourth day of November, nineteen hundred and twenty-five, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances: Joseph T. Lieblich, Esq., for the complainants;
Ward & McGinnis, Esqs., for the defendants.

STIPULATION

Mr. Lieblich—Counsel agree that these photographs, which will be marked "C-1, C-2, C-3" and "C-4," were taken by F. M. Wyborn upon the order of the defendant, Alexander G. Nicholson. They were taken on October 21, 1922. These are photographs.

It is also stipulated, that these photographs, which will be marked "Exhibits C-5, C-6, C-7, C-8," were taken by Mr. Wyborn on November 14, 1922.

Said photographs are marked "Exhibits C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8."

Mr. Lieblich—I offer in evidence a policy, No. 1,895,811, Phoenix Assurance Company, Limited, to Gladys Nicholson.

Mr. Ward—That offer is made, as I understand, with the understanding that these policies were held by Harriet F. Snyder, as mortgagee on this property, and obtained through Lindabury, Depue and Faulks, their solicitors; and the amount of that policy is $2,000.

Marked "Exhibit C-9."

Mr. Lieblich—I offer in evidence policy No. 105,127, Insurance Company of North America, in the sum of $3,000. That also was held by Harriet F. Snyder as mortgagee, and delivered to me through the courtesy of Lindabury, Depue and Faulks, their counsel.

Mr. Lieblich—I offer in evidence policy No. 936,893, Mercantile Insurance Com-

pany, in the sum of $8500.00, which policy was held by Harriet F. Snyder, and delivered through the courtesy of Lindabury, Depue and Faulks, their counsel.

Mr. Ward—The policy insured William H. Snyder.

Mr. Lieblich—Covering the Jacobson Mansion.

Marked "Exhibit C-11."

Mr. Ward—Going back to "Exhibit C-10," —this policy insured William H. Snyder.

Mr. Lieblich—And covered the Jacobson mansion.

Mr. Lieblich—I offer in evidence policy No. 196,765, Phoenix Assurance Company, in the sum of $6,000, insuring William H. Snyder, covering the Jacobson mansion.

Marked "Exhibit C-12."

Mr. Lieblich—I offer in evidence policy No. 5920386, London Assurance Corporation, in the sum of $3,000, insuring William H. Snyder, covering the Jacobson mansion.

Marked "Exhibit C-13."

Mr. Ward—These policies insured William H. Snyder as owner.

Mr. Lieblich—Loss, if any, payable to Harriet F. Snyder, mortgagee.

Mr. Lieblich—I offer in evidence policy No. 289219, Colonial Underwriters of the National Fire Insurance Company, in the sum of $15,000, insuring Gladys Nicholson, covering the Jacobson mansion.

Marked "Exhibit C-14."

Mr. Lieblich—I offer in evidence Policy No. 224708, Phoenix Assurance Company,

in the sum of $6,000, insuring Gladys Nicholson, covering the Jacobson mansion.

Marked "Exhibit C-15."

Mr. Lieblich—I offer in evidence Policy No. 1247847, Firemen's Fund Insurance Company, in the sum of $10,000, insuring Gladys Nicholson, covering the Jacobson mansion.

Marked "Exhibit C-16."

Mr. Ward—Issued through Feist & Feist Agency, Inc., of Newark, New Jersey.

Mr. Lieblich—Oh, yes.

Mr. Lieblich—I offer in evidence Policy No. 7142842, Scottish Union and National Insurance Company, in the sum of $10,000, insuring Gladys Nicholson, covering the Jacobson mansion.

Marked "Exhibit C-17."

Mr. Ward—That being issued through the Feist & Feist Agency.

Mr. Lieblich—I offer in evidence Policy No. K-6908, Star Insurance Company, in the sum of $3600.00, insuring Gladys Nicholson, covering Jacobson mansion for rental value, in the sum of $10,000, issued through Feist & Feist.

Marked "Exhibit C-18."

Mr. Ward—I might add, that the last five policies marked in evidence were produced by the defendants' counsel at the request of complainants' counsel, in response to a notice to produce. That notice was served after I got into court.

WILLIAM ZIEGLER, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. What is your business, trade or occupation? A. Chief of the Fire Department, Hackensack, New Jersey.

Q. How long have you lived in Hackensack? A. 25 years.

Q. Chief, I show you these pictures, referring to "Exhibits C-2, C-3, C-4," and ask you to tell us if you recognize the object in the picture? A. I do.

Q. Tell us what it is, Chief. A. It is the Jacobson mansion.

Q. How long have you known that Jacobson mansion? A. 20 years, I should say.

Q. When was the last that you saw the Jacobson mansion in existence? A. I saw the building last, perhaps in September, 1922.

Q. Can you tell us anything about the condition of the building at the time that you saw it in 1922?

Mr. Ward—We object. This bill was filed on the part of the complainants to have these policies set aside on the ground of fraud, and there is nothing about the character of the buildings in the bill of complaint. The only way in which this evidence would be evidential would be as to the defence, or our endeavor to recover the insurance; on this part of the case it has no bearing at all.

The Court—The objection is overruled.

Q. What was the condition of the building? A. When I saw it last it was in need of repairs and paint.

Q. Do you know what happened to this Jacobson mansion? A. It burned down.

Q. Do you know when? A. It was in October, 1922.

Q. Were you in attendance at the fire? A. No, sir.

Q. Who was in charge? A. Captain Jackson.

Q. Who was next in charge? A. Fire Lieutenant Penque.

Q. Is Captain Jackson still a member of the Fire Department of Hackensack? A. Not technically.

Cross-Examination by Mr. Ward:

Q. You said you knew the property burned down; don't you also know that Mr. Alexander Nicholson was instrumental in having pipe water hydrants installed in the vicinity of that property before the fire? A. Yes, sir, he came to me and asked me to place hydrants in the vicinity of the Jacobson property, but they were not placed until after the fire.

Re-Direct Examination by Mr. Lieblich:

Q. How long was it before this fire that Mr. Nicholson asked you to have these hydrants installed? A. About a year and a half.

CHARLES W. PENQUE, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. What is your business, trade or occupation? A. Fireman—Lieutenant of the Fire Department of Hackensack.

By the Court:

Q. You are engaged in that occupation steadily? A. Yes, sir.

Further Direct:

Q. I show you these pictures, referring to "Exhibits C-2, C-3 and C-4," and ask you whether you have seen the objects in those pictures before? A. Yes, sir, I have.

By the Court:

Q. What do the pictures represent? A. The Jacobson mansion.

Further Direct:

Q. How long have you lived in Hackensack? A. 32 years.

Q. During the time you have lived there, have you known whether or not the Jacobson mansion was in existence? A. Yes, sir, always.

Q. Do you know what happened to the Jacobson mansion? A. Yes, sir, I do.

Q. What, if anything, happened? A. It burned down.

Q. Do you know when? A. Yes, sir.

Q. Tell us the date. A. October 27, 1922.

Q. With respect to October 27, 1922, when did you last see the Jacobson mansion; when before? A. Probably a month before it burned down; we had a grass fire around the building.

Q. When was that grass fire? A. I should say a month or six weeks previous to the large fire.

Q. And you were up there at that time? A. Yes, sir.

Q. And did you observe the condition of the building at that time? A. Yes, sir.

Q. What was its condition? A. In pretty bad shape; it needed repairs.

By the Court:

Q. Did you examine it closely? A. Yes, sir, and it also needed paint besides repairs.

Further Direct:

Q. Did you get into the building on the occasion of this fire? A. Yes, sir.

Q. What, if anything, did you observe when you got into the building; what was the condition you found inside of the building?

Mr. Ward—We object on the ground that we are not charged in this complaint with having fired this building; there is no such charge; the charge merely is, that we got these policies, misrepresenting the value of them.

The Court—I will let him take the testimony briefly.

Q. What did you observe inside the building? A. There was a burning substance all over the floor and on the stairways, that we termed it looked like a touched-off job.

Mr. Ward—We ask to have that struck out.

The Court—I will note your objection.

Q. Did anything happen to any of the firemen after they got in, which caused you to reach the conclusion you have just stated?

Mr. Ward—We object to all this testimony.

The Court—The objection is overruled.

A. As we walked through there, I slipped and fell down, and I got the odor of it, and I called the attention of the Captain to it.

Q. After slipping and falling down, what was the condition of your clothes? A. It was all saturated with this substance that was on the floor; when a burning mattress fell into it, it burned up; it was an inflammable substance.

(No Cross-Examination.)

GUSTAV A. LANG, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. Are you a member of the Hackensack Fire Department? A. Yes, sir.

Q. Do you remember this fire in October, 1922? A. Yes, sir.

Q. Did you get inside the building? A. Yes, sir.

Q. What happened to you in there? A. We got in with the line of hose, and the place was saturated with inflammable liquid.

Q. You don't know what the liquid was? A. No, sir.

Mr. Ward—I ask to have that stricken out.

By the Court:

Q. Did you slip down on this floor? A. Yes, sir, we fell with the line, yes, sir.

Q. Did your clothes get on fire? A. No, sir.

Further Direct:

Q. What happened to you after you fell? A. We saw the place was so inflammable that it spread quickly and the Captain ordered us to fight it through the windows from the outside.

Q. What time of day or night was this fire? A. I should imagine about 1:50 in the morning.

Q. With respect to the main road or Polifly Road, how far distant was this Jacobson mansion from it? A. I should imagine three or four hundred feet.

Q. Was it on level ground? A. On an incline, up the hill.

Q. Did you observe the condition of the road leading from the Polifly Road up towards the Jacobson mansion? A. No, sir, I did not see that.

Cross-Examination by Mr. Ward:

Q. As a matter of fact, the hose of the department was attached to the hydrant that was down the hill? A. Yes, sir.

Q. There was a hydrant up above, wasn't there, at that time; that is true, isn't it? A. No, sir.

Q. You know of no hydrant that had been installed which was above the grade of the hydrant where you attached your hose? A. No, sir.

Q. Would you say there was none there? A. There are hydrants up in that section.

Q. As a matter of fact, you had some difficulty in getting water, didn't you; the pressure was very poor? A. Yes, sir.

Q. And as a matter of fact, if you had attached your hose to the hydrant which was above the grade of the one to which you had attached your hose, you would have had no difficulty in getting water of the proper pressure? A. I don't know that.

Q. Haven't you made a study of the pressure of water so as to know where to attach your hose in case of fire? A. Yes, sir.

Q. Don't you know that there was a hydrant above the grade of the one to which you had attached your hose, with a greater pressure of water, and more accessible to the place where this fire was? A. It all depends on how far the hydrant is away, to get your pressure.

Q. Don't you know there was a hydrant that was more accessible and nearer to the property, and at a higher grade, where the pressure would have been greater and better had you attached your hose to it? A. Probably so.

Q. Yet that hydrant was not used by your department on the day of this fire, was it? A. No, sir.

By the Court:

Q. Why not? A. I could not tell you; I was not in charge.

Q. Was there not at that time a hydrant on Simonson Avenue within 350 feet of this building? A. That I could not tell you.

Q. As a matter of fact, the hydrant to which you actually attached your hose was over a thousand feet away, wasn't it? A. I believe that is so.

Q. And that made a great deal of difference in fighting this fire, didn't it? A. Yes, sir.

Q. And the hydrant to which you attached your hose, which was over a thousand feet away, was also 80 feet below the grade of this house, wasn't it? A. Yes, sir.

Q. And the other hydrant to which I referred, which was within 350 feet of the house, was above the grade of the house? A. It was above the grade of the house.

Re-Direct Examination by Mr. Lieblich:

Q. Would it make any difference, in your opinion, the number of hose that you would have attached, in view of this inflammable substance, and the condition of this fire when you got there; would it have resulted in saving the property? A. No, sir, it was so saturated that you could not have saved the building.

Re-Cross Examination by Mr. Ward:

Q. As a matter of fact, you did pour water in through the windows? A. Yes, sir, we were there to put it out, and we tried to put it out.

EDMUND BARRETT, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. Mr. Barrett, with respect to October 27, 1922, what was your business? A. I am employed by the Public Service Electric Company; in Hackensack we have a paid department and a call department—part paid department—of which I am a member.

Q. Were you a member of the part paid department in October, 1922? A. Yes, sir.

Q. Were you in attendance on this fire at the Jacobson mansion? A. Yes, sir.

Q. Had you ever been there before October 27 in response to an alarm? A. No, sir.

Q. How long have you lived in Hackensack? A. About 18 years.

Q. Did you ever see this Jacobson mansion prior to the fire? A. I could not say that I have.

Q. You were in attendance at this fire? A. Yes, sir.

Q. Tell us what were the conditions that you observed when you got to this fire.

Mr. Ward—Objected to as irrelevant, incompetent and immaterial, and outside the issue.

The Court—Objection overruled.

A. On going up the front steps with a line of hose the front doors were open. We had orders to go in first; the staircase, which was right in front of the door, there was a flaming substance dropping down from upstairs; finally, the banister on the staircase upstairs broke and that struck this substance that was on the staircase, and that drove us all out of the building, and we got ordered out of the building.

Q. Do you know how the firemen got up there to the Jacobson mansion with respect to the Polifly Road? (No answer).

By the Court:

Q. Was there any obstruction in the way of the firemen? A. I saw no objects in the road; the apparatus that I went to the fire on was the last one there.

CHARLES W. PENQUE recalled.

Direct Examination by Mr. Lieblich:

Q. Lieutenant, with respect to the Polifly Road, how far up the incline was the Jacobson mansion? A. I should say between 350 and 400 feet.

Q. Is it a steep grade? A. Yes, sir.

Q. How did you get up to the Jacobson mansion on the night of this fire? A. We came up the Polifly Road to Parker Avenue, and then on to the mansion.

Q. Which is nearest to the Jacobson mansion going up the incline? A. The Polifly Road is nearer.

Q. Did you observe anything in the roadway leading from the Polifly Road up to the Jacobson mansion?

Mr. Ward—Objected to.

The Court—The objection is overruled.

A. We saw some logs across the road; they resembled three railroad ties.

Q. Did you examine these logs at any time? A. They resembled railroad ties.

Q. Were they new ties or old ties? A. I could not say; they were in the private driveway that led to the mansion.

Cross-Examination by Mr. Ward:

Q. You were not going to run your engine up into this private driveway? A. Yes, sir.

Q. Your engine? A. Yes, sir.

Q. Didn't you have to attach your engine to a hydrant? A. Yes, sir.

Q. Was not the hydrant in the street? A. Yes, sir.

Q. There was no hydrant up there in that private driveway? A. No, sir.

Q. In what part of the driveway were they? A. There was a double driveway; on the right side would be the North side of the driveway.

Q. How far is the house from Parker Avenue? A. I should say 200 feet.

Q. And you say about 350 feet from the Polifly Road? A. Yes, sir, approximately.

Q. And the entrance or driveway which was open, was nearer Parker Avenue? A. No, sir, further away.

Q. Nearer Polifly Road? A. The driveway came out to Polifly Road.

Re-Direct Examination by Mr. Lieblich:

Q. But the entrance of this driveway leading to the house—was there anything in that roadway which would prevent your progress in approaching the Jacobson mansion? A. There was, yes, sir.

Q. Why was it that the hose was attached furthest away and not on Essex Street? A. Essex Street was closed off.

Re-Cross Examination by Mr. Ward:

Q. You had great difficulty in getting water, didn't you? A. No, sir, we had difficulty in the pressure.

Q. Didn't you state, Lieutenant, before, that you did not know of a hydrant on Simonson Avenue? A. No, sir.

GARRET A. DAWSON, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. Where do you live? A. Hackensack, New Jersey.

Q. How long have you lived in Hackensack? A. Since 1869.

Q. I show you these pictures, referring to "Exhibits C-2, C-3, C-4," and I ask you to tell us if you have seen this building before? A. Yes, sir.

Q. What is it? A. The old Jacobson mansion.

Q. How long back do you remember the Jacobson mansion? A. From my school days.

Q. It was up when you went to school? A. Yes, sir.

Q. When did you last see the Jacobson mansion with respect to October 27, 1922? A. Twice in September, and once in the first part of October, 1922, before the fire.

Q. What was the object of your seeing it in September, 1922?

Mr. Ward—Objected to.
The Court—The objection is overruled.

A. Official business connected with the Prosecutor's office of Bergen County.

Q. Was that an investigation with respect to a fire that occurred?

Mr. Ward—Objected to.
The Court—The objection is overruled.

A. Not in September; it was in October.

Q. What happened? A. I went up there and made an investigation after the fire, but prior to the other investigation.

Q. Now, when you saw this Jacobson mansion in September, 1922, can you tell us what its general condition was? A. It needed repairs and paint, and glass in some of the windows.

Q. Have you any idea how old this building was?

The Court—That is improper.

Q. Do you know how old this Jacobson mansion was? A. I saw it first 45 years ago.

Q. Did you have any conversation with Alexander G. Nicholson subsequent to this fire? A. No, sir.

No cross examination.

ALEXANDER G. NICHOLSON, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

The Court—This is the defendant, and you are bound by his statement, Mr. Lieblich?

Mr. Lieblich—I appreciate that, your Honor.

Q. Mr. Nicholson, do you know William H. Snyder? A. Yes, sir.

Q. Did you have any conversation or negotiations with William H. Snyder in the middle or along about August or September of 1918, with respect to the exchange of a piece of property, No. 215 Foster Avenue, Brooklyn, New York, which was in your sister's name, in exchange for this property in Hackensack, known as the Jacobson mansion?

Mr. Ward—Objected to; we object; any transactions that occurred with reference to the transfer of this property certainly are not relevant in this case.

The Court—I will sustain the objection on the ground that it is leading.

Q. Did you have any conversation with Mr. Snyder at this time? A. No, sir.

Q. How long prior to that did you have any conversation or negotiations with Dr. Snyder?

Mr. Ward—Objected to.
The Court—Objection sustained.

Q. How long before September, 1918, did you have this conversation with Dr. Snyder? A. In regard to the exchange of property? A

Q. Yes. A. Probably it started in March, 1918, to the best of my memory.

Q. And that conversation finally culminated in an exchange, didn't it—

Mr. Ward—Objected to as leading.
The Court—Objection sustained.

Q. What was the final outcome of this conversation or conversations which you had with Dr. Snyder, with respect to the exchange of the property?

Mr. Ward—Objected to on the ground that it is incompetent, irrelevant and immaterial.
The Court—Objection overruled.

A. Do you want me to tell what the conversation was, and then what the outcome was? The outcome of the negotiations was, that Dr. Snyder deeded the property to my daughter, Miss Gladys Nicholson, of Denver, Colorado; Dr. Snyder deeded the Jacobson mansion to my daughter Gladys.

Q. And also as the result of these negotiations, was the property at 215 Foster Avenue, deeded to Harriet F. Snyder?

Mr. Ward—Objected to as leading.
The Court—Objection overruled.

A. It was deeded, I think to William H. Snyder.

Q. That property, 215 Foster Avenue, belonged to you, didn't it? A. No, sir.

Q. To whom did it belong? A. It belonged to my sister, Mary T. Ward.

Q. As the result of these negotiations, your sister, Mary T. Ward, deeded the property, 215 Foster Avenue, Brooklyn, New York, and Dr. Snyder deeded the Hackensack property, the Jacobson mansion to your daughter, Gladys Nicholson? A. Yes, sir.

Q. You instructed Dr. Snyder to have the deed made to Gladys Nicholson?

Mr. Ward—Objected to as leading.
The Court—Objection sustained.

Q. Do you know upon whose instruction Dr. Snyder deeded the property to your daughter, if any? A. Yes, sir, on mine.

Q. Now, was there any cash paid by you or your daughter to Dr. Snyder for the Jacobson mansion?

Mr. Ward—I object to that; you can see the issue that might be opened—
The Court—Objection overruled.

A. There was no cash passed.

Q. Did your sister, Mary T. Ward, receive any cash for the conveyance of the property at 215 Foster Avenue to Dr. Snyder, or Harriet F. Snyder, if you know? A. No, sir; I have no knowledge of her getting any cash.

Q. At the time of the transfer of this property at 215 Foster Avenue, Brooklyn, New York, was there a foreclosure suit pending against it?

Mr. Ward—Objected to as incompetent, irrelevant and immaterial.

Mr. Lieblich—We want to show upon our theory of the case, as alleged in the bill, that—

The Court—I shall sustain the objection on the ground that it is not the best evidence. Produce the record, if you have got it.

Mr. Ward—We have produced the deed.

Mr. Lieblich—I offer in evidence the deed to which he has testified.

Mr. Ward—We have no objection.

Mr. Lieblich—Deed, Snyder to Gladys Nicholson, dated October 10, 1918.

Marked "Exhibit C-19."

Mr. Lieblich—We are offering a copy of the mortgage, Gladys Nicholson to Alexander Nicholson, dated June 17, 1922.

Mr. Ward—This is not certified, and we have found one error in it already; but we agree to its going in, because we are willing to agree that the property was mortgaged for the amount, and I think all the other factors are correct—in the year 1942; it should be 1922; that is the only error, so far as we know at present.

Marked "Exhibit C-21."

Q. I show you this paper, referred to "Exhibit C-21," Mr. Nicholson, and ask you whether or not you gave your daughter any money in consideration of the $25,000 therein expressed?

Mr. Ward—Objected to as irrelevant and immaterial.

The Court—Objection overruled.

A. I only gave her a very small amount for executing this.

Mr. Lieblich—I call upon the defendant to produce, in response to a notice to produce, a registered letter from complainants to Alexander G. Nicholson, from complainants to Alexander G. Nicholson, dated December 7, 1922.

By Mr. Ward:

Q. Have you got that letter, Mr. Nicholson? A. I don't know that I have any December letters; I will produce all I can find.

Mr. Ward—Just answer the question, Mr. Nicholson; Mr. Nicholson cannot read; his eyesight is very bad. May I read this to him, your Honor?

The Court—Yes.

Mr. Ward—(Reads "Exhibit C-22"). Do not take this down, Mr. Stenographer.

By Mr. Ward:

Q. Do you remember any such letter? A. I might have received it; I don't have any memory of it.

Mr. Lieblich—It is a demand to file proofs of loss—it is a demand for a full compliance with the conditions.

Marked "Exhibit C-22."

Further Direct:

Q. Mr. Nicholson, do you know who William Martin Moore is? A. Yes, sir, I know Mr. Moore.

Q. With respect to the year 1922, was Mr. Moore in any way connected with you with respect to the fire loss to the Jacobson mansion? A. Mr. Moore acted as my attorney, notifying the fire insurance companies of the loss.

Mr. Lieblich—I move the latter part be stricken out.

The Court—I will let it stand on the record.

Mr. Lieblich—I call for the production of the registered letter from the Star Insurance Company to Alexander G. Nicholson, dated December 28, 1922, in response to notice to produce.

Mr. Ward—Is that a registered letter?

Mr. Lieblich—Yes.

The Court—Did you give notice to produce them all?

Mr. Lieblich—Yes, sir.

The Court—Have you got them all?

Mr. Ward—I don't know, sir.

Mr. Lieblich—The copy of that letter is offered in evidence by consent.

Marked "Exhibit C 23."

Mr. Lieblich—I call for the production of the letter of February 7, 1923, from the complainant to Alexander G. Nicholson.

I call for the production of the letter of February 23, 1923, to Alexander G. Nicholson, from the complainants.

Mr. Ward—We do not know whether we received such a letter or not.

Mr. Lieblich—You have a copy in your files, haven't you, Mr. Ward?

Mr. Ward—Merely a copy, but not any letter.

Mr. Lieblich—I have no objection to using your copy.

Mr. Ward—I don't know how the copy got there; I just noticed a copy.

The Court—I will receive it.

Mr. Ward—Objected to on the ground that there is no proof of the sending or a receipt of the letter.

The Court—Objection overruled.

Marked "Exhibit C 24."

Q. I show you this paper and ask you to examine it and tell me whose signature appears thereon. A. You mean here?

Q. Yes. A. I don't know, I can see that it is not mine, but I don't know whose it is.

Q. What do you indicate? A. Mr. Myers' name is there, I see, and my name is there.

Q. Do you recognize Mr. Myers' signature? A. No, sir, I don't know it well enough to recognize it.

Q. Mr. Myer was your attorney at this time? A. Yes, sir.

Mr. Lieblich—I offer this card for identification.

Marked "Exhibit C 25 for identification."

Mr. Lieblich—Post Office registry receipt card for Article No. 14,783.

Mr. Lieblich—I call for the production of a letter dated March 3, 1923, from the com-

plainants, addressed to Alexander G. Nicholson, care of Melosh, Norton and Melosh.

Mr. Ward—Here it is.

Mr. Lieblich—I offer it in evidence. This is a copy only.

Marked "Exhibit C 26."

The Court—There has nothing been paid yet.

Mr. Ward—So far as we are concerned, no, sir.

Mr. Lieblich—I am through, practically, with the exception that I want Mr. Nicholson to identify two letters.

The Court—You may do that subsequently.

FREDERICK I. VAN SAUN, being duly sworn, testified as follows?

Direct Examination by Mr. Lieblich:

Q. What is your business? A. I am in the insurance business; we do real estate and insurance.

Q. For how long? A. 27 years.

Q. What is the name of your firm? A. F. M. Taylor and Company, 252 Main Street, Hackensack.

Q. How long have you lived in Hackensack? A. 27 Years.

Mr. Lieblich—I want to show by this witness the age of this building and his particular qualifications.

Q. With respect to the business that you are engaged in, what are your functions in that business? A. Making inspections and appraisals, and getting business, of course.

Q. What do you make these inspections and appraisals for? A. For applications for insurance.

Q. How long have you been doing that? A. Oh, fifteen years, at least.

Q. Mr. Van Saun, what, in your opinion, was the cash value of the Jacobson mansion on the 27th day of October, 1922?

Mr. Ward—Objected to; that is not the proper question; that is not the test.

Q. I mean, immediately preceding the fire? A. (No answer).

By the Court:

Q. What do you think it was worth? A. The building was old, and it had depreciated; no question about that, and Mr. William E. Taylor, who is the father of Judge Taylor, used to own this building.

Mr. Ward—I object.

A. I used to go in the house while he was there.

By the Court:

Q. What do you think was the value of it just prior to the fire? A. Not over $18,000, that is, the building.

Q. That is the Jacobson mansion? A. Yes, sir, the building that burned.

Q. And it burned down completely? A. Yes, sir.

Cross-Examination by Mr. Ward:

Q. You have not been there for how long—in the house? A. Maybe three years prior to the fire.

Q. Three years prior to October 1922, you had been in the place? A. I would not like to say positively just when I was there, but I would say about then; I was in the house when—(interrupted).

Q. One moment—have you any distinct recollection as to when you were there last? A. I don't remember the date, of course.

Q. Have you a distinct recollection of about the time you were there last? A. I think, probably, it was five or six years ago.

Q. Have you a distinct recollection of the occasion—I don't mean the date—I mean of what transpired when you were there? A. I went there to look at the conditon of the building.

Q. Don't you know the plumbing alone in that building was worth over $10,000?

Mr. Lieblich—I object to that.

The Court—Objection overruled.

A. I did not know that.

Q. Did you ever inspect that to find out? A. I never went through the building inside.

Q. So you don't know how much that plumbing was worth? A. No, sir.

Q. Did you or not, ever go through the building to appraise it? A. I never went through the building, just from the outside and the general appearance of the building.

Re-direct Examination by Mr. Lieblich:

Q. Mr. Van Saun, did the office of F. M. Taylor & Company, at any time prior to October, 1922, carry insurance on the Jacobson mansion?

Mr. Ward—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection overruled.

A. They had insurance on the building when William E. Taylor owned it.

Q. How much insurance did you carry, and when was it? A. That I could not say.

The Court—That is not the best evidence.

Now, gentlemen—I did not know this case would go on today; it was put down subject to two other important cases; how much more will you want, Mr. Lieblich?

Mr. Lieblich—I have five or six witnesses yet. Dr. Snyder and Mrs. Snyder are on the way now; and I have a builder by the name of Robinson, from Newark, New Jersey. He is subpoenaed for today; and then I have this Brooklyn builder; he is not subpoenaed. Then I have a man from I. V. Ball and Company; Dr. Snyder will take at least two hours. He is the man whose wife we have taken subrogation of the mortgage interest; we have bought Mrs. Snyder's mortgage rights.

The Court—You will have to have another day, Mr. Lieblich.

Mr. Lieblich—If your Honor will hold here let us assume your Honor will not sustain our bill, and they go on with their phase of it, I raise the point, as a matter of law, that this court has not jurisdiction of the main issue between the parties—

The Court—I will try the issue. How many insurance policies are concerned?

Mr. Lieblich—Ten of them, and nothing has been paid.

The Court—How much of the policy of insurance represents insurance on the Nicholson property?

Mr. Lieblich—The whole thing, about $70,000.

The Court—Nothing has been paid?

Mr. Lieblich—No, sir. Let us assume, for argument's sake, that you were to say, "I find the insurance companies liable; I find the loss is $100,000, or $5,000;" that would then have to be apportioned under these respective contracts.

The Court—Your charge is, that Mr. Nicholson has committed a fraud upon the insurance companies. I think Mr. Lieblich is pretty nearly through, excepting Mr. Snyder.

Mr. Ward—There is a gentleman here from Brooklyn.

Mr. Lieblich—I will admit this for you in regard to what the witness might testify.

Mr. Ward—Will you admit the notice?

Mr. Lieblich—No, sir, but I admit the receipt of a paper purporting to be a proof of loss against the Scottish Union and National Insurance Company, signed by Alexander G. Nicholson, attorney in fact of Gladys Nicholson. I will admit, for the purpose of the record, the receipt of a paper purporting to be a proof of loss to the Star Insurance Company of America, signed by Alexander G. Nicholson, attorney in fact of Gladys Nicholson. The receipt of a paper purporting to be a proof of loss to the Firemen's Fund Insurance Company, signed by Alexander G. Nicholson, attorney in fact of Gladys Nicholson. I will admit the receipt of a paper purporting to be a proof of loss to the Colonial Underwriters of the National Fire Insurance Company, signed by Alexander G. Nicholson, attorney in fact of Gladys Nicholson.

Mr. Lieblich—I admit the receipt of a paper purporting to be a proof of loss to the Phoenix Assurance Company, signed by Alexander G. Nicholson, provided the defendants admit that William Martin Moore was Nicholson's attorney and was authorized by Nicholson to negotiate or to correspond with me as the attorney for these complainants.

Mr. Ward—That is correct. Do you also admit the receipt of notice of the fire?

Mr. Lieblich—No.

Mr. Ward—Will your Honor permit Mr. Moore to go on now?

The Court—I don't know whether I will or not; how long will it take? We will now take a recess.

Mr. Ward—There is one other thing I want to call to your attention, and that is the fact that Mrs. Nicholson is in poor health. You will admit she submitted herself to examination?

Mr. Lieblich—No.

Mr. Ward—May I put her on the witness stand to prove that she submitted herself to examination. Then she is going back to Denver immediately.

The Court—All right; put her on the witness stand for that purpose only.

GLADYS PAULA NICHOLSON, being duly sworn, testified as follows:

Mr. McGinnis—This witness is offered now as part of the defense.

Direct Examination by Mr. McGinnis:

Q. You are one of the defendants, and a complainant of the cross-bill in this case? A. Yes, sir.

Q. Were you requested to appear before Mr. Lieblich to be examined concerning this fire loss? A. Yes, sir.

Mr. Lieblich—Objected to; the best evidence would be the letter or the demand as made.

A. Yes, sir.

Q. Did you appear? A. Yes, sir.

Q. Did Mr. Lieblich conduct an examination touching this loss and the fire, etc.? A. Yes, sir.

Q. Was that examination in behalf of the insurance company who are the complainants in this case?

Mr. Lieblich—I raise the same objection; I ask for the production of the written notice.

Q. Was there anything said by Mr. Lieblich as to whether he was through or not, at the conclusion of this examination?

Mr. Lieblich—Objected to.
The Court—Objection overruled.

Q. What was said by Mr. Lieblich?

Mr. Lieblich—Objected to.
The Court—Objection overruled.

A. Mr. Lieblich was not certain that he was finished with the examination, and he said if he was not finished he knew that I was leaving for Denver in a few days, and he said he would continue it in Denver if necessary.

Cross-Examination by Mr. Lieblich:

Mr. Lieblich—I call for the production of the letter dated February 23, 1923, to Gladys Nicholson, and December 28, 1922, January 8, 1923, January 9, 1923, January 10, 1923, January 11, 1923; also letter dated January 16, 1923, to Gladys Nicholson; letter dated March 5, 1923, to Gladys Nicholson; letter dated March 19, 1923, to Gladys Nicholson, and letter dated March 28.

Mr. Ward—We will waive the formality—

Mr. Lieblich—I will offer in evidence the letter dated December 28, 1922, from the Star Insurance Company.

The Court—You cannot do it on cross-examination, if it is objected to.

Mr. Ward—And we do object.

The Court—Objection sustained.

Q. Mrs. Nicholson, did you, or didn't you, receive a letter dated December 28, 1922, from the Star Insurance Company of America?

Mr. Ward—We will admit that you will go through the formality of proving these letters; we admit that.

Mr. Lieblich—I want them identified, at least; I want them marked for identification.

The Court—Mark them all for identification; these are letters to Miss Nicholson, as I understand it.

Mr. Lieblich—We offer for identification letter dated December 22, 1922, from the Star Insurance Company to Gladys Nicholson.

Marked "Exhibit C-27½" for identification.

Mr. Lieblich—Letter dated January 8, 1923, from Phoenix Assurance Company to Gladys Nicholson.

Marked "Exhibit C-28 for identification."

Mr. Lieblich—Letter dated January 9, 1923 to Gladys Nicholson, from National Fire Insurance Company of Hartford.

Marked "Exhibit C-29 for identification."

Mr. Lieblich—Letter dated January 10, 1923, to Gladys Nicholson from Star Insurance Company.

Marked "Exhibit C-30 for identification."

Mr. Lieblich—Letter dated January 16, 1923, from Firemen's Fund Insurance Company to Gladys Nicholson.

Marked "Exhibit C-32 for identification."

Mr. Lieblich—Letter dated March 5, 1923, from complainants to Gladys Nicholson.

Marked "Exhibit C-33 for identification."

Mr. Lieblich—Letter dated March 19, 1923, from complainants to Gladys Nicholson.

Marked "Exhibit C-34 for identification."

Mr. Lieblich—Letter dated March 28, 1923,

from Joseph T. Lieblich to Gladys Nicholson.

Marked "Exhibit C-34 for identification."

Mr. Lieblich—Letter dated December 7, 1922, to Gladys Nicholson from complainants, National Fire Insurance Company of Hartford Fund Insurance Company of California —and the Scotish Union and National Insurance Company of Edinburg, Scotland.

Marked "Exhibit C-35 for identification."

Mr. Lieblich—Letter dated December 8, 1922, from complainants to Gladys Nicholson.

Marked "Exhibit C-36 for identification."

Mr. Lieblich—Letter dated March 1, 1923, from Joseph T. Lieblich to Gladys Nicholson.

Marked "Exhibit C-37 for identification."

Mr. Lieblich—Letter dated April 30, 1923, Joseph T. Lieblich to Gladys Nicholson.

Marked "Exhibit C-38 for identification."

Mr. Lieblich—Letter dated May 3, 1923, Joseph T. Lieblich to Gladys Nicholson.

Marked "Exhibit C-39 for identification."

Mr. Lieblich—Letter dated May 15, 1923, Joseph T. Lieblich to Gladys Nicholson.

Marked "Exhibit C-40 for identification."

Q. Miss Nicholson, at the time of this examination that you have testified to, were you represented by counsel? A. Yes, sir.

Q. Who was your attorney? A. Mr. Holywell.

Q. Was Melosh, Morton and Melosh, were they your New Jersey attorneys? A. I don't know, not unless they were engaged by my father.

Q. Was Mr. Moore your attorney, too? A. No, sir, not unless he was engaged by my father.

Q. Do you know whether he was engaged by your father to represent you, too? A. I don't know.

Mr. Lieblich—I cannot go any further.

The Court—The case will be adjourned to a day to be fixed.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-third day of February, nineteen hundred and twenty-six, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances: Joseph T. Lieblich, Esq., for the complainants;
Ward & McGinnis, Esqs., for the defendants.

WILLIAM H. SNYDER, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. Doctor, did you ever have occasion to live at Hackensack, New Jersey? A. Yes, sir.

Q. And did you ever own any property there? A. Yes, sir.

Q. Can you tell us what the property was known as? A. It was known as the Jacobson Mansion.

Q. Can you tell us when you acquired the title or possession of that property? A. From memory, I think it was in 1908.

Q. From whom did you acquire it? A. William H. Field; he was Mrs. Snyder's father, my father-in-law.

Q. Do you know how old a building that was? A. It must have been about 67 years old—I only know from hearsay.

Mr. McGinnis—Objected to.

A. (Continued) I had never seen it until I bought it in 1908, or 1909, somewheres along there.

Q. How long did you own that property, doctor? A. From 1908 until 1918.

Q. During the time you owned it, did you carry insurance on it? A. Always.

Q. How much insurance, if any, did you carry on it?

Mr. McGinnis—Objected to.

The Court—I think it is immaterial, but I will allow it.

A. $16,000.

Q. Did you have occasion to dispose of that property at any time? A. I did.

Q. When? A. October, 1918, I sold it to a man named Nicholson; I sold it to him, but gave the deed to his daughter.

Mr. Ward—I don't think this witness should go on.

The Court—Isn't it all a matter of record?

Mr. Lieblich—Yes; we predicate our action on the theory of fraud, and we want to show that at Mr. Nicholson's instigation the property was deeded to his daughter. We can show subsequently that at his instigation his daughter gave to him a mortgage.

Q. How came you to sell this property to Mr. Nicholson?

Mr. McGinnis—Objected to.
The Court—Objection overruled.

A. He owned some property in Brooklyn which had been foreclosed on—

Mr. Ward—That is a matter of record as well—

Mr. Lieblich—We allege that in our bill, sir; I am trying to lay a foundation for it.

A. Somebody was foreclosing it, and I exchanged the property in Hackensack, the mansion for property which he had in Brooklyn on which there was a foreclosure suit.

Mr. Ward—Objected to.

Q. Tell us what was the conversation in substance, as you recall it, between you and Mr. Nicholson, with respect to this exchange of property? A. He had the property and was about to lose it, and he wanted to borrow money to redeem the property.

Mr. Ward—I object to these conclusions of the witness.

A. He said he wanted to borrow money; he asked for $800.00.

Q. What did you say? A. I told him I did not loan money, but I would take his property and the difference I would take back in a mortgage.

Q. To whom, or in whom, was the title to this Brooklyn property? A. His sister, Mary Ward, he said—

Q. This was the property 215 Foster Avenue, Brooklyn? A. Yes, sir.

Q. Did he have a deed executed to you by Mary Ward?

Mr. Ward—Objected to.

Q. Have you that deed with you, doctor? A. No, sir, I have not.

Q. You did not bring it? A. No, sir.

Q. Will you send it to me? A. Yes, I will do so.

Q. And that deed was made to Harriet F. Snyder? A. Yes, sir.

Q. What, in turn, did you do with respect to the Hackensack property then? A. I transferred the Hackensack property to Mr. Nicholson's daughter.

Q. But your transaction was with Mr. Nicholson? A. Entirely.

Q. Did you ever see Miss Nicholson? A. Yes, sir.

Q. What was her name? A. I don't recall.

Q. Did you ever have any conversation or any transaction or negotiation with Mr. Nicholson's daughter, Gladys Nicholson, prior to this conveyance? A. No, sir.

Q. Did you ever have any negotiations with her subsequent to the conveyance? A. No, sir.

Q. And at whose request was it that the deed was made to Gladys Nicholson? A. Alexander Nicholson's.

Q. Prior to the execution of this deed, was there any mortgage entered into by you covering the same property—the Hackensack property? A. Yes, sir.

Q. To whom?

Mr. Ward—Objected to—it is not the best proof.

The Court—The objection will be sustained. It is a mortgage and it is a matter of record, and we want to get the best evidence.

Q. Have you that mortgage with you, doctor? A. No, sir.

Q. Where is this mortgage? A. I think Judge Bays has it—

Q. Will you make an effort to collect these papers? A. Yes, sir.

Mr. Lieblich—Will you agree to admit these until I can produce the originals?

Mr. Ward—No, I will not.

Mr. Lieblich—The papers are all in existence, and I will agree to have them stricken from the record if I do not produce the originals; they are all written instruments.

Q. Was there one or more mortgages on this property held by Gladys Nicholson? A. Two.

Q. Have any of these mortgages been paid by Mr. Nicholson, doctor?

Mr. Ward—Objected to. Do I understand these mortgages are held by the doctor?

The Witness—They are held by Mrs. Snyder.

Mr. Ward—Then I object.

Q. Who looks after the business of Mrs. Snyder in this particular case? A. I do.

By the Court:

Q. Have you collected any interest? A. None at all.

Q. You mean Mrs. Nicholson never paid any? A. That is right.

Q. During the time you owned this property, did you put it in the market for sale? A. Yes, sir

Q. What, if anything, did you ask?

Mr. Ward—Objected to.

The Court—Why cannot you get better proof than that as to the value at the time?

A. $16,000.

Mr. McGinnis—Our objection is noted to this.

The Court—Yes; I think it is incompetent to prove value.

Q. At the time you deeded this property to Gladys Nicholson, was it vacant, or empty? A. Vacant.

Q. Subsequent to deeding it, did you have occasion to visit the Jacobson Mansion? A. Yes, sir.

Q. Did you go inside of it? A. Yes, sir.

Q. Do you know what happened to that property? A. Yes, sir, it burned down.

Q. Do you know when that was? A. I don't remember the date.

Q. With respect to this time of the burning, how long prior to that time had you been in the premises? A. I used to visit it once a month and sometimes once in three months.

Q. Would you say that you had been in this property about a week, or a month, prior— A. Maybe about that.

Q. Did you observe the condition of the property—the building? A. Yes, sir.

Q. What can you say as to its general condition? A. It was not very good.

Q. What was the trouble with the property? A. It was in very bad repair, especially the rear of it.

Q. Were there lots of glass broken? A. Yes, sir.

Q. Tell us in detail just what you saw with respect to its condition of repair? A. The rear of the building had scarcely any foundation under it, and it was rotted out; and the floors were pushed up by the rotted sills being pushed against the ends of the boards; the plumbing was in bad repair, and the front of the house was in a good deal better repair.

Q. Did you notice anything with respect to any bathtub? A. The laundry tubs had been all torn and were turned over on the floor.

Q. How much, if anything, was due at the time of this fire upon these mortgages? A. About $12,000, including taxes, etc.

Q. Did you receive any cash at all, doctor, in this transaction for the conveyance of that Hackensack property for the Brooklyn property.

Mr. Ward—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection overruled.

A. None whatever.

Q. Did you receive anything, except in the conveyance?

Mr. Ward—Objected to.

The Court—The objection will be overruled.

A. No, sir.

Cross-examination by Mr. Ward:

Q. You have no distinct recollection of when you were there last? A. Not as to date; I went up once a month or once every three weeks to look over everything.

Q. You cannot tell whether it was a month, two months or three months? A. Within a month.

Q. How do you fix that date? A. I did not have any dates, but that was my habit.

Q. How do you fix the time within a month? A. I did not make a memorandum.

Q. Do you know whether any plumbing was put in that property prior to the time of the fire? A. No, sir.

Q. You don't know the condition of the property at the time of the fire? A. No, sir, but I know the condition of it a month before.

Q. You don't know what was done just prior to the fire, do you? A. No, sir.

Mr. Lieblich—With the exception of offering these depositions, sir, of Mrs. Snyder and

Dr. Snyder to connect the instruments, and this builder, Mr. Anderson, and Mr. Grill with respect to the non-payment of premiums, etc. on these policies, I think the complainants' case is in.

The Court—Snyder has got his money, I suppose, and Nicholson has not.

Mr. Lieblich—No, sir, there is a mortgage clause in these policies, making the loss payable to Snyder as mortgagee; we took subrogation of Snyder.

Mr. Ward—I never like to be arbitrary in these matters, but in 1922 this fire occured. There was a police investigation. Nicholson was held in jail for 70 days, and nothing came of it; and absolutely nothing came of the matter then. Suit was insituted and Mr. Lieblich opposed the same obstructionary methods he is following now. He then removed these cases to the United States Courts. He could have interposed all these defences of fraud in the State court, but he did not see fit to do that; he wanted delay. He removed them to the United States court, and we met him there. Then he came into the Court of Chancery and asked that these policies be cancelled. We joined issue on all these matters, and there has been delay after delay. Now, as late as last November, when he knew he did not have these witnesses here, he communicates to your Honor that he could not go on. He has known for some time when this case was to be tried. He could have taken the evidence of these witnesses by deposition. We have agreed with him to take another

deposition, but he comes in here at the last minute and asks for further adjournment.

Mr. Lieblich—May I call your Honor's attention to this fact—

The Court—How much do the policies amount to?

Mr. Lieblich—$70,000, I think; on the property here are about $70,000.

Mr. Ward—$35,000 on Nicholson's property.

The Court—How much was the mortgage indebtedness?

Mr. Lieblich—$12,000.

The Court—He is trying to collect $22,000 plus interest.

Mr. Ward—About $35,000 Mr. Nicholson is trying to collect.

Mr. Lieblich—They have agreed to let us take the deposition on Thursday of this week, in Brooklyn, at the home of this builder.

The Court—It is a very unfortunate situation for you gentlemen; it makes it very bad.

Mr. McGinnis—There were two other delays, and that was, Mr. Lieblich's attempt to strike out the answer—

The Court—How would the bona fides of the situation be affected by the payment of the mortgages by the insurance company; you have undertaken to do equity to the mortgagee; and the owner you have not. The basis of your action is an action of fraud.

Mr. Lieblich—Under the Reed Case the Court of Errors and Appeals said, that the mortgagee clause creates a seperate contract as between those parties; and in that case,

where it was evident that there was a bona fide mortgage on the property which we could not dispute, we felt that we had better take subrogation and subserve our interest in this court, whatever it might be.

There is evidence in this case now that this property was smeared or greased with some inflammable substance. Before the firemen got to the building there were found to be obstructions on the road before they got to it; there were obstructions that had been placed on he road; and when they got in the premises some of the firemen slipped and fell, and when they got up their clothes were on fire; and when anything fell down it would flare up. The value of this property, assuming that Mr. Robinson, what testified, and the other experts have testified, is or was approximately $16,000; that Nicholson paid no consideration at all for the conveyance, except this piece of property in Brooklyn which was the subject of foreclosure. Now, then, he placed approximately $70,000 insurance on this property. There had been a fire a short time previously, which the firemen put out. Now, taking all the circumstances, I say that in this court we have raised sufficient circumstances to warrant this court in finding fraud. In addition to that, Nicholson had the property put in his daughter's name; then he had a mortgage executed to him, which has been offered here, a $25,000 mortgage without consideration. He admits that; it is in the testimony. He had his daughter execute to him a mortgage for $25,000 for no

consideration, showing that Nicholson was the actual owner of this property. Now, I think we have raised sufficient inferences of fact to point out that we have made out a case of fraud.

The Court—Proceed with your defence, Mr. Ward.

Mr. Ward—May we have a consultation, your Honor.

The Court—Yes, take a consultation.

DEFENCE

ALEXANDER G. NICHOLSON, sworn for the defence, testified as follows:

Direct Examination by Mr. Ward:

Q. You are one of the defendants in this case? A. Yes, sir.

Q. And you are the father of Gladys Nicholson? A. Yes, sir.

Q. You, of course, are familiar with the property that has been mentioned as the Jacobson Mansion in Hackensack? A. Yes, sir.

Q. Do you know when your daughter acquired that property? A. Yes, sir.

Q. Were you familiar with the property before that time? A. Yes, sir.

Q. And after her acquisition of this property, did you ever see the property? A. Yes, sir.

Q. Did you ever go to live there? A. I lived there for over four years.

Q. When did you start to live there? A. I started to live there in 1918.

Q. What part of the year? A. It was about the last of May.

Q. And you continued to live there up until what time? Up until the house was burned.

Q. And that was in October, 1922? A. Yes, sir, the 27th of October.

Q. How many rooms were there in the house? A. 25.

Q. How large a house was it, if you know the dimensions? A. The main part was 40 by 50 feet; and the extension was 18 by 35 feet—three stories high.

Q. And 25 rooms all together? A. Yes, sir, with over 100 feet of porch or stoop.

Q. Had any repairs been made to these premises after it was purchased by your daughter? A. Yes, sir.

Q. And what repairs had been made during that period of time?

Mr. Lieblich—Objected to unless he knows about it.

The Witness—I know about it; I done them.

Q. What repairs were made to those premises? A. Repairs of almost every description, plumbing, carpentering, painting and decorating; plastering where it needed it, and painting inside the entire building the second time, and expensively decorating the inside all through.

Q. Have you any record or personal knowledge of what money was spent on the repair of that property?

Mr. Lieblich—Objected to; that would not be the best proof.

The Court—The objection will be overruled.

A. Yes, sir.

Q. Where is your record? A. The books that I kept were burned in the building, but I have it from my memory; it was about $7,700. I don't remember the exact dollar, but I remember approximately the amount.

Q. And that was over $7,000? A. Yes, sir.

Q. Were those books kept by you or not? A. Yes, sir.

Q. And you kept them in the rooms of the fire, did you? A. There was nothing left of the building except the hole in the ground and the bricks and iron work.

Q. I want you, please, to answer my question, and that is all. When did you see these premises last before the fire? A. On the evening of October 25.

Q. And what was the condition of the plumbing at that time? A. It was in good shape.

Q. What was the condition of the foundation in the rear of the building? A. All in first class condition

Q. There has been evidence given by Mr. Snyder that the foundation under the extension of the building a month or so prior, or sometime prior to the fire, was in very bad condition? A. No, sir, it never was.

Q. Do you recall the date of the fire? A. Yes, sir.

Q. And after the fire what steps were taken, if any to notify the company?

Mr. Lieblich—Objected to.

The Court—He can testify if he took any steps to notify the company.

A. Yes, sir, I did.

Q. What steps did you take? A. I went to Counsellor Moore's office in Brooklyn, who was then my attorney.

Mr. Lieblich—The contract provides with respect to notice. I have a Court of Errors and Appeals case here.

The Witness—The policies were in Counsellor Moore's office.

Q. You went to Counsellor Moore's office with reference to this matter? A. Yes, sir.

Q. And in whose behalf? A. My daughter's and my own.

Q. Who was Counsellor Moore? A. He acted as my attorney, and I had office room there to do a little business, and a mail address there.

Q. Did Mr. Moore do anything in your presence in reference to this matter? A. Yes, sir, he got the policies and wrote notices to the various companies, notifying them of the fire.

Q. Did you see those notices? A. Yes, sir.

Q. After they were written? A. Yes, sir.

Q. And do you know to whom they were addressed? A. Some of them I know were addressed to Feist and Feist, of Newark, New Jersey.

Q. Do you know what was done with those notices, of your own knowledge? A. I did not see them posted; I saw them placed in envelopes, but I did not see them posted.

Q. You say the policies of insurance were there at Mr. Moore's office? A. Not all of them; one was not at Mr. Moor's office.

Q. Which one was that? A. That was a policy for $6,000, issued by, I think, the Phoenix Assurance Company of London; and that was delivered to me in Hackensack Jail after I was arrested.

Q. The other policies of insurance, were they or not, all in the possession of Mr. Moore at the time you went to see him? A. They were all in Mr. Moore's office.

Q. Did you actually see them at the time? A. Yes, sir.

Q. And the addresses on the letters that were sent out, how did they compare with the addresses on the policies?

Mr. Lieblich—Objected to.

By the Court:

Q. Did you examine the policies? A. Yes, sir.

Q. Did you have an interest in the property- A. A mortgage of $25,000 on the property.

Mr. Lieblich—Objected to.

The Witness—I have the mortgage here, Counsellor; I think I have it in my pocket.

Further Direct:

Q. Is the document referred to dated the 17th of June, 1922? A. Yes, sir.

Mr. Ward—We offer this in evidence.

Marked "Exhibit D 1."

Q. You examined the policies? A. Yes, sir, I handed them to Mr. Moore to write letters to the companies.

Q. That is the last you heard of it, is it? A. No, sir, within four days, when Counsellor Lieblich examined me in police headquarters in Hackensack for hours, I heard of it again.

Q. You have spoken of these letters being enclosed in envelopes; I ask you whether or not you saw the addresses on the envelopes? A. Yes, sir.

Q. Did they correspond with the addresses and names of the companies from which you had these policies? A. Yes, sir.

Q. How long after the fire was it that you went to Mr. Moore? A. The following day.

Q. The letters that you saw prepared by Mr. Moore, and which you read, and which were enclosed in the envelopes you have stated—

A. You did not understand me correctly. I did not read the letters, because my sight is very bad, and ordinary writing I cannot see to read.

Q. After your business with Mr. Moore, about which you have told us, did you do anything else with reference to these policies of insurance, or with reference to the companies? A Oh, Yes; later on I executed proofs of loss in the Hackensack Jail, with power of attorney from my daughter as the owner, to each one of the various companies.

Q. After you had transacted this business about which you have spoken, with Mr. Moore, what was the next thing you did with reference to the insurance companies? A. I came to Hackensack to see Chief Ziegler, Chief of the Fire Department.

Q. Prior to that time had you seen the Jacobson mansion, I mean, prior to seeing the Chief, and after the fire? A. No, sir, I did not see the ruins between the time after I was notified of the fire and the time that I saw Chief Ziegler.

Q. When were you notified of the fire? A. I was notified the morning of the 27th.

Q. Where were you at the time? A. I was in Farmingdale, Long Island.

Q. When had you last seen the Jacobson mansion? A. The last time it was on the evening of the 25th, prior to its burning on the morning of the 27th; I started for Farmingdale, Long Island, to paint a house and a store that I had a contract for painting.

Q. The fire was on the morning of the 27th of October? A. Yes, sir.

Q. Mr. Nicholson, have you any knowledge of any logs or pieces of timber having been placed across the driveway of this Jacobson mansion at the time that you last saw the place? A. No, sir.

Q. Were there any there at the time you saw it? A. Not that I have any knowledge of, and I don't believe I had gone down that driveway in weeks, or probably months; there were two fire hydrants installed within 500 or 550 feet of the house, at may instigation, through the Building Department.

Q. Have you any knowledge at any time of any obstructions being put in the driveway of those premises? A. No, sir, never.

Q. Have you any knowledge, or did you have any knowledge of any inflammable material of any kind of liquid or otherwise, that was in the Jacobson mansion prior to the fire? A. Long prior to this, when I was painting, I had linseed oil and turpentine, but not recently; there was none in it,

not a quart, that I had knowledge of at the time of the fire.

Q. Did you put the oil on the floors? A. No, sir; I oiled the floor with floor oil from time to time; I oiled the floors occasionally.

Q. And aside from the oil that you have mentioned, the floor oil which you from time to time put on the floors, at the time of the fire and prior to that time, were there any inflammable oils or liquid materials that you know of in those premises? A. No, sir.

Q. Any put in there by you? A. Not since I had been painting there—

Q. How far was this Jacobson mansion from the street? A. From Terrace Avenue, following the driveway in question, it was probably from 900 to 1,000 feet—

Q. And right here, I might ask you this: During the time that you owned those premises, was there ever another fire there? A. Not during the time that I occupied them; I did not own them; but during the time I occupied those premises, there was never the slightest fire in the building, except in the stoves, none whatever.

Q. This Terrace Avenue from which the building sat back about 900 feet, does that run Easterly and Westerly, or how? A. Well, nearer Northerly and Southerly, a little Northwesterly and Southeasterly.

Q. Did the Jacobson mansion front on that street? A. Yes, sir.

Q. The driveway that has been referred to, and upon which it has been testified there was some sort of a log or beam laid across, where did that driveway extend? A. It goes from Terrace Avenue or Polifly Road; that is one and the same street; that driveway runs in onto the Snyder property; that was the original holding of the Snyder property entire; on the Southerly end of the property; that is up to the Jacobson property; thence Westerly 400 feet; thence Northerly about 400 feet or 425 feet; thence Southerly again.

Q. Are you telling us how the driveway ran? A. Yes, sir; and thence Southwesterly again up onto the ground where the house stood it was 85 feet higher than Terrace Avenue.

Q. How long was that driveway? A. It was somewheres from 900 to 1,000 feet long.

Q. Were there any parts of it which are not within sight of the house? A. It was all in sight of the house.

Q. Did the Jacobson property run down Polifly Road? A. No, sir, the Jacobson property—but not my property—did not run to Polifly Road; Dr. Snyder and his wife owned a great deal of property between that and the Polifly Road.

Q. This driveway, there was some sort of an obstruction; was that entirely upon your daughter's property? A. It was not; the greater part of it was on Dr. Snyder's property.

Q. And the Snyder to whom you refer, was that the Dr. Snyder who was on the witness stand? A. Yes, sir.

Q. As I understand you, most of the driveway in question was on the land of Dr. Snyder or his wife? A. Yes, sir, the greater portion of it, seven or eight hundred feet.

Q. Prior to the time this fire occurred, and while you were in occupancy of the premises, had you ever done anything with reference to the improvement of

fire facilities in that neighborhood? A. Yes, sir.

Q. What was that? A. I went to the City Department to ask them to install a hydrant up at the same level of the property about 350 feet away.

Q. How far was the nearest hydrant from the premises before you interested yourself in better fire protection? A. Somewhere from nine to eleven hundred feet away from the property

Q. What did you do to get better fire protection? A. I went to the City Department of Hackensack and asked them to install a hydrant at the end of Simonson Avenue,—that was about 350 feet from the building and up to the same level of the building.

Q. As a result of what you did, was anything done by the authorities? A. The City Department then said I would have to take it up with Chief Ziegler. I then went to Chief Ziegler in regard to installing fire hydrants, and made an appointment with him to come and look the situation over. As a result, a fire hydrant was installed at the end of Simonson Avenue, 350 feet from the property up on the same level, and another one in Parker Avenue about 500 feet from the property, up at the same level.

Q. When were fire hydrants installed? Do you know when those fire hydrants were installed? A. They were installed some time before the fire.

Q. How long before the fire? A. I think in April or May; I don't know just when they were installed.

Q. The spring of 1922? A. Yes, sir.

Q. After you had seen Mr. Moore, as you have stated, you say you then came to Hackensack? A. Yes, sir.

Q. Where did you go? A. I went to Chief Ziegler's office, the chief of the Fire Department.

Q. Why did you go there? A. I went there, having knowledge that I had to go; I think he sent some word—telephoned to Mr. Moore's office, I think, for me to come to see him, as he had the power of a fire marshal or the supervision of questioning, and I went there.

Q. Now, while you were there did you see Mr. Lieblich? A. Not the first time I was there.

Q. Any time while you were there? A. I saw him at police headquarters.

Q. When was that? A. That was the last day of October.

Q. Were you put through any examination at that time? A. I was, by Mr. Lieblich, by Garry Dawson, and by other men who said they were representatives of different companies.

Mr. Lieblich—Objected to—

The Court—The objection will be overruled.

By the Court:

Q. When was this? A. Ziegler examined me first.

Q. When? On the 29th of October, 1922.

Q. How long after the fire was that? A. That was the following day after.

Further Direct:

Q. How long after that was it that Mr. Lieblich examined you? A. The last day of October Mr. Lieblich was after me and caused my arrest.

Q. When did he examine you? A. On the last day of October, when I was arrested.

Q. Where? A. In police headquarters in Hackensack.

Q. After that where were you? A. I was in Hackensack Jail for 84 days—never arraigned in court.

Q. During that time, was there any further examinations held of you? A. Yes, sir, in Prosecutor Hart's office in Hackensack, by Mr. Lieblich.

Mr. Ward—This is simply on the notice to the companies, showing they had notice of the fire.

Q. Now, Mr. Nicholson, during your incarceration in the Hackensack County Jail, did you do anything with reference to these fire losses? A. Yes, sir.

Q. During that time had you received any communication from your daughter? A. Yes, sir.

Q. What?

Mr. Lieblich—Objected to as immaterial and irrelevant, and not binding—

A. Yes, sir.

By the Court:

Q. Have you got it here? A. No, sir.

Further Direct:

Q. Did you sign any proofs of loss? A. Yes, sir.

Q. And under what authority? A. Under a power of attorney executed by my daughter in Denver, Colorado.

Q. Where is that power of attorney? A. Counsellor Moore has it and made out the proofs of loss.

Mr. Lieblich—These proofs of loss have not been produced in evidence.

Mr. Ward—We call upon you to produce the notice that we served on the different companies of this fire.

Mr. Lieblich—No notice was ever served. Anything that I have you may have; you are asking for a paper which never was in existence.

Mr. Ward—I call upon you to produce those notices, notices given to the insurance companies of this fire.

Mr. Lieblich—No such notices were ever received by any of the companies. I am willing to let in proof of loss under Policy 1895-811, Phoenix, also 5920386, London Assurance Co.; 15127, Insurance Company of North America; 936893, Mercantile Insurance Company. I object to the offer of proof of loss Policy No. 224708, Phoenix Assurance Company. I admitted four; I object to five of them. These are signed by Nicholson as attorney in fact.

The Court—I will let them all in, subject to your objection.

Mr. Lieblich—I object to the admission of proof of loss under policies numbered 224708, Phoenix Assurance Company; 289219, Colonial Fire Underwriters, of the National Fire Insurance Company of Hartford; 124847, Firemen's Fund Insurance Company; K-6908, Star Insurance Company of America; 7142842, Scottish Union and National Assurance Company; first, on the ground, that they are not evidential for the purpose of

proving loss and damage; secondly, that they do not appear to be executed by the assured named and designated in the respective policies under which these papers purport to be proofs of loss.

Mr. Ward—I will withdraw this witness for a moment. He will be recalled.

Mr. Lieblich—They called upon me to produce all the proofs of loss. I have produced all the proofs of loss in my possession. I made no objection to four, but I objected to five, and your Honor said you would admit all of them.

Mr. Ward—We do not wish to offer them.

The Court—Then they will not go in yet.

MISS GLADYS NICHOLSON, recalled.

Direct Examination by Mr. Ward:

Q. You are a person who was sworn before, and you are one of the defendants in this case? A. Yes, sir.

Q. Did your father have power and authority from you to sign and put in the proofs of loss under the insurance policies that are the subject matter of this proof. A. (No answer.)

By the Court:

Q. What did you do? A. I executed a power of attorney for my father to sign the proofs of loss.

Q. Was it from the power of attorney—didn't your father have authority from you to sign and file your proofs of loss? A. (No answer).

Q. With respect to October 27th, 1922, how near that date did you have occasion to observe or inspect the property known as the Jacobson Masion? A. Was that the date of the fire?

Q. Yes. A. Not a great while before that, because Mr. Nicholson asked me if I would appraise the building—

Q. Mr. Nicholson asked you what? A. He asked me if I would appraise the building, and I told him I was too busy; I have forgotten whether he telephoned, or whether he came to see me.

Q. Did you again inspect these premises after the fire? A. Yes, sir.

Q. For what purpose? A. To make an estimate on the loss.

Mr. Lieblich—Do you want to examine him as to his qualifications?

Mr. Ward—I will reserve that.

Q. I show you this paper and ask you if you have seen that before? A. Yes, sir, I made the original plan of that.

Q. Is that a plan of the Jacobson Mansion? A. As near as I could make it from what I could find and what I could learn from the people who knew the building.

Marked "Exhibit D-A 1 for identification."

Q. Did you also make an appraisal as to the value of that property before the fire? A. No, sir, I did not.

Q. Do you understand what I mean? A. I made an estimate of the damage by fire.

Q. That was after the fire? A. Yes, sir.

Q. And how much, in your opinion, would you say was the loss from damage sustained by reason of the destruction of this property, to either Mr. or Miss Nicholson?

Mr. McGinnis—Objected to on the ground that he has not shown sufficient knowledge of the building itself.

By the Court:

Q. Did you examine the building ever before the fire? A. No, sir.

The Court—He can only give an estimate; I will let him testify; I will note your objection, Mr. McGinnis.

By the Court:

Q. What would you say. A. Do I understand that question to mean, what did I consider the value of that building which was totally destroyed—

Q. Was any depreciation taken into consideration by you? A. I made an estimate of what I thought it would be worth to reconstruct it; and then what I thought the depreciation should be.

Q. What, in your opinion, would it cost to reconstruct? A. My original figures were $52,300.00 and something; I have not my figures before me.

Q. Are these the figures that you referred to? A. $52,353.70 is right; that is the new replacement value.

Q. Now, was this building a new building? A. This building was a very old building from what I

could see and from what I could learn, and from the style of architecture.

Q. And as a result of your information that you gathered, and your experience, what, in your opinion, was the amount of depreciation on that building? A. (No answer).

By the Court:

Q. Did you know it when it was constructed? A. No, sir.

The Court—I will note your objection.

A. It was built in the period when the French mansard roofs were used, which was about 70 years ago.

Q. So that taking that as one of the factors, did you arrive at an opinion as to the amount of depreciation on the building?

Mr. McGinnis—Objected to, because he said in addition to that the things that he had heard.

The Court—Objection sustained. $53,000 he put it at to replace it.

The Witness—I wrote that, taking into consideration the condition of the woodwork that I found, and the condition of the wood that I found, and on account of the age it was not a building that could be used by people—would not be used by the kind of people that it would have been used in those days; because the ceilings were about as high as this court room, very high ceilings and the ceilings were too high for a poor family to use; it was out of date to the class of people who

could use it. The rooms were large, most of them; and under those conditions I estimated that the actual cash value of that house should be depreciated about 70%, which would make the value about $12,000 or $14,000; anyhow, 70% of the $52,000 valuation that I made, would represent my opinion of the actual cash value on the day of the fire. I think the ground was better with the house off than with it on.

Mr. McGinnis—I ask that the latter part of the answer "I think the ground was better with the house off than with it on" be stricken out.

The Court—Strike it out.

Cross-examination by Mr. McGinnis:

Q. You do considerable appraising for insurance companies? A. Yes, sir.

Q. And you have done appraising for the insurance companies that are the complainants in this case? A. I don't know who they are.

Q. Star; Scottish Union; Firemen's Fund; Colonial; Hartford; Phoenix—A. Yes, sir, I have done work for some of them.

Q. Have you done work for Mr. Lieblich before? A. I don't remember that I have; I have been on the opposing side to him.

Q. You speak of the house being what they call a French Mansard roof of the style of 70 years ago; that is not quite correct is it? A. Yes, sir.

Q. Did not the French mansard roof style in this country exist considerably later, sometime in the late '70's or '80's? A. In answer to that question, in my study of architecture, the French building was

during the period of the late fifties and the early sixties.

Q. Back in Civil War days didn't they have the square houses with the cupolas? A. This has a cupola.

Q. In fixing the present value, as I take it, you were trying to do, when you mentioned $14,000, you took into consideration the difficulty of renting the property; is that right, or its sale value? A. Yes, sir, and the difficulty of remodelling it so that it could be used as a modern house; and also the depreciation from wear and tear.

Q. What proportion of this 70% did you allow for wear and tear; and what proportion for difficulty in renting or selling? A. I could not tell you.

Q. In your judgment, the difficulty in renting or selling the property would be the major portion of the depreciation? A. I don't think it would be the major portion; probably there may have been, as I can remember, probably a depreciation of 33 1-3 or 35%.

Q. In other words, about one-half of the depreciation you would attribute to the old-fashioned architecture; and the other half to natural wear and tear? A. I suppose so, as near as I can remember.

Q. Will you take up the subject of wear and tear; these old houses were built of heavier, and on the whole, better material than they use today in frame houses? A. Some old buildings are; some are built of oak frame, but this was not.

Q. You say this was not oak framing? A. This was hemlock.

Q. The beams were oak? A. Yes, sir.

Q. The trim was walnut? A. I did not see. I took it to be white pine.

Q. Which is high class wood? A. Not necessarily; I can get white pine that can be used for trim at nominal price; I figured, in my estimate, I figured the white pine at walnut price.

Q. You say you examined this building before the fire? A. No, sir, I did not.

Q. So that the estimate that you have given us here of this building is from what other people have told you? A. Partly, and from photographs.

Q. And what else? A. And from what I can learn and find out at the site of the lots.

Q. So that from your own knowledge, you know nothing of the size of the rooms? A. I never was in the house.

Mr. McGinnis—I move to strike all his testimony out.

The Court—I will let it stand.

Q. Did you or not say to Mr. Nicholson at any time, that this building had not, in fact, depreciated to any substantial extent? A. No, I do not remember saying any such thing.

Q. You stated that Mr. Nicholson got you to appraise the property? A. No, sir, he asked me if I would appraise it for him.

Q. You, as a matter of fact, were appointed by the complainant insurance company, were you not, to act as appraiser in their behalf in this case? A. I think Mr. Lieblich asked me.

Q. I ask you if you received a letter of which I am handing you what purports to be a copy, dated Brooklyn, New York, April 23, 1923, addressed to Benjamin F. Robinson, 20 Clinton Street, Newark,

New Jersey, signed "George J. Marron;" did you receive a letter of which that is apparently a copy? A. Yes, sir, I think I did receive such a letter.

Marked "Exhibit MC. 1 for identification."

Q. Have you the original of that letter in your possession? A. I have not.

Q. Do you know where it is? A. No, sir.

Q. I show you a letter on stationery "B. F. Robinson, General Contractor, Newark, New Jersey, April 25, 1923. Addressed to Mr. George J. Marron, 79th Street, Brooklyn, New York; is that letter on your stationery? A. Yes, sir.

Q. Was that letter written by you? A. Yes, sir.

Marked "Exhibit Mc. 2 for identification."

The Witness—I wrote it because it is initialed by me; it is not my signature; it is stamped; it is on my stationery.

Mr. Lieblich—You can read it then.

(Witness reads it).

A. Yes, sir, I wrote this.

Mr. Lieblich—I have no objection to your offering this in evidence.

Mr. McGinnis—I am not offering it in evidence.

Q. Were you ever appointed to appraise this—
A. No, sir, not to my knowledge.

Q. Did you receive any communication from Mr. Lieblich to that effect, that you were appointed?
A. I don't remember that I did; perhaps so; I don't

remember that I did. If I did, I probably sent it back and told them I did not want to appraise it.

Mr. McGinnis—I ask to have that struck out.

The Court—Strike it out.

Mr. Lieblich—I am willing to offer these letters that Mr. McGinnis has offered in evidence for indentification.

The Court—I won't permit it.

Re-direct Examination by Mr. Lieblich:

Q. You stated in making up your appraisal you used some photographs; I show you "Exhibits C 3" and "C 4", and ask you whether or not you used those photographs? A. I had copies of these.

The Court—Has it been established when these were taken?

Mr. Lieblich—Dates are on the back of them, I think.

Re-cross Examination by Mr. McGiinnis:

Q. Nothing on that picture which I show you, "Exhibit P 4," that discloses the character of the woodwork or the need of or absence of painting, or anything of that kind, is there? A. Yes, sir.

Q. There is something there that shows the condition of the woodwork? A. The window shows some blinds on and some off there; and on the other photograph it shows how the windows were broken and in a more dilapidated condition than this is

ALEXANDER G. NICHOLSON recalled.

Cross-examination by Mr. Lieblich (continued):

Q. At the time of this fire you stated that you were married to Elvira Suero? A. Yes, sir.

Q. Was your wife living with you at this time in the Jacobson house? A. No, sir, she never lived with me at any place.

Q. What methods or means did you have of heating this building? A. Oh, steam heating plant; there was also a hot air heating plant, furnace plant, in it, but that was more recent, the steam heating was more recent.

Q. Do you know when that was mstalled? A. I do not.

Q. Did you have that working at any time, that heating plant? A. Yes, sir, just built a fire in it occasionally.

Q. When did you have a fire in their last? A. I don't remember whether I had one in at all the winter before the fire; I think I did a few times when it was very cold at night; I did not operate it in general or right along at all.

Q. I understand you to say you were examined in the police station within a few days after the fire? A. Yes, sir.

Q. You were examined by the Chief of the Police Department? A. No, sir.

Q. Were you examined by the Chief of the Fire Department? A. I was examined at his office by the Chief of the Fire Department, before I was invited to the Police Department; I was examined by you in the Police Department.

Q. You mean that I accidentally came in and talked to you at Police Headquarters in Hackensack?

A. I do not mean that you accidentally came in; you were there when they invited me over there.

Q. How do you know that? A. Because I saw you at Police Headquarters; I did not see you at Fire Headquarters.

Q. How do you know I was invited there? A. I don't know how you came to be there.

Q. Then it might have been accidental? A. It might have been.

Mr. McGinnis—That is argumentative, and it is asking for a conclusion of the witness.

Q. When you say that I was invited to the police station, how do you know that? A. I did not say you were invited there; I said I was invited there.

Q. Then you don't know how I came to be in the Police Headquarters? A. No, sir, I have no knowledge.

Q. How long after that was it that you were examined in the Prosecutor's office? A. Quite some time, but I could not tell—my best memory would be, probably six weeks to two months.

Q. And on that occasion, do you know whether I was invited or came in? A. I don't know how you came in.

Q. Was there anyone else examined in the Prosecutor's office or talking to you while I was present? A. I don't remember anyone else talking to me; I don't remember anyone examining me or cross- examining me, or anything.

Q. Do you know Prosecutor Hart? A. I don't know whether I would know him if I saw him on the street; there was a number of men in there.

Q. You don't recall anyone else speaking to you except myself? A. I recall a Mr. McCarthy showed me into the room and let me out again, but I don't remember his asking me any questions; the examination was not very long there.

Q. Just a conversation, wasn't it? A. No, sir, I was led over there from the jail to be examined.

Q. Will you say that Mr. McCarthy was not present in the room? A. I did not say he was not present..

Q. Was Mr. Dawson there? A. I have answered the question that I don't know all the men that were there.

Q. Do you know whether Dawson was there? A. I don't know; there was quite a number there.

Q. Do you remember the conversation which is alleged to have taken place between you and me? A. I remember some parts of it. You started in to ask about mortgages, which I didn't think was of much consequence and you did not go very far with it.

Q. Have you, since this morning, discovered the lease that you have testified to with Mrs. Masterson? A. I have not, because I ordered a certified copy made at the County Clerk's Office; I ordered a certified copy, and at last reports it was not finished.

Q. You received a demand from me for the appointment of an appraiser, didn't you? A. Yes, sir.

Q. Did you designate your appraiser? A. Yes, sir.

Mr. Lieblich—These letters, Senator, which have been marked for identification—shall I

go over them—they are all addressed to the defendant.

Mr. McGinnis—All right.

Mr. Lieblich—I call for the production of the letter dated June 2, 1923.

Mr. McGinnis—Use your copy.

Q. Mr. Nicholson, I show you this paper, referring to United States Post Office registry receipt for article 14583, and ask you whose signature appears on the back of that? A. Here, do you mean—it looks like my signature; I think it is.

Q. You received this letter to which this is attached, referring to letter of June 2, 1923? A. Read it.

Mr. Lieblich—(Reads "Exhibit D. A. J. 1 for identification"). "Take notice that we have heretofore made several demands on you and given you notice" (continues reading).

A. I don't remember all that; I don't remember the date; I remember you demanded under those lines of your policy, that you be supplied with a magistrate's certificate, setting forth the lines of your policy; that you demanded the Notary's certificate from 77 to 80; and I complied with that by getting a magistrate's certificate from Charles Mackay.

Mr. Lieblich—I move it all be struck out as not responsive.

The Court—Strike it out.

Mr. Lieblich—I offer it for identification.

Marked "Exhibit D. A. J. 1 for identification."

Q. You testified, on direct examination, to having had linseed oil and turpentine in the house? A. Not at the time of the fire I did not.

Q. How long previous to the fire? A. Perhaps two or three weeks, a very small quantity of ready-mixed paint, not linseed oil and turpentine individually by themselves.

Q. When you said you did have linseed oil and turpentine, you were mistaken? A. I did not say that.

Q. If you did say it? A. I said I had a small quantity of turpentine to condition down varnish with, and used it all.

Q. If you did say on your direct examination that you had linseed oil and turpentine on the premises before the fire, you were mistaken? A. No, sir, I had had it a long time before, but not very near to the time of the fire. I painted the whole building during my occupancy of it, outside and in.

Q. How long prior to this fire did you paint it outside and inside? A. Within two weeks is my nearest memory, that I did some painting both inside and outside.

Q. What kind of oil was this you used on the floor? A. It was a regular floor oil, manufactured for that purpose.

Q. Where did you buy it? A. In Brooklyn.

Q. Did it have any gasolinie in it? A. No, sir.

Q. When did you buy it? A. Maybe eight months to a year before the fire; I only bought a gallon of it at a time.

Q. How much of it did you have there prior to the fire? A. I think I used the last that was in the can two weeks before the fire; maybe three weeks before the fire.

Q. It could not have been a night or so before the fire? A. No, sir; it might have been a month before the fire.

Q. At this time the house was unoccupied, no one living there? A. Yes, up to within a very short time before the fire; I explained to you; I had some people went out of there about ten days or two weeks before the fire.

Q. You testified, the night before the fire, that you went to Farmingdale, Long Island? A. No, sir, not the night before, I did not testify.

Q. When did you go to Farmingdale? A. I started to go to Farmingdale about six or seven o'clock in the evening of the 25th of October, 1922.

Q. You did not sleep in the Hackensack mansion on the night of the 25th of October, did you? A. No, sir.

Q. Did you sleep there the night of the 24th? A. Yes, sir.

Q. Did you sleep there for a period of two weeks prior to the 24th? A. For years, but not all the time.

Q. Now, you saw that for a period of two weeks prior to the fire, no one else lived there but yourself? A. I did not say that; Mrs. Masterson had leased it as soon as I could get the tenants out; she had been stopping a portion of the time in some of the rooms until I could turn over full possession to her; and the trouble I had to get this Connelley out took so much of my time that they were getting disgusted; I think a son-in-law of Mrs. Masterson died in New York on the operating table, and they went there.

Q. What night of the week did this fire happen? A. I think on Friday; I think so, if that was the

27th; that is my best memory; I am not positive.

Q. This fire happened Saturday morning, early in the morning? A. No, sir, I don't think so, I think it happened Friday morning early; that is my best memory.

Q. Now, then, the last you slept there was on Wednesday night; is that right? A. No, sir, that is not right, it was the Tuesday night.

Q. Was there anyone in that house from Tuesday night or until the fire? A. Not that I know of.

Q. Now, you say Mrs. Masterson stopped there? A. Yes, sir.

Q. Did she stop there within a week or two prior to the fire? A. I cannot tell just what nights she spent there, or what nights she did not; she had access to stop there whenever she wanted to.

Q. Did she have anyone else to stop with her? A. Yes, sir, her daughter and her grandson.

Q. With reference to the date of the fire, when did Mrs. Masterson and her daughter and grandson stay over night? A. I could not fix a date, I don't know.

Q. Will you say she stayed there within a week previous to that fire? A. No, sir.

Q. Will you say she stayed there within two weeks previous to that fire? A. To the best of my memory, I would say "Yes."

Q. Will you tell us what room Mrs. Materson occupied in this house?

Mr. McGinnis—How is this relevant?

The Court—It might go to his credibility; it may be for the purpose of contradicting him; we have a wide license, you know.

Q. Look at "Exhibit C 4," and tell us if you can, the room that Mrs. Masterson occupied when she did stay there? A. She had access—

Q. I did not ask you that; she had access to the whole house, didn't she? A. No, sir, part of it was locked up. I had the room I occupied locked up securely with a heavy padlock for the valuables I had in the closet there; that was on the third floor, a mortice lock and a Yale lock.

Q. Did you have any other rooms locked up? A. I don't think I did at that time.

Q. So that Mrs. Masterson had access to the whole house? A. No, sir, she did not have access to the whole house for the reason that I had not turned over possession.

Q. When were you to give Mrs. Masterson possession? A. I would have turned over possession to Mrs. Masterson probably within a week from that time, and I was preparing to leave the place myself; I felt, and that was the object of my getting those photographs to take with me to visit my relatives and relations all over the country, I thought it would be nice to have the photographs of my home along with me, and that was the object of my getting them taken.

Q. So that if the fire had not intervened within a week after that, Mrs. Masterson would have had possession. A. I expect she would.

Q. You say you had these photographs taken for the purpose of showing to your relatives? A. Yes, sir, or anyone else.

Q. Where were you going? A. I was going to the Western part of New York State, where I had a great many cousins; I had cousins in Buffalo and relatives in Chicago, and relatives in Pocotillo, Idaho, and in Denver, Colorado.

Q. Are you sure you did not take these photographs for the purpose of showing them to the appraisers after the loss (referring to "Exhibits C 3" and "C 4")? A. No, sir.

Q. I show you these papers, Mr. Nicholson, and ask you to tell us what that is which I have just taken from you? A. That is a photograph of the same house that you have the photograph of there (indicating "C 3" and "C 4").

Q. Can you tell us about when that photograph was taken? A. No, sir, it was delivered to me by Dr. Snyder, this photograph was, when I came in possession of the house. (Indicating a postal card).

Mr. McGinnis—Put it in evidence.
Postal card marked "Exhibit F. A. J. 2."

Q. You testified that Mrs. Masterson had access to the whole house with the exception of one room? A. I did not say that.

Q. What room did she occupy when she stayed there? A. I will show you if you will come here.

Q. Take my pencil and make a mark indicating the room she occupied. A. That the family occupied; I don't know which one she was in; she occupied three rooms right straight on that floor there (Indicating the top floor) on the Northerly side back of the room that occupied and had securely locked; back of that room there were three other large sleeping rooms. They had access to them, and they were all furnished. There was another room down here.

Mr. McGinnis—I have a witness here from New York that I would like to put on the witness stand at this time.

Mr. Lieblich—I have no objection.

ISAAC E. JERSEY, being duly sworn, for the defence, testified as follows:

Direct Examination by Mr. McGinnis:

Q. Mr. Jersey, where do you live? A. I live in Jamaica, Long Island.

Q. What is your business or profession? A. Contractor and builder.

Q. How many years have you been engaged in contracting and building? A. About 35.

Q. And in the course of that time have you built and constructed frame dwellings? A. Yes, sir.

Q. And frame buildings of various other kinds? A. Yes, sir.

Q. Have you ever acted as an appraiser of the buildings, appraising their value? A. Yes, sir.

Q. In insurance cases? A. Yes, sir.

Q. And in condemnation cases? A. Yes, sir.

Q. Will you state briefly to the court some of the people for whom you have done this work? A. I do a great deal of work for the Title Guarantee and Trust Company and the United States Trust Company of New York, and for various money loaning institutions. I have appraised for insurance purposes for Mr. Wickersham, our ex-Attorney General, all of his buildings in the country and city; and for the estate of John D. Rockefeller two or three hundred buildings.

Q. You appraised Mr. Rockefeller's—

A. I have some of my work here—right on the bench there where I was sitting back there.

Q. What is this? A. That is some of my work of appraising buildings. (Showing book entitled

"Appraisal of Buildings, John D. Rockefeller Estate, Pocontico Hills, Pocontico, New York.")

Q. And this represents your appraisal of the Rockefeller Estate? A. Yes, sir, about 100 buildings.

Q. You also show me a book entitled, "Appraisal of Buildings, Murray, Chapman and Scott Corporation, Clifton, Staten Island." Who is that corporation? A. They are the ones that have this large plant, they do wrecking of ships, getting them up after they sink.

Q. How many buildings does that book show? A. Probably a dozen or more.

Q. I show you another book, entitled "Appraisal of Residences and Other Buildings, Estate John V. Trevor, Yonkers, New York." How many buildings does that represent? A. About a dozen.

Q. And their approximate value is how much? A. It is all in here.

Q. Can you give me an approximation? A. Three or four hundred thousand dollars.

Q. Now, Mr. Jersey, do you know this building known as the Jacobson Mansion, owned by Gladys Nicholson; I show you the picture?

Mr. Lieblich—Objected to; there is no evidence that Gladys Nicholson owned this property.

Mr. McGinnis—He sets that up in his bill of complaint.

Q. Do you know this building as shown by pictures marked "C 2" and "C 3?" A. Yes, sir.

Q. When did you see it? A. I saw that a year or two before this fire.

Q. Do you live out there? A. No, sir; I went out there for the purpose of appraising.

Q. Did you visit that building for the purpose of appraising it? A. Yes, sir.

Q. By whom were you sent? A. I was communicated with by an insurance broker by the name of Poggenburg.

Q. And did you examine this building inside and out? A. Yes, sir.

Q. And as a result of that examination did you make an appraisal as to its value? A. I did.

Q. And does that appraisal express your opinion as to the value of the building at the time you took the appraisal and made it? A. Yes, sir.

Q. What, in your opinion, at that time, was the value of this building?

Mr. Lieblich—I object; first of all upon the ground that no proper foundation has been laid for this; no time has been fixed; no evidence before this court as to what conditions in detail this witness went through for the purpose of laying the foundation.

The Court—Objection overruled.

A. I am reading from a copy of my report of that appraisal—

Mr. Lieblich—I object to his reading from it

Q. Cannot you tell us what you fix the value at? A. A little upwards of $59,000, new replacements.

Q. And what did you allow for depreciation, if any? A. I would like to give a little explanation. I allowed 10% depreciation.

Q. Making the value of the buildings then between $52,000 and $53,000? A. Yes, sir.

Q. And that was done between one and two years, I understand, before this fire? A. I think it was about a year or more, to the best of my recollection.

Q. The fire was October 27, 1922; is there any memorandum in your possession by which you can refresh your memory as to the exact date? A. No, sir, not on that paper.

The Court—He said about a year before.

Cross-examination by Mr. Lieblich:

Q. Have you discussed this mater with Mr. Nicholson before you came out today? A. I have discussed it with him several times.

Q. And you knew Mr. Nicholson before you made this appraisement? A. Yes, sir.

Q. For how long a period did he work for you? A. He has done contracts for me and considerable work for me for probably twenty years.

Q. When you came out here, you knew you were coming out to Nicholson's house? A. Yes, sir.

Q. So when you said Poggenburg asked you— A. He employed me to make the appraisal.

Q. But you had discussed the question of appraisement with Nicholson before that? A. I don't know that I had, I don't recall that I did.

Q. You knew Nicholson had bought this property in Hackensack before you came out? A. Yes, sir.

Q. And he told you he had bought some property in Hackensack before you came out? A. Yes, sir.

Q. When you came out did you observe the condition of the property at that time? A. I did.

Q. Was it in need of repairs? A. It was undergoing repairs at the time I made the appraisal.

Q. And then you based your appraisal upon the prospective repairs to be made? A. Prospective repairs to be finished, which were under way, and well under way; there was some painting and decorating to be finished; some of the work had been finished, and other was still to be done.

Q. Who paid you for this appraisal? A. Mr. Poggenburg.

Q. Was Mr. Poggenburg an agent for any of these insurance companies? A. I don't know; he is an insurance broker; that was his business.

Q. Don't you know whether or not he represents insurance companies? A. As a broker; certainly I know it; I have not said I did not. My understanding is, that an agent represents the company, and a broker gets business for the agent.

Q. And the broker represents the assured and the policy holder, doesn't he?

The Court—I would not ask that.

Q. Mr. Jersey, at the time you made a detail figure of the appraisal of this property at the time you were there—A. I made what I call a descriptive report; I went into every room in the building and noted how it was finished and how the building was constructed.

Q. What did you do with that report? A. I put it in typewriting; I have a copy in my pocket, if you want it.

Q. What did you do with your original memorandum or notes that you made? A. They are on file in my office I suppose.

Q. Who paid you for it? A. Mr. Poggenburg.

Q. How did he pay you? A. I could not tell you; I imagine he paid me by check; I don't know.

By the Court—How much did you charge?

The Witness—I did that for $50.00; I have a great deal of experience, and when I make an investigation of a building in that way, I am then able to arrive at its full value from a cubical calculation after taking the description of the building and the size of it.

By Mr. Lieblich:

Q. You charge pretty good fees?

The Court—He says he charged $50.00.

A. If I went into details for that, I would charge $200.00 and it would be worth it.

Re-direct examination by Mr. McGinnis:

Q. This work was not done for Mr. Nicholson? A. Not directly.

Q. When you spoke of Mr. Nicholson working for you, you meant that he did work from time to time for you during that twenty years? A. Yes, sir, not continuously.

By the Court:

Q. You and he are friendly? A. We have been for thirty years.

Further Re-direct:

Q. Mr. Jersey, you said, in answer to Mr. Lieblich's question, that when you made the appraisal you made rough notes, and that you yourself transferred those to a typewriter; is this the paper you referred to that you did the typewriting on yourself (showing a paper entitled—)? A. I wrote that all out in longhand and gave it to my typewriter.

Q. I show you a paper entitled "Appraisal of Real Estate in Hackensack, New Jersey, belonging to Gladys Nicholson;" I ask you if that is a copy of the original that you signed and delivered to Mr. Poggenburg? A. Yes, sir.

Q. The Gladys Nicholson property was this building marked "Exhibits 2" and "4" that you looked at? A. Yes, sir, and that is the report based on that.

Q. Now, will you look at this and refresh your memory from this paper if you need to? (Question withdrawn). Can you, without the use of this paper describe in detail the condition of each room in that building? A. I can describe its condition, but I cannot describe its finish—

Mr. Lieblich—Objected to.

Q. I want you, if you can, reading this paper, describe in detail the finish and condition of each room in each part of that building which is the subject of this discussion.

Mr. Lieblich—I object to the use of that paper; the evidence is that it is a carbon copy.

The Court—I think the Senator should get it in evidence properly if he wants to use it; why do you want to go into all this detail, anyhow? The document gives the details. If I were complainant's counsel in this case, I would be glad to have it offered.

Mr. McGinnis—We offer in evidence paper entitled, "Appraisal of Real Estate in Hackensack, New Jersey, belonging to Gladys Nicholson," and produced by the witness "Jersey."

Marked "Exhibit C. F. L. 1."

Mr. Lieblich—Let us stipulate this, that Mr. Jersey's detail is whatever the figures show.

Mr. McGinnis—I don't care about the figures.

Mr. Lieblich—We can consent to an abridgment of the record afterwards. By stipulation, "C. F. L. 1" is admitted; and letter by Mr. Robinson, dated March 14, 1923, to Joseph T. Lieblich, is marked "Exhibit C. F. L. 2;" and the detail statement of B. F. Robinson, dated March 10, 1923, is marked "Exhibit C. F. L. 3."

By Mr. McGinnis:

Q. Mr. Jersey, can you tell us about how long the average contractor would take to replace that building? A. I should say about nine months actual working time.

By Mr. Lieblich:

Q. How old would you say that Jacobson Mansion was? A. Possibly 30 or 40 years old.

Q. Was that kind of a roof utilized 40 years ago, as Mr. Robinson described it? A. Yes, sir, it was the prevailing style at that time.

The Court—When you have got the testimony written out and have received it from Robert, you may come in and I will fix a day for you.

ADJOURNED.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the seventh day of May, nineteen hundred and twenty-six, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances:

Joseph T. Lieblich, Esq., for complainants;
Ward & McGinnis, Esqs., for the defendants.

PAUL POGGENBURG, being duly sworn, testified as follows:

Direct Examination by Mr. McGinnis:

Q. Where do you live? A. New York City.

Q. What is your business? A. Insurance.

Q. You are connected with what company? A. Feist & Feist, Newark, New Jersey.

Q. How long have you been with Feist & Feist? A. Eight years.

Q. What position do you occupy there? A. I am the manager of the insurance department.

Q. Have you access to the files of the office? A. Yes, sir.

Q. Have you in your possession any letters or notices from either a Mr. William M. Moore or Mr. Alexander G. Nicholson in reference to a certain loss sustained by Gladys Nicholson on October 27th, 1922? A. I have a letter from Mr. Moore.

Q. Produce it, please. A. (Hands Mr. McGinnis a letter on the business head of William Martin Moore, Counsellor at Law, 381 Pearl Street, Brooklyn, N. Y., dated October 28, 1922.)

Q. Did you receive this letter through the mail? A. I cannot answer the question.

Q. Is the letter in the possession of Feist & Feist? A. Yes, sir.

Q. Do you know when it was received? A. No, sir.

Q. Is there any memorandum in your office of any kind on the subject? A. An acknowledgment of this letter.

Q. Let me see the acknowledgment. A. I cannot show you the original.

Mr. McGinnis—A copy—I offer the letter in evidence.

Mr. Lieblich—I object to it; there is not anything to identify this letter in any way with any of these defendants.

The Court—The objection will be overruled.

Mr. McGinnis—Witness hands counsel a letter, dated Newark, New Jersey, October 30, 1922, addressed to Mr. William M. Moore, 381 Pearl Street, Brooklyn, New York. I ask that that letter be marked for identification.

(The paper produced is apparently a copy of some paper purporting to be a letter, and Senator McGinnis identifying the paper said, there was a letter.)

The Court—I will note your objection.

Mr. Lieblich—The witness has not identified this particular paper as being a copy of a letter, because the witness has not testified that it is a copy to his knowledge.

Marked "Exhibit M. J. 1 for identification."

Q. What is this paper which you have handed me and which has just been marked for identification?

Mr. Lieblich—I object to the form of the question, unless it can be shown that this witness has, of his own knowledge, information or knowledge with respect to what the particular paper is that has been handed to the witness. I assume that is "Exhibit M. J. 2" as of this date for identification.

The Court—Objection overruled.

A. It is a carbon copy of a letter sent to William Moore.

Q. Was that in response to the letter "M. J. 2" from Mr. William Moore, October 28— A. It says in the letter, "We are in receipt of a communication of the 28th instant concerning the loss of Gladys Nicholson"—

Mr. Lieblich—I object to the paper being read into the evidence, the paper having been marked only for identification.

The Court—Objection sustained; strike it out.

Q. This is a carbon copy of a letter? A. Yes, sir.

Q. Who is M. E. H.? A. Marion E. Heim, the stenographer.

Q. And is that the way letters are usually sent out from your office—carbon copy kept? A. Yes, sir.

Mr. McGinnis—I offer it in evidence.

Marked "Exhibit M. J. 3."

Q. Have you any other letters from Mr. Moore? A. No, sir.

Q. Have you made a search of your files for them? A. No, sir.

Q. You were subpoenaed to produce all letters and communications of every kind respecting notice of a loss by Gladys Nicholson by a fire which occurred on the 27th of October, 1922? A. Yes, sir, that is correct.

Q. Did you make such a search? A. I have the file.

Q. Are there any other letters in the file respecting a notice of loss? A. I have no original letter from Mr. Moore, other than the one that has been already presented.

Q. Have you other letters of acknowledgment in carbon copies? A. Yes, sir.

Q. Are you here under subpoena? A. Yes, sir.

Q. Will you produce it? A. Yes, sir. (Witness produces a subpoena addressed to Feist & Feist.)

Q. Are Feist & Feist the concern with which you are connected? A. Yes, sir.

Q. Were you directed to appear here this morning? A. Personally, no.

Q. As a representative of the concern did you come here this morning? A. Yes, sir.

Mr. McGinnis—I offer that subpoena duces tecum in evidence.

Marked "Exhibit M. J. 4."

Q. Who are Feist & Feist? A. We are insurance and real estate agents in Newark, New Jersey, brokers and agents.

Q. I show you policy, Star Insurance Company of America, K-6908, and ask you if Feist & Feist are the agents of that company?

Mr. Lieblich—Objected to as not binding on these defendants, and that the best evidence is the written certificate of authority issued to them, confining and limiting their authority in compliance with the Insurance Act of 1902.

Q. Who composed the firm of Feist & Feist? A. Abram Feist—he is the firm.

Q. Is that policy issued out of the Feist & Feist agency?

Mr. Lieblich—The paper will speak for itself.

Q. Showing witness policies Star Insurance Company of America, K-6908—referring to Policy Star Insurance Company of America, K-6908—

Mr. Lieblich—Referring to "Exhibit C-18."

The Court—Don't interrupt—don't interfere with the Senator's examination.

A. It is issued out of Feist & Feist.

Q. I show you policy, Scottish Union & National Assurance Company, "Exhibit C-17," and ask you if that policy was issued out of your agency? A. Yes, sir.

Q. I show you policy, "Firemen's Fund Insurance Company, B-1247847" marked "Exhibit C-16," and ask you if that policy was issued out of your agency? A. It was.

Q. Is Abram B. Feist in court? A. No, sir.

Q. You know him, of course? A. Yes, sir.

Cross-Examination by Mr. Lieblich:

Q. Why is Mr. Feist not in court, and why are you here? A. Because Mr. Feist has nothing to do personally with the running of the insurance end of the business, and I have.

Q. Prior to coming here, did you have any conversation with counsel in this case? A. Yes, sir.

Q. Which one? A. Mr. McGinnis.

Q. Was it as a result of that conversation that you were subpoenaed, and that you came instead of Mr. Feist or somebody else? A. Yes, sir.

Q. How long have you been in the employ of Feist & Feist? A. Eight years.

Q. I show you "Exhibit C-17," and ask you to look at the signature of L. Kretschmann, and tell us whether or not Mr. Kretschmann is connected with your office? A. He is not.

Q. Then that paper which is attached to "Exhibit C-17,' bearing the signature of Kretschmann,

was not attached by anyone connected with Feist & Feist?

Mr. McGinnis—Objected to.
The Court—Objection overruled.

A. It was not.

Q. What is there about this paper, referring to "Exhibit C-17," which makes you say it came out of the office of Feist & Feist? A. (Witness indicates "Abram" printed on the face of the policy, which stands for Abram Feist.)

Q. But Mr. Abram Feist's signature does not appear on there? A. No, sir.

Q. I show you this paper, referring to "Exhibit M. J. 3," and ask you whether or not you personally have ever seen the original of that paper? A. I have not, to my knowledge.

Q. And the only way that you assume that to be a copy of an original letter, is because you found it among the files?

Mr. McGinnis—Objected to.
The Court—The objection will be overruled.

A. That is correct.

Q. Can you, of your own knowledge, state the day or dates when these papers, referring to "Exhibits M. J. 2" and "M. J. 3," were actually received or left your office? A. I cannot.

Q. Does Abram Feist comprise the firm of Feist & Feist? A. That is a difficult question to answer; he owns all the stock.

Q. It is a corporation? A. Yes, sir.

Q. Can you tell me the names of the officers of that corporation? A. Ralph Schebemeyer is the secretary, and William Lewis is Vice-President.

Q. Mr. Feist is the president? A. Yes, sir.

Q. And have Feist & Feist in their possession a certificate of authority from each of these companies? A. No, sir.

Mr. McGinnis—Objected to.
The Court—Objection overruled.

Q. You have not? A. No, sir.

Q. By that, I understand you to mean, that you are no longer underwriting agents of the Star Insurance Company of America, the Firemen's Fund Insurance Company, and the Scottish Union and National Assurance Company—

Mr. McGinnis—Objected to—first: what the present relationship of these parties is, is not material, and this is not the best way to prove it.

The Court—The objection will be overruled.

A. We are agents for the Firemen's Fund Insurance Company and the Scottish Union and National Assurance Company; and we are not agents for the Star Insurance Company of America.

Q. On the 9th of August, 1921, did you have in your possession a certificate of authority from the Star Insurance Company of America?

Mr. McGinnis—Objected to.
The Court—Objection overruled.

A. If that is the day when the policy was issued, we did.

Q. I show you paper, referring to "Exhibit C-18," and ask you to look at the date and see whether or not that is the date that I have mentioned? A. That is correct; that is the date.

Q. I show you "Exhibit C-16," Firemen's Fund Insurance Company policy B-1247847, and ask you to look at the date of the issuance of that policy and tell us the date when the policy was issued. A. August 2, 1921.

Q. On the 2nd of August, 1921, did you have a certificate of authority from the Firemen's Fund Insurance Company? A. We did.

Q. I show you "Exhibit C-17," Scottish Union and National Assurance Company policy 7142842, and ask you to look at it and tell us the date of the issuance of that paper. A. Second of August, 1921.

Q. Did Feist & Feist, on the 2nd of August, 1921, have a certificate of authority in writing from the Scottish Union and National Assurance Company designating and limiting their authority? A. They did.

Q. Have you the certificate of authority of the Scottish Union and National Assurance Company, and the Firemen's Fund Insurance Company in the possession of Feist & Feist? A. We have it in the office.

Q. When was the agency of the Star Insurance Company of America discontinued by Feist & Feist?

Mr. McGinnis—Objected to; I think that is immaterial.

The Court—Objection overruled.

A. About two years ago.

Q. Was that prior to, or after October 7, 1922? A. It was after the policy was issued.

Q. Do you know Ike Jersey? A. I know him.

Q. How long have you known Ike Jersey? A. Approximately for ten years.

The Court—You are making him your own witness now?

Mr. Lieblich—Yes, sir.

Q. Have you had occasion at any time to have office or desk room with Ike Jersey? A. Yes, sir.

Q. And at what place or point? A. 62 William Street, New York City.

Q. This Ike Jersey, is he a builder? A. Yes, sir.

Q. Did you ever ask Mr. Ike Jersey to make an estimate for you on the property of Mr. Nicholson in Hackensack?

Mr. McGinnis—Objected to.

The Court—Objection overruled.

A. No, sir, I did not.

Re-direct Examination by Mr. McGinnis:

Q. Did you telephone to me about not wanting to come to Paterson? A. Yes, sir.

Q. After subpoena was issued? A. Yes, sir.

Q. You informed me, didn't you, that Mr. Lieblich had promised you that he would admit this correspondence in evidence, didn't you? A. No, sir.

Q. You did not tell that to me? A. No, sir, I had no conversation with Mr. Lieblich.

Q. Didn't you tell me that you had had a conference of talk with Mr. Lieblich, and that he had informed you, that if I would get in touch with him it would not be necessary for you to come up? A. No, sir.

Q. Didn't I tell you that Mr. Lieblich was insisting upon the case going off, and that I was insisting upon the case going on? A. Yes, sir.

Q. And didn't I tell you any agreement we might make out of court could not be used here? A. Yes, sir.

Q. And that you would have to come up with this correspondence? A. Yes, sir.

MR. WILLIAM MOORE, being duly sworn, testified as follows:

Direct Examination by Mr. McGinnis:

Q. What is your profession? A. I am an attorney at law of New York State.

Q. With offices where? A. In Brooklyn.

Q. And were you such in 1922? A. Yes, sir.

Q. Was Mr. Nicholson—one of the defendants here—a client of yours at that time? A. Yes, sir.

Q. Was it brought to your attention by him or anyone, that a loss had been sustained by Gladys Nicholson and him of certain property in New Jersey? A. Yes, sir.

Q. Did you have possession of those policies at the time, or were they brought to you? A. Yes, sir.

Q. As a result of any conference you had with Mr. Nicholson, what did you do? A. I sent a brief notice to Feist & Feist covering the three policies

in one letter, mentioning by number, and I sent a similar notice to I. V. Doveland and Company, agents for the Colonial Fire Underwriters.

Mr. Lieblich—I move that that part of the answer which speaks about the agents be stricken out, and also with respect to what the particular contents of the paper may be, referring to "Exhibit M. J. 2" as of this date; that paper will speak for itself. The witness says that he wrote to Feist & Feist, and then he attempted to say what was in the letter.

The Court—Oh, no, he did not.

Q. When did you send these communications?

A. On October 28, 1922.

Q. The information that you gave with respect to this fire loss, was it contained in one letter or more than one letter? A. To Feist & Feist? In one letter.

Q. I show you a letter of October 28, 1922, marked "Exhibit M. J. 2," and ask you if that is the letter you sent? A. Yes, sir, that is the letter.

Q. And can you identify the policies in your hand with the numbers and description in that letter?

Mr. Lieblich—Objected to; the paper will speak for itself.

The Court—Objection overruled.

A. Yes, sir.

Q. And are the numbers of policies mentioned in this letter, "Exhibit M. J. 2," the numbers of the policies of "Exhibits C-16—C-17"? A. Yes, sir.

Q. And "C-18"? A. Yes, sir.

Mr. Lieblich—I object; the best evidence is the exhibits themselves.

The Court—Objection overruled.

Q. Did you receive any acknowledgment from Feist & Feist agency, or any reply to your communication? A. Yes, sir.

Q. Have you that reply here? A. No, sir.

Q. Where is it? A. I don't know.

Q. Have you lost it? A. Mr. Nicholson, from time to time, has obtained papers from me, and I believe he has received it from me.

Mr. McGinnis—(Addressing Mr. Lieblich) May we use this copy? It is probably in our files.

Mr. Lieblich—I cannot consent to it if it is going to bind the defendants in any way.

Q. Did you mail this notice or communication of October 28, 1922, to Feist & Feist agency? A. Yes, sir.

Q. Postage prepaid? A. Yes, sir.

Q. Was your professional address or card on the outside of the envelope? A. Yes, sir.

Q. Was the letter ever returned? A. No, sir.

Q. Now, with reference to these other policies, what did you do with reference to policy 2829219, Colonial Fire Underwriters of the National Fire Insurance Company of Hartford, "Exhibit C-14"? A. I sent a similar notice to I. V. Doveland and Company, mentioning the policy by number.

Q. By "similar notice," you mean that you sent them word that a fire loss had occurred to the Nicholsons on October 27, 1922? A. Yes, sir.

Mr. Lieblich—Objected to; I object to the effort to use secondary evidence—upon failure of the defendant to give us notice to produce, any evidence or any notice such as this witness is attempting to testify to.

The Court—Objection overruled.

Q. And that notice, do you know when that was sent to the Doveland agency? A. It was sent the very same day and same hour when the notice was sent to Feist & Feist, and mailed by me and postage prepaid.

Q. Your professional card was on the outside of the envelope? A. Yes, sir.

Q. Was it ever returned? A. No, sir.

Mr. Lieblich—I make the same objection with respect to that notice—it is not the best evidence.

The Court—The objection will be overruled. The court can strike it all out afterwards.

Q. What did you do, if anything, with reference to proofs of loss? A. I made up the proofs of loss and persnally served them upon certain parties.

Q. Upon whom did you serve them, and when? A. On December 23, 1922, I served proof of loss on the State agent of the Colonial Fire Underwriters of the National Fire Insurance Company of Hartford.

Mr. Lieblich—I ask to have that stricken out until such time as a proper foundation is laid.

A. I served it on Mr. Alton, at 15 Clinton Street, Newark, New Jersey; he had a sign on the door.

Q. Why did you serve it on him? A. I was informed by somebody that he was a State agent; I saw his name on the door as State agent, and I asked for the State agent, and somebody sent me in the office, and he told me he was the State agent, and he said he had already received notice of the fire; that Mr. Lieblich of Paterson represented the companies, and that he was the proper party to receive the proof of loss; and I left the proof of loss with him.

Mr. Lieblich—We are entitled to head off rambling statements that are not responsive.

The Court—Objection overruled. Your objection will be noted.

Mr. Lieblich—My further objection is, that there is no proof adduced in any way to establish Mr. Alton as State agent with authority to bind these defendants.

The Court—I will let it stand.

Q. Were proofs of loss ever returned? A. No, sir.

Q. What did you do with the proof of loss with regard to the other companies? A. On the same day, December 23, 1922, I served three proofs of loss on Feist & Feist, at 738 Broad Street, Newark, New Jersey, covering the policies K-6908, Star Insurance Company of America—Policy No. 7142842 in the Scottish Union and National Assurance Company of Edinburgh, and Policy 1247847 in the Firemen's Fund Insurance Company.

Q. Those are, respectively, the "Exhibits C-16, C-17, C-18"? A. Yes, sir.

Mr. McGinnis—I call on counsel for complainants to produce those proofs of loss.

Mr. Lieblich—I have them at the office; I will send for them to bring up the Nicholson files.

Mr. McGinnis—Won't you admit those are the proofs that are offered in this case, the same proofs that were delivered to these people, as testified to by the witness?

Mr. Lieblich—The only thing I will admit is, that certain proofs are marked in evidence, and I will have them here in about five minutes.

Q. You were here at the last session of the court when they were produced? A. Yes, sir.

Q. You saw them? A. Yes, sir.

Q. Were those the proofs of loss that you served, as you have just testified? A. Yes, sir.

Q. Were those the proofs of loss that you saw them produced by Mr. Lieblich? A. Yes, sir.

Q. I ask you what you did with reference to proofs of loss of the Phoenix Assurance Company of London, "Exhibit C-15"? A. On the same day, December 23, 1922, I went to their principal place of business in New York, 100 William Street, Manhattan, New York City, and served proof of loss on the gentleman in charge of the loss department of that insurance company—at that address.

Q. And what else did you do with reference to that—did you do anything else? A. I asked him if he was the proper party to receive the proof of loss, and he said he was.

Q. And did you ever see that proof of loss again? A. Yes, sir.

Q. Where? A. The day I was in court on the trial.

Q. Produced by whom? A. Mr. Lieblich.

Q. Those proofs of loss, were they made out in due form? A. To the best of my knowledge and belief.

Q. Did I understand you to say that Phoenix Assurance Company proof of loss was produced in court? A. I think they were all here the last time.

Q. I show you a letter headed "Feist & Feist, 738 Broad Street, Newark, New Jersey," and dated "Newark, N. J., December 20, 1922," and ask you to whom that letter is addressed? A. To myself, at my office in Brooklyn, from Feist & Feist in Newark, New Jersey.

Q. Was that in response to a letter sent by you? A. Yes, sir.

Q. This you received from Feist & Feist, I believe? A. Yes, sir.

Mr. McGinnis—I offer this.

Mr. Lieblich—Let me see that before you mark it. I object to the admission of this paper. There is nothing thereon to indicate in any way that it has any connection with any of these defendants; it is immaterial and irrelevant, and furthermore, there is no proper foundation laid for the admission of that paper to bind these defendants.

The Court—Objection overruled. The Court will read it and determine whether it is material.

Marked "Exhibit M. J. 5."

Cross-Examination by Mr. Lieblich:

Q. Did I understand you to say, that at the time of the fire you had all of the Nicholson policies in your possession, referring to "Exhibits C-16, C-17, C-18, C-14, C-15" (interrupted).

Mr. Lieblich—Are these all the policies, Senator McGinnis?

Mr. McGinnis—Yes.

The Witness—I did not say so.

Q. What policies did you have in your possession at the time of this fire? A. I don't recall what I had at the time of the fire; when I sent out the notices a day or two after the fire, I was shown, or had in my possession, four policies—three of which Feist & Feist were the general agents of, and one of which I. V. Doveland was the agent.

Q. At the time of this fire did you have in your possession any of the policies of insurance, referring to "Exhibits C-14" to "C-18" inclusive? A. I am not sure.

Q. At the time of the fire did you have any policies of Nicholson in your possession? A. I am not sure.

Q. When you say you are not sure, is that your best recollection? A. Yes, sir, because I had some of them two days after the fire when I sent the notice, and I don't remember whether they were brought in to me that day, or whether they were in my files.

Q. The day you sent the notices, some policies were brought to you? A. Yes, sir, I think they were brought to me, or else I had them.

Q. If the policies were brought to you, who brought them to you? A. Mr. Alexander G. Nicholson.

Q. Had you seen Gladys Nicholson between the day of the fire and the day the policies were brought to you? A. No, sir.

Q. How long after the fire did you first see this Gladys Nicholson? A. I think it was some months after the fire.

Q. Do you recall what policies, if any, Alexander G. Nicholson brought to you two days after this fire? A. I can refresh my memory by looking at the policies, I think.

Q. I show you "Exhibits C-14," to, I think, "C-19" inclusive, and ask you to pick out the policies which were brought to you by Alexander G. Nicholson two days after the fire. A. I have not said they were brought to me; they were either brought to me, or I had them—"C-18, C-17, C-14 and C-16."

Q. Did you ever have in your possession "Exhibit C-15"? A. I don't think I ever had that in my possession.

Q. So, with respect to "Exhibit C-15," you did not write any notice on that? A. No, sir.

Q. And with respect to "Exhibit C-15," did you make up any proof of loss? A. Yes, sir, and served it on the Phoenix Assurance Company on the same day I served the other.

Mr. Lieblich—I ask to have that struck out as not responsive.

Q. (Question read.) A. Yes, sir.

Q. Before you prepared these letters which you have testified to as having written on the 28th, Mr. Moore, you read the insurance policies, didn't you?

Mr. McGinnis—Objected to as not cross-examination.

The Court—Objection overruled.

Q. How long have you been practicing law? A. About 18 years.

Q. Are you a member of the New Jersey Bar? A. No, sir, of the New York Bar.

Q. Mr. Nicholson came to you and retained you for the purpose of representing him with respect to the loss? A. Yes, sir.

Q. And you took no trouble to read over the policies? A. I did not read them before I sent out the notices.

Q. What made you send notices, then, to Feist & Feist? A. I read enough of the policies to ascertain who the agents were to whom notices should be sent—

Q. You did not observe the policy line 67 to 80, with respect to whom the notices were to be sent? A. Not specially observing any writing in there.

Q. How did you know Feist & Feist were agents? A. Mr. Nicholson told me.

Q. That was the only way you knew? A. And from some data on the policies, I believe.

Q. So you did make an examination of the policies? A. Yes, sir.

Q. Did you personally deliver the notices to Feist & Feist? A. Personally, yes, sir.

Q. Did Mr. Nicholson accompany you? A. He was in jail at the time. I went there and had the proofs signed by him.

Mr. Lieblich—Objected to as not responsive.

The Court—I will let it stand; it is by way of explanation.

Q. You received some letters from me, too? A. Plenty of them.

Q. Have you any of them here? A. They have all been turned over to Mr. Nicholson.

Q. Have you any letters that I have written to you in the file that you have with you? A. I think there are letters in this file which I just received this morning from Mr. Nicholson; there seem to be none in this package.

Q. Did I understand you to say in response to counsel's question, that one of the gentlemen upon whom you served proof of loss was in court here the last time we had a hearing? A. No, sir.

Q. Can you tell upon whom you did actually serve or deliver the proof of loss of the Firemen's Insurance Company? A. I went in the office of Feist & Feist.

Q. What are you referring to—is that some memorandum in writing, Mr. Moore? A. Yes, sir, which I made at the time of the service—the same day.

Mr. Lieblich—In response to counsel's demand, I now produce "Exhibits P. A.-2, P. A.-3, P. A.-4, P. A.-5, P. A.-6."

Mr. Ward—Do you admit those were the proofs referred to by the witness?

Mr. Lieblich—I don't know. I will ask the witness.

Q. Are these the papers that you have designated as proofs of loss (showing witness papers)? A. Yes, sir.

Q. At the time that you served or delivered these papers, referring to "Exhibits P. A. 2, P. A. 3, P. A. 4, P. A. 5, P. A. 6," inclusive, you knew that I was representing these companies? A. I don't recall that I did at that time.

Q. Do you recall when it was that you served these papers? A. On December 23, 1922.

Q. Had you received any letters from me prior to that date? A. I don't recall.

Q. There is no question in your mind but that you actually delivered those papers on December 23rd? A. I personally did it.

Q. 1922? A. Yes, sir, two days before Christmas. I made a note of the service on my envelope at the time of it.

Q. Do you know Effingham L. Hollywell? A. Yes, sir.

Q. What relation, if any, does he bear to the Nicholsons in this case? A. I understand he is the attorney now for Gladys Nicholson.

Q. Was he the attorney for her at the time that you—

Mr. McGinnis—We object to that.

Q. Was he the attorney for Gladys Nicholson at the time that you say you served the proof of loss December 23, 1922? A. No, sir.

Q. I understand he is the attorney for her now? A. Yes, sir.

The Court—Strike that out.

Q. Were you the attorney for Gladys Nicholson and Alexander Nicholson on December 23, 1922? A. Yes, sir.

Q. You were? A. I drew up the power of attorney and had her sign it in Denver, which is here in court. She lived with her aunt in Denver, and I sent a power of attorney out there and had it signed.

Q. Do you know how long after December 23, 1922, you continued as the attorney for Gladys Nicholson? A. I don't recall how long.

Q. Would you say it was a week, a month, a day or a year? A. I would say that I was never discharged—

Q. You don't know when Mr. Hollywell was retained, if at any time, by Gladys Nicholson? A. I don't know exactly when he was retained.

Q. I show you this paper and ask you if you have seen the signature before?

Mr. McGinnis—Show him the whole paper.

The Court—I think I will let him show him the signature.

Mr. McGinnis—He has folded down the whole letter, so that nothing but the signature shows. I further object on the ground that it is not cross-examination.

The Court—I don't think it is cross-examination.

Mr. Lieblich—It is to affect his credibility.

A. I may have seen the signature; I would not swear whether it is a genuine signature or not; it says "Gladys T. Nicholson."

Q. You say you have never seen that signature before? A. I don't know.

Q. You cannot identify the signature? A. No, sir.

Mr. McGinnis—I want that marked for identification.

The Court—It will be marked for identification.

Marked "Exhibit M. J. L. 6 for identification."

Q. Have you at any time had any conversation with anyone from any of these companies, with the exception of myself? A. Well, I have had conversations with various men who were in the offices of the companies where I called on them.

Q. With whom did you have conversations? A. When I went to the office of Feist & Feist, I tried to ascertain if I was serving the proof of loss on the proper parties, and I talked to Mr. Alton, who said he was the State agent of one of the companies.

Q. With the exception of Mr. Alton, have you spoken to anyone else? A. Yes, sir, I spoke to two or three people in the office of Feist & Feist, and with somebody connected with I. V. Doveland in New York; I spoke to somebody connected with this other insurance company on William Street.

Q. Did you speak to any of the companies' agents themselves? A. In the office of the Phoenix Assurance Company I did, and was directed back to the loss department, and they pointed out the correct man to serve with the loss; they tell you where to go and whom to see and whom you can see.

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

The Court—It is explanatory. I will allow it.

A. I went to other people in New York, and they told me they were not the proper people; that I should go to Feist & Feist.

Mr. Lieblich—I move it all be struck out until such time as a proper foundation can be laid to charge any of these people with being agents of these defendants, and until such time as this witness fixes definitely the names of these people whom he saw.

The Court—The solicitor must develop this line of testimony by his questions, and it will not be struck out.

Q. Have you the proofs of loss; have you any letters acknowledging the receipt of any of these papers, referring to "Exhibits C. A. 2 to C. A. 6" inclusive? A. I don't know, because I turned over all my papers to Mr. Nicholson to give to his New Jersey attorney.

Q. You would remember if you had received any, wouldn't you, Mr. Moore? A. I received very many letters, Mr. Lieblich; I must have had 100 altogether. The letters from Mr. Lieblich would be the best evidence; he called on me personally and said he had the proofs of loss.

By the Court:

Q. Did you ever have any adjustment on any of these policies? A. No, sir.

Q. Your official step was to send them to Feist & Feist? A. Three I served on Feist & Feist, one at 100 William Street, and the other on the Alton State agent, 15 Clinton Street, Newark, New Jersey; I left them there.

Q. You left them there? A. Yes, sir.

Q. How long did you have charge of this transaction for Mr. Nicholson and his daughter? A. For several months thereafter I was back and forth with Mr. Lieblich.

Q. And the correspondence was all turned over to Ward & McGinnis? A. Yes, sir.

Q. Mr. Lieblich held himself out to be what? A. He said he was the attorney of the company and represented them in this loss.

Q. Did he suggest anything to you about a settlement? A. He talked of possibility of settlement in an indefinite way.

Further Cross:

Q. Did Mr. Lieblich ever make any distinct offer of settlement? A. No, sir.

Q. As a matter of fact, my visit to you was more of a cordial one at the time I had business in Brooklyn? A. I had never seen you before, and you had no other cause to come to see me except in regard to this insurance.

Q. Maybe I wanted to get acquainted with you.

Mr. McGinnis—I call for a letter, addressed by Mr. Moore, the witness, dated December 18, and addressed to Joseph T. Lieblich, 1922.

The Court—Have you got it, Mr. Lieblich?

The Witness—I just want to say, that in one way and another, I dropped out of the case actively; as I was originally in it, I had a power of attorney signed by Miss Nicholson in favor of her father, which I had prepared, and sent on. Later I got word from Mr. Hollywell that he was her attorney.

Re-direct Examination by Mr. McGinnis:

Q. I show you a paper, purporting to be a power of attorney from Gladys Nicholson; did you ever see that paper before? A. Yes, sir, I prepared that paper and forwarded it to her for her signature, and it came back to me in its present form, acknowledged with the proper County Clerk's certificate on it, and under authority of that I proceeded to prepare the proofs of loss, dated December 12, 1922, and proofs of loss were served December 23.

Mr. Lieblich—I think this witness is subject to the restrictions of this court—he should not be permitted to read from a paper which is not in evidence.

Mr. McGinnis—I now offer this power of attorney in evidence.

Mr. Lieblich—I object to the offer, first, upon the ground that the paper has not been properly proven.

The Court—He said he drafted it himself—sent it on to Miss Nicholson—she returned it in its present form. I will receive it and note your objection to it.

Mr. Lieblich—If it is offered for the purpose of binding any of these defendants, or permitting Alexander G. Nicholson to act under a power of attorney on behalf of Gladys Nicholson, it is not in compliance with policy conditions.

Marked "Exhibit A. B. C. 1."

Q. I show you a letter from Joseph T. Lieblich to you, under date of December 19, in which he acknowledges the receipt of a letter of yours of the 18th, and I ask you if you know what the contents of the letter of December 18, 1922 to Mr. Lieblich, were?

Mr. Lieblich—Objected to.

By the Court:

Q. Did you receive that letter? A. Yes, sir.

Mr. Lieblich—I object to the question as propounded.

Q. And was it in reply to the letter you wrote? A. Yes, sir.

The Court—Offer it in evidence.

Mr. McGinnis—I offer this letter in evidence.

Marked "Exhibit A. B. C. 2."

(Mr. McGinnis reads "Exhibit A. B. C. 2.")

Further Re-direct:

Q. The letter referred to as coming from you on December 18, I ask you if you have a copy of that letter in your possession here? A. It may be in court here with all the papers I turned over.

Q. Do you know what the contents of that letter of December 18 were?

The Court—Have you got it, Senator?

Mr. McGinnis—No, sir.

By the Court:

Q. Have you searched your files for it, Mr. Moore? A. Yes, sir.

Q. And you cannot find it? A. No, sir.

Q. Can you state to us what the contents of that letter of December 18, 1922, to Mr. Lieblich, were?

Mr. Lieblich—I object; I have not been served with notice to produce that letter.

The Court—What does that letter reply to? It is secondary evidence, of course, but he says he cannot find it in his files.

Mr. Lieblich—I say, if a reasonable opportunity is given to me to produce it, perhaps I shall find it.

Mr. McGinnis—Will your Honor receive it, subject to Mr. Lieblich's producing it?

Mr. Lieblich—I may find it.

The Court—All right.

Mr. Lieblich—What do you want? December 18?

Mr. McGinnis—Yes. From Mr. Moore.

Mr. Lieblich—In response to the oral notice to produce in court, I produce letter of William Martin Moore, dated December 18, 1922.

Q. I show you letter on your stationery, December 18, 1922, addressed to Joseph Lieblich; is that the letter of December 18, to which Mr. Lieblich wrote you on December 19, as shown by "Exhibit A. B. C. 2"? A. Yes, sir.

Mr. McGinnis—Offered in evidence.

Marked "Exhibit A. B. C. 3." (Mr. McGinnis reads "A. B. C. 3.")

The Witness—I do not claim to be attorney for Miss Nicholson; in one way or another I was discharged either by her or by Mr. Hollywell.

Mr. McGinnis—I have offered the power of attorney, but it is not marked. Will you mark it, Mr. Roberts?

Marked "Exhibit A. B. C. 6½" (power of attorney).

CHARLES WILLIAMS, being duly sworn, testified as follows:

Direct Examination by Mr. Ward:

Q. Where do you live? A. 75 Parkville Avenue, Brooklyn.

Q. What is your business? A. I am a plumbing and heating contractor.

Q. How many years have you been such? A. 35 years.

Q. Do you know the building commonly known as the Jacobson Mansion over near Hackensack, New Jersey, belonging to Mr. Nicholson? A. Yes, sir.

Q. It was afterwards destroyed by fire? A. Yes, sir.

Q. Did you ever do any work there in any place? A. Yes, sir.

Q. When? A. I could not give you the dates but I did work there for Dr. Snyder, and also for Mr. Nicholson.

Q. Keeping in mind that the fire was on October 27, 1922, how long before that date did you first do any plumbing or heating work in that building? A. About three years before that fire, when Dr. Snyder first bought the property.

Q. Do you recall what you did? A. Yes, sir.

Q. Tell us substantially what it was that you did? A. I was called on by Dr. Snyder to go and look over the place, and I don't remember whether he told me to go on with the work or not; I don't think he did. But afterwards I heard that Nicholson bought the place; and Mr. Nicholson sent for me or came for me to do some repairs for him over there, and I had known him for years, and I did these repairs; that was when Mr. Nicholson first bought the property.

Q. Do you remember what repairs you did? A. Yes, sir, repairing supply lines in the laundry and kitchen, and minor repairs through the bathroom and throughout the whole building.

Q. Did you do the work? A. Yes, sir.

Q. Did he pay you? A. Some.

Q. How much does he owe you? A. I would not consider he owed me anything, because we were friends, and I did it anyway; I did not charge the bill up.

Q. How much would it have been? A. I guess I spent two weeks there, or ten days, and stayed there over night and helped to get the thing in working order—

Q. How much? A. I don't know the amount of money I got from Mr. Nicholson; it was a small job; it was ordinary repairs.

Q. Having in mind the date of the fire, when did you last either do the work or observe the plumbing and heating conditions in that house? A. Well, I should judge it was about, to the best of my recollection—Dr. Snyder sent me over on another proposition, to look at the house next door.

Q. Answer my question, and tell us the last time

before the fire that you either worked in that place, or observed the plumbing and heating conditions. A. The last time before the fire, I should judge was about three months.

Q. With that in mind, can you tell us what was the condition of the plumbing and the heating thruout that building the last time you saw it and which you have fixed as about three months before the fire?

Mr. Lieblich—Objected to. No proper foundation has been laid as to the proper qualifications of the witness, and no proper foundation has been laid for the question.

Q. How long have you been a plumber? A. 35 or 40 years. I did not enter the building at the time I went over; I met Mr. Nicholson at another house.

Q. What was the last time you did observe the plumbing in that building or do any work, and under "plumbing" I include heating, of course, and piping of all kinds that a plumber would do? A. To the best of my recollection, it was about four months before the fire.

Q. What was the condition of the plumbing and heating in that building when you last saw it, and which you fix as about four months before the fire?

Mr. Lieblich—I object. First of all, upon the ground that that is too remote from the time of the fire; the conditions may have changed considerably; and there is no foundation laid for this witness' testimony with regard to the condition of the premises.

The Court—Objection overruled.

A. The condition, as I remember it, was perfect, with the exception of one closet, one closet, one water closet, and Mr. Nicholson was to furnish that water closet—one end was broken.

Q. Was it a good type of plumbing? A. First class.

Q. Was it what we speak of as modern plumbing? A. It was exceedingly good; it was Mott's material.

Q. What was the standing of Mott's plumbing in the trade? A. First class.

Q. From your examination of the plumbing in that building four months or thereabouts before this fire, could you say what the value of that plumbing was?

Mr. Lieblich—I make the same objection: first of all upon the ground that this witness has not been properly proved qualified to testify.

By the Court:

Q. Have you ever estimated the value of plumbing? A. Yes, sir, I have estimated the value of plumbing in various schools; I completed five schools in New York.

Mr. Lieblich—May I examine him as to his qualifications?

The Court—Yes.

Cross-Examination by Mr. Lieblich:

Q. Mr. Williams, did you make an examination of this plumbing in this Nicholson house on this

occasion of your visit four months prior to the fire? A. Yes, sir.

Q. Did you get all through it? A. Yes, sir.

Q. From top to bottom? A. Yes, sir.

Q. It was all open plumbing? A. No, sir, I cannot say it was.

Q. How did you examine it if it was not open? A. I can tell a job when I look at it.

Q. You cannot tell what its actual condition may have been under the floors? A. I positively can.

Q. Did you break open any walls anywhere? A. Yes, sir, several places were broken open; there were numerous walls broken open and the pipes were exposed.

Mr. McGinnis—May I object on the ground that this is not ascertaining the witness' ability to testify on the subject matter. This is really a matter that should be matter of general—

The Court—Objection overruled—I will allow it. You may note an objection.

Q. In how many places, Mr. Williams, were the walls broken open and the pipes exposed so that you could look at them? A. I could see it in the butler's pantry; I could see the vent lines; it was a small hole under the pantry sink; and everything was right up to the minute; and I saw a couple of the bathrooms; the plaster had to be fixed; and I saw the top floor in the tank room; I could see it was all first class work.

Re-direct Examination by Mr. McGinnis:

Q. What, in your opinion, was the value of that plumbing and heating work about four months before the fire? A. If I had to figure on the work, I woud figure approximately everything considered, $500.00 a plumbing fixture.

Q. How many fixtures in the building?

Mr. Lieblich—This witness' testimony as I see it, is predicated upon other conditioins than those which actually existed there.

Q. What did you figure it at? A. $500.00 a fixture as it stood.

Q. How many fixtures were there in the building? A. There were eleven, I think.

Q. $5500.00? A. Yes, sir.

Q. Add the value of the heating to that. A. I looked it over and examined it.

Q. Who put the plant in? A. I don't know.

Q. Was it a big boiler? A. It was a sectional boiler—apparently in good condition.

Q. About what was that heating plant worth? A. You charge two dollars a foot, and there were 2,000 feet.

Q. Does that include the boiler? A. Yes, sir, covering boiler and radiators and pipes, footings, and valves and labor.

Q. What about the gas fixtures and piping? A. All I saw is the piping.

Q. What was the value of the piping? A. To install that gas fitting, and then it would be worth four dollars an outlet, that, approximately, I would figure it worth $1,000.

Q. You then total $10,500 as the fair value of that heating and lighting and plumbing? A. Yes, sir.

Q. Now, you were asked something about whether you could observe any of this plumbing—the plumbing of the cellar was all open, the piping and connections? A. Yes, sir.

Q. You could see the steam risers? A. Yes, sir.

Re-cross Examination by Mr. Lieblich:

Q. How long have you known Mr. Nicholson? A. About 18 years.

Q. You and he are very friendly? A. Not very.

Q. Nicholson asked you to come out? A. He subpoenaed me.

Q. Where did he get you? A. He came to my house in Brooklyn with a subpoena.

Q. Didn't you know that subpoena was not any good in New York. A. No, sir, but I would come anyhow.

Q. Because Mr. Nicholson asked you to? A. No, sir, because I feel that way.

Q. Let me see the subpoena which was served on you.

Mr. Lieblich—I ask to have it marked for identification.

Marked "Exhibit M. J. 6½."

Q. How many visits did you make all together to this Jacobson Mansion in Hackensack? A. Four times.

Q. And I understand you to say the first time

you made a visit when Dr. Snyder bought it? A. Yes, sir, he sent me over there.

Q. And that was about four years before the fire? A. Yes, sir.

Q. When, after that, did you learn that Dr. Snyder was about to sell that house to Nicholson? A. Dr. Snyder offered me the proposition of buying that house; I did not care for it; and the next I heard was, that he had sold it to Mr. Nicholson.

Q. What proposition, if any, did Dr. Snyder offer you? A. He told me to go over and look at it and see if I cared for it, and I said "No;" he told me to "go and look at it and see how you like it."

Q. Did he tell you how much he wanted for it? A. No, sir.

Q. Were you interested in buying it? A. No, sir.

Q. But you did go over to look at it? A. I was working for him, and he paid me for going over to look at it, and I looked at the house next door that he owns.

Q. How much has Nicholson given you for coming over here? A. I don't want anything.

Q. He did not give you anything? A. No, sir, and I don't think I will let him do so.

Q. He never paid you anything for doing this plumbing work. Yes, sir, he paid for one week.

Q. How much did he pay you? A. I think he had $15.00 in his pocket that night; I did it as a friend.

Q. For all this work you have done, he has never paid you, has he? A. There is not much work I did for him—just a few leaks.

Q. Didn't you work two weeks on it? A. Yes, sir.

Q. Did you come there to live with Nicholson for two weeks? A. No, sir.

By the Court:

Q. Was he broke then? A. Yes, sir.

Q. You did not get any money? A. No, sir.

Further Re-cross:

Q. And you received nothing for coming over here today? A. No, sir.

Q. And you don't intend to receive anything? A. No, sir.

Q. When you made this appraisement of the plumbing work, how much time did you spend on that? A. I had to go from one place to the other to see what repairs were wanted, and make an approximate figure on any job I could do at any time—

Q. How much time did you actually spend making this appraisement? A. All I have to do is to look at the job for half a day, and I know what the job is worth and I know what it ought to cost.

Q. Tell us just about how long it took you to look over this thing? A. It would take me half a day to look over the house to see what was wanted.

Q. Did you go from top to bottom? A. Yes, sir.

Q. In the cellar did you observe the plaster down? A. I did not bother with that; I was only looking at the plumbing and heating; you had to see the vent lines in the wall, and how the fittings were—

Q. Were there any pipes in the cellar that you had to look at in order to make this appraisement?

A. All the pipes in all buildings have to pass through the cellar.

Q. Did you observe part of the plaster broken away so that you could see the pipes in the cellar? A. Yes, sir.

Q. How long ago would you say that plumbing was done? A. I think that plumbing was done—it was done when they first started to install enamel iron tubs; that would be about twenty years ago.

JOSEPH CROCE, being duly sworn, testified as follows:

Direct Examination by Mr. Ward:

Q. What is your business? A. Painter and decorator, and contractor.

Q. How long have you been doing that? A. Fifteen years in this country.

Q. What experience have you had—have you ever painted any place? A. Lots of places.

Q. Have you decorated any? A. I decorated 1900 houses in Brooklyn.

Q. Do you come from Brooklyn? A. Yes, sir.

Q. Have you also painted houses? A. Yes, sir.

Q. Now, are you familiar with the Jacobson Mansion owned by Miss Nicholson? A. Yes, sir.

Q. Did you do any work there? A. Yes, sir

Q. When did you do it? A. I did some between July and September, 1922.

Q. You were familiar with the house itself? A. Yes, sir.

Q. And do you remember going through the house from the top down to the bottom? A. Yes,

Q. Did you or not, decorate the property at the time or shortly after you went through it? A. I did some decorating.

Q. What did you do there? A. I did eight bedrooms; I did the big main hall and the billiard room downstairs.

Q. What was the character of the work you did there? A. I scraped all the paper and burned all the woodwork, and replastered all the cracks that were hanging on the walls, and new paper—about $2.80 a single roll; and woodwork; with four coats of paint, all the way through, with enamel, four coats.

Q. What was the cost of the work that was done by you on this house, or in this house? A. $1600.

Q. And what was the condition of the house with reference to the decorating and painting, after you had finished your work? A. First class; and I did some work outside, also.

Q. What work did you do outside? A. I started outside and did two or three hundred dollars' worth of work outside—painting on the outside of the house.

Q. Was that aside from the $1600.00? A. That was in the $1600.00.

Cross-examination by Mr. Lieblich:

Q. Did you finish the work on it, Mr. Croce? A. Yes, sir.

Q. And you were paid up? A. Yes, sir.

Q. How did he pay you? A. Cash.

Q. Did he give you $1600.00 at once? A. No, sir, he paid me money every week; I had to get money every week to buy material and to pay my men.

Q. How much did he give you every week? A. The first week I did not get anything; the second week he gave me $200.00—that week he gave me $200.00.

Q. It took you how long to complete this work? A. Four five weeks.

Q. Did he buy the supplies for you, or did you buy the material? A. I bought them.

Q. Where did you buy them? A. Direct from a factory in Brooklyn.

Q. How did you get them over to Hackensack? A. He sent it himself to me; he shipped it; I know a truck came there, and then I got the stuff.

Q. Where did you buy that stuff? A. At Payson Varnish Company.

Q. Where is that? A. 144th Street, New York.

Q. East or West. A. East, I think.

Q. Have you ever been there? A. No, sir, I have never been there.

Q. The salesman came to you in Hackensack and you gave the order? A. I did not say that; I said the salesman came to my house.

Q. Where did you live? A. 4420 16th Avenue, Brooklyn; the salesman came to my house in the daytime and was there every week selling stuff.

Q. When did he find you home? A. In the evening and Sundays.

Q. Do you remember when it was that you gave him an order for the stuff for the Nicholson job? A. I cannot remember the exact date—oh, in July, at the end of July, 1922.

Q. And when did you intend to start to work on the Nicholson job? A. The next week; I said I wanted the stuff hurried over; I started there on a Monday to scrape off all the paper, with five men that I had there.

Q. You started in August to do the work? A. Yes, sir.

Q. What are the names of the five men you had working for you? A. I don't remember all their names; I remember three names. Do you want their names?

Q. Yes. A. Jimmie Lostri.

Q. Where does he live at the present time? A. 185 20th Street, Brooklyn.

Q. Did your brother work for you? A. Yes, sir.

Q. What is his name? A. Vinceni Croce; he lives at 193 Eighth Street, Brooklyn.

Q. Who was the next one you had working for you? A. The next one was a man named Angelo; I don't remember his second name, and I don't remember where he lived.

Q. Had you been in the painting contracting business before this Nicholson job? A. Yes, sir, for fifteen years.

Q. Did you ever have any of these men working for you before? A. Yes, sir.

Q. How long had they been working for you before? A. Different times.

Q. These five men you had on the Nicholson job, were they new help? A. Yes, sir.

Q. And your brother was also a new man? A. No, sir, three men were old help and two were new help.

Q. So that your brother Vinceni and Jimmie Lostri were old help? A. Yes, sir.

Q. How long had they worked for you? At the time of this Nicholson job how long before that had your brother worked for you? A. About six or seven years.

Q. And Jimmie? A. About three years before that time.

Q. Now, this salesman came to see you and you told him to rush it; what was the name of the salesman? A. Irving Wiseman.

Q. Where does Irving Wiseman live at the present time? A. Bath Beach, Brooklyn.

Q. He worked for what concern? A. At that time he worked at a place, at a paint and varnish company's place.

Q. Did you give this paste and varnish company an order for materials? A. No, sir, I bought white lead and enamel and varnish from them.

Q. And do you remember how much you bought of white lead? A. $200.00 worth of white lead.

Q. How many pounds of white lead would that be? A. I cannot remember.

Q. Don't you know how much white lead you figured on? A. I remember I got the $1600.00; I don't remember how much white lead I got; I bought $200 worth of white lead.

Q. How much is white lead a pound? A. At that time it was 9 cents a pound.

Q. When you took the job? A. Yes, sir.

Q. How much is white lead today? A. 15 cents and 16 cents.

Q. How much enamel did you buy? A. I bought about 25 gallons of enamel.

Q. How much varnish did you buy from the paint and varnish company—ten gallons? A. That was all on one order.

Q. You gave the order in writing? A. No, sir, he wrote it out.

Q. And you told him where to deliver it? A. Yes, sir.

Q. And did you tell him how to deliver it? A. No, sir.

Q. They had their own trucks? A. Yes, sir.

Q. Did they bring it in their own trucks to Hackensack? A. I did not see the truck; Mr. Nicholson signed for me, I suppose; I know I got the stuff the next morning.

Q. What else did you have to buy for the Nicholson job? A. Paper and plaster and shellac.

Q. Did you buy the paper? A. (No answer).

AFTER RECESS

JOSEPH CROCE resumes the witness stand.

Cross-examination (cont'd) by Mr. Lieblich

Q. Did you buy the paper? A. I did not buy all the paper.

Q. Did you buy any wall paper? A. Yes, sir..

Q. Where did you buy the wall paper that cost you $2.80 a single roll? A. I did not buy the paper; I said the paper in the hall cost me $2.80; I did not say I bought it.

What do you mean when you say it cost you $2.80 a single roll? A. Because that paper cost $2.80 a single roll.

Q. You did not buy it? A. No, sir.

Q. How do you know what it cost? A. The price is marked on the back of the paper.

Q. Do you know who bought it? A. Mr. Nicholson bought it; that is the main hall paper. I bought the bedroom paper.

Q. You don't know what Mr. Nicholson may have paid for this paper which you say cost $2.80 a single roll? A. No, sir.

Q. It may have cost more, and it may have cost less? A. It cannot be.

Q. Mr. Nicholson may have paid more and may have paid less? A. Yes, sir.

Q. Did you buy any wall paper yourself? A. Yes, sir.

Q. What kind of paper, did you buy? A. Bedroom paper.

Q. From whom did you buy it? A. At a place on 13th Avenue, Brooklyn; I don't know the name.

Q. Whereabouts on 13th Avenue, Brooklyn? A. Brooklyn.

Q. Near what street? A. Corner of 45th Street at that time.

Q. Was there a paper supplied from there? A. Yes, sir.

Q. Do you know the fellow's first name? A. No, sir.

Q. Do you know his last name? A. No, sir.

Q. Did you live in close proximity in the neighborhood of that store? A. Yes, sir.

Q. And you did considerable business with this wall paper man? A. I went there before; at that time I bought the paper there.

Q. You bought the paper there for how many rooms? A. Eight rooms.

Q. And how big were these rooms? A. I did not measure that room; it was a big room.

Q. How did you know how much paper you needed if you did not measure it? A. I figured out how many lengths I needed.

Q. How many lengths of paper did you figure you needed for each room? A. I don't remember.

Q. What is your best recollection? A. About 16 rolls, I think, for each room.

Q. Single rolls or double rolls? A. Single rolls.

Q. How big were those rooms with respect to the size of this court room? A. About one-half.

Q. You bought 16 rolls? A. 16 or 18.

Q. What else did you buy besides the paper, the varnish and the enamel? A. I bought plaster and shellac and sizing.

Q. How much plaster did you buy? A. I don't remember.

Q. There were a good many holes to be fixed up in this building? A. Not many holes.

Q. How many pounds of plaster did you buy? A. About 30 or 35 pounds.

Q. Where did you buy this plaster? A. Down in Hackensack City.

Q. Where did you buy the sizing? A. In Hackensack, at the same place.

Q. Was the sizing delivered on the job for you? A. I brought it up myself, and the plaster I brought up, too, at different times.

Q. How long did it take you to do this job, after you started in the early part of August, 1927? A. Five or six weeks.

Q. It did not take you over six weeks? A. I don't remember.

Q. Who paid for this material, you or Mr. Nicholson? A. For the sizing, do you mean?

Q. Yes. A. I paid.

Q. Who paid for the wall paper? A. I paid for the bedroom paper.

Q. Did you carry the paper out yourself from Brooklyn? A. Little by little, yes.

Q. When did you start your papering—was it the first week you were on this job? A. No, sir

Q. Was it the second week? A. The second week or third week, I scraped off the paper.

Q. When you bought this paper did you pay cash for it? A. Always cash.

Q. With respect to the varnish, did you bring it out yourself,—the varnish? A. No, sir.

Q. When you started this job in the early part of August did you and your five men live in Hackensack, or did you go back and forth to Brooklyn? A. Every night I went to Brooklyn, and the men, also; nobody stayed over in Hackensack on my account.

Q. Did any of these men help you bring out any of the material from New York? A. My brother did.

Q. And you were out every day? A. Yes, sir.

Q. How did Nicholson pay you? A. Cash.

Q. When did he generally pay you? A. Fridays, Saturdays, Mondays or Tuesdays; when I would ask for it he would give it to me the next day.

Q. How much did he give you all together; how much cash all together did Nicholson give you? A. $1600.00 cash money.

Q. Did you keep a record of what he gave you? A. No, sir.

Q. What did you do with the $1600.00? A. I bought materials and I paid my men.

Q. Didn't you get anything for yourself? A. Yes, sir.

By the Court:

Q. What was the profit on the job? A. I cannot remember just now.

Q. Cannot you remember? A. $275.00 or $300.00.

Q. What did you do with that, did you put it in a bank? A. No, sir.

Further Cross:

Q. Did you have a bank account at that time? A. No, sir.

Q. Have you a bank account now? A. Yes, sir.

Q. Now you pay by checks? A. Yes, sir.

Q. What did you do to the outside of the building? A. I started painting the outside of the building, and I did not finish.

Q. At the time of the fire did you have your varnishes removed? A. I did not have anything in the house at all when I started to work.

Q. How long before the fire did you finish your work? A. I finished in September—the first week of September.

Q. How much, if anything, did Nicholson agree to pay you for coming out here today? A. Oh, five dollars; he gave me a subpoena the other day and five dollars.

Q. You were here in court before, were you not, the last time this trial was on? A. No, sir, this is the first time.

Q. Before you came here you talked to Nicholson about this case? A. No, sir.

Q. Did you talk to Messrs. Ward and McGinnis, or either one? A. No, sir.

Q. Nobody told you what you were going to say when you came here?

Mr. Ward—Objected to—that calls for a conclusion.

Q. Did you ever discuss this matter with Nicholson before you came to court to testify; did you ever discuss this matter you are testifying about with Mr. Nicholson? A. No, sir.

Q. Did you talk to Mr. Moore, the Brooklyn lawyer?

The Court—Of course, they talked it over.

ALEXANDER G. NICHOLSON recalled.

Direct Examination by Mr. Ward:

Mr. Ward—Your Honor will recall the time of the first hearing, that Mr. Nicholson did not remember definitely the furniture that was in the property or upon the property at the time to go over it carefully so that he might give a detailed list, and he is ready to give it now.

Q. How many bedrooms were furnished in that house? A. There were eight bedrooms furnished.

Q. How were they furnished? A. There were six of them furnished with enamel iron beds, brass beds.

The Court—You went all over this before.
The Witness—The court is right, I did.

Q. Have you a written statement made out? A. Yes, sir.

Q. Have you got it here? A. It is in my brief case—as best I could enumerate it.

Q. Have you made up a list of that furniture? A. Yes, sir.

Q. From the list you have made up, can you compute the value of the furniture in that house? A. As nearly as I can.

Q. All right; how much, as nearly as you can.

Mr. Lieblich—Let me examine the list.

By the Court:

Q. Was the furniture insured? A. Yes, sir.

Q. Was there a separate policy on it? A. Yes, sir, for $3500.00—the billiard table was specially mentioned, and I think, if you will look at the policy, the form of the policy, in the Colonial policy of Hartford, I think that there in the form of the policy you will find it mentions a billiard and pool table, combination Griffith's billiard and pool table.

Mr. Lieblich—This paper to which counsel has directed your attention is a typewritten paper, consisting of three sheets?

The Witness—Yes, sir.

Cross-examination by Mr. Lieblich:

Q. Did you type this yourself? A. No, sir.

Q. This was made and prepared since you were last in court? A. Yes, sir, it was.

Q. And was this typed from some original paper in your handwriting? A. Some of it was, and some of it was not; I have an original paper, counsellor, that I sent you a list from Hackensack Jail when I was incarcerated there, and some small pieces of that I found, but I could not find it all.

Mr. Lieblich—I object to it.

By the Court:

Q. When was it made? A. A few days ago.

The Court—I will allow it, for the purpose of refreshing his recollection.

Mr. Lieblich—The rule is, that a witness can only use anything for refreshing his recollection if it was made at the particular time.

Further Direct:

Q. From the thought you have given this matter, and from the list that you made out the other day, based upon the thought and consideration you have given it, can you state how much the furniture, in your opinion, was worth at the time of the fire?

Mr. Lieblich—I object on the ground, first, that this witness has not been qualified as an expert to testify to value.

The Court—It is self-serving.

Mr. Ward—That was all gone into at the time Mr. Nicholson testified, in a general way.

The Court—All he can do about the thing is to refresh his recollection. He can go over this item by item, and that is the way you can get it in. He can say, "I paid John Smith so much for this chair," and so on. Do you want to do that? It will prolong the case considerably?

Mr. Ward—Your Honor will recall, that at the first hearing, Mr. Lieblich, counsel for the complainant, raised the same objection at

that time. Mr. Nicholson qualified as a person who appraised losses on furniture, and he qualified at that time.

The Court—What page is that on?

Mr. Ward—Page 78.

The Court—He did qualify to some extent, Mr. Lieblich, on furniture; he said he appraised a lot of furniture.

By the Court:

Q. Refreshing your recollection by this list, were all those things in your house? A. Yes, sir, they were.

Q. You have made a list lately? A. Yes, sir.

Q. From that list can you tell us now what the furniture was in that house, without referring to the list? A. Nearly.

Q. Tell us what it was; did you have a parlor in the house? A. Yes, sir.

Q. Do you remember what was in the parlor? A. Yes, sir.

Q. Did you buy all the furniture in the house? A. No, sir, and some of it came with the house in exchange of property.

Q. What was the value of that furniture, in your opinion? A. The value was over $4,000.

Mr. Lieblich—The policy provides for cash value, which is whatever he may have paid for it, less the depreciation.

The Court—I will allow the question.

A. About $4500.00 on what I listed, but I have not listed any of my own wardrobe; 4500 would be the value.

Cross-exmination by Mr. Lieblich:

Q. This $4500.00 which you have testified to; how much of it was in the building at the time you acquired it from Dr. Snyder? A. The billiard table was there and the safe.

Q. The billiard table was $700.00? A. That is the price Dr. Snyder put upon it.

Q. How much was the safe? $75.00(?) A. $7500.00.

Q. Where did the rest of the furniture come from comprising this $4500.00? A. I bought some from Mr. Charles Mackay in Hackensack.

Q. How much did you buy from Senator Mackay's brother? A. I couldn't tell you that; I bought different things at different times, and I never kept bills of them.

Q. Did you pay him cash? A. Yes, sir.

Q. Mr. Mackay runs a second-hand store? A. And a new store, also.

Q. Was it all new? A. No, sir, some was second-hand.

Q. Did you yourself buy all the rest of these items which you say comprised the $4500.00? A. No, sir; I did not; a vast amount of expensive stuff was left to me by my sister to present to my daughter as a wedding present; some very expensive patchwork, and lace work; she was a lace maker, and she left this stuff with me to present to my daughter.

Q. You have not made any presentation to your daughter as yet? A. No, sir.

Q. The time had not arrived yet? A. No, sir, she is not married yet.

Q. When your sister gave you this property for

your daughter to present to her as a wedding gift, did she put that in writing? A. No, sir.

Q. Which sister are you referring to? A. Mary T. Ward, the only sister I ever had; she was in Rupert, Idaho, at that time.

Q. That is the same Mary Ward who held the title to the property in Brooklyn? A. Yes, sir.

Q. And is the same lady who, at your request, conveyed the Brooklyn property to Mrs. Snyder? A. Yes, sir.

Mr. Lieblich—I will now make him my own witness.

Q. I show you this paper and ask you whether that is your signature thereon? A. That is my signature.

Mr. Lieblich—I offer the letter in evidence. Marked "Exhibit M. J. L. 7½."

Mr. Ward—I object to it on the ground that it is irrelevant.

Q. Did you, in the month of December, 1922, retain Melosh, Morten and Melosh, of Jersey City, as your attorneys?

Mr. Ward—Objected to as irrelevant and immaterial.

The Court—Objection overruled.

A. No, sir.

Q. Did you ever retain Melosh, Morten and Melosh to represent you in this matter? A. I went to Mr. Morten with a recommendation from a man

in Brooklyn, but I did not know that he was going to write any letters, because I said to him, "It is my daughter was the owner," and I had not arranged what counsel we were to have in New Jersey—and I went to Melosh, Morten and Melosh.

Q. When was that? A. I cannot state.

Q. Do you know whether Melosh, Morten and Melosh had any correspondence with me with respect to this loss? A. I will take it for granted they did, because I got some letters from you.

Q. Will you admit that in Decembers? A. No, sir, not in December; that is when I was in jail, 1922; I was in the jail at Hackensack at that time; you had me in jail at that time.

The Court—Strike the last part of that testimony out.

Q. Did you retain Melosh, Morten and Melosh in March, 1923? A. I did not retain them at all; I went and talked to Mr. Morten, and why he took it upon himself to write letters, I don't know; I did not know they were going to write any letters.

Mr. Lieblich—Will you admit the signature of Melosh, Morten and Melosh?

Mr. Ward—We will admit nothing. We will follow your example, and admit nothing.

Q. Now, with respect to the $4500.00 of furniture, of which you say $700.00 was a pool table, how much was the safe that was left there by Dr. Snyder? A. I only listed it for $35.00 in this list.

Q. Aside from the pool table, the safe,—the property which was entrusted to you to be given to

your daughter upon your daughter's marriage, what other property did you have there? A. Shall I enumerate it.

Q. Yes. I have enumerated the beds already.

Q. Did you buy those beds yourself? A. Some of them I did.

Q. And you paid for them yourself? A. Yes, sir.

Q. Did you get a bill of sale for them? A. No, sir.

Q. Did you get a receipt? A. No, sir.

Q. You say some you did not, buy yourself, some beds? A. That is right.

Q. Where did you get those? A. I got two beds from Brooklyn.

Q. Your money paid for them? A. Yes, sir.

Q. And that applies to all of the furniture—that your money paid for it. A. These items I have furnished that my sister left, and some items I brought from my mother's home in the Western part of the State, I did not buy.

Q. (By the Court) Did you get some from your second wife? A. No, sir.

Further Cross:

Q. Did you ever live with your second wife in the Jacobson estate? A. I never lived with her as a wife anywhere for five minutes.

MISS GLADYS NICHOLSON, recalled.

Direct Examination by Mr. Ward:

Q. I show you "Exhibit A. B. C. 6 ½," and ask you if that is your signature? A. Yes, sir.

Q. And you knew that was a power of attorney that you executed at the time you signed it? A. Yes, sir.

Cross-examination by Mr. Lieblich:

Q. I show you this paper, referring to "M. J. L. 6 for identification," and ask you whether that is your signature or not? A. Yes.

Mr. Lieblich—I offer the paper in evidence.

Mr. Ward—It is objected to as irrelevant and immaterial.

Marked "Exhibit M. J. L. 6."

(Mr. Lieblich reads it).

Q. Mr. Hollywell acted as your attorney prior to March 6, 1923? A. Just about that time.

Q. Have you retained Melosh and Morten to act for you prior to March 6, 1923? A. No, sir.

Q. Who was your attorney prior to that? A. Mr. Moore, whom my father had engaged.

Q. Are you sure about that? A. Yes, sir.

JOSEPH T. LIEBLICH, being duly sworn, testified as follows:

Direct Examination by Mr. Ward:

Q. You are an attorney at law? A. Yes, sir.

Q. Admitted since when? A. I think I was admitted at the June Term 1914.

Q. Do you know Mr. Nicholson, one of the defendants in this case? A. I have had occasion to meet him.

Q. When did you first meet him? A. I think

I first met Mr. Nicholson when I was in Hackensack police station investiating some matter.

Q. What date? A. I think it must have been in December of 1922, I am not certain.

Q. Do you remember the date of this fire? A. I think it was October 22, 1922.

Q. So you had not met him until December, 1922? A. That is my best recollection.

Q. Don't you know that is not so—what you have just stated? A. I have given you my best recollection.

Q. When, in December, do you say you met Mr. Nicholson first with reference to some real estate? A. I don't recall saying that; I happened to be in police headquarters in Hackensack when, I believe, Mr. Nicholson had been brought in.

Q. You just happened to be there? A. That is what I said.

Q. You were not there on any business? A. I was there in the course of an investigation.

Q. Retained by whom? A. I don't recall the particular party.

Q. Do you recall what insurance company, if any, you were representing when you first met Mr. Nicholson in the police station in Hackensack, New Jersey? A. I think I was investigating a claim for the Superior, in Garfield, N. J., either the Superior or the Orient Insurance Company. This is four years back.

Q. Were you at that time representing any of the insurance companies which are the complainants in this suit? A. I had not been retained by any of the companies interested in this matter with respect to the Nicholson claim.

Q. Were you at that time representing any of the insurance companies that are the complainants in this suit? A. I already told you I was not retained by any of the companies interested in this matter with respect to Nicholson.

Q. (Question read). A. I may have been engaged to defend some of these companies in some other action at that time.

Q. Were you engaged to represent any of the companies which are the complainants in this case in the matter of the claims of Nicholson under the policies in this case? A. No, sir.

Q. Have you any letters from those companies? A. If I did they would be confidential communications; I don't recall having any.

Q. Will you say you had not, prior to the time you met Mr. Nicholson in the police station when he was brought in, when you happened to be there, received letters from somebody, or some one of the companies who are complainants in this suit, retaining you to act in the matter of the fire covered by these policies? A. I am positive that the first time I met Mr. Nicholson in the police headquarters I had not received any letters from any of the companies interested in this litigation retaining me to represent them.

Q. Had you received any communications from any of these companies with reference to the Nicholson matter, or with reference to the fire covered by the policies issued by the complainants in this case? A. I have no recollection of having received anything from any of these companies interested in this matter at the time I met Mr. Nicholson in police headquarters.

Q. Is your recollection poor? A. On the contrary, Mr. Ward, I pride myself on having a good recollection.

Q. Pride goeth before a fall. Isn't it true that at that time, Mr. Lieblich, you represented to Mr. Nicholson that you were the representative of the companies that had insured him against the fire that had taken place on the property known as the Jacobson property? A. I am positive I never made any such statement.

Q. Isn't it true that you made that statement before the police when he was brought in? A. I don't recall ever making that statement that I was representing the insurance companies interested in Nicholson's loss.

Q. In just what capacity were you at the police station at that time? A. I was there investigating a fire loss which occurred either in Garfield or Hasbrouck Heights; I am not sure at this time; I do not recall.

Q. In this fire loss, Mr. Nicholson was in no way interested, was he? A. No, sir.

Q. Did you or not, at the time Mr. Nicholson was in the police station when you happened to be there, did you interrogate Mr. Nicholson about the fire that occurred on the Jacobson property. A. I think when I was there my attention was directed to Mr. Nicholson, and I did speak with him.

Q. Did you at that time question him with reference to this particular fire? A. I may have spoken to him; I think I did speak with him with respect to this fire.

Q. And you questioned him? A. I spoke with him.

Q. Did you question him? A. I may have; I don't recall.

Q. Didn't you at that time question him as representing one or more of the companies that are now complainants in this suit? A. I did not represent one or more of any companies interested in this litigation at the time I spoke to Mr. Nicholson with respect to this particular matter.

Q. So that, without any interest, you interjected yourself into the matter; is that so? A. I may have spoken to him about this matter, but at that time I had not been retained by any of the companies interested to take up with Mr. Nicholson or to talk to him about any of these questions with respect to the fire in October, 1922.

Q. When you first spoke to Mr. Nicholson in the Hackensack police station with reference to the fire that occurred which was covered by these policies issued by the complainants in this case, at that time were you in any way representing any of these complainant companies—just answer that "Yes" or "No." A. I object to the form of that question.

The Court—You cannot object.

Mr. Lieblich—Your Honor has directed that I take the witness stand, and my clients are entitled to have some objection noted.

The Court—I will let you answer. Try to answer.

Q. (Question read.) A. I may have been representing some of the companies interested in defending them in other litigation.

Q. Were you representing them in this particular matter which involved the policies now in question?

A. As I recall, I have already told you that at that time I do not believe that I had been retained by these companies.

Q. You are not sure, then? A. I am only sure of one thing, and that is, that I am—

The Court—Answer the question.

A. I learned of that when I was in the police headquarters, and the police officers, apparently knowing that I had had occasion to be there before in the interest of insurance companies, told me and pointed out Nicholson to me, and told me of all the suspicious circumstances attending this fire; and maybe then I started to talk to him.

Q. How soon after did you communicate with these complainant companies? A. I don't think I communicated with them at all after that—except in response to communications which may have been written to me.

Q. Do your books show any charge made against any one of these complainant companies as appearing in their behalf at the time Mr. Nicholson was brought into the police station in Hackensack? A. I don't think so, Mr. Ward.

Q. Don't you know? A. I don't recall any such thing, Mr. Ward; as a matter of fact, I don't think my bill has gone in to these companies as yet, these companies interested here.

Q. Have you here the first letters that you received from any one of these complainant companies, with reference to the fire loss under the policies of the complainant companies? A. I think so.

Q. Will you produce them? A. I shall refuse to produce those.

Q. On what grounds? A. They are privileged communications as between the company and myself in the record of the relation of attorney and client; and until such time as my clients will release me from that privilege, I have no right to produce them.

Q. Did you not at the time Mr. Nicholson was brought in the police station at Hackensack, ask him where his policies of insurance were, and didn't you state that you represented the companies that had issued these policies of insurance? A. I am reasonably certain, Mr. Ward, that I did not say that I was representing the companies who issued the policies.

Q. Have you here in court the letters sent to you by the companies with reference to this case? A. I believe I have here in court my entire files, which will show all of the correspondence and communications between the companies and myself.

Q. Can you refresh your recollection from those letters as to when the companies had knowledge of this fire? A. I think, if I remember correctly, it was sometime in December when the companies interested received first knowledge of the fire at the Jacobson Mansion, according to my records.

Q. Is that knowledge derived from the letters that you received from your companies? A. My recollection of it is, that sometime in December the companies learned of this Nicholson loss, and then they retained me to represent them and gave me specific instructions; a copy of my authority was sent to Mr. Hollywell about June 6, 1923, in response to Mr. Hollywell's request to ascertain my authority in the premises.

Q. Isn't it true that Mr. Nicholson was brought in the Hackensack Police station four days after the fire? A. I don't recall when he was brought in.

Q. Isn't it true that he was brought in the Hackensack police station four days from the 28th of October, 1922? A. I don't know, but the best evidence will be the records over there; I did not bring him in; I don't remember how soon after the fire it was; I don't rmember how soon after the fire Mr. Nicholson was in police headquarters in Hackensack the day I first saw him; he may have been there before.

Q. Was there not in the police station at the time you were interrogating Mr. Nicholson, some representative from the office of Feist & Feist of Newark, New Jersey? A. There never was to my knowledge at the time I saw Mr. Nicholson, any representative of Feist & Feist or any of the insurance companies interested.

Q. Who was there with you at the time? A. I think at the time I saw Mr. Nicholson, there was present Captain Long, of the Hackensack Police Department. I think Assistant Prosecutor McCarthy was there; I think Mr. Dawson was present—he is the Prosecutor's detective.

Q. When did you first represent these complainant companies in this matter? A. I think I was retained after December of 1922.

Q. And thereafter you carried out negotiations in behalf of these complainant companies with reference to the loss or losses under these policies, didn't you? A. I did not carry any negotiations with anyone in behalf of these companies; I carried out instructions given to me by these companies.

Q. Do you mean that they were not your clients? A. I mean that I was specifically retained for specific purposes; Mr. Hollywell wanted to know what authority I had, and Mr. Hollywell was in posses-

sion of letters from each and every one of these companies dated June 5 and 6, 1923, defining my authority.

Q. Do you remember writing the letter—first, I will ask you if this is your signature? A. That is not my signature.

Q. Is that your letterhead? A. While it is not my signature, it appears to be on my stationery and was signed under my authority, and I assume responsibility for it.

Mr. Ward—I am referring to "Exhibit A. B. C. 2."

Q. How long did you take in questioning Mr. Nicholson in Hackensack on the occasion when he was brought in when you happened to be there? A. I think I only asked him a few questions after Mr. Dawson and Captain Long had spoken to him.

Q. Didn't you interrogate him for about two hours? A. That is absolutely untrue.

Q. How long did you interrogate him? A. I don't think I interrogated him at all except to, possibily, ask him a few questions. I had listened to Captain Long and Garry Dawson, and possibly the Chief may have asked him a few questions, I don't recall; I know I listened.

Q. You don't know whether or not you have ever made any charge on your books against the companies for what you did at that time? A. I have not yet rendered any bill to them making any charge, and I am reasonably certain that I have no record in any book of ours making a charge for appearing for these companies interested in this matter in the Police Court on the day that I first met Mr. Nicholson.

Q. When did you first represent any of these companies in any capacity? A. Possibly I was retained by these companies with respect to the Nicholson loss—no specific instructions—sometime in December of 1922.

Q. How long after the first meeting with Mr. Nicholson was it that you met him the second time? A. I did not say that I met him any second time.

Q. Did you meet him a second time? A. I believe I saw Mr. Nicholson in the Prosecutor's office in Hackensack.

Q. How long after the first meeting was it that you met him in the Prosecutor's office in Hackensack? A. Oh, I believe it must have been some months after I was retained.

Q. Some months after you were retained? A. I think so.

Q. Now, your recollection is keen about that, is it? A. I am giving you my best recollection.

Q. Isn't it true, that in the month of December, 1922, you met Mr. Nicholson in the office of the Bergen County Prosecutor, and there interrogated him about this fire and about the loss covered by these policies issued by the complainant companies? A. I don't think it was in December that I met Mr. Nicholson.

Q. Was it in November? A. No, sir, I am sure of that; it was not in November.

Q. Isn't it true, that within four weeks from October 28, 1922, you met Mr. Nicholson in the office of the Prosecutor of the County of Bergen in the Court House of Hackensack and there interrogated him with reference to the loss covered by the policies of insurance issued by these complainant companies? A. I don't think so. I know, at least

I believe, it was considerably after the first of January, 1923, when I was invited over to the Prosecutor's office—

Q. You have answered the question.

The Court—Let him answer.

A. I was invited over to the Prosecutor's office and while there Mr. Nicholson was being interviewed by either Prosecutor Hart or Assistant Prosecutor McCarthy, and I was asked whether or not I would ask the questions; and at that time I apparently was more familiar with the complaint which had been made against Mr. Nicholson by the Prosecutor's detective on the charge of arson, as I recall it, with respect to this property in Hackensack.

Q. That was January 3, you say? A. It was after January 1st, according to my recollection.

Q. Is your recollection keen about that date? A. I did not act for these insurance companies in that capacity.

Q. Are you sure it was after January 3, 1923, that you had the first conversation in the Prosecutor's office of Bergen County with Mr. Nicholson? A. I think I only saw him once in the Prosecutor's office.

Q. Are you sure that was before the first of January, 1923? A. I know, that at the request of the Prosecutor's office and without the scope of my authority on behalf of these companies I may have asked Mr. Nicholson some questions.

Q. Whenever it was, however, that you met Mr Nicholson in the Prosecutor's office, you did ask some questions with reference to the loss covered by the policies issued by these complainant companies, didn't you, "Yes" or "No"? A. I asked questions with respect to the cause and origin of the fire and all of the suspicious attending circumstances.

Q. Were you at that time retained by these companies when you interviewed Mr. Nicholson in the office of the Prosecutor of Bergen County? A. I had been retained by these companies for certain specific purposes, notice of which was given to Mr. Hollywell; that was the limit of my authority; I was not retained by the authorities to conduct an examination for the Prosecutor's office.

Q. Had you been in communication with the complainant companies before you went to the Prosecutor's office and interviewed Mr. Nicholson in the office of the Prosecutor of Bergen County? A. I believe I had been retained by the companies for certain specific purposes prior to seeing Mr. Nicholson.

Q. Had you been in communication with them? A. I think the communication which retained me was received by me prior to my seeing Mr. Nicholson in the Prosecutor's office.

Mr. Ward—I ask that that be stricken out as not responsive.

The Court—Answer the question.

Q. (Question read.) A. I don't want to be placed in the position of embroiling the insurance companies.

By the Court:

Q. Answer the question. However, the Court will assume it.

Cross-examination of himself by Mr. Lieblich:

Q. Mr. Lieblich, were you retained by any of these insurance companies interested in this litigation to represent them in any capacity at the police station in Hackensack when you met Mr. Nicholson the first time? A. No.

Q. Mr. Lieblich, were you retained by any of these companies interested in this matter to appear for them at the Prosecutor's office and conduct an examination for them at this time? A. No.

By the Court:

Q. What prompted you to examine or ask any question of Mr. Nicholson when you met him the first time in the police station? A. I was told by Mr. Dawson of this fire.

Q. What was your interest in it? A. My interest in the thing was simply this, that I had had occasion prior to this case to represent some of these companies interested in this litigation as an attorney, defending in other suits, and I had a commonplace interest in ascertaining the facts with respect to this particular case.

Re-direct examination by Mr. Ward:

Q. Where was the fire that you were investigating that occurred at Hasbrouck Heights or Garfield? A. It was at one or the other place, to the best of my knowledge.

Q. What was your purpose in going to the police station at that time? A. I was looking for one of the detectives; I forget his name now.

Q. What company were you representing when you went there on this other matter when you happened to be at the police station? A. I think it was either the Superior or the Orient; I am not sure; that is my recollection; it is four years ago, and I have represented a good many insurance companies since.

Q. Who was the person who held the policy that was involved in this matter that you were investigating when you happened to be at the police station at this time? A. I don't remember the name just now; I think it was an Italian name.

Q. What was the amount of the policy involved? A. If I remembered that I could readily tell you the name.

Q. Have you any charge on your books for any such appearance for any other company? A. I think you will find I have; I made a bill for the time which I spent.

Q. Do you remember making the bill? A. I think so.

Q. Then why don't you remember the company? A. I think I made it; I am not certain as to the name of the company, but I am almost certain that I do not work for nothing; I get paid pretty well for the services I render, and in all probability I billed the particular company or companies.

Mr. Ward—We offer, before closing, the lease which contains the acknowledgment between A. G. Nicholson, agent for Gladys Nicholson, owner, to Catherine T. Masterson.

The Court—I don't know for what purpose it is offered; may I ask counsel for what purpose it is offered?

Mr. Ward—For rent insurance, and this lease was covering the property in question

during the period of time, and there was rent insurance among these policies.

The Court—I will receive it.

Mr. Lieblich—I call for the production of letters of June 5 and 6, addressed to Effingham L. Hollywell by all of these insurance companies in this litigation.

Mr. McGinnis—We have not any.

Mr. Ward—That is all.

EFFINGHAM L. HOLLYWELL, being duly sworn, testified as follows:

Direct Examination by Mr. Lieblich:

Q. I show you this paper, referring to "Exhibit M. J. L. 6," and ask you whether or not that was written from your office? A. It was.

Q. I show you this paper, referring to letter of March 3, 1923, upon your stationery, and ask you whether or not that is your signature? A. It is.

Q. You wrote that letter? A. Yes, sir.

Mr. Lieblich—I offer the letter in evidence.

Mr. Ward—I object, on the ground that it is not competent.

The Court—It will be received. Note it on the record.

Marked "Exhibit M. J. L. 8½."

Q. I show you this paper, dated March 20, 1923, upon your stationery, and ask you whether you wrote that? A. Yes, sir.

Mr. Lieblich—I offer that in evidence.

Mr. Ward—No objection to that.

Marked "Exhibit M. J. L. 9."

Q. I show you this letter, dated May 23, 1923, upon your stationery, and ask you if you wrote that letter? A. I did.

Marked "Exhibit M. J. L. 10."

Q. In response to this letter of May 23, did you receive letters from the several insurance companies, dated July 5 and 6, 1923? A. I don't believe I did; the fact is, I have no recollection of receiving any communications from the insurance companies outside of two letters—the two letters you wrote to me, and which I have turned over to Mr. McGinnis.

Q. Look this over and see whether or not you recall having received such a letter? A. I do now recall it, but all the correspondence I had I turned over to the firm of Ward and McGinnis.

Q. But you do not recall receiving it? A. No, sir.

Mr. Lieblich—I will call for the production of the letter dated June 6, 1923, from Phoenix Insurance Company—from the Star Insurance Company—from the Scottish Union, Firemen's Fund, and from the National of Hartford Colonial Underwriters.

Mr. McGinnis—I produce letter addressed to Mr. Hollywell, from the Scottish Union, dated June 8, 1923.

Mr. Lieblich—I offer it in evidence.

Marked "Exhibit M. J. L. 11."

Mr. Lieblich—Certified copy of a deed from A. G. Nicholson, agent, for Gladys Nicholson, owner, to Catherine E. Masterson, I will have that marked.

Marked "Exhibit M. J. L. 10."

The Court—You may retire, Mr. Hollywell. I shall adjourn now.

Mr. McGinnis—We will call upon you to produce magistrate's certificates, which were called for by the insurance companies and furnished by the defendant, as requested by the insurance companies.

Mr. Lieblich—I have not been served with any notice to produce by counsel; and furthermore, it is not within the issue of the case. If I have them I will produce them.

Mr. Ward—The terms under which counsel was allowed to take his testimony in New York was, that he was to furnish us with a copy of the testimony; that was the terms.

The Court—I should say it was advisable.

Mr. Lieblich—May I ask the commissioner to make a copy for me?

The Court—The commission will be returned to me, and if necessary, I will order a copy made.

Continuation of the hearing in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the sixteenth day of June, nineteen hundred and twenty-six, before Hon. Vivian M. Lewis, Vice Chancellor.

Mr. Lieblich—The action at law in the New Jersey Supreme Court against these complain-

ants was instituted as of October 25, 1923. There was an action brought against the Scottish Union, the Firemen's Fund, the National Fire of Hartford, the Star Insurance, and all of the companies. I offer that purposely to show that the action which we brought was brought in this court prior to the institution of the action at law. I restrained them in the law court, and came in here.

Now, in addition to that, I offer in evidence exhibits which were marked for identification: "Exhibit 27½, 28, 29, 30, 31, 32, 33, 34, Exhibit C 34, Exhibit C 34½, Exhibit C 35, Exhibit C 36, Exhibit C 37, Exhibit C 38, Exhibit C 39, Exhibit C 40, Exhibit D. A. J. 1, Exhibit D. A. 1."

Mr. McGinnis—I have the right, as we argue, to object to the sufficiency of them, or the relevancy or competency of them.

The Court—That is all right.

Mr. McGinnis—We call on counsel to produce three notices—Mr. Lieblich makes no point on that.

We call for the production of an appraisal agreement, and we have our copy of it here, together with the letter from Mr. Lieblich, which we will offer in evidence.

Mr. Lieblich—I object to the admission of the paper purporting to be an appraisal agreement, upon the ground that the insurance policy makes no provision for the execution of a separate and distinct agreement to appraise. The method provided by the policy is not that a separate and distinct agreement be entered into.

Mr. McGinnis—I have another letter which I cannot lay my hands on just now, but which I will offer in evidence, replying to that paper and telling them that there is no provision in the policy which requires insurance companies to enter into a signed agreement for appraisal.

Mr. Lieblich—He is going to offer that, and, of course, I am going to see it.

Mr. McGinnis—I offer letter of Mr. Lieblich of May 15, in connection with that, and three copies of letters that were sent to Mr. Lieblich, that is, from Gladys M. Nicholson.

Mr. Lieblich—I have no objection to the copy of the letter dated March 24, 1923, signed "Gladys Nicholson," addressed to Joseph T. Lieblich.

Marked "Exhibit L. F. 1."

Mr. Lieblich—We offer in evidence copies of letters sent by the various companies to Mr. Effingham L. Hollywell, in response to his letter of May 23rd, asking to define the authority of Joseph T. Lieblich. Letter dated June 6, and all the companies made similar replies, and it is agreed that this is the form.

Marked "Exhibit L. F. 2."

Mr. Lieblich—Shall I read the depositions taken de bene esse in New York?

The Court—Yes.

(Mr. Lieblich then reads the depositions, or copies, the original being in the hands of the Clerk of the Court of Chancery.)

Mr. Lieblich—I do not want these read into the record to add to the expense.

The Court—No. The stenographer will not take it down.

Have your briefs in the hands of the Court by September 7th.

Mr. McGinnis—Counsel should serve his brief on me first.

The Court—Yes. It will have to be written up.

DEPOSITION OF FOREIGN WITNESSES.

CERTIFICATE OF COMMISSIONER

I, Nathaniel Kent, of the City, County and State of New York, do hereby certify that pursuant to and by virtue of the authority of a commission issuing out of and under the seal of the Court of Chancery, dated the 4th day of May, 1926, I did appoint the 7th day of June, 1926, at the hour of four o'clock in the afternoon, at my office, No. 27 William Street, in the said City of New York, as the time and place where and when I would take the testimony De Bene Esse of A. L. Anderson, William H. Snyder, Harriet F. Snyder and Andrew J. Corsa, in the suit between Firemen's Fund Insurance Co., Scottish Union & National Insurance Co., Insurance Company of North America, Mercantile Insurance Company, London Assurance Co., National Fire Insurance Co., Star Insurance Co., and Phoenix Assurance Co., and Harriet F. Snyder, William H. Snyder, Alexander G. Nicholson and Gladys Nicholson, both parties to the action have had due notice of the same; that before proceeding to take said depositions, I did take an oath which is hereto annexed, faithfully, fairly and impartially to execute the said commission before Sol Blumenthal, who is a Notary Public and is duly

authorized by the laws of the State of New York to take oaths and affirmations; that at the time appointed, I was attended by Joseph T. Lieblich, solicitor of complainants, and Peter J. McGinnis, one of the solicitors of defendants Gladys Nicholson and Alexander G. Nicholson. The other defendants were not represented; that the said A. L. Anderson, William H. Snyder, Harriet F. Snyder and Reginald D. Walker were first duly sworn by me that the evidence which they should give in the suit pending between the parties hereto should be the truth, the whole truth and nothing but the truth, so help them God.

I did take the depositions De Bene Esse of the said witnesses, which depositions have been reduced to writing and the signatures thereto waived by agreement of counsel. I myself read over the said depositions and at the same time signed it. That annexed hereto is the said depositions and exhibits produced by the said witnesses and offered in evidence on the part of the complainants, said exhibits were each duly marked by me as appears thereon.

In witness whereof, I have hereunto set my hand and seal this 7th day of June, 1926.

Witness:

Nathaniel Kent, Commissioner. (L. S.)

HARRIET F. SNYDER, being first duly sworn, testified as follows:

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

Q. What is there about this paper which causes you to identify it? A. My signature.

By Senator McGinnis—I object to the question on the ground that it is incompetent and immaterial.

By Mr. Lieblich—I offer this paper for identification.

(Paper marked P-1 for identification).

Q. I show you this proof of loss to the London Insurance Company referring to P-1 for identification, and ask you whether you forwarded this, through Andrew J. Corsa, to the London Insurance Company.

By Senator McGinnis—I object to the question on the ground that it is incompetent and immaterial.

Q. Did you send that paper or did you have Andrew J. Corsa send that paper to the London Insurance Company? A. Yes.

Q. And you made claim on the London Insurance Company in the sum of $3,000.00? A. Yes.

By Mr. Lieblich—I now offer the proof of loss in evidence.

By Senator McGinnis—I make the same objection on the ground that it is incompetent and immaterial.

(Paper marked P-2 in evidence.)

Q. I show you this paper and ask you whether you have seen this before, Mrs. Snyder. A. Yes.

Q. And is that your signature? A. It is.

Q. And did you receive the sum of $2490.00

from the London Insurance Company under the proof of loss?

By Senator McGinnis—I object to the question on the ground that it is incompetent and immaterial.

A. I don't know. Dr. Snyder attends to everything. I simply can identify the paper.

By Mr. Lieblich—I now offer this paper for identification, the proof of loss under Policy No. 5920386 of London Insurance Company.

(Paper marked P-3 for identification.)

Q. I show you this paper, Mrs. Snyder, and ask you whether you have seen this before, A. Yes.

Q. What is there about that paper which causes you to identify it? A. My signature.

Q. And did you make claim on the Mercantile Insurance Company in the sum of $3500.00 under Policy No. 936893?

By Senator McGinnis—I object to the question on the ground that it is incompetent and immaterial.

A. Dr. Snyder attends to all business. All I know is that it is my signature and that I signed the paper.

Q. And did you do this yourself or was it done through Andrew J. Corsa? A. Dr. Snyder attended to it. Whatever was done, he did it.

By Mr. Lieblich—I ask that this paper be marked for identification.

By Senator McGinnis—I object on the ground that it is immaterial, irrelevant and incompetent.

(Paper marked P-4 for identification.)

Q. I show you this paper, referring to loss draft of the Mercantile Insurance Co., under Policy No. 936893, and ask you whether you have seen that before? A. Yes.

Q. What is there about that paper which causes you to identify it? A. My signature.

Q. And did you receive from the Mercantile Insurance the sum of $2905.00 under Policy No. 936893?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. Dr. Snyder may have received it. He attends to all business for me.

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

(Paper marked P-5 for identification.)

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

Q. What is there about that paper which causes you to identify it? A. My signature.

Q. And you signed and swore to this paper, being policy of the Phoenix Insurance Company, No. 1895811, in the sum of $2,000.00?

By Senator McGinnis—I object to this question on the ground that it is immaterial, irrelevant and incompetent.

A. Yes.

By Mr. Lieblich—I now offer this paper in evidence.

(Paper marked P-6 in evidence.)

By Senator McGinnis—I object to this on the ground that it is incompetent, irrelevant and immaterial.

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

Q. What is there about that paper which causes you to identify it? A. My signature.

Q. And you signed this draft of the Phoenix Insurance Company in the sum of $1660.00? A. Yes.

Q. Did you receive the money?

By Senator McGinnis—I object to the question on the ground that it is incompetent, irrelevant and immaterial.

A. Dr. Snyder attended to all my business for me.

By Mr. Lieblich—I now offer this paper in evidence.

(Paper marked P-7 in evidence.)

By Senator McGinnis—I object on the ground that it is incompetent, irrelevant and immaterial.

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

Q. What is there about that paper which causes you to identify it? A. My signature.

Q. You signed and swore to this paper making a claim on the Insurance Company of North America, under Policy No. 105127 in the sum of $1500.00?

By Senator McGinnis—I object to this question as irrelevant and incompetent.

A. Yes.

By Mr. Lieblich—I offer this paper in evidence.

(Paper marked P-8 in evidence.)

Q. Did you sign the draft of the Insurance Company of North America in the sum of $1245.00?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, incompetent and immaterial.

A. Dr. Snyder attends to all business for me.

Q. But you saw the draft of the Insurance Company of North America and signed it? A. I suppose I must have.

Q. I show you the writing, "Harriet F. Snyder" on the back of the Insurance Company of North America draft and ask you whether or not that is your signature?

By Senator McGinnis—I object to that question on the ground that it is irrelevent, incompetent and immaterial.

A. Yes.

By Mr. Lieblich—I offer this paper in evidence.

(Paper marked P-9 in evidence.)

By Mr. Lieblich—I offer in evidence the mortgage of William H. Snyder to Harriet F. Snyder, duly recorded.

By Senator McGinnis—I object to that as irrelevant, incompetent and immaterial.

(Paper marked P-10 in evidence.)

By Mr. Lieblich—I offer in evidence deed from Frank E. Fields to William H. Snyder, duly recorded.

By Senator McGinnis—I object to that as irrelevant, incompetent and immaterial.

(Paper marked P-11 in evidence.)

By Mr. Lieblich—I offer in evidence deed from Mary T. Ward to Harriet F. Snyder, which is duly recorded.

By Senator McGinnis—I object to that as irrelevant, incompetent and immaterial.

(Paper marked P-12 in evidence.)

By Mr. Lieblich—I offer in evidence assignment of mortgage from Alexander G. Nicholson to Harriet F. Snyder, duly recorded in Book 89, page 289, Assignments, Bergen County Clerk's office.

By Senator McGinnis—I object to that as irrelevant, incompetent and immaterial.

(Paper marked P-13 in evidence.)

By Mr. Lieblich—I offer in evidence mortgage from William H. Snyder to Alexander G. Nicholson, recorded in Book 416 of Mortgages, Bergen County Clerk's office.

By Senator McGinnis—I object to that as irrelevant, incompetent and immaterial.

(Paper marked P-14 in evidence.)

Q. I show you Exhibit P-11, which is the deed from Frank E. Fields to William H. Snyder, and ask you if you know how that deed came to be executed?

By Senator McGinnis—I object to that question on the ground that it is irrelevant, incompetent and immaterial.

A. I don't know. Dr. Snyder attends to everything in the matter of business for me, so that I do not feel competent to reply.

Q. Do you know who Frank E. Fields was? A. Yes.

Q. Who was he? A. Eugene Fields' son.

Q. Any relation to you at all? A. Distant cousin.

Q. I show you this paper (referring to P-10) being a mortgage of William H. Snyder to Harriet F. Snyder, and ask you whether you know anything about it. A. No. I really don't feel competent to tell anything about it. Dr. Snyder attends to all my business and I know nothing.

Q. I show you this paper (referring to P-12), being deed from Mary T. Ward to Harriet F. Snyder, and ask you whether you know anything about it.

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial and incompetent.

A. I can't tell you about it.

Q. Who can tell? A. Dr. Snyder.

Q. Did he attend to that for you? A. He attends to all my business for me.

Q. Mrs. Snyder, attached to Exhibit P-8 is a blue print, an estimate showing a diagram of property situate at Hackensack, known as the Jacobson Mansion. Do you know who made this blue print?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial, incompetent and is a leading question.

A. I do not.

Q. Who does? A. Dr. Snyder.

Q. And that would apply to all of the proofs of loss and all of the blue prints? A. Yes, all of them.

Cross Examination by Senator McGinnis:

Q. Aside from the fact that you have signed these various papers, you know nothing about them? A. Nothing at all.

By Mr. Lieblich:

Q. Did you know that you had some properties known as the Jacoson Mansion? A. I am no business woman. I pay no attention to things of that sort. Dr. Snyder takes care of everything for me.

By Mr. Lieblich—I am now calling Mr. Reginald D. Walker, of the office of Andrew J. Corsa & Son, 145 Montague Street, Brooklyn. It appears that a subpoena was

attempted to be served on Andrew J. Corsa of the firm, which this witness represents. Mr. Corsa is now dead, and for this reason Mr. Walker has appeared in the place and stead of Andrew J. Corsa.

By Senator McGinnis—I object to Mr. Walker's being permitted to testify on the ground that his name did not appear and is not mentioned in the Commission. We had no knowledge of his being presented as a witness.

By Mr. Lieblich—Mr. Walker was subpoenaed as a substitute for Andrew J. Corsa, the person mentioned, who is now deceased.

By Senator McGinnis—I object to Mr. Walker's testifying herein.

REGINALD D. WALKER, being first duly sworn, testified as follows:

Q. What is your business, trade or occupation? A. Insurance broker.

Q. Do you know William H. and Harriet F. Snyder? A. I do.

Q. Have you had occasion to do business with them or for them? A. I have.

Q. Did you have occasion to do work for Dr. Snyder or Mrs. Snyder with respect to Exhibits P-8, P-2, P-4 and P-6 introduced here?

By Senator McGinnis—I object to the question on the ground that any dealings this witness had with Dr. and Mrs. Snyder are irrelevant, incompetent and immaterial

and in no wise binding on the defendants in this case.

A. I personally made them all up.

Q. Attached to these exhibits which I have just mentioned by number—P-3 for identification, P-2, P-6 and P-8 in evidence, is a blue print and loss and damage of the Jacobson Mansion—will you look at these exhibits which I have shown you and tell me what it is about?

By Senator McGinnis—I object to this question on the ground that the papers speak for themselves and on the further ground that the inquiry is irrelevant, incompetent and immaterial.

A. In order to establish our claim it was necessary to file evidence of the property destroyed.

Q. Did you have an estimate made of the loss and damage of the Jacobson Mansion? A. Yes.

Q. Who made the estimate?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, incompetent and immaterial.

A. The estimate for the purpose of filing proofs was made by A. L. Anderson, of 3605 Avenue L, Brooklyn.

Q. And these papers, P-4 for identification, P-2, P-6 and P-8 in evidence, were they made by Mr. Anderson? A. The blue prints were not. They were made by an architect.

Q. The estimate attached was made by Mr. Anderson?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. Yes.

Q. During the course of your business with Dr. and Mrs. Snyder, did you have any cause to place any insurance?

By Senator McGinnis—I object on the question on the ground that it is irrelevant, immaterial and incompetent.

A. We did.

Q. I show you these papers, Exhibits P-12, C-10, C-11 and C-13 and ask you whether or not you placed those particular policies of insurance?

By Senator McGinnis—I object on the question on the ground that it is irrelevant, immaterial and incompetent.

A. We did.

Q. Have you produced here the records of Andrew J. Corsa & Son with respect to the insurance, if any, which you carried for William H. Snyder? A. I only have very limited records with me, most of the records having been used in this case before.

Q. Have you any recollection of the amount of insurance carried by Dr. and Mrs. Snyder on the 27th day of October, 1922?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I do.

Q. How much?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. What date was that?

Q. October 27, 1922. A. Total insurance of $16,000.00 on the Jacobson Mansion.

By Senator McGinnis—I move to strike the answer out as being incompetent, irrelevant and immaterial.

Q. How long prior to October 27, 1922 had Andrew J. Corsa & Son carried this insurance for Dr. and Mrs. Snyder on the Jacobson Mansion?

By Senator McGinnis—I object on the question on the ground that it is irrelevant, immaterial and incompetent.

A. Since the year 1914—the early part of 1914, and from then to 1922, Dr. and Mrs. Snyder carried this insurance on the Jacobson Mansion.

Q. Was $16,000.00 the maximum amount?

By Senator McGinnis—I object on the question on the ground that it is irrelevant, immaterial and incompetent.

A. $16,000.00 was the maximum at any one time.

Q. I show you this paper, (referring to P-3 in evidence) and ask you whether you have seen that before? A. I have not.

Cross Examination by Senator McGinnis:

Q. Was that a mortgage or owners' insurance? A. Both.

Q. $10,000 of this $16,000 insurance had the mortgagee clause? A. Yes.

Q. You mean of the $16,000? A. $10,000 was payable to the mortgagee and $6,000 to the owner.

WILLIAM H. SNYDER, being first duly sworn, testified as follows:

Q. Doctor, I show you this deed—Fields to Snyder, Exhibit P-11 in evidence, and ask you if you can tell us how you came to get that deed.

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. Mr. Fields is the father of Mrs. Snyder and Mr. Fields gave this property to me as a wedding present to Mrs. Snyder. It was given to me as a wedding present for Mrs. Snyder.

Q. I show you this mortgage—William H. Snyder to Harriet F. Snyder (referring to P-10 in evidence) and ask you to tell us what that is.

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I always regarded it as Mrs. Snyder's property and when it was disposed of, in order to avoid any legal complications to the broker to whom it was sold, I made this mortgage to Mrs. Snyder.

By Senator McGinnis—I shall reserve the right to move to strike out this answer.

Q. After you executed this bond and mortgage, did you make a conveyance of the Jacobson Mansion to anyone?

By Senator McGinnis—I object to the question on the ground that it is immaterial, irrelevant and incompetent.

A. To Gladys Nicholson.

Q. How did you come to convey this to Gladys Nicholson?

By Senator McGinnis—I object to the question on the ground that it is immaterial, irrelevant and incompetent.

A. At the request of Alexander G. Nicholson.

Q. Was there a conveyance made by Alexander G. Nicholson of the Brooklyn property simultaneously with the conveyance by you to Gladys Nicholson?

By Senator McGinnis—I object to the question on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that it is leading.

A. Yes.

Q. What was that?

By Senator McGinnis—I object to the question on the ground that the entire inquiry is irrelevant, immaterial and incompetent, and on the further ground that it is leading.

A. Deed from Mary T. Ward to Harriet F. Snyder, given some time in May.

Q. And who was Mary T. Ward? A. The sister of Alexander G. Nicholson, as I was told by him.

Q. I show you the deed of Mary T. Ward to Harriet F. Snyder, (referring to P-12), and ask you if that was the deed you have in mind?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that the deed speaks for itself.

A. This is the deed, yes.

Q. I show you mortgage of William H. Snyder to Alexander G. Nicholson, Exhibit P-14 in evidence, and ask you how that paper came to be executed?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial and incompetent, and also that no part of it is binding on Alexander T. Nicholson.

A. He said that after the transfer of the property to him, it would take $500 to repair, so I told him I would give him a mortgage.

Q. I show you assignment of mortgage from Alexander G. Nicholson to Harriet F. Snyder, be-

ing Exhibit P-13 in evidence, and ask you if you can identify the paper?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial and incompetent.

A. That is the assignment of the mortgage just put in evidence, Dr. Snyder to Alexander G. Nicholson.

Q. I show you these papers (referring to Exhibits P-6 and P-8 in evidence, and Exhibits P-1 and P-4 for identification, being the proofs of loss to the Insurance Company of North America, London Assurance Company, Mercantile Insurance Company and Phoenix Insurance Company, and ask you whether you assisted in the preparation of those papers?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I did.

Q. I show you this paper (referring to Exhibit P-9, and ask you whether you have seen that before? A. I have.

Q. You signed this draft of the Phoenix Insurance Company in the sum of $1660.00?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I did.

Q. And you received the sum of $1660 by reason of the proof of loss which you filed (referring to P-6 in evidence)?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I did.

Q. I show you this paper and ask you whether you have seen that before? A. I have.

Q. That is the draft of the Mercantile Insurance Company in the sum of $2905.00?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. It is.

Q. And you received the sum of $2905.00 by reason of the proof of loss which you filed with the Mercantile Insurance Company in the sum of $2905.00-

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. I did.

Q. I show you Exhibit P-4 for identification and ask you whether or not that is the proof of loss which you sent to the Mercantile Insurance Company?

By Senator McGinnis—I object on the ground that this question is irrelevant, immaterial and incompetent, and on the fur-

ther ground that the instrument speaks for itself.

A. I did.

Q. I now offer that in evidence.

By Senator McGinnis—I object on the ground that it is irrelevant, immaterial and incompetent.

(Paper marked Exhibit P-15 in evidence.)

By Mr. Lieblich—I now offer in evidence P-5 for identification, being the loss draft or cancelled voucher of the Mercantile Insurance Company in the sum of $2905.00.

By Senator McGinnis—I object on the ground that it is irrelevant, immaterial and incompetent.

(Paper marked Exhibit P-16 in evidence.)

Q. I show you this paper (referring to Exhibit P-9 in evidence), the loss draft of the Insurance Company of North America in the sum of $1245.00, and ask you whether you have received this sum?

By Senator McGinnis—I object on the ground that this question is irrelevant, immaterial and incompetent.

A. I did.

Q. Did you receive that sum by reason of the claim that you made on the proof of loss, Exhibit P-8?

By Senator McGinnis—I object to the question on the ground it is irrelevant, immaterial and incompetent.

A. I did.

Q. I show you loss draft of the London Insurance Company in the sum of $2490.00 (referring to Exhibit P-3, for identification and ask you whether you have seen that before? A. I have.

Q. What is there about that which causes you to identify it? A. My signature.

Q. You received this money? A. I did.

Q. Did you receive that sum by reason of your proof of loss, (referring to Exhibibt P-2 in evidence)?

By Senator McGinnis—I object on the ground that this question is irrelevant, immaterial and incompetent.

A. I did.

By Mr. Lieblich—I offer in evidence P-3 for identification.

By Senator McGinnis—I object to the offer on the ground that it is irrelevant, incompetent and immaterial.

(Paper marked P-17 in evidence.)

Q. Dr. Snyder, when you say you received all these sums of money, you mean you received all of them for the benefit of Mrs. Snyder? A. Yes.

Q. There is no question but what the Phoenix Insurance Company paid the sum of $1660.00; the London Insurance Company paid the sum of

$2490.00 under the particular policy covering the Jacobson Mansion; the Mercantile Insurance Company paid the sum of $2905.00, and the Insurance Company of North America paid the sum of $1245?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, incompetent and immaterial.

Q. $7,000.00 was what I received from the different insurance companies.

Q. You mean that was after Mr. Bayes, your attorney, had made deduction for fees? A. The Insurance Companies settled with me with the understanding—

By Senator McGinnis—I object to his testifying what his understanding was.

Q. But you did endorse these drafts? A. No. I endorsed $7,000 worth of drafts. The Insurance Companies were to pay that out of their pockets.

Q. When you executed the conveyance of the Jacobson Mansion in Hackensack to Gladys Nicholson at the direction of Alexander G. Nicholson and you received the conveyance of Mary T. Ward to Harriet F. Snyder, was there any cash consideration passed between you and Alexander G. Nicholson?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that any testimony as to Gladys Nicholson is not binding upon her, as the same would be hearsay.

A. No cash was passed.

Q. Did Gladys Nicholson ever pay you anything for making the conveyance to her?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. No.

Q. So that the consideration for the Jacobson Mansion in Hackensack was the transfer of the property at 125 Foster Avenue, was it not?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. Yes.

Q. How much of the equity did Gladys Nicholson and Alexander G. Nicholson have in the 215 Foster Avenue property?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent, and on the further ground that it is not in any event binding on Gladys Nicholson.

A. Between $3500.00 and $4,000.00. I could not tell the exact amount without my papers. There were some back taxes.

Q. How much was the mortgage you paid?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. $3,500.00.

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

Q. Will you tell us what this is?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. It is an estimate of valuation of October, 1922.

Q. Who made that? A. A. L. Anderson.

Q. At whose instigation did he make it?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. William H. Snyder.

Q. That was for the purpose of determining the value of the Jacobson Mansion after the fire? A. Yes.

By Mr. Lieblich—I now offer this paper for identification.

(Paper marked P-18 for identification.)

Q. Do you remember when it was that you acquired the title to the Jacobson Mansion in Hackensack? A. Yes.

Q. When.

By Senator McGinnis—I object to the question on the ground that the deed would speak for itself.

A. In 1908, but I am not sure. I would like to see the deed.

Q. From 1908 to 1922 did you have occasion to carry insurance on the Jacobson Mansion? A. Yes.

Q. Did you carry insurance on the Jacobson Mansion? A. Yes.

Q. In what amount did you carry insurance?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. $16,000.00.

Q. In other words, you mean that $16,000.00 was the maximum insurance that you carried?

By Senator McGinnis—I object to the question on the ground that it is leading, and also on the ground that it is irrelevant, immaterial and incompetent.

A. I did not say that. There was insurance on there in a sum as high as $22,000 put on there by Frank Taylor when the property was turned over to me. Then it was decided that the property was over-insured and decided that the insurance should be reduced to $16,000.

By Senator McGinnis—I will now move at the proper time to strike this answer out on the ground that it is irrelevant, incompetent and immaterial, and also because it states conclusions and hearsay.

Q. Doctor, do you know what happened to the Jacobson Mansion? A. Yes.

Q. What, if anything, happened? A. It burned down.

Q. Do you know when? A. I don't remember the date.

Q. I show you this paper, Exhibit P-2 in evidence, and ask you whether it will refresh your recollection? A. The fire was on October 27, 1927.

Q. With respect to that date, how long prior, if at any time, did you visit the Jacobson Mansion? A. I don't remember.

Q. What was the last time you went there before October 27, 1922? A. I could not say. I don't remember.

Q. Was it within a short time of October 27, 1922? A. I was in the habit of visiting the Jacobson Mansion every month. It could not have been over a month before the fire.

By Senator McGinnis—I ask that that answer be stricken out.

Q. When you last visited the Jacobson Mansion before the fire, can you tell us what its condition was? A. I can.

Q. What was its general condition?

By Senator McGinnis—I object to this question on the ground that it is irrelevant, immaterial and incompetent.

A. It was in a pretty bad general condition.

Q. Just describe to us the condition of the Jacobson Mansion in connection with the house, after the fire. A. Quite a number of lights were out of the house, the rear of the house was in a

condition where it needed repair and plumbing; some of the plumbing had been damaged; the floors were rotted and they were all springing out from the room. Almost all of the plumbing had been destroyed.

By Senator McGinnis—I shall reserve the right to move that this answer be stricken out on the ground that it contains hearsay evidence, conclusions of the witness, and on the ground that the matters stated in the answer are irrelevant, immaterial and incompetent.

Q. Did you observe any new painting having been done?

By Senator McGinnis—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. Yes.

Q. There was evidence of new paint? A. Yes.

Q. Where? A. On the outside and some on the inside.

Q. Did you observe any evidence of new plumbing? A. No.

Q. At the time you visited the premises, did you observe any furniture in the house? A. I did.

Q. What kind of furniture, if any, was in there? A. Beds, chairs, tables, dressers, etc.

Q. Was it new furniture? A. I did not see any new furniture there of any kind.

Cross Examination by Senator McGinnis:

Q. Doctor, you cannot tell us when you last went into that building before that fire? A. Not the date, no.

Q. On that occasion, did you go all through the building? A. I don't recall what I did.

Q. Do you remember what particular rooms you went into? A. No.

Q. Before this particular occasion, when did you visit this building? A. I have not any dates at all.

Q. I am directing your attention to the visit which just preceded the last visit before the fire, and I am asking you what particular rooms you went into? A. I went in the rear and I was in the hallways on the floor part of the building.

Q. Do you recall on which of these occasions you noticed that there was new painting? A. I observed that every time I had been there.

Q. Shortly before the fire there had been considerable improvement in grading, sidewalks, etc.? A. There had been some improvements.

Q. The property had advanced in value, had it not? A. It hadn't advanced any at all.

Q. The last two years before the fire it hadn't advanced any at all? A. No.

Q. Doctor, do you know where Second Street is? A. I do.

Q. How near does it reach this property? A. About 225 feet or 300 feet, I didn't measure it.

Q. Had it been graded? A. Yes.

Q. Water service had been installed? A. Yes.

Q. The neighborhood was growing, was it not? A. Not very much.

Q. And all of which helped to enhance the value of the property? A. No.

Q. How near was the nearest public street to that property? A. About—maybe 175 feet, I guess.

Q. Doctor, I show you these four exhibits, P-7, P-9, P-16 and P-17. You are the payee on all those checks, are you not? A. I am the payee on three, yes.

Q. Your name is William H. Snyder? A. Yes. My name is there.

Q. I show you on the back of this photostatic copy, Exhibit P-9, an endorsement "William H. Snyder," and ask you if that is your signature? A. I refuse to answer.

Q. When you endorsed your name on these exhibits was it as a mortgagee or as owner of this property? A. Mortgagee. Mrs. Snyder's agent.

Q. You personally had no interest in any of the money mentioned in these four drafts or checks? A. No.

Q. Doctor, did all these policies of insurance have a mortgagee clause? A. $10,000 worth of them did.

Q. And the $6,000 did not have a mortgagee clause? A. No.

Q. And all of this insurance was payable to whom? A. Harriet F. Snyder as mortgagee.

Q. Who held the title then? A. Gladys Nicholson.

A. T. ANDERSON, being duly sworn, testified as follows:

Q. What is your business, trade or occupation? A. I am a mason and builder and general contractor.

Q. For how long have you been doing that? A. Twenty-five years, at least.

Q. During the course of your work, have you had occasion to estimate loss and damage to buildings by fire? A. Yes.

Q. Did you, at the request of Dr. Snyder or Mrs. Snyder, or Andrew J. Corsa & Son, make an estimate of a building at Hackensack? A. Yes.

Q. When did you do this? A. About four years ago.

Q. I show you this paper (referring to Exhibit P-18 for identification) and ask you whether you know what it is? A. It looks like a copy of an estimate I made.

Q. You made that? A. Yes.

Q. Is it an estimate? A. Yes.

Q. And do you recall how much you estimated the loss and damage at? A. It is all there. I can't remember four years ago. The paper speaks for itself.

By Mr. Lieblich—I now offer the paper in evidence.

By Senator McGinnis—I object to the offer on the ground that it is irrelevant, immaterial and incompetent.

(Paper marked P-18 in evidence.)

Q. Did you have a signed copy? A. I must have. It must have been a signed copy. I am not so sure. That looks like a copy. I would like to see the signed copy.

Q. Is this the original? A. I don't know.

By Senator McGinnis—I object to the witness examining any estimate or report he made.

A. It looks like my hand writing.

Cross Examination by Senator McGinnis:

Q. Mr. Anderson, you were called in to make this estimate or appraisal some time after the fire? A. Yes.

Q. About how long after the fire? A. I don't know.

Q. You never saw the building itself? A. I never did. I saw a photograph.

Q. The building was totally destroyed by fire? A. Yes.

Q. Did you go to the scene of the fire? A. I don't remember.

Q. So that whatever you looked on was on what? A. What you see on the papers there, (referring to Exhibits P-15, P-6, P-8 and P-2).

Q. And the reference you are making, Mr. Anderson, is to blue prints showing floor sketches and on one sketch of a house? A. Yes.

Q. So that is all you had to work on? A. I don't know.

Q. You knew nothing of your own knowledge of the dimensions of this building? A. I can't remember.

Q. You knew nothing of the character of the woodworking, for instance, in the building? A. No. I can't remember.

Q. But you do remember that you never saw the building? A. I don't suppose I did. Four years have elapsed. I don't know.

Q. Whatever work you did do was without having seen the house? A. That is my business and not yours. My way of estimating is my own way. Nobody can move to take it away from me.

By Senator McGinnis—I shall move to have that stricken out on the ground that it is not responsive.

Q. Of course, you know when that building was erected? A. No. I do not. I don't know anything about your case.

Q. When you talk for instance of depreciation in a building—when you go to estimate values of old buildings, do you figure the age of the buildings in your figures on the estimate?

By Mr. Lieblich—I object to the question because it is not within the confines of cross-examination to ask such a question. If the Senator wants to make his own witness, he may do so.

Q. Do you take into consideration the age of the building? A. If I see the building.

Q. And if you don't see the building you are pretty much in the dark, aren't you? A. Not for new construction.

Q. No, for old construction. A. It is very hard to tell. I estimate every day without seeing the building.

Q. And it would make no difference to you—the question of the lack of repair of a building? A. It does make a difference.

Q. Would it make a difference to you whether

or not a building had been completely renovated or not? A. Of course.

Q. You are here under subpoena? A. Yes, and unwillingly. I want to know who is going to pay me here.

Q. Are you being paid to come here? A. Yes, I expect to be paid for my time. I don't know whose favorite I am, whether yours or Joe's, I don't know.

Q. Will you tell me when you made this estimate? A. I don't know.

Q. About how long after the fire? A. I don't know.

By Commissioner:

Q. Weren't you paid a dollar with your subpoena? A. Yes.

EXHIBIT LA-1

Plan of first floor, second floor, third floor, Nicholson frame dwelling made by B. F. Robinson, 2|17|23.

EXHIBIT CFL-3

Detailed estimate by B. F. Robinson, for replacement cost,	$47594.27
plus 10% builders profit,	4759.43
	$52353.70

EXHIBIT C-19. Deed

William H. Snyder and	: Dated:	10|10|1918
Harriet F., his wife,	Ack.	10|10|1918
to	: Rec.	11|19|1918
Gladys Nicholson of 1244 S.	Book 999-pp. 488	
Penn St., of Denver, Colorado	: Cons.	$1.00 and other cons.

Conveys Jacobson Mansion, Hackensack, N. J. "Subject, however, to a $6500 first mortgage for 10 years at 5% interest to be paid annually and a second mortgage of $500 for two years at 6% interest to be paid semi-annually."

EXHIBIT C-21. Mortgage

(Printed form of Polehenus Printing Company, 48 Vessey St., New York City)

Gladys Nicholson of Denver Colorado, to Alexander G. Nicholson of Hackensack,

: Dated 6|17|22
Ack. 6|22|22
: Rec. 6|27|22
Book 554—Mortgages, Page 519
: Cons. see recital

"Whereas the said Gladys Nicholson is justly indebted to the said party of the second part, in the sum of twenty-five thousand ($25,000) dollars, lawful money of the United States of America."

"It is hereby agreed that the party of the second part shall be a mortgagee in possession of said premises, in consideration whereof, the said mortgagee agrees to waive all interest upon this mortgage and to pay all carrying charges including taxes, interest on prior mortgages, insurance, etc., and to keep the premises in good repair and tenable condition at all times during his occupancy of the same and the term of this mortgage.

All rents are to be collected by and paid to the mortgagor." This mortgage acknowledged by C. Leroy Emmich, Notary Public, Denver, Colorado.

EXHIBIT C-1

Photograph of A. G. Nicholson in door way of Jacobson Mansion, taken 10|21|22.

EXHIBIT C-2

Photo of Jacobson Mansion before destruction, taken 10|21|22.

EXHIBIIT C-3

Photo of Jacobson Mansion before destruction, taken 10|21|22.

EXHIBIT C-4

Photo of Jacobson Mansion before destruction, taken 10|21|22.

EXHIBIT C-5

Photo of destroyed Jacobson Mansion, taken 11|14|22.

EXHIBIT C-6

Photo of destroyed Jacobson Mansion, taken 11|14|22.

EXHIBIT C-7

Photo of destroyed Jacobson Mansion, taken 11|14|22.

EXHIBIT C-8

Photo of destroyed Jacobson Mansion, taken 11|14|22.

EXHIBIT LA-2

Photo of Jacobson Mansion at time of Fields' ownership.

EXHIBIT C-9

No. 1895811.
Phoenix Assurance Company Limited, of London.

Head Office in the United States, 100 William St., New York.

Established 1782.

Amount Insured $2000. Rate .74. Premium $14.80.

In consideration of the Stipulations herein named, and of Fourteen 80|100 Dollars Premium, does insure Gladys Nicholson for the term of five years from the 11th day of November 1920, at noon, to the 11th day of November 1925, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding Two Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

This Policy is made and accepted subject to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto; and no officer, agent, or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

Provisions Required by Law to be Stated in this Policy.—This Policy is in a stock corporation.

In Witness Whereof, this Company has executed these presents this 15th day of April, 1921 but this policy shall not be valid until countersigned by the duly authorized Agent of the Company at Newark, N. J.

Countersigned at Newark, N. J., this 15th day of April, 1921. O'Gorman & Young, Agent. P. Bluefed, Manager.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quantity within reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intentions so to do; but there can be no

abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death

of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasolene, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosporous, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or

lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately crease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If any application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this

company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the pro rata premium.

If with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be

liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of the fire, stating that he has examined the circumstances and believes the

insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and

satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word

"loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written upon, attached or appended hereto.

Not exceeding two families.

Gladys Nicholson

$2000. On the building, additions, extensions and connections thereto attached (including cost of excavations and foundations of building below the level of the ground) situate on the west side of Terrace Avenue, south of Essex Street, Hackensack, Bergen County, New Jersey, occupied as a private dwelling.

Nil. On the building, additions, extensions and connections thereto attached (including cost of excavations and foundations of building below the level of the ground), situate about 250 feet northwest of above described building, and occupied as a private barn.

It is understood and agreed that this policy also covers gas, steam, waste and water pipes, water tanks, sprinkler system, engines, boilers, pumps, dynamos, motors, elevators, dumbwaiters, refrigerators and such plumbing, sanitary, heating, lighting, hoisting, ventilating, fire extinguishing, refrigerating, cooking, vacuum cleaning, pumping, burglar and fire alarm and fixed electric equipments, apparatus, appliances, appurtenances, connections, fixtures, as pertains to the service of the building or for the furnishing of power therein, plate, window, ornamental and other glass, and

lettering on same, fixed mirrors, architect's fees, exterior and interior decorations, frescoes, fixed ornamental and cabinet work, and other wall and ceiling coverings, chandeliers, fixtures, globes, awnings, window shades, screens, signs, shutters, storm doors and windows, fire doors, ladders and escapes, skylights, flagpoles, fences, railings, stoops and stoop lamps, sidewalks, flagging, machinery pertaining to the service of the building or buildings, and/or the furnishing of power therein or therefore, and all other permanent fixtures, installations, apparatus, equipments, and constructive work, contained in, or on attached or belonging to said building or buildings or premises, or under sidewalks thereof and all permanent appurtenances, appliances and equipments to said premises.

It is the intention of this insurance to cover the building or buildings including all additions adjoining, improvements and betterments, appurtenances, appliances, and equipments to said building or buildings of whatsoever nature, whether mentioned specifically or not, as they may stand at the time of any loss or damage which may occur.

It is understood and agreed that should the building or buildings or any part of same insured hereunder be mortgaged or stand on leased grounds, or foreclosure proceedings be commenced, or notice of sale be given by virtue of any mortgage or trust deed, or a contract be executed or delivered for the sale of said building or buildings, or if the interest of the insured be other than unconditional or sole ownership; or if the subject of insurance be a building on ground not owned or wholly owned by the assured in fee simple this insurance shall not be prejudiced thereby.

In the event of death of the assured, this insurance shall continue for the benefit of his, her or their heirs, devisees, or legal representatives.

Loss if any, payable in New York City, in funds not subject to bank collection charges.

It is understood and agreed that this insurance shall cover the assured as now or may be hereafter constituted.

Loss, if any, payable to Harriet F. Snyder, mortgagee. (Clause attached.)

N. J. Mortgagee clause attached. Certificate issued.

Privilege is hereby granted to keep and use small quantity of fireworks, for amusement, or display, on the above described premises, between the first and fifth day of July in each year.

Privileged for other insurance and for existing communications, to remain vacant not exceeding six months in any one year, and unoccupied without limit of time, to use gas for heat, light and power and kerosene oil stoves for cooking and/or heating purposes and for each tenant to keep and use not exceeding one quart of benzine, naphtha, gasoline or similar substances for domestic purposes.

Privilege granted to use electric current.

Mechanics Privilege

Permission for mechanics to be employed for additions, alterations and repairs in the within described premises, without limit of time.

Lightning Clause

This policy shall cover any direct loss or damage caused by Lightning (meaning thereby the commonly accepted use of the term Lightning,

and in no case to include loss or damage by cyclone, tornado or windstorm not exceeding the sum insured, nor the interest of the insured in the property and subject in all other respects to the terms, and conditions of this policy. Provided, however, if there shall be any other insurance on said property, this company, shall be liable only pro rata with such other insurance for any direct loss by Lightning, whether such other insurance be against direct loss by Lightning or not.

Temporary Housing Clause (Applies to barn only)

This Clause Void.

It is hereby expressly stipulated and made a condition of this contract that gasoline automobiles and gasoline motor vehicles of guests may be temporarily housed in building for period not exceeding three days at any one time. It being distinctly understood and agreed however, that said gasoline automobiles and gasoline motor vehicles are not the property of the insured, and that no gasoline (except that in the reservoir of the vehicle) shall be kept in the building, that the reservoir shall be filled outside of building, and supply of gasoline at least 25 feet removed from any insured property, otherwise this policy is void.

Privilege granted to store one automobile in the building insured under the second item of this policy, it being understood and agreed that said automobile is not covered by this policy and that same is on dead storage only, and that the fuel tanks of said machine have been drained and that no gasoline or other volatile hydro-carbon oils will be kept used or allowed on the premises temporarily or permanently except one quart of benzine, gasoline or naphtha for domestic purposes.

Attached to and forming part of policy No. 1895811 of the Phoenix Assurance Company.

Andrew J. Corsa & Son,
151 Remsen Street,
Brooklyn, N. Y.

Standard Mortgagee Clause

Loss or damage, if any, under this policy, shall be payable to Harriet F. Snyder as mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within-described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; Provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for

ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payments shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of the claim.

Dated April 15th, 1921.

Attached to and forming part of Policy No. 1895811 of the Phoenix Assurance Company, Ltd. of London.

EXHIBIT C-10

Certificate No. 105127—Insurance Company of North America, $3000, premium $30.30, insured William H. Snyder, from 3|3|22 to 3|3|27 (standard form as Ex. C-9).

This certificate insures the Jacobson Mansion in the sum of $1500 and the Barn in the sum of $1500, with a standard mortgagee clause attached, making the loss payable to Harriet F. Snyder, mortgagee.

EXHIBIT C-11

Certificate No. 936893—The Mercantile Insurance Company of America, $8500, premium $89.90, insured William H. Snyder, from 3|3|22 to 3|3|27 (standard form as Ex. C-9).

This certificate insured the Jacobson Mansion in the sum of $3500 and the barn in the sum of $5000 with a standard mortgagee clause attached, making the loss payable to Harriet F. Snyder, mortgagee.

EXHIBIT C-12

Certificate No. 196765—Phoenix Company, Limited, $6000, premium $80, insured William H. Snyder from 9|13|21 to 9|13|26 (standard form as Ex. C-9).

This certificate insures the Jacobson Mansion in the sum of $6000 (no mortgagee clause).

EXHIBIT C-13

Certificate No. 5920386—The London Assurance Corporation, $3000, premium $22.20, insured William H. Snyder from 12|20|21 to 12|20|26 (standard form as Ex. C-9).

This certificate insures the Jacobson Mansion in the sum of $3000, with a standard mortgagee clause attached, making the loss payable to Harriet F. Snyder, mortgagee.

EXHIBIT C-14.

Certificate No. 289219, National Fire of Hartford, $15,000., premium $62.10, insured Gladys Nicholson from 11-11-21 to 11-11-22 (standard form as Ex. C-9).

This certificate insures the Jacobson Mansion in the sum of $9000; $3000 on household furniture and

$3000 on shrubbery, with a standard mortgagee clause attached, making the loss payable to Alexander G. Nicholson, mortgagee.

EXHIBIT C-15.

Certificate No. 224708—Phoenix Assurance Co., $6000, premium $65.25, insured Gladys Nicholson from 9-7-22 to 9-7-25 (standard form as Ex. C-9).

This certificate insured the Jacobson Mansion in the sum of $6000, with a standard mortgagee clause attached, making loss payable to Alexander G. Nicholson, mortgagee.

EXHIBIT C-16.

Certificate No. 1247847—Firemen's Fund Insurance Company, $10,000, premium $50, insured Gladys Nicholson from 8-2-21 to 8-2-24 (standard form as Ex. C-9, same as Scottish Union & Natl.)

EXHIBIT C-17.

Certificate No. 7142842—Scottish Union and National Insurance Company, $10,000, premium $50., insured Gladys Nicholson from 8-2-21 to 8-2-24, (standard form as Ex. C-9).

This certificate insured the Jacobson Mansion in the sum of $10,000 with a standard mortgagee clause attached, making loss payable to Alexander G. Nicholson, mortgagee.

EXHIBIT C-18.

Certificate No. 6908—Star Insurance Co., $3600, premium $9.90, insured Gladys Nicholson from 8-2-21 to 8-2-24 (standard form as Ex. C-9).

This certificate insured the Jacobson Mansion in the sum of $3600 (no mortgagee clause) rent policy.

EXHIBIT ABC-6½—POWER OF ATTORNEY

Gladys Nicholson to Alexander G. Nicholson:

Dated 12-12-22, Ack. 12-12-22, before Alice Higgins, Notary Public at Denver, Colorado.

By these presents do make, constitute and appoint my father, Alexander G. Nicholson, my true and lawful attorney for me and in my name, place and stead, to act for me relative to the loss by fire of my house located on the Westerly side of Terrace Ave., about 100 ft. Westerly of Second Street and about 200 feet Southerly of Parker Ave., Hackensack, Bergen County, New Jersey, which fire occurred on or about October 27th, 1922; to make, execute and deliver proofs of loss relative to the same to each and every fire insurance company, having a policy on said premises; to make, execute and deliver any and all inventories relative to the same and to conduct all business and matters necessary to the adjustment of said fire loss, and to execute all necessary papers relating thereto.

EXHIBIT JL-10—LEASE

A. G. Nicholson, agent for Gladys Nicholson, owner, residing at Hackensack, and Catherine T. Masterson, residing in the Bronx, City of New York.

Dated 6-21-22, Ack. 6-21-22, Rec. 6-26-22, Bergen County, Book 1162—Deeds, page 687, Cons. $300 per month.

Lease for one year, with the privilege of three years, rent to start July 1st, 1922, possession to be given June 18, 1922. Bldg. to be used for dwelling purposes only and not to be occupied for more than five boarders kept at any one time upon the conditions and covenants following.

2. That the tenant shall take good care of the

premises and shall at his cost and expense make all repairs—.

18. Landlord hereby agrees . . . to furnish complete eight bed-rooms, also dining room, three parlor suits, combination billiard and pool table as agreed to between the parties on the n. e. corner of said building for the occupancy of himself or his daughter and not to be leased to or occupied by anyone else at a rental to be paid tenant of forty dollars per month or to be deducted from the rent to be paid by tenant.

Acknowledged before Jacob F. Klumpp, Notary Public, Hudson County, N. J.

EXHIBIT D-1—MORTGAGE.

Gladys Nicholson to Alexander G. Nicholson (set out in Ex. C-21).

EXHIBIT CFL-1.

Detailed estimate by Isaac Jersey.

The present replacement	$59,162.42
Depreciation, 10%	5,916.24
Present insurable value	$53,246.16

EXHIBIT JT-11.

Letter from Scottish Union Insurance Co., signed by A. MacKechnie, State Agent, dated 6-8-23, to Effingham L. Holywell, (similar to Ex. LF-2).

EXHIBIT ACB-3.

Dec. 18, 1922.

Mr. Joseph T. Lieblich,
Dear Sir:

Please send 30 day extension of time to file proof

of loss under 289219, 1247847, 7142842. I have received power of attorney from Glady Nicholson of Denver, Colorado. Also send blank forms to be filled out. Should proofs be filed with you or direct with Companies. Your letter of Dec. 8 sent to Gladys Nicholson has been forwarded by her to me.

Yours truly,
Wm. M. Moore.

EXHIBIT ABC-2.

Dec. 19th, 1922.

William Martin Moore, Esq.,
381 Pearl Street,
Brooklyn, N. Y.
Dear Sir:—

I have before me your favor of the 18th inst. In reply thereto would advise that I have no authority to waive any of the terms, covenants or conditions of the papers which you refer to by number, neither have I in my possession any blank forms such as you refer to. I assume, however, that blank forms may be purchased by you at any stationery store.

I would further suggest to you that the several companies interested will hold your client to a strict compliance with all the terms, covenants and conditions of the certificate which you refer to by number, without in any wise waiving any forfeiture in the premises heretofore incurred by your client, neither admitting nor denying liability in the premises.

Very truly yours,
Joseph T. Lieblich.

Exhibit N. J. 3

Newark, N. J., Oct. 30, 1922.

Mr. Wm. M. Moore,
281 Pearl Street,
Brooklyn, N. Y.
Dear Sir:—

We are in receipt of your communication of the 28th inst., concerning the loss of Gladys Nicholson. We would appreciate if you will advise us the cause of the loss, and the approximate amount of damage, and also furnish us with a builder's estimate for the repairs.

Yours truly,
Feist & Feist Agency.

EXHIBIT M. J. 5

Newark, N. J., Dec. 20, 1922.

Mr. Wm. M. Moore,
281 Pearl St.,
Brooklyn, N. Y.
Dear Sir:

Replying to yours of the 18th inst, concerning the loss of G. Nicholson, beg to advise that your letter has been referred to the Star Ins. Co. who will furnish you with the information requested.

Yours truly,
Feist & Feist Agency,
Wm. Lewis, Vice-President.

EXHIBIT PA-2

Statement and Proof of Loss No. K6908.

Assured Gladys Nicholson. Policy No. K6908.

Feist & Feist, Agency, Newark, N. J.

Amount of Policy, $3600. Amount of Claim, $3600. Date of Fire, October 27, 1922.

Star Insurance Co., of America, 80 Wm. Street.

To the Star Insurance Company of America, 80 William Street, New York.

1. The above named Insurance Company, by its Policy of Insurance No. K6908 issued at its Agency, for the term of three years from the 2nd day of August, 1921, to the second day of August, 1924, insured Gladys Nicholson against loss or damage by fire, as therein expressed, to the amount of Thirty six hundred dollars. The written portion of said Policy, and all provisions, agreements, conditions and transfers endorsed thereon or added thereto, are as follows:

2. A fire occurred on the 27th day of October, 1922, at or about the hour of 1 A. M., causing loss and damage to the property described in said Policy to the amount of dollars, The origin of said fire was as follows: Unknown, no knowledge sufficient to form a belief and no information. Owner, Gladys Nicholson, resided and still resides in Denver, Colorado.

3. The sole owner in fee simple of the building covered by the said Policy, and of the ground on which said building stood is Gladys Nicholson.

4. The cash value of each item of property covered by the said Policy and described and located as therein specified at the time of the fire, and the amount of direct loss and damage thereon caused by said fire, and for which claim is hereby made, were as follows:

Cash value of building $53000. Whole insurance $35000 on building; also $3000 on furniture; $3000 on shrubbery. Whole loss $53000. Insured by Star Ins. Co., $3600 on rental value. Claim upon Star. Ins. Co., $3600 on rental value.

5. No incumbrance existed on any portion of the premises or property, except as follows, in

favor of the persons and in the amounts following:

Alexander G. Nicholson, mortgagee in the sum of $25,000. Harriet Snyder, mortgagee, in the sum of $7000, with accumulated interest.

6. All other insurance and agreements for insurance, verbal or written, whether valid or not, issued to owner covering any part of said property at the time of the fire, amounting to $41000 dollars, and the apportionment of the claim upon each Company, are shown in Schedule "A," annexed hereto, which contains true copies of all the descriptions and schedules in all the policies covering on the said property, together with the dates of expiration of the several policies.

7. There have been no changes in the title, use, occupation, location, possession or exposure of said property since the issuing of said Policy.

8. The building or buildings described in the Policy, and the several parts thereof, were occupied at the time of fire only by the persons hereinafter named and for the following purposes:

Occupied by Mrs. Catherine Masterson as a dwelling, also by Alexander G. Nicholson and for no other purpose whatever.

9. The said fire did not originate by any act, design or procurement, on the part of the insured, or prohibited by said Policy; and nothing has been done before or since the fire by said insured, or by the party making this statement and proof, to violate any of the conditions of said Policy.

10. This statement and claim are subscribed and sworn to by the undersigned, pursuant to the provisions of said Policy, and the sum claimed

from the Star Insurance Company as its share of said loss as above specified is $3600 dollars.

It is hereby covenanted that the furnishing of this blank, or the making up of proofs by an adjuster or other representative of the Company, shall not be construed as a waiver of any of the rights of the Company.

Dated at Hackensack, New Jersey, 21st day of December, 1922.

Subscribed and sworn to by Alexander G. Nicholson before me, a Notary Public in and for the County of Bergen, State of New Jersey, this 21st day of December 1922. Wm. H. Bratt, Notary of N. J.

Gladys Nicholson, Alexander G. Nicholson, Attorney in fact of Gladys Nicholson under power of Attorney, Dec. 12, 1922.

Schedule A

Apportionment of Claim

No. of Policy 1237857. Name of Company—Fireman's Fund Insurance Co., of San Francisco, Cal. Expiration of Policy—Aug. 2, '24. Amount insured $10,000. Whole amount claimed under policy—$10,000.

No. of policy—289219. Name of Company—Colonial Fire Underwriters of Hartford, Conn. Expiration of policy—Nov. 11, '22. Amount insured—$15,000. Whole amount claimed under policy—$15,000.

No. of policy—K6908. Name of company—Star Ins. Co. of America. Expiration of policy—Aug. 2, 1924. Amount insured $3600. Whole amount claimed under policy—$3600. (Covers rental value only.)

No. of policy—224708. Name of company—Phoenix Ins. Co. of London. Expiration of poli-

cy—Sept. 7, '25. Amount insured $6000. Whole amount claimed under policy—$6000.

No. of policy—7143842. Name of company—Scottish Union and National Ins. Co. of Edinburgh. Expiration of policy—Aug. 2, '24. Amount insured—$10,000. Whole amount claimed under policy—$10000.

All of above policies (except Star Ins. Co. policy) have attached the Standard Mortgagee Clause with Alexander G. Nicholson named as mortgagee.

EXHIBIT PA-3

Proof of loss to Firemens Fund Insurance Co., Policy No. B1247847, making claim in the sum of $10,000. (Similar in all respects to Ex. PA-2).

EXHIBIT PA-5

P/L. to Phoenix Assurance Co., Ltd., policy No. 224708, making claim in the sum of $6000. (Similar in all respects to Ex. PA-2.)

EXHIBIT PA-6

P/L to Scottish Union & National Insurance Co., policy No. 7142842, making claim in the sum of $10,000. (Similar in all respects to Ex. PA-2.)

EXHIBIT PA-4

P/L to Colonial Fire Underwriters of Hartford, Conn., Branch of National Fire Insurance Co., of Hartford, making claim in the sum of $15,000, (similar in all respects to Ex. PA-2, except statement 4 which is as follows):

Cash Value		Whole Insurance	Whole loss	Issued by Colonial	Claim
Bldg.	53,000	35,000	53,000	9,000	9,000
shrubbery	3,000	3,000	3,000	3,000	3,000
furniture	3,000	3,000	3,000	3,000	3,000
totals	59,000	41,000	59,000	15,000	15,000

EXHIBITI P-7. Kent Commissioner

Cancelled voucher No. 304519—Phoenix Assurance Co., dated 12|26|24, Pay to the order of William H. Snyder, Harriet F. Snyder and William F. Bayes, atty., $1660, endorsements guaranteed, paid by American Exchange National Bank, New York, 1|13|25.

EXHIBIT P-17. Kent Commissioner

Cancelled voucher No. 32553—The London Assurance Corporation, dated 12|26|24, Pay to the order of Wm. H. Snyder, Harriet F. Snyder and W. R. Bayes, attorney, $2490. Endorsement guaranteed, paid by Bank of New York and Trust Company, New York, 1|14|25.

EXHIBIT P-9. Kent Commissioner

Cancelled voucher No. 16792—Insurance Company of North America, dated 1|6|25, Pay to the order of William H. Snyder and Harriet F. Snyder and William R. Bayes, $1245. Endorsement guaranteed, paid by Girard Nat'l. Bank of Phila., 1|13|25.

EXHIBIT P-16. Kent Commissioner

Cancelled voucher No. C-7175—The Mercantile Insurance Company of America, dated 12|26|24, Pay to the order of Harriet F. Snyder and William H. Snyder, $2905. Endorsements guaranteed. Paid by Nat'l. Bank of Commerce in New York, 1|23|25.

EXHIBIT P-10. Kent Commissioner
Mortgage

William H. Snyder, to Harriet F. Snyder. Dated: 10|10|18. Ack. 10|10|18. Rec. 10|21|18. Book 415—pp. 178. Cons. $6500.

Covers Jacobson Mansion. (This mortgage made by a husband to his wife.)

EXHIBIT P-11. Kent Commissioner
Warranty Deed

Frank E. Fields and Louisa, his wife, to William H. Snyder. Dated: 11|27|1096. Ack. 11|27|1906. Rec. 4|18|1908. Book 690—Deeds, pp. 345. Cons. $100.

Covers Jacobson Mansion (Frank E. Fields was Harriet F. Snyder's father, record page).

Deed

EXHIBIT P-12. Kent Commissioner

Mary T. Ward, residing in the Town of Rupert, County of Lincoln, State of Idaho, and Harriet F. Snyder of 26 Schermerhorn St., Brooklyn. Dated: 5|9|1918. Ack. 5|9|1918. Rec. 10|7|1918. Book 3753, pp. 33, Register's office, Kings County, N. J. Cons. $100.

Conveys premises 215 Foster Ave., Brooklyn, N. Y., Mary T. Ward was a sister of A. G. Nicholson, record page died in St. Mary's Hospital, San Francisco, Cal., 4|17|18, record page . This deed given as sole consideration for transfer of Jacobson Mansion, record page .

EXHIBIT P-14. Kent Commissioner
Mortgage

William H. Snyder, to Alexander G. Nicholson. Dated: 10|10|18. Ack. 10|10|18. Rec. 11|19|18. Book 416—pp. 1 &c. Cons. $500.

Covers Jacobson Mansion.

EXHIBIT P-13. Kent Commissioner
Assignment

Alexander G. Nicholson, to Harriet F. Snyder. Dated: 12|14|18. Ack. 12|14|18. Rec. 12|23|18. Book 89, pp. 289.9 Cons. $1.00 etc.

Assignment of mortgage set forth in Ex. P-17, Kent Commissioner.

EXHIBIT P-2. Kent Commissioner
Proof of Loss to London Assurance Corporation

To the London Assurance Corporation of London.

By your policy of Insurance No. 5920386, dated Dec. 20, 1921, issued at your Agency at Arlington, N. J. (I. E. Doland & Co.) you insured William H. Snyder, owner, and Harriet F. Snyder, mortgagee, against loss or damage by Fire to the amount of Three Thousand dollars, according to the terms and conditions printed in said policy, the written portion, together with correct copy of all endorsements, assignments and transfers, being as follows, viz: occupied for dwelling purposes by not more than two families.

For the term 5 years from the 20th day of December A. D. 1922, to the 20th day of December A. D. 1926 at noon; which said policy was subsequently continued in force by Renewal No. until the day of A. D. 19 at noon.

That in addition to the sum insured by said Policy deponents interest thereunder, there was other insurance made thereon, to the amount of Seven Thousand dollars, as particularly specified in Schedule hereto attached, besides which there was no other insurance thereon.

A fire occurred on the 27th day of October A. D. 1922, by which the dwelling building insured was destroyed and deponent claims to the extent of Ten Thousand dollars, and originated as follows, viz.: unknown to deponent.

The actual Cash Value of each specific subject thus situated and insured under the aforesaid Policies at the time of loss, and the actual loss and damage by said fire to the same, and for which claim is hereby made, was as follows, viz.: dwelling building, sound value $18144, deponent's interest $10,007.09, insurance on same $10,000.

For a more particular statement of same see Schedule annexed.

And the deponent claims of the London Assurance Corporation, by reason of said loss, damage and Policy of Insurance, the sum of Three Thousand dollars.

The property insured belonged exclusively to see supplementary statement and no other person or persons had any interest therein.

If the loss is on building, state whether Real Estate is owned in fee simple or held on lease, see supplementary statement.

State the nature and amount of incumbrance at

time of the fire: amount of mortgages to deponent plus interest and taxes.

The Total Value of Property saved is nil as per statement attached hereto marked Schedule

The building insured, or containing said property, was occupied in its several parts by the parties hereinafter named, and for the following purposes, to wit: unknown to deponent and for no other purposes whatever.

The said fire did not originate by any act, design, or procurement of my part, nor in consequence of any fraud or evil practice done or suffered by me; that nothing has been done by or with my privity or consent to violate the conditions of the Policy, or render it void; and that no articles are mentioned herein but such as were in the building damaged or destroyed, and belonging to, and in the possession of the said insured at the time of the said fire; that no property saved has been in any manner concealed, and that no attempt to deceive the said Company as to the extent of said loss, or otherwise, has in any manner been made. Any other information that may be required will be furnished on call, and considered a portion of these proofs.

Witness my hand at Brooklyn, N. Y., this 22nd day of December, 1922, Harriet F. Snyder, mortgagee.

Personally appeared Harriet F. Snyder, signer of the foregoing statement, who made solemn oath to the truth of the same, and that no material fact is withheld that the said Company should be advised of.

Witness my hand and official seal, this 22nd day of December, 1922. August Brook.

Supplementary Statement by the Assured

This is to certify that I, William H. Snyder, insured this property in my name, believing when I did so that I was the owner in fee of the property described in the first item of this policy.

Subsequently I have learned that I am not the owner of the fee and therefore make no claim.

Signed William H. Snyder, Assured.

Witness: R. D. Walker.

The following papers are attached to this Proof of Loss:

1. Blue print, 1st, 2nd, 3rd floor plan, disclosing Ex. DAJ-2.

2. Estimate of A. L. Anderson.

Cost of reconstruction	$60,445
70% depreciation since built	42,311
Present value	18,144
Bond and Mortgage Interest of Harriet F. Snyder	
Mortgage $6500, plus interest $1409.13	$ 7,209.13
Mortgage $500, plus interest $120.83	620.83
Taxes—July, 29, 1920—$210.85, interest $41.40	252.25
Taxes—July 13, 1921—$295.73, interest $30.23	325.96
Taxes—July 13, 1921—$287.04, interest $29.34	316.38
Taxes—July 1, 1922 $146.48, interest $2.92	149.40
Taxes—July 24, 1922 $317.01, interest $6.63	323.64
Water taxes	109.50
	$10,007.09

EXHIBIT P-6. Kent Commissioner

Proof of Loss, Phoenix Assurance Company, policy No. 1895811, wherein Harriet F. Snyder makes claim in the sum of $2000 (otherwise identical to Ex. P-2, Kent Commissioner).

EXHIBIT P-15. Kent Commissioner

Proof of Loss to Mercantile Insurance Company of America, policy No. 936893, wherein Harriet F. Snyder makes claim in the sum of $3500 (otherwise identical to Ex. P-2, Kent Commissioner).

EXHIBIT P-8. Kent Commissioner

Proof of loss, Insurance Company of North America, policy No. 115127, wherein Harriet F. Snyder makes claim in the sum of $1500 (otherwise identical to Ex. P-2, Kent Commissioner).

EXHIBIT C. F. L. 2

Newark, N. J., March 14th, 1923.

Mr. Joseph T. Lieblich,
136 Washington Street,
Paterson, N. J.

Dear Mr. Lieblich:

Re: Nicholson, W-S of Terrace Ave., South of Essex St., Hackensack, N. J.

I am enclosing herewith my detailed estimate on the above loss and also a plan, which are as nearly correct as I could make them with what information I received.

The building, as you know, is totally destroyed. It, no doubt, was a mansion when it was built and the work in same expensive, but from the appearance of what little was left, and from the condition of the other buildings on the property, it may have

been subject to a very considerable depreciation. Not only was it subject to depreciation from ordinary wear and tear, but from the fact that it was on account of the fact that it was very much out of style; the rooms large with high ceilings and for people wanting a house that would cost that much money, they would build all together a different style of house today.

On the other hand it was almost impossible to remodel into a tenement or apartment in order to get the proper return out of it.

Therefore, taking everything into consideration, probably 70% would be a fair depreciation. It would be simply impossible for anyone to give a Bona Fide estimate as to the actual depreciation on this building without having seen it before it was burned.

My estimate of depreciation is as stated above, and from what I could learn from the people who say they new the house before it was burned.

Yours very truly,

B. F. Robinson.

BFR:RM

EXHIBIT C-22

Dec. 7th, 1922.

Alex G. Nicholson,
311 Parker Avenue,
Hackensack, N. J.

Dear Sir:

We are in receipt of information from a source which we believe to be reliable, that certain property in the City of Hackensack, which is alleged to be insured by us, has been damaged by fire.

If such is a fact and there is a claim against the Colonial Fire Underwriters of the National Fire In-

surance Company of Hartford, Fireman's Fund Insurance Company of California and the Scottish Union & National Insurance Company of Edinburgh, Scotland, under papers or certificates No. 289219, No. 1247847 and No. 7142842 respectively, the alleged claim will have to be presented in accordance with the terms and conditions of the said papers referred to herein by number and we hereby demand a strict compliance by you of all the terms, covenants and conditions of the said alleged insurance policies, particularly referring to the filing of a proof of loss, examination under oath, Magistrate's certificate appraisal, furnishing us with duplicate bills, vouchers and plans and specifications and all of the terms and conditions of the alleged policies of insurance referred to herein, expressly reserving and waiving none of our rights under the said alleged policies of insurance, neither admitting nor denying liability in the premises and without waiving any forfeiture heretofore incurred by you.

This demand is made in order that opportunity be afforded us to investigate and to determine if there be any claim against us and we do not admit there is any.

Very truly yours,

Colonial Fire Underwriters of the National Fire Insurance Company of Hartford, Fireman's Fund Insurance Company of Calfornia and the Scottish Union & National Insurance Company of Edinburgh, Scotland.

By Joseph T. Lieblich, Attorney.

JTL:A

EXHIBIT C-35

Demand similar to C-22, dated 12|7|22, addressed to Gladys Nicholson, 311 Parker Ave., Hackensack, N. J.

EXHIBIT C-36

Demand similar to C-22, dated 12|7|22, addressed to Gladys Nicholson, 638—19th St., Denver, Colorado.

EXHIBIT C-27½

Dec. 28th, 1922.

Gladys Nicholson,
638 19th St.,
Denver, Colorado.

Dear Madam:

We are in receipt of information from a source which we believe to be reliable, that certain property in the City of Hackensack, which is alleged to be insured by us, has been damaged by fire.

If such is a fact and there is a claim against the Star Insurance Company of America, under paper or certificate No. K-6908, the alleged claim will have to be presented in accordance with the terms and conditions of the said paper referred to herein by number and we hereby demand a strict compliance by you of all the terms, covenants and conditions of the said alleged insurance policy, particularly referring to the filing of a proof of loss, examination under oath, Magistrate's certificate, appraisal, furnishing us with duplicate bills, vouchers and plans and specifications and all of the terms and conditions of the alleged policy of insurance referred to herein, expressly reserving and waiving none of our rights under the said alleged policy of insurance,

neither admitting nor denying liability in the premises and without waiving any forfeiture heretofore incurred by you.

This demand is made in order that opportunity be afforded us to investigate and to determine if there be any claim against us and we do not admit there is any.

Very truly yours,
Star Insurance Company of America,
By Joseph T. Lieblich.

JTL:A

EXHIBIT C-23.

Dec. 28th, 1922.

Alex G. Nicholson,
311 Parker Avenue,
Hackensack, N. J.

Dear Sir:

We are in receipt of information from a source which we believe to be reliable, that certain property in the City of Hackensack, which is alleged to be insured by us, has been damaged by fire.

If such is a fact and there is a claim against the Star Insurance Company of America, under paper or certificate No. K-6908, the alleged claim will have to be presented in accordance with the terms and conditions of the said alleged insurance policy, particularly referring to the filing of a proof of loss, examination under oath, magistrate's certificate, appraisal, furnishing us with duplicate bills, vouchers and plans and specifications and all of the terms and conditions of the alleged policy of insurance referred to herein, expressly reserving and waiving none of our rights under the said alleged policy of insurance, neither admitting nor denying liability in the premises and without waiving any forfeiture heretofore incurred by you.

This demand is made in order that opportunity be afforded us to investigate and to determine if there be any claim against us and we do not admit there is any.

Very truly yours,

JTL:A Star Insurance Company of America.

By Joseph T. Lieblich.

EXHIBIT C-28

Jan. 8th, 1923.

Gladys Nicholson,
638 19th Street,
Denver, Colorado.

Dear Madam:

I am in receipt of a paper purporting to be a proof of loss, on the Phoenix Assurance Company of London, under an alleged certificate No. 224708, in connection with an alleged fire in Hackensack, New Jersey, on Oct. 27th, 1922.

I desire to advise you, on behalf of the said Phoenix Assurance Company, that we hereby reject the said paper or alleged proof of loss as incomplete, incorrect and not in accordance with the terms, covenants and conditions of the alleged certificate No. 224708 or the facts and conditions existing at the time of the alleged fire.

I expressly point out to you some of the reasons why the said paper or alleged proof of loss is not in accordance with the terms, covenants and conditions of the alleged certificate No. 224708; the claim is far in excess of any actual loss or damage sustained, you have failed to execute and swear to the said paper, you have failed to state the cause and origin of the fire, you have failed to comply with the demand made upon you on the 8th day of December,

1922, you have failed to attach a certificate of a Magistrate, you have failed to attach plans, specifications, surveys of the property, you have failed to attach a statement showing sound value and alleged loss or damage and for other reasons which are apparent on the face of this paper, further details of which will be furnished upon demand, the same stands rejected and I am holding it at this office subject to your call, advice or disposition.

You will please take further notice that we demand a strict compliance by you with all of the terms, covenants and conditions of the said alleged certificate No. 224708, particularly relating to the covenants of appraisal, examination under oath, Magistrate's certificate, plans and surveys, production of bills, books of account, etc., and in pointing these covenants out to you, we do not waive any other covenant but insist upon a strict compliance with all of the terms, covenants and conditions of the alleged certificate No. 224708.

You will please take further notice that for the purpose of investigating the alleged loss and damage which you claim under certificate No. 224708, we demand that you submit to an examination under oath and if you will advise us of the place that you desire this examination conducted, we shall be pleased to fix the time and designate the person who is to conduct the said examination and after the examination shall have been concluded, we demand that you will subscribe to the said examination.

You will take further notice that in making the several demands upon you, we do so for the purpose of having you comply with the terms, covenants and conditions of the alleged certificate No. 224708, and for the purpose of investigating and determining

and ascertaining the loss or damage, if any, which may have resulted by reason of the alleged fire of October 27th, 1922, and in making these demands, we do not admit nor deny any liability in the premises.

Very truly yours,
Phoenix Assurance Co., of London
By Joseph T. Lieblich, Attorney.

JTL:A

EXHIBIT C-29

Jan. 9th, 1923.

Gladys Nicholson,
638 19th Street,
Denver, Colorado.

Dear Madam:

I am in receipt of a paper purporting to be a proof of loss, on the Colonial Fire Underwriters of the National Fire Insurance Company of Hartford, under an alleged certificate No. 289219, in connection with an alleged fire in Hackensack, New Jersey, on October 27th, 1922.

I desire to advise you, on behalf of the said Colonial Fire Underwriters of the National Fire Insurance Company of Hartford, that we hereby reject the said paper or alleged proof of loss as incomplete, incorrect and not in accordance with the terms, covenants and conditions of the alleged certificate No. 289219 or the facts and conditions existing at the time of the alleged fire.

I expressly point out to you some of the reasons why the said paper or alleged proof of loss is not in accordance with the terms, covenants and conditions of the alleged certificate No. 29219; the claim is far in excess of any actual loss or damage sustained, you have failed to execute and swear to the

said paper, you have failed to state the cause and origin of the fire, you have failed to comply with the demand made upon you on the 8th day of December, 1922, you have failed to attach a certificate of a Magistrate, you have failed to attach plans, specifications, surveys of the property, you have failed to attach a statement showing sound value and alleged loss or damage and for other reasons which are apparent on the face of this paper, further details of which will be furnished upon demand, the same stands rejected and I am holding it at this office subject to your call, advice or disposition.

You will please take further notice that we demand a strict compliance by you with all of the terms, covenants and conditions of the said alleged certificate No. 289219, particularly relating to the covenants of appraisal, examination under oath, Magistrate's certificate, plans and surveys, production of bills, books of account, etc., and in pointing these covenants out to you, we do not waive any other covenant but insist upon a strict compliance with all of the terms, covenants and conditions of the alleged certificate No. 289219.

You will please take further notice that for the purpose of investigating the alleged loss and damage which you claim under certificate No. 289219 we demand that you submit to an examination under oath and if you will advise us of the place that you desire this examination conducted, we shall be pleased to fix the time and designate the person who is to conduct the said examination and after the examination shall have been concluded, we demand that you will subscribe to the said examination.

You will take further notice that in making the several demands upon you, we do so for the purpose of having you comply with the terms, covenants

and conditions of the alleged certificate No. 289219, and for the purpose of investigating and determining and ascertaining the loss or damage, if any, which may have resulted by reason of the alleged fire of October 27th, 1922, and in making these demands, we do not admit nor deny any liability in the premises.

Very truly yours,
Colonial Fire Underwriters of the
National Fire Insurance Company
of Hartford,
JTL:A By Joseph T. Lieblich, Attorney.

EXHIBIT C-30

Same as Ex. C-29 dated 1-10-23, policy K-6908, addressed to Gladys Nicholson, 638—19th St., Denver, Colorado, from Star Ins. Co. of America.

EXHIBIT C-31

Same as Ex. C-29, dated 1-11-23, policy 7142842, to Gladys Nicholson from Scottish Union & Natl. Ins. Co.

EXHIBIT C-32

Same as Ex. C-29, dated 1-16-23, to Gladys Nicholson, policy No. B1247847, Firemen Fund Ins. Co.

EXHIBIT C-24.

Feb. 23rd, 1923.

Mr. Alex G. Nicholson,
c-o William Martin Moore, Esq.,
381 Pearl Street,
Brooklyn, N. Y.

Dear Sir:

We made demand upon you under registered cover, on the 7th day of February, 1923, addressed to 311

Parker Ave., Hackensack, N. J., which has been returned to this office.

You will please take notice that you are hereby required to submit to an examination under oath, concerning the alleged loss under certificates Nos. 224708—Phoenix Assurance Company of London; No. 7142842—Scottish Union & National Insurance Company of Edinburgh; No. 289219—Colonial Fire Underwriters of the National Fire Insurance Company of Hartford; B-1247847—Fireman's Fund Insurance Company of San Francisco, California and K-6908—Star Insurance Company of America; by Joseph T. Lieblch, Esq., the person named by said companies for that purpose, at the office of the said Joseph T. Lieblich, Esq.; No. 136 Washington Street, Paterson, N. J., for Monday, March 5th, 1923, at 1 P. M., and that you will at the same time and place, on such examination and for the purpose of it, produce for examination all books of account, checks, bills, invoices and other vouchers or certified copies thereof if originals be lost, in any way relating to the loss and permit extracts and copies thereof to be made.

You will please take further notice and for the purpose of ascertaining the loss and damage, if any, we hereby demand an appraisal pursuant to the terms, covenants and conditions of the said certificates above referred to and hereby name as our appraiser Benjamin F. Robinson, 20 Clinton St., Newark, N. J. You will please advise us of the name of your appraiser at your earliest convenience.

It is further provided in your certificates above mentioned that it is provided that these companies shall not be held to waive any of the provisions and conditions of the alleged certificates, or any forfeit-

ure thereof by any act, requirement or proceeding on its part, relating to Magistrate's certificate, appraisal, examination under oath, etc., and in making the demands herein stated, we wish it clearly understood that the same is not to be construed as an admission or a denial of liability on our part, nor do we intend to waive any of the terms, covenants or conditions in the said alleged certificates, and we shall hold you to a strict compliance with all of the terms, covenants and conditions of the said alleged certificates.

Very truly yours,
Phoenix Assurance Company, et als.,
By Jos. T. Lieblich,
Attorney of the Insurance
Companies herein mentioned.

JTL:A

Copy sent to Mr. Martin Moore Feb. 24, 1923.

EXHIBIT C-37.

Mar. 1st, 1923.

Miss Gladys Nicholson,
1407 Bean Street,
Brooklyn, N. Y.

My dear Miss Nicholson:

Confirming your telephone request of this date, I shall be pleased to arrange to conduct your examination on Monday next, March 5th, 1923, at 10:15, at this office, and in the event that you cannot get here, I trust you will keep your promise and notify me so that I may not be compelled to lose the time.

Very truly yours,
Joseph T. Lieblich.

JTL:A

EXHIBIT C-26

Joseph T. Lieblich, Counsellor-at-Law, 136 Washington St., Paterson, N. J., Phone Sherwood 1975.

March 3rd, 1923.

Alexander G. Nicholson, Esq.,
c-o Melosh, Morten & Melosh, Esqs.,
76 Montgomery St.,
Jersey City, N. J.

Dear Sir:

I am this day in receipt of a letter from the law firm of Melosh, Morton & Melosh wherein they allege, inter alia, that they are your attorneys and presumably authorized to represent you, heretofore I have understood that you were being represented by a gentleman by the name of Moore an Attorney in Brooklyn, N. Y., I shall therefore appreciate your advising me as to who is authorized to represent you so that I may know with whom I am to deal in the matter and avoid any confusion.

You will please take notice that if there is any claim against any of the insurance companies that I am representing, and we do not admit that there is, the same will have to be presented in accordance with the terms, covenants and conditions of the several certificates which may be in your possession, and that we will hold you personally to a strict compliance with each and every one of the terms, covenants and conditions of the certificates herein referred to without waiving any term, covenant, condition, or forfeiture heretofore incurred by you in the premises, and I particularly point out some of the covenants that we insist upon your immediate compliance with, without waiving all the others, viz: furnishing us with 'proof of loss' as set out in lines 67 to 84 inclusive, 'Magistrates' certificate,' verified

plans, specifications, etc., of the building etc., a survey or sketch of the property, copy of the alleged deed or mortgage, an appraisal to determine the loss and damage if any, an examination under oath and the subscription of the same after completion.

You will take notice that in makng these demands upon you, it is done solely for the purpose of ascertaining, investigating and determining if there is a claim against any of my clients, and in doing so, we neither admit nor deny any liability.

Yours truly,

JTL-B

copy to: Melosh, Morton & Melosh, Jersey City, N. J.; William Martin Moore, Brooklyn, N. Y.

EXHIBIT J. L. 8½.

Effingham L. Holywell, Attorney and Counsellor at Law, 38-44 Court Street, Brooklyn, N. Y., Phone Main 3176; removed to 50 Court Street, Triangle 6195-6-7.

March 3rd, 1923.

Joseph T. Lieblich, Esq.,
Romaine Building,
Paterson, N. J.

Dear Sir:

As attorney for Miss Gladys Nicholson, I beg to state it will not be convenient for her to attend at your office for examination on the fifth instant. If convenient for you she will appear at this office on March 12th at 2 P. M. for such examination.

Kindly advise if this date is satisfactory, and oblige.

Yours truly,

E. L. Holywell.

EXHIBIT C-33.

Mar. 5th, 1923.

Miss Gladys Nicholson,
1407 Bean Street,
Brooklyn, N. Y.

Dear Madam:

I am this day in receipt of a letter from Effingham L. Holywell, Esq., Counsellor at Law at 50 Court Street, Brooklyn, wherein he alleges, inter-alia, that he is your attorney and presumably authorized to represent you, heretofore I have understood that you were being represented by a gentleman by the name of William Martin Moore, an attorney in Brooklyn, N. Y. I shall therefore appreciate your advising me as to who is authorized to represent you so that I may know with whom I am to deal in the matter without any confusion.

You will please take notice that if there is any claim against the Phoenix Assurance Company of London, Scottish Union & National Insurance Company of Edinburgh, Colonial Fire of the National of Hartford, Fireman's Fund Insurance Company of California and or Star Insurance Company of America, and we do not admit that there is any, the same will have to be presented by you personally in accordance with the terms, covenants and conditions of the standard fire insurance policy of the State of New Jersey, such as are issued by the Companies herein named, and we will hold you personally to a strict compliance with each and every one of the terms, covenants and conditions of the said standard fire insurance policy of the State of New Jersey, without waiving any term, covenant, condition or forfeiture heretofore incurred by you in the premises and I particularly point out to you some of the cove-

nants that we insist upon your immediate compliance with, without waiving any other, viz:

"Furnishing us with 'proof of loss' as set out in lines 67 to 84 inclusive, 'Magistrate's certificate,' certified plans, specifications, etc., of the building, etc., a survey or sketch of the property, copy of the alleged deed or mortgage, an appraisal to determine the loss and damage, if any, an examination under oath and the subscription of the same after completion."

You will please take further notice that for the purpose of ascertaining or determining the alleged loss and damage, if any, we hereby demand that the said alleged loss or damage be ascertained or determined by an appraisal in accordance with the covenants recited in the standard fire policy and nominate as our appraiser, B. F. Robinson, Esq., No. 20 Clinton Street, Newark, N. J., and would ask you to forthwith notify me of the name of your appraiser.

You will take further notice that in making these demands upon you, it is done solely for the purpose of ascertaining, investigating and determining, if there is a claim against any of the companies herein mentioned, and in doing so, we neither admitting nor denying any liability in the premises.

Yours very truly,

Phoenix Assurance Company of London; Scottish Union & National Insurance Co. of Edinburgh; Colonial Fire Underwriters of the Nat'l. of Hartford; Fireman's Fund Ins. Co. of San Francisco, Cal., and or Star Insurance Co. of America.

JTL:A By Joseph T. Lieblich.

Copy sent to: William Martin Moore, Esq., 381 Pearl Street, Brooklyn, N. Y.; Effingham L. Holywell, Esq., 50 Court Street, Brooklyn, N. Y.

EXHIBIT J. L. 6.

March 6th, 1923.

Joseph T. Lieblich Esq.,
136 Washington Street,
Paterson, N. J.

Dear Sir:

Replying to your letter of the 5th instant, I desire to state that Mr. Effingham L. Holywell, No. 50 Court Street, Brooklyn, N. Y., is my attorney and authorized to act for me.

Yours truly,
Gladys P. Nicholson.

EXHIBIT C-34½.

Mar. 19th, 1923.

Miss Gladys P. Nicholson,
1407 Bean Street,
Brooklyn, N. Y.

Dear Madam:

You will pardon my failure to acknowledge receipt of your letter of March 6th, prior to this date. I had understood from a law firm in Jersey City, N. J., who were representing your father, that you would be present with your father on Mar. 7th, for the purpose of submitting to an examination under oath and that your father had called up that day and stated that he was unable to appear. Whether I have been correctly informed or not, is a matter which I leave with you, however, in order to prevent any misunderstanding, you will take notice that if there is any claim against the Phoenix Assurance Company of London, Scottish Union & Na-

tional Insurance Company of Edinburgh, Colonial Fire of the National of Hartford, Fireman's Fund Insurance Company of California and or Star Insurance Company of America, and we do not admit that there is any, the same will have to be presented by you personally in accordance with the terms, covenants and conditions of the standard fire insurance policy of the State of New Jersey, such as are issued by the companies herein named, and we will hold you personally to a strict compliance with each and every one of the terms, covenants and conditions of the said standard fire insurance policy of the State of New Jersey, without waiving any term, covenant, condition or forfeiture heretofore incurred by you in the premises, and I particularly point out to you some of the covenants that we insist upon your immediate compliance with, without waiving any other, viz:

"Furnishing us with 'proof of loss' as set out in lines 67 to 84 inclusive, 'Magistrate's certificate,' certified plans, specifications, etc., of the building, a survey or sketch of the property, copy of the alleged deed or mortgage, contract, lease or other papers in any wise relating to this property, any interest or claim which you are alleging and an appraisal in accordance with the covenants and conditions of the policy for the purpose of ascertaining and determining the loss and damage, if any, an examination under oath and the subscription of the same in compliance and in accordance with the terms and conditions of the standard policy of the State of New Jersey."

You will please take further notice that we insist upon an examination under oath and if it is not your intention to appear in Jersey City, will you

please advise us where you do wish to appear for the purpose of this examination, giving us a few days, as we desire to be as courteous as we possibly can, and to assist you and not put you to any inconvenience in coming to this office, if you prefer to have the examination under oath conducted at some other place or point.

You will take further notice that in making these demands upon you, it is done solely for the purpose of ascertaining, investigating and determining if there is a claim against any of the companies herein mentioned, that we do not waive any of the terms, covenants or conditions of the standard policy of insurance, such as is issued by us, and insist upon a strict compliance therewith, neither admitting nor denying liability in the premises.

Very truly yours,

Phoenix Assurance Company of London; Scottish Union & National Insurance Co. of Edinburgh; Colonial Fire Underwriters of the National of Hartford; Fireman's Fund Ins. Co. of San Francisco, Cal., and or Star Insurance Co. of America.

JTL:A By Joseph T. Lieblich.

Copy sent to: Effingham L. Holywell, Esq., 50 Court Street, Brooklyn, N. Y.

EXHIBIT J. L. 9.

March 20th, 1923.

EXHIBIT C-32.

Joseph T. Lieblich, Esq.,
Romaine Building,
Paterson, N. J.

My dear Mr. Lieblich:

Confirming my conversation with you on the phone this day, I beg to state that Miss Gladys P. Nichol-

son will be present at this office for examination under oath by you as the examiner for the Insurance Companies on the twenty-second instant at 2 o'clock P. M.

You are hereby further advised that I am Miss Nicholson's sole attorney and the only person authorized to act for her as attorney or otherwise, and that any other attorney, person or firm attempting or claiming to act in her behalf is without her authority, knowledge or consent.

Yours respectfully,

E. L. Holywell.

EXHIBIT C-38.

April 30th, 1923.

Miss Gladys Nicholson,
c-o Effingham L. Holywell, Esq.,
Counsellor-at-Law,
Brooklyn, N. Y.

Dear Madam:

I desire to acknowledge receipt of a letter signed by E. L. Holywell, your attorney, dated April 24th, 1923 and also to acknowledge receipt of some plans. These papers were to be furnished to me for the purpose of permitting us to conduct an examination under oath. I shall therefore be ready to proceed with the examination under oath, which may be held at either Mr. Holywell's office or at my office and I hereby fix May 9th, at 2 P. M., for this purpose. You will therefore advise me at which place you desire to proceed with this examination and if the date and time is satisfactory to you.

The said letter referred to, dated April 24th, further states: "I have cause to be presented to you appraisal agreements for execution in accordance

with your demand for such." I desire to advise you that you are mistaken in your statement for I have never made a demand upon you or anyone else for the execution of the appraisal agreement and to date I have never received any notification from you of any party whom you have selected in pursuance to a demand made upon you for the purpose of having the loss and damage appraised and I note that you now name a gentleman by the name of George J. Marron. If you will be kind enough to give me his address and occupation so that I may have an opportunity to look into his qualifications, etc., I shall then be in a position to advise you if he is acceptable to us as your appraiser.

Isn't it an assumption of authority on your part or on the part of anyone else, to get in touch with anyone whom I have designated as our appraiser before advising me as to whether the said party is agreeable or objectionable to you and prior to your notifying us and the acceptance by us of the appraiser? We feel that we are fully competent and able to instruct our appraiser when we are ready to have him proceed and I doubt very much whether he would proceed without having been notified by us of his selection. As a matter of fact, I have not as yet even notified him of his selection by us as our appraiser.

You will please take notice that in making these demands upon you, we do so solely for the purpose of investigating, ascertaining or determining the loss or damage, if any, and in doing so, we neither admit nor deny liability in the premises, nor do we waive any of the terms, covenants or conditions of the standard fire insurance policy of the State of New Jersey, or any forfeiture heretofore created

or incurred by you and will hold you to a strict compliance with all of the terms, covenants and conditions of the standard fire insurance policy of the State of New Jersey.

Very truly yours,

JTL:A Joseph T. Lieblich.

EXHIBIT C-39.

May 3rd, 1923.

Miss Gladys Nicholson,
c-o Effingham L. Holywell, Esq.
Counsellor-at-Law
Brooklyn, N. Y.

Dear Madam:

I wrote you under date of April 30th, addressing the letter same as this is addressed. To date I have not received any acknowledgment.

Will you be kind enough to advise me if you have received this letter as I must insist upon your early reply and immediate compliance with all of the terms, covenants and conditions and demands heretofore made upon you and if it is your intention to actually and bona fide have the loss and damage, if any, on the property which you allege is yours, at Hackensack, N. J., appraised. I must insist upon your immediate advice and compliance with my letter of April 30th.

You will please take notice that in writing you, we do not admit nor deny liability in the premises, neither do we waive any of the terms, covenants or conditions of the standard fire insurance policy of the state of New Jersey, or any forfeiture heretofore incurred by you.

Very truly yours,

JTL:A Joseph T. Lieblich.

EXHIBIT C-40.

May 15th, 1923.

Miss Gladys Nicholson,
c-o Effingham L. Holywell, Esq.,
50 Court Street,
Brooklyn, N. Y.

Dear Madam:

We are without reply to our letters of April 30th and May 3rd, 1923, which we have forwarded to you, in care of Effingham L. Holywell, your attorney, at 50 Court Street, Brooklyn, New York, in compliance with your instructions to forward letters to Mr. Holywell's office.

You will please take notice that we insist upon a full compliance by you with all of the terms, covenants and conditions of the standard fire policy of the State of New Jersey, or any alleged certificate of any Insurance Company which you may have in your possession, and any and all demands heretofore made upon you under any alleged policy or certificate which you may hold or make an alleged claim, without waiving any term, covenant and condition of any demand heretofore made upon you.

You will please take further notice that we object to George J. Marron as your appraiser upon the ground that he is not competent. You alleged claim covers a building, household furniture effects, goods and chattels. We have heretofore asked you to advise us of the occupation or business of the said Marron and our investigation discloses the fact that he is a bookkeeper or accountant, consequently he is not sufficiently experted to ascertain, appraise, or estimate the loss and damage upon any building or household goods or effects and if our investigation has not disclosed the true state of facts, we shall

be pleased to have you advise us of the business or occupation of Mr. Marron, so that we may intelligently pass upon his qualifications and should he qualify, we shall be pleased to withdraw the objection.

Failure to take notice will be at your peril.

Very truly yours,

JTL:A Joseph T. Lieblich.

EXHIBIT J. L. 10.

May 23rd, 1923.

Mr. Joseph T. Lieblich,
136 Washington Street,
Paterson, N. J.

Dear Sir:

Your letters of April 30th, May 3rd, and 15th, addressed to Miss Gladys Nicholson have been received and contents noted.

Until I receive from you proper written authority executed by the several insurance companies you claim to represent in this matter, authorizing you to act as their attorney, no further attention will be paid to your communications.

Yours truly,

E. L. Holywell.

EXHIBIT J. L. 7½

William Martin Moore, Counsellor at Law, 381 Pearl Street (near Borough Hall), Brooklyn, N. Y., Phone, Triangle 5416.

June 9, 1923.

Mr. Joseph T. Lieblich.

Dear Sir:

This is to advise you that Wm. M. Moore is one of my attorneys in regard to fire loss you have charge

of for various insurance companies, at Hackensack, N. J., known as the Jacobson Mansion.

Very truly yours,

A. G. Nicholson.

EXHIBIT DAJ-1

June 2nd, 1923.

Mr. Alex G. Nicholson,
311 Parker Avenue,
Hackensack, N. J.

Dear Sir:

Please take notice that we have heretofore made several demands upon you and given you notice that if there is any claim, and we do not admit there is any, by yourself as an alleged mortgagee or as attorney in fact for Gladys Nicholson, covering any property in the State of New Jersey, upon which property you allege to hold or have an interest in any certificate or alleged policies of insurance, that you will have to make claim in accordance with the terms, covenants and conditions of the alleged certificates or alleged policies of insurance, and I refer your attention particularly to lines 67 to 80 inclusive which must be complied with by you, together with any and all demands heretofore made upon you, for an appraisal of the alleged loss and damage, examination under oath, furnishing us with a Magistrate's certificate, furnishing us with specifications, plans and surveys of the alleged property, together with any and all other demands heretofore made upon you, and unless the same be complied with, we shall assume that you do not intend to comply with the terms, covenants and conditions and demands heretofore made upon you, under any alleged certificate or policy which you may hold in your pos-

session, or make an alleged claim thereunder and your failure to comply will be constructed as a forfeiture thereof.

Failure to take notice will be at your peril.

Very truly yours,

JTL:A Joseph T. Lieblich.

Copy sent to: William Martin Moore, Esq., 381 Pearl St., Brooklyn, N. Y.

EXHIBIT LF-2.

Phoenix Assurance Company, Limited.

June 6, 1923.

Registered Mail.

Effingham L. Holywell, Esq.,
No. 50 Court Street,
Brooklyn, N. Y.

Dear Sir:

Your letter of May 23rd, addressed to Joseph T. Lieblich, Esq., 136 Washington Street, Paterson, New Jersey, is before us for attention.

In reply thereto would advise that we retained Mr. Lieblich in the latter part of 1922, solely:

1. For the purpose of investigating an alleged claim by reason of an alleged fire of October 27, 1922, at Hackensack, N. J.

2. To ascertain and determine if there is any liability on our part, and,

3. If so, report to us his conclusions upon the facts collected and established and the examinations under oath, with his opinion in the premises, and,

4. To carry out any further instructions which may from time to time be given by this company, and incidental thereto:

.a) For the purpose of conducting an examination under oath, such as is contemplated by the

Standard Fire Insurance Policy of the State of New Jersey, and

.b) To demand a full compliance with all of the terms, covenants, conditions precedent and subsequent of any alleged certificate of this company in the statutory form, known as the Standard Fire Insurance Policy.

You will take notice, that we neither admit or deny any liability or waive any forfeitures under any alleged certificates of this company, and acknowledgment is made, solely for the purpose of enabling Mr. Lieblich to terminate his employment and make his report. Should Mr. Lieblich have performed any act for our benefit which is not covered by these instructions, we may decide to ratify or disaffirm the same and shall be pleased to receive your advice in the premises immediately.

Yours very truly,

Prentice B. Reed,

PBR:L General Adjuster.

Similar letter sent by Star Insurance Co., Firemen's Fund Insurance Co., Scottish Union & Natl. Ins. Co., and National Fire Ins. Co.

No. 28

New Jersey Court of Errors and Appeals

Firemen's Fund Insurance Co., Scottish Union & National Insurance Co., Insurance Company of North America, Mercantile Insurance Co., London Assurance Co., National Fire Insurance Co., Star Insurance Co., and Phoenix Assurance Co., Complainants-Appellants, vs. Harriet F. Snyder, William H. Snyder, Gladys Nicholson and Alexander G. Nicholson, Defendants-Respondents.	On Appeal From Court of Chancery.

BRIEF ON BEHALF OF GLADYS NICHOLSON AND ALEXANDER G. NICHOLSON

STATEMENT OF FACTS

The appellants, by their appeal, bring up for review a decree of the Court of Chancery.

The defendants, Harriet F. Snyder and William H. Snyder, are no longer parties to the cause, the bill as to them having been dismissed in the early part of the proceedings. The decree appealed from concerns the defendants, Gladys Nicholson and Alexander G. Nicholson.

The bill charged fraud of various kinds against the Nicholsons, and the Court after a consideration of all the evidence, found that fraud had not been proven.

Gladys Nicholson was the owner of the premises known as the Jacobson Mansion in Hackensack, having obtained title to these premises by a deed dated October 10th, 1918, and recorded in the Bergen County Clerk's Office in Book 999, (P. 488). She received title to these premises from one William H. Snyder and wife. The deed was absolute in form, excepting that it was subject to a mortgage (P. 285, State of case).

Gladys Nicholson thereupon, in consideration of certain indebtedness, and for further good and valuable consideration, executed to Alexander G. Nicholson, her father, a mortgage of $25,000; the premises were worth in the neighborhood of $60,000, together with considerable shrubbery around the building, and furniture and other personal property within the property, all belonging to Miss Nicholson, and which were destroyed by fire on October 27th, 1922.

Notice of loss was given, proofs of loss filed and demand for payment made. The various insurance companies, however, who are the complainants in this cause, filed a bill in the Court of Chancery of New Jersey, about coincident with the time that the defendants herein brought action in the New Jersey Supreme Court. The bill filed in the Court of Chancery, sought to have the policies cancelled and delivered up on the ground of fraud, on the part of Alexander Nicholson and Gladys Nicholson. The cause was duly heard and a series of hearings had, with the result, that at the conclusion of the cause Vice Chancellor Lewis, as to the complainants' bill, found that there was no fraud and dismissed the bill.

A final decree was advised, upon objections by counsel for complainants (appellants herein), a new decree was redrafted and was advised on the 19th day of September, 1927 (P. 9, State of case). By that decree the Court after citing the various charges of fraud, mentioned in the bill held that the charges were unproven. The language of the decree on that part is as follows:

> "The complainants having alleged that said policies were obtained by the said defendants, each or either of them by false representations and fraud as to the title to said premises, as to the consideration for the mortgage, and as to the true ownership of Gladys Nicholson of the premises, and as to the representations of the value of the building upon said premises, and as to the fact that said premises were alleged to be occupied, whereas the same were vacant and unoccupied, and as to the true physical condition of the building on said premises, and of the income thereof, all of which matters of fraud were denied by the defendants, Gladys Nicholson and Alexander G. Nicholson and the said defendants Harriet F. Snyder and William H. Snyder having been stricken out as party defendants, and the Court having considered the pleadings and proofs, and considered the argument of counsel, from all of which it appears that the charges of fraud, or misrepresentation, made against said Gladys Nicholson and Alexander G. Nicholson in said bill of complaint were not proved."

"It is thereupon on this 19th day of September, 1927, on motion of Ward and McGinnis, solicitors and of counsel with defendants, ordered, adjudged and decreed, that the charges of fraud and misrepresentation, having not been proved that the said bill be and the same is hereby dismissed."

"It is further ordered that there be awarded to Ward & McGinnis, Solicitors and of counsel with Gladys Nicholson and Alexander G. Nicholson, a counsel fee of $1000.00 and costs to be taxed against the complainants."

(P. 9-10, State of case.)

POINT 1.

THE COMPLAINANTS' CHARGES OF FRAUD IN THE BILL OF COMPLAINT WERE NOT PROVEN.

The decree correctly recites the various charges of fraud alleged, but we shall again refer to them as they appear in the printed case. The bill of complaint commences at page 16, but the first ten paragraphs deal with the introduction of the various complainants; the eleventh to the sixteenth paragraphs inclusive seem to be an attempt to give the history of various transactions from various transactions showing how the title to the premises came into possession of Gladys Nicholson. Paragraph 17 sets out the deed to Miss Nicholson and the mortgage to Alexander G. Nicholson. Paragraphs eighteen to twenty inclusive, have no bearing on the case, and seem to deal with an alleged

claim concerning some Brooklyn property, which counsel has never been able to understand how it had any bearing on the question of the above case under consideration.

The various charges of fraud seem to be set forth in paragraphs twenty-one to twenty-nine inclusive, and are as follows:

By the 21st section, it is charged that the defendants, the Nicholsons, represented to the complainants that the property was worth $60,000, which complainants say was untrue.

By the 22nd section the bill charges that for the purpose of deceiving and defrauding the Star Insurance Company, the defendant, Alexander G. Nicholson purported to execute to one Mrs. Masterton, an alleged lease on the premises for $3600, knowing that the premises were not to be rented and occupied by Mrs. Masterton, and it was done for the sole purpose of fraudulently obtaining insurance from the Star Insurance Company and "for the purpose of establishing a cause of action in the event the property be destroyed, in order that the said Alexander G. Nicholson by its servants and agents, might collect from the claimant, Star Insurance Company."

By the 23rd section it charges that Alexander G. Nicholson, in order to carry out the fraudulent intent caused to be executed by his daughter, Gladys, a mortgage for $25,000.

By the 24th section it charges, that on or about the 7th day of July, 1922, Alexander G. Nicholson, represented to each claimant that he was a bona fide mortgagee of the premises and thereby secured a mortgagee clause in his favor on the poli-

cies, "whereas in fact, the said Alexander G. Nicholson was the true owner of the property, etc."

By the 25th section, Alexander G. Nicholson is charged with saying that the market value of the property was less than $14,000, had been vacant and unoccupied for a long period of time and had been sold for unpaid taxes and was not bringing in an income, "wilfully, deliberately and fraudulently" concealed these facts from the claimant for the purpose of obtaining $60,000.

By the 27th clause, it is alleged, that on the 27th of October, 1922, the property was destroyed by fire, "under suspicious circumstances".

These allegations constitute all the various charges of fraud.

Fraud is never presumed. It must be proven by clear and positive evidence.

In Feickert v. Feickert, 98 N. J. Equity, 444, p. 448 (first line) Chancellor Walker said that

> "fraud is never presumed, but always has to be strictly proved."

In Guerber Engineering Co. v. Stafford, 96 N. J. Law 280, p. 281, para. 2, this court adopted the following:

> "Fraud is never presumed, and where a party to the transaction alleges its existence, the burden rests upon him of proving the truth of his allegation".

Aside from the strong rule of law thus invoked, what evidence is there to support the allegations

of the claimant? We will take these charges up in order.

The 21st paragraph speaks of the defendants making fraudulent representations. At the outset we wish to point out all the sections charging fraud in the bill of complaint which we have just mentioned in reference to the "defendants" that is, in referring to the defendants, Alexander G. Nicholson and Gladys Nicholson. As a matter of fact there is not a word of evidence in this case from beginning to end or any evidence from which any inference could be drawn that Gladys Nicholson ever came in contact with any of the insurance companies. The evidence is that she had title to this property known as the Jacobson Mansion and that through her father, Alexander G. Nicholson, she placed policies of insurance. At the outset we insist, that any agency of Alexander G. Nicholson to place insurance did not carry with it any implied right to make false representations. Hence, fraud mentioned in the various sections quoted must refer to fraud alleged to have been committed by Alexander Nicholson. Such fraud, if committed would only go to the extent of Alexander G. Nicholson's mortgage rights and could not affect Gladys Nicholson's insurance.

We contend that no fraud has been shown with reference to Alexander Nicholson and will consider the charges now in order.

The 21st section which charges that he represented other insurance companies and set the value of the property as being Sixty Thousand Dollars ($60,000) is not supported by a word of evi-

dence. Not one insurance agent comes forward to say that anything was said by Nicholson with reference to the value of the property. Over-insurance is no evidence of fraud.

As a mater of fact the evidence in the case shows that the property was substantially worth Sixty Thousand Dollars ($60,000). This will be considered under the cross bill but we may say incidentally in passing that the evidence as to the value of this property was given by two men. Mr. Jersey, an expert, produced by defendant, who had examined the property and who fixed the value at Fifty-Nine Thousand Dollars ($59,000) less ten per cent for depreciation. This witness had seen and examined the property.

MR. JERSEY, whose testimony begins at page 170 of the State of case, testified to his long experience as an appraiser, which showed him to be highly qualified. He saw this property a year or two before the fire, and he went for the purpose of appraising it; the appraisal being for an insurance broker by the name of Poggenburg (P. 172, l. 1-8). He fixed the value at $59,000, which allowing ten per cent for depreciation, placed the value of the property between $52,000 and $53,000 (P. 172 at bottom; P. 173 at top). No other evidence was presented, and no other witnesses produced on behalf of the defendant who testified to the value of the property as a whole, but other evidence was offered which in a measure helped to substantiate the testimony of Mr. Jersey thus:

CHARLES WILLIAMS, whose testimony begins at page 207, was in the plumbing and heating business, and did work for the previous owner, Dr. Snyder and for Mr. Nicholson, on the Jacobson Mansion; about three years before the fire (P. 205, l. 30-40); the last work he did was about three months before the fire (P. 209, l. 3-10). He was then asked: Q. "What was the condition of the plumbing and heating in that building when you last saw it, and which you fix as about four months before the fire?"

> "A. The condition, as I remember it, was perfect, with the exception of one closet, one water-closet, and Mr. Nicholson was to furnish that water-closet, one end was broken. Q. Was it a good type of plumbing? A. First class. Q. Was it what we speak of as modern plumbing? A. It was exceedingly good; it was Mott's material." (P. 210, l. 1-10.)

That the plumbing was in first class condition; He supplied the plumbing and heating work in the building at a total cost of $10,500 (P. 213, l. 1-5).

JOSEPH CROCE, a painter, decorator and contractor of long experience, testified to work he had done between July and September, 1922, on the Jacobson Mansion (P. 216, l. 25-30). He described at length the painting, papering and decorating he did, and placed the value of his work at $1,-600.00 (P. 217, l. 27-28).

The only evidence offered by the defendant was a Mr. Robinson, who had not seen the property, but had seen a rough plan and a photograph. Of

course his evidence is of the slightest value, but his testimony was that the replacement would be $52,000. He claiming, however, a greater depreciation. In any event the figures of these gentlemen approximate the approximate loss, while the insurance claim amounts to $41,000, so that the property according to the testimony of these two witnesses was not over insured. Mr. Robinson's testimony will be found at page 152 to page 160 inclusive.

On cross exaxmination he testified,

> "Q. You say you examined this building before the fire? A. No, sir, I did not. Q. So that the estimate that you have given us here of this building is from what other people have told you? A. Partly, and from photographs. Q. And what else? A. And from what I can learn and find out at the site of the lots. Q. So that from your own knowledge, you know nothing of the size of the rooms? A. I never was in the house." (P. 158, l. 5-15.)

This evidence was admitted over the objection of defendants' counsel. It would seem ridiculous to ask the court to accept the testimony of a witness who had never seen the building. However, aside from all this, there is not a word of evidence in the case to show that Mr. Nicholson made any representation as to the value to any of the insurance companies, or its agents.

As to paragraph 22, that as part of the fraud, a lease was executed to Mrs. Masterton, our answer is, that there was a lease executed as stated, but

not a line of evidence is offered to show that it was done with the purpose of defrauding the Star Insurance Company, who had issued a rent policy. (See the lease at page 305 of State of Case, and the testimony of Alexander G. Nicholson that he had rented the property to Mrs. Masterton. P. 136, l. 13-16).

Section 23 which charges that the mortgage was executed by Gladys Nicholson to Alexander G. Nicholson, as part of the scheme of fraud, is of course, not so. The mortgage was executed, but no evidence is offered to show any part of a fraudulent scheme. There is evidence offered by the defendants that there was a good and valuable consideration for this mortgage. In any event, what relation in the respect of fraud, can there be in the issuance or making by Miss Nicholson of a mortgage, and a fraudulent fire?

Section 24 which charges that Alexander G. Nicholson was in fact the true owner is without a line of proof to support it. The only evidence in the case shows a conveyance to Gladys Nicholson from Snyder. Evidence is offered by Mr. Nicholson as to the fact that this was bona fide. Assuming, however, that Alexander Nicholson was in a position to have taken title from Snyder, nevertheless he would have the right to direct the conveyance to Gladys, even without consideration and this would not be a fraud. As a matter of fact, however, Mr. Nicholson testifies to a substantial consideration moving between him and his daughter.

Paragraph 25, the charge that the market value of the property was less than $14,000, is not supported. There was no evidence that he represented to claimants that it was worth $60,000. As a matter of fact this would make no difference. These policies were known as valued policies, but undertook to pay only actual loss. Hence, it would make no difference with the policies of insurance amounting to a million of dollars, the insurance companies would only be obliged to pay the actual loss. Further, the building was there and the land also when the policies were issued, substantially not changed until the fire, and the insurance companies had equal opportunity to inspect and ascertain for themselves the true value. Defendants have already pointed out the testimony of Mr. Jersey and others to the court, as fully answering this unsupported charge.

Paragraph 27, charges that the property was destroyed under suspicious circumstances. This charge amounts to nothing. No defense could be interposed by the insurance companies under this paragraph excepting a direct charge and proof of arson. As we pointed out nothing is shown in regard to Gladys Nicholson by anybody, hence, even assuming for the purpose of argument that Alexander G. Nicholson committed arson, such a crime would not be imputable to Miss Nicholson, so as to avoid the policies. Of course, there is no proof that Alexander G. Nicholson committed arson. The only proof in reference to the character of the fire is that which comes from the two firemen, who testified in the

case. One of these was William Ziegler, Chief of the Hackensack Fire Department, who did not see the fire, but who testified before the fire Mr. Nicholson had asked that an additional fire hydrant be placed in the vicinity of the property. This was a year before the fire. (P. 79, l. 30-35.)

CHARLES W. PENQUE, Lieutenant of the Hackensack Fire Department, testified that there was a burning substance on the floor and stairways that made it look like a "touched off job". He said that it was an inflammable substance as he slipped on it (P. 82, l. 1-5). Gustav A. Long, member of the Hackensack Fire Department, also spoke of the inflammable liquid (P. 84 entire).

EDMUND BARETT, saw the fire and said there was a flaming substance dropping down from upstairs (P. 86 at bottom). An attempt was made by the witness Penque, who was recalled to say, that in the private driveway there were three railroad ties (P. 88, l. 12). This witness testified that they were going to run an engine up the driveway but the ties were in the way, and there was no hydrant except the one in the street.

Exactly what they intended to do with the fire engine, when driven up this roadway where there was no water, does not appear in the testimony.

There is evidence in answer to this from Mr. Nicholson and from a painter, that painting and decorating had been done before the fire, which may account for some paints or inflammable material in the place. Aside from this, however, there

is no proof in this case from which it can be inferred that arson was committed by anybody. The hurried opinion of firemen that there was inflammable material in the building, is first of all no proof of arson and we say that it is not in any event any proof that Alexander G. Nicholson or Gladys Nicholson committed the alleged arson. Counsel for the defendant would ask this Court to assume that there was (1) arson committed and (2) that Alexander Nicholson and Gladys Nicholson committed this arson. The Court has no right to assume that a person is guilty of a crime. The charge of fraud which this is said to constitute must be proven almost with a certainty of a crime.

This constitutes the complainants' case, and we may add, that most of the testimony appearing in the book and exhibits attached thereto, all relates to defendants cross bill, which the court dismissed.

We respectfully insist that fraud was not proven, nor a suspicion of it, under the facts presented in the case.

POINT 2.

THE POINTS IN BRIEF OF COMPLAINANTS-APPELLANTS.

> "That the Court erred in failing to grant complainants' motion to strike out the answer of Gladys Nicholson, etc."

A reading of the bill and answer shows clearly that the bill was answered on every material issue

As we have pointed out in the preceding point, the paragraphs charging fraud (paragraph 21 to 27), the defendants flatly denied these charges. Exactly what could be said to the charge of arson or false representation of value and the like, excepting to say that they were untrue, if they were in fact untrue; aside from this the matter was argued before the court, the evidence was taken piece meal over a period of a year or more, and at no time does it appear that the complainants were hampered in the production of their case.

Complainants' counsel amongst other cases cites Thompson v. North, 67 N. J. Equity, 278, and he quotes as follows:

> "Where a matter is charged in the bill, which must, if true, be within the knowledge of the defendant, the substance of the charge should be answered directly etc.,"

As the Vice Chancellor pointed out in the course of the argument on the motion, what could be more positive and direct, than a flat denial of the charge of arson, and a flat denial of the charge of misrepresentation and the like?

What is said with reference to the failure to strike out the answer of Mr. Nicholson, applies also to the answer of Gladys Nicholson.

The law on this is thus stated from the very beginning of our Equity reports:

go to 19.

In Decker v. Caskey, 1 N. J. Eq., p. 427, Chief Justice Ewing, sitting for the Chancellor, said:

> "It is the duty of this Court never to do

justice by the halves; never merely to beget business to another court, and never, when the case is finally within its jurisdiction, to leave open the door for litigation farther, or in any other place if it can possibly be here closed."

Chancellor Zabriskie in Bullock v. Adams Executors, 20 N. J. Eq., p. 367 at p. 374, said:

"But this Court might have jurisdiction upon the principle adopted in equity courts, that when a matter is before the Court properly for relief which can only be had in equity, the court will grant such other relief arising out of the facts of the case, to which the party is entitled, although the relief could be had at law."

In the case of Cahill v. Town of Harrison, 87 N. J. Eq., p. 524, it was said that,

"If equity had jurisdiction of the case, it will settle all questions, legal and equitable."

Probably the leading case on the concurrent jurisdiction of Equity, with that of Law, in this State, is the case of Eggers v. Anderson, 63 Equity, page 264, Justice Dixon, speaking for the Court of Errors and Appeals, cites at page 269:

fraud being the great subject of relief their remedy at law, and may bring an action for moneys had and received for the plaintiff's own use, for, in cases of fraud, the Court of Equity has a concurrent jurisdiction with the common law, matter of

fraud being the great subject of relief here."

Again in the same paragraph, it is cited that:

"If there is a jurisdiction at law in such cases, there is also a jurisdiction in equity."

At page 271, Justice Dixon says:

"But New Jersey is distinguished from her sister states by her adherence to the standards of the mother country respecting both rights and remedies in equity, and I know of no constitutional or statutory provision or judicial decision in this State, which can be regarded as withholding or withdrawing from our Court of Chancery, any jurisdiction possessed by its English prototype. True, the jurisdiction of equity in cases of fraud remediable at law, has not been much invoked, but that may be accounted for, in a large degree, by the less expensive, equally efficient and in former times, more speedy, remedy secured in the Courts of Law. When resorted to, however, the jurisdiction of equity has not been doubted."

In the recent case of Shaw v. Beaumont Company, 88 N. J. Eq., p. 333, Justice Black speaking for this Court, said, at bottom of p. 335:

"It might be conceded that a Court of Chancery, having once acquired jurisdiction of a cause, will do all in its power to settle all the rights of all the parties in the matter of any controversy,—"

In the case of Couse v. Boyles, et al., 4 N. J. Eq., p. 212 at p. 213, it was said:

> "If a case be once properly before the Court, the Court will do all in its power to settle the rights of all the parties in the matter of controversy justly and equitably by one decree."

Lastly, it might not be amiss to cite the case of Mosser v. Pequest Mining Company, 26 N. J. Eq., p. 200, wherein Chancellor Runyon permitted the filing of a cross-bill to establish the defendant's claim, by saying:

> "The controversy is already here, and in justice to the complainants and the Company, it should be disposed of here. Cole & Hielman may file a cross-bill in this suit to establish their claim, and the whole matmer may be adjusted in this Court, and the money awarded to the rights of the parties."

AS TO POINT THREE OF COMPLAINANTS' BRIEF, THAT THE COURT SHOULD HAVE STRUCK OUT THE CROSS BILL OF THE DEFENDANTS.

These cross bills were filed under the following circumstances:

The defendants had brought an action in the New Jersey Supreme Court under the policies against the complainants; the complainants herein, thereafter caused the various actions to be removed to the United States Court, and then instituted this suit in Chancery, and included in the relief, obtained an order, restraining the defendants herein from proceeding with their actions at law. Defendants, thereupon answered the bill of complaint and filed a cross bill praying for affirmative, and demanding that when the court would consider the various questions of fraud, charged in the bill of complaint, that in the event of finding no fraud, that the court then proceed to try the question of the right of complainants to recover damages.

The rule is clear, that where Equity assumes jurisdiction of the subject matter, it may hold the same for the purpose of granting relief on another phase of the case.

Complainants should not be here to raise this question. The reliefs sought for by this bill of complaint with reference to the various acts of fraud, were all matters which could have been pleaded and were in fact pleaded as defenses in the law action.

The point is without merit for another reason, viz., that the Court of Chancery did not by its decree grant any relief on the cross bill, but left the parties to their remedy at law.

AS TO POINT FOUR OF COMPLAINANTS' BRIEF.

The Vice Chancellor's Decree.

It may be true that the Court did not ~~substan~~tially dismiss the cross bill, but in the decree the court said with reference to the cross bill, that it believed that the damages claimed therein should be ascertained by a court of law. The defect of not dismissing the cross bill, if it be a defect, is

formal and may be, we submit, amended as of course by this court or the court below.

AS TO POINT FOUR-A.

> "That fraud was proven as to the National Fire Insurance Co., of Hartford."

This contention is without merit. Counsel contents himself by stating that, "the testimony in this cause clearly and conclusively established," etc., but no testimony is quoted or pointed out, whereby counsel would be in a position to meet the same in his brief, the only argument advanced by counsel in his brief, is his own assertion that fraud was proven, and that the decree should be reversed.

Under this point appellants' counsel also urges that there should have been a decree in favor of complainants, because defendants had not given prompt notice of fire and loss to the complainants. Appellants' counsel then deliberately misquotes the testimony and by his argument indicates that notice was given January 8, 1923 (See his brief at page 26).

The evidence on that point comes from William Moore, a Brooklyn lawyer, who testified that notice was given the day after the fire. Q. "When did you send these communications?" (referring to fire and loss). A. "October 28, 1922." (P. 189, L. 10-20.) The exhibit mentioned and set forth at page 307 is a letter which refers to a proof of loss and not notice of fire.

The complainants' next contention is that defendants failed to file proof of loss within sixty days after fire (See his brief at page 26). In answer to this we say: Proofs of loss were filed and were actually produced in court, and the proof with regard to furnishing them, testified to by Mr. William Moore, whose testimony begins at page 188. Mr. Moore, a Brooklyn lawyer, said: "I made up the proofs of loss and personally served them upon certain parties." (P. 191, L. 25.) He then through pages 192-193 and 194 testified in detail as to the different persons upon whom all these proofs of loss were served.

With great reluctance appellants' counsel produced these (P. 193 L. 1-15), and they were finally marked in evidence.

Aside from this, however, failure to file proof of loss would not constitute fraud; it may, if not waived, bar a recovery, but this was a bill of complaint to set aside the policies on the ground of fraud in their procurement. Lest the court be confused may we point out that all this evidence with respect to notice, proof of loss, value of property, etc., were all in defendants' cross bill?

Counsel's next contention in his brief is that Gladys Nicholson having failed to present the proofs of loss personally, voided the policies. His exact language on this point is:

> "By reason of the failure of the defendant, Gladys Nicholson, to comply with this covenant, complainants were and are entitled to a decree in their favor, and by reason of the premises the decree is erroneous." (P. 27 of brief.)

Of course this is plain nonsense. The testimony disclosed that Miss Gladys Nicholson lived in Denver, Colorado. The proofs of loss were filed by Alexander G. Nicholson, under power of attorney from Gladys Nicholson. This power of attorney was marked in evidence and is set out at page 305 of the state of case. The evidence of Mr. Nicholson disclosed that it was he who had personal knowledge of the building, its contents, the character of the loss, etc., that he actually lived in the place part of the time. (See his testimony at page 120-121 entire.)

He knew of the value of the premises of his own knowledge, as that was his business viz., making appraisals of frame dwellings and buildings (P. 135 L. 10). He fixed the value of the property just before the fire at $80,000 (P. 135 at bottom); that the rental value was $3600 (P. 361 L. 25-35). He testified as to the value of the furniture destroyed (P. 138 L. 35-40), and its complete destruction (P. 139 at top). Hence, the evidence showed that he was the only person who could give any intelligent information as required by the proof of loss. In addition to this, Mr. Nicholson also had an interest in the insurance, which also gave him the right to file proof of loss. On this point see 26 Corpus Juris at page 368, and cases cited under note 62, also 25 Corpus Juris at page 369 and note 88:

> "However, proofs may be made by an agent if insured is absent, and hence unable to make them in person, or if he is insane or critically ill, especially where he ratifies the agent's act on his recovery, or if the facts are better known to the agent than to his principal he having procured the insurance and having had charge of the property."
>
> (See cases cited in notes to text.)
>
> 26 Corpus Juris, P. 369.

Aside from this, however, as we have indicated elsewhere, failure to file proof of loss does not constitute fraud, even though it may constitute a defense to an action on the policy.

AS TO POINT FOUR-B.

(29 of Brief.)

His argument consists merely in his statement of his ground of appeal, and statement of his conclusion as to certain facts that are not borne by the evidence.

The court was not bound to find the exact consideration as to the mortgage given by Miss Nicholson to her father.

AS TO POINT FOUR-C.

That the Court made no determination as to what consideration passed between William H. Snyder and Gladys Nicholson, by which Gladys Nicholson acquired title to the property (See his brief at page 30).

This point is without merit. Counsel contends in his argument that consideration passed, viz., an exchange of property in Brooklyn, but inasmuch as under the terms of the policy, they were required to pay the loss, it is sufficient if Gladys Nicholson had legal title. It is absolutely immaterial of

course, if a person derived a loss from property which had either been given to the person, or which they had by virtue of good business acumen obtained title to the property, for half the value, of the loss sustained.

Supposing, by way of example, the court had determined that Gladys Nicholson had not paid a substantial sum for the property, exactly what right would that justify the complainants in refusing to pay the actual loss of damage sustained by the destruction of the building? If counsel's contention is correct, it would logically follow, that if a person received a property as a gift, they could not recover for loss derived by fire, by reason of the fact that they had paid nothing for the property.

AS TO POINT FOUR-D.
(P. 31.)

There is absolutely no merit in this point. It is similar in principle to the other points argued, and in substance is, that it is the duty of the court to make special findings. This of course is not the law.

AS TO POINT FOUR-E.
(P. 32.)

This point is utterly without merit. By this point counsel complains of the decree dated September 19, 1927. This decree, however, was amended by the Court under date of October, 1927, and it is the October decree from which the complainants appeal.

The remainder of his points are without merit.

AS TO POINT FIVE.
(P. 39.)

That the court refused to grant him a re-hearing on the question of counsel fee. They were actually in court as complainants, and brought the defendants into court as their defendants, and of course the court had the right to fix a counsel fee against them.

The rest of his brief under title "Summary", commences at page 39, and is an argument of his view of the facts. From one end of his argument to the other, he fails to quote a line of testimony, or make any reference to the page or line, so that the court might see if his contentions are justified. The fact is, that the only testimony of any person who saw the building comes from Mr. Jersey, produced by the defendants, who placed the value of the property at $53,000.

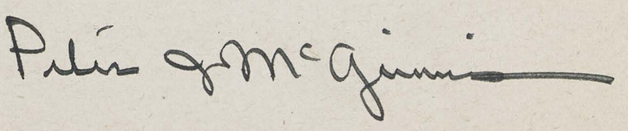
In conclusion, as we have indicated, there is very little evidence on the question of fraud, and it is to the questions of fraud that the decree is directed. The various other points are utterly without merit.

CONCLUSION

For the reasons herein, it is respectfully submitted, that the decree should be affirmed, with costs.

WARD & McGINNIS,
Solicitors of Defendants.

PETER J. McGINNIS,
Of Counsel.



New Jersey Court of Errors and Appeals

Firemen's Fund Insurance Co., Scottish Union & National Insurance Co., Insurance Company of North America, Mercantile Insurance Co., London Assurance Co., National Fire Insurance Co., Star Insurance Co., and Phoenix Assurance Co.,
Complainants-Appellants,
vs.
Harriet F. Snyder, William H. Snyder, Gladys Nicholson and Alexander G. Nicholson,
Defendants-Respondents.

COMPLAINANTS' BRIEF

FACTS

The premises in question, known as the Jacobson Mansion in Hackensack, were deeded to William H. Snyder and were held by him in trust for his wife, by his wife's father, Frank E. Fields on Nov. 27th, 1926, (Ex. P-11, page 314) and from 1906 to 1918 Dr. Snyder had insured this Jacobson Mansion for a sum not exceeding $16,000 (page 109) and offered it in the market for sale at $16,000. (page 113.)

Prior to the 9th day of May, 1918, Alexander G. Nicholson had some interest in a piece of property at 215 Foster Avenue in the Borough of Brooklyn and which he was about to lose by reason of a

foreclosure suit, (page 110) the title to which property was in the name of Mary T. Ward, Alexander G. Nicholson's sister. (page 93.) Under Nicholson's direction, (page 93) his sister, Mary T. Ward, conveyed to Harriet F. Snyder her interest in the Brooklyn property as is evidenced by Ex. P-12, page 314. The only consideration which has been accounted for is the $500 mortgage (page 314) which was subsequently assigned by Alexander G. Nicholson to Harriet F. Snyder, the wife of Dr. Snyder and which Dr. Snyder says he gave to cover contemplated repairs (page 269). The Brooklyn property at this time was the subject of a foreclosure suit. (page 110.) It being, however, agreed between Alexander G. Nicholson and William H. Snyder that the said William H. Snyder would convey to Alexander G. Nicholson his equity in the property in Hackensack, known as the Jacobson Mansion subject to a mortgage in the sum of $6500 in consideration of Nicholson conveying 215 Foster Avenue, Brooklyn, to Mrs. Snyder. No cash consideration ever passed between any of the parties to this transaction. (page 115.) It is further to be observed from Ex. P-12, the deed of Mary T. Ward to Harriet F. Snyder (Ex. P-12, page 314) that it contains the following recital with respect to the residence of Mary T. Ward, to wit; "in the town of Rupert, County of Lincoln and State of Idaho". This deed, (Ex. P-12) is a New York form of deed, printed by Stevenson & Marsters of Brooklyn. The deed is dated the 9th day of May and is acknowledged before a Notary Public of Kings County, New York, on the 9th day of May, whereas Mary T. Ward died in St. Mary's

Hospital, San Francisco, California on April 17th, 1918. (page 315.). William H. Snyder executed a mortgage (Ex. P-10, page 314) on the 10th day of October, 1918 to Harriet F. Snyder on the Jacobson Mansion in anticipation of the conveyance and on the same day, presumably in consideration of the transfer of the Foster Avenue property in Brooklyn, to Harriet F. Snyder, the said William H. Snyder executed to Alexander G. Nicholson a mortgage in the sum of $500 (Ex. P-14, page 315) which was subsequently assigned to Harriet F. Snyder on Dec. 14th, 1918. (Ex. P-13, page 315.) This mortgage covers the same property as the $6500 mortgage of William H. Snyder to Harriet F. Snyder, (Ex. P-10).

It further appears that upon Nicholson's direction (Page 93) Dr. Snyder conveyed the Jacobson Mansion to Gladys Nicholson, the daughter of Alexander G. Nicholson by (Ex. D-1), subject to two mortgages, (Ex. P-10 and P-14). Dr. Snyder further testified that he never had any dealings with Gladys Nicholson (page 111) and Gladys Nicholson admits that she did not pay any consideration for the conveyance, (page 115) nor did she ever see the Jacobson Mansion prior to its destruction by fire and the sole investment, if it be termed any, or consideration of Mary T. Ward, Gladys Nicholson or Alexander G. Nicholson in this Jacobson Mansion at Hackensack is represented by the $500 mortgage (Ex. P-14) made by Dr. Snyder to Nicholson for contemplated repairs (page 69) and assigned to Mrs. Snyder about two months thereafter (Ex. P-13) and on which no payment has ever been made by any of the Nicholsons. (page 113.)

It appears upon the transfer of this property to Gladys Nicholson, the policies then outstanding in the sum of $16,000 held by the Snyders were duly endorsed and mortgagee clauses attached, making the loss if any, payable to Harriet F. Snyder as first mortgagee, which insurance was renewed from time to time and is represented by the present policies. (Ex. D-9, 10, 11, 12, and 13.)

It further appears that in June, prior to this fire, Nicholson for some reason best known to himself, had his daughter Gladys execute to him a mortgage in the sum of $25,000 (Ex. P-21, page 286) covering the Jacobson Mansion, which mortgage was executed at Denver, Colorado and recorded June 27th, and containing this recital: "It is hereby agreed that the party of the second part shall be a mortgagee in possession, etc." and Mr. Nicholson admits that there was no cash consideration for this mortgage or the conveyance. (pages 93-94-95.)

From the policies of insurance it appears that mortgagee clauses were attached to the policies in favor of Alexander G. Nicholson as mortgagee, and in September preceding this fire, Nicholson obtained an additional $6000 insurance in the Phoenix of London (Ex. C-15, page 304). Prior thereto, Nicholson had obtained from the National Fire Insurance Company of Hartford, a policy (Ex. C-14) covering the Jacobson Mansion in the sum of $9000, $3000 on the shrubbery and $3000 on household furniture, for the benefit of Gladys Nicholson, to which a mortgagee clause was attached, making the loss, if any, payable to him, the total insurance represented on the Jacobson Mansion is as follows:

C-9	1895811	Phoenix Assn. Co.	
		Building	$ 2,000.00
C-10	105127	Ins. Co. of N. A.	
		Barn	1,500.00
		Building	1,500.00
C-11	936893	Mercantile Ins. Co.	
		Barn	5,000.00
		Building	3,500.00
C-12	196765	Phoenix Assn. Co.	
		Building	6,000.00
C-13	5920386	London Assn, Corp.	
		Building	3,000.00
C-14	289219	Natl. of Hartford, (colonial)	
		Building	9,000.00
		Furniture	3,000.00
		Shrubbery	3,000.00
C-15	224708	Phoenix Assn. Co.	
		Building	6,000.00
C-16	B1247847	Firemen's Fund,	
		Building	10,000.00
C-17	7142842	Scottish Union	
		Building	10,000.00
C-18	K6908	Star Ins. Co.	
		Rent	10,000.00

Re-Capitulation:

Jacobson Mansion,	$51,000.00
Household furniture,	3,000.00
Rent,	10,000.00
Shrubbery,	3,000.00
Barn,	6,500.00
Total insurance,	$73,500.00

From the testimony of the firemen, these premises had been visited by fire prior to this fire of Oct. 27th, 1922, (page 81); that the shrubbery around the Jacobson Mansion had been burnt and destroyed prior to the October 27th, fire; the general condition of this building was dilapidated as set forth in the testimony of the firemen, Dr. Snyder and other witnesses. It was at least 60 to 70 years old and had been useless for present day purposes (page 155-156). The building was destroyed by fire on Oct. 27th, 1922 under various suspicious circumstances as testified to by the firemen, (page 80 to 84). After the fire, claim was made to:

London Assurance Co., in the sum of $3,000, (Ex. P-12, p. 315).

Insurance Co., of North America, in the sum of $1,500, (Ex. P-8, page 319).

Mercantile Ins. Co., in the sum of $3,500, (Ex. P-15, p. 319).

Phoenix Assurance Co., in the sum of $2,000, (Ex. P-6, p. 319).

each of these policies had attached thereto a mortgagee clause making the loss, if any, payable to Harriet F. Snyder as mortgagee, against which claims the companies, subsequent to the the filing of the Bill in this Court, on the advice of counsel, made payment to Harriet F. Snyder, the mortgagee, in the sum of $8300 as follows:

Insurance Co. of North America, the sum of $1245 (Ex. P-9, p. 313).

London Assurance Co., the sum of $2490, (Ex. P-17, page 313).

Phoenix Assurance Co., the sum of $1660, (Ex. P-7, page 313).

Mercantile Insurance Co., the sum of $2905, (Ex. P-16, page 314).

and in addition thereto, papers purporting to be proofs of loss were received by the complainants, viz; (Ex. PA-2-3-4-5-6, page 308-312), in which papers Alexander G. Nicholson, as attorney in fact for Gladys Nicholson, set forth an alleged claim of $36,000 on the building, $3600 on rent and $3000 on shrubbery and $3000 on furniture.

It is to be observed in the claims made and filed by Harriet F. Snyder, the mortgagee, referring to (Ex. P-2, 6, 8 and 15), there is attached to each of these a blue print sketch and estimate made by A. L. Anderson, a builder retained by Dr. Snyder for the purpose of appraising or determining the cash value of the building at the time of the loss, on which blue print is a photograph of this building, such as was offered in evidence during the course of the hearings, (Ex. DAJ-2) and this Mr. Anderson computed the cash value of the property at the time of the loss to be $18,144. This same builder subsequently testified with respect to the value of the property and offered his original estimate showing the determination of $18,144, (Ex. P-18, page 282) which estimate shows how he computed the cash value of the property to be $18,144 at the time of the loss. In addition thereto, Mr. Van Saun, a real estate expert connected with the office of F. M. Taylor & Co., of Hackensack, testified in response to questions propounded by Vice Chancellor Lewis, (record p. 99).

"Q. What was the value of the building just prior to the fire. A. Not over $18,000."

and in addition thereto, is the testimony of Dr. Synder that the building was 67 years old, (page 109) and that he had it in the market for sale for $16,000. There is further the testimony of Benjamin F. Robinson, who has been engaged in the contracting business for over thirty years, (page 152) who testified from the looks, appearances and style of the building, it was about 70 years old, (page 155); that the cash value of the property at the time of the fire was $12,000, (page 155-156; see Ex. C. F. L. 2, page 319 and Ex. C. F. L. 3, page 285). The only person offered to contradict these values is a gentleman by the name of Isaac Jersey, a New York builder, who testified: "Was employed by Mr. Poggenburg." (page 173) (this Mr. Poggenburg is a gentleman employed by Feist & Feist) and Mr. Jersey further stated that he was "employed by Mr. Roggenburg to make an appraisal of the Nicholson property". An examination of Mr. Poggenburg's testimony will disclose that he knows Ike Jersey for ten years, (page 187) but he denies retaining Mr. Jersey to make this appraisal (page 187). Mr. Jersey admitted his long standing friendship with Nicholson (page 173) and testified that the appraisement of the property was made between one and two years prior to the fire of October 27th, 1922, (page 173) and furthermore that his appraisal was predicated upon contemplated repairs and improvements which had not been completed, (page 174).

Summarizing these facts, it appears that for the transfer by Dr. Snyder of the Jacobson Mansion subject to two mortgages in the sum of $7000, he received a deed purporting to be signed by a person who had been dead for sometime prior to the date of execution and acknowledgment; that from the testimony of the experts, the cash value of this property at the time of its destruction was somewhere between $12,000 and $18,000; that the building was insured in the sum of $61,000; that the furniture was the property of Alexander G. Nicholson, if there was any furniture in this house; that the shrubbery had been destroyed by fire prior to the fire of October 27, 1922; that there was no proof of any leasehold interest or the value of the leasehold interest if there was any upon which to hold or predicate any prima facia case of liability on the part of the Star Insurance Company; that there was no consideration for the $25,000 mortgage which Gladys Nicholson executed in favor of her father Alexander G. Nicholson; that the property was destroyed by the fire of October 27, 1922 under various suspicious circumstances; that the Insurance Companies have already paid the sum of $8300 by reason of the destruction of this building; that these Insurance Companies did a very unusual thing in taking "the bull by the horn" and filing a bill in the Court of Chancery instead of waiting until they were sued in an action at law on behalf of the alleged policy holders.

This bill was filed by eight complainants for the following relief:

(a) That the defendants, Alexander G. Nicholson, Gladys Nicholson, William H. Snyder and Harriet F. Snyder may set forth, disclose and discover the true consideration for the exchange of the "Jacobson Mansion" in Hackensack, New Jersey, with the property at 215 Foster Avenue, Brooklyn, New York.

(b) That the said defendants, Alexander G. Nicholson and Gladys Nicholson may disclose the equity if any which they have or had and which the said Alexander G. Nicholson or Mary T. Ward had in the property at 215 Foster Avenue, Brooklyn, New York, and what interest, if any, the said defendants have in the property at Hackensack, New Jersey, and what interest, if any, the said Alexander G. Nicholson may have in the alleged mortgage on the property in Hackensack, which alleged mortgage is in the sum of $25,000.

(c) That the said defendants, William H. Snyder and Harriet F. Snyder make a full, true and accurate disclosure of the title to the property in Hackensack, New Jersey, which was conveyed by Frank E. Fields to the said William H. Snyder and why the property was conveyed to the said William H. Snyder, if the same was to be the property of Harriet F. Snyder, and if the alleged mortgage to Harriet F. Snyder in the sum of $6500 was not intended as a reconveyance to her of the fee, what was intended to be reconveyed.

(d) That the said defendants, Alexander G. Nicholson and Gladys Nicholson may disclose the true and correct name and address of Mrs. Masterson, the alleged lessee of the premises and how long, if any, at any time, the said lessee did live in the property and what rent, if any, the said lessee paid and what relation, if any, she is or was to the said Alexander G. Nicholson.

(e) That the deed made by Harriet F. Snyder to Gladys Nicholson be decreed a deed in favor of Alexander G. Nicholson.

(f) That the mortgage made by Gladys Nicholson to Alexander G. Nicholson be decreed a deed in favor of Alexander G. Nicholson.

Let us examine the pleadings to ascertain the issue raised. The allegations in paragraph one to ten inclusive ***are admitted*** with the exception of the following language contained in each allegation:

> "Relying upon the truth of the statements, inducements and representations so made did without territorial authority."

By the production of the original policies of insurance, (Ex. P-9 to 18 inclusive) and by the subsequent conduct of the defendant, Alexander G. Nicholson and by the facts and testimony adduced in this case.

Paragraph eleven of the Bill of Complaint has been proved by Ex. D-12; paragraph twelve and thirteen of the Bill of Complaint has been proven

by the testimony of Dr. Snyder, (record page 267-269) wherein he says:

> "Mr. Fields is the father of Mrs. Snyder and Mr. Fields gave this to me as a wedding present to Mrs. Snyder. It was given to me as a wedding present for Mrs. Snyder."
>
> "I always regarded it as Mrs. Snyder's property and when it was disposed of, in order to avoid any legal complications to the broker to whom it was sold, I made this mortgage to Mrs. Snyder."

Paragraph fourteen is evidenced by Ex. D-12; paragraph fifteen is evidenced by the admission of Alexander G. Nicholson, as set forth in the facts and also in Ex. D-12. There was no consideration passed between Dr. Snyder and Mary T. Ward for Dr. Snyder testified that he never met or saw Mary T. Ward (who died in San Francisco April 17th, 1918); his entire dealings in this transaction being with Alexander G. Nicholson. (Record page 267-286.)

Paragraph sixteen of the Bill has been clearly established by the testimony in this case together with the exhibits D-11, 12, 14 and 19. Mr. Robinson has testified to the house as 70 years old and it is further brought out by the testimony of Dr. Snyder and it is further evident and to be noticed that the deed made by Mary T. Ward, for the Foster Avenue property in Brooklyn, (Ex. D-16) was not recorded until October 7th, 1918.

Paragraph seventeen is established in every detail by the testimony of Dr. Snyder (page 267-

286 and Ex. P-19). Paragraph eighteen is established by the testimony of Dr. Snyder except that the figure of $14,000 should be $16,000.

Paragraph nineteen and twenty of the Bill are fully established by the testimony of Dr. Snyder, Mr. Van Saun, Benjamin F. Robinson and A. L. Anderson.

Paragraph twenty-two of the bill is clearly proven by Alexander G. Nicholson himself that at the time of the fire the premises were vacant, that Mrs. Masterson had not yet gone into possession (page 143-144).

With respect to paragraph twenty-three of the Bill, can there be any question in the mind of this Court after reading the testimony in this case and particularly of Mr. Nicholson on page 134 and of his several appearances in this Court on prior proceedings, whether or not Nicholson was acquainted with the terms and conditions of the insurance contract; whether Dr. Snyder or Nicholson was the master-mind in connection with the entire transaction.

Paragraph twenty-four is evident and admitted by the policies of insurance, (Ex. P-9 to 18 inclusive).

Paragraph twenty-five is evident by the insurance itself (Ex. P-9 to 18) and the testimony in this case. Paragraph twenty-six is immaterial to this issue. Paragraph twenty-seven is proven by the testimony of the firemen and paragraph twenty-eight is evident by Ex. P-24, 26, 33 and 34½.

It is needless for me to specifically point out the divergence in the testimony of Alexander G. Nicholson as compared to the firemen as well as the

difference in the testimony of Alexander G. Nicholson as compared to that of Dr. Snyder. Can it be possible that the firemen are mistaken when they say in their testimony that they attended a previous fire to the premises in question and there must have been some condition existing at the time of the fire of October 27th, 1922 to warrant Lieutenant Penque of the Hackensack Fire Department in saying:

> "It was a touched off job (page 82), place was saturated with inflamable liquid (page 83)."

Firemen Lang of the Hackensack Fire Department testified:

> "We saw the place was so inflamable that it spread quickly and the Captain ordered us to fight it through the windows from the outside". (page 83.)

Firemen Lang refers to Captain Jackson and the evidence discloses that Captain Jackson is no longer connected with the Hackensack Fire Department and couldn't be found by the process server.

Firemen Barrett of Hackensack Fire Department testified that:

> "There was a flaming substance dropping down from upstairs".

With respect to the alleged interest of Gladys Nicholson in the rent policy of the Star Insurance Company it appears conclusively that the alleged tenant, Catherine T. Masterson under the alleged lease, never went into possession and under the

$25,000 mortgage which Gladys Nicholson made to her father, Alexander G. Nicholson, the rents were specifically reserved and to accrue to Alexander G. Nicholson, consequently Gladys Nicholson did not have any insurable interest in the rent.

The testimony of Alexander G. Nicholson, if it is to receive any credence at all, clearly establishes a fact that whatever goods and chattels there were in this building were all the property of Alexander G. Nicholson. The insurance policies run in favor of Gladys Nicholson.

With respect to the insurance on the shrubbery, if the testimony of the firemen be given any credence at all, whatever shrubbery was on the premises was apparently destroyed by the preceding fire and there was no shrubbery existing that was of any value that could have been destroyed by the fire of Oct. 27th, 1922. See Ex. 2 to 8 inclusive as compared with Ex. DAJ-2.

POINT I.

THE COURT ERRED IN FAILING TO GRANT COMPLAINANTS MOTION TO STRIKE OUT THE ANSWER OF ALEXANDER G. NICHOLSON UPON THE GROUND:

1. that the same is not responsive, insufficient and the defendant has failed to fully answer all material allegations charged in the bill.
2. In that the defendant Alexander G. Nicholson has failed to make a full, frank and explicit

discovery and disclosure of all matters necessary and materials to be answered.

3. In that the said answer is not in compliance with the rules and practice of the Court of Chancery with respect to the requisite of good pleading and making a full, frank and explicit discovery of all matters necessary and material to be answered.

Complainants gave notice (page 49 and 50) and brought for argument the motion to strike out the answers of Alexander G. Nicholson and Gladys Nicholson:

> "The motion to strike out the answer is predicated upon the ground that the same is not responsive and insufficient and the defendant has failed to fully answer all material allegations and charges in the bill."

Let us examine the authorities to ascertain the rule in this State with respect to pleading in Chancery.

Green, J., speaking for this Court, said:

> "When a defendant undertakes to answer a bill, he must answer fully all of the allegations and charges in it, and all the interrogatories incident to and founded upon them, further, a defendant, besides answering the complainant's case, must, in his answer, state to the Court all of the circumstances of which he intends to avail himself by way of defense, for a defendant ought to apprise the complainant by his answer of the nature of the case he intends to set up, and that too, in a clear and unambig-

> uous manner—It is clear that, tested by these rules, the defendant's answer could not stand."

N. J. B. & L. Assn. vs. Lord, 66 Equity 352.

> "An express denial in an answer of a fact of the truth of which defendants admit themselves to be ignorant, is not a satisfactory denial of complainant's equity."

Bailey vs. Stiles, 3 N. J. Equity 245.

> "It is not sufficient for defendant, in his answer, to say that he does not know as to facts charged in the bill, or that he does not believe them, as that may be true, and yet the facts charged remain uncontradicted."

Quackenbush vs. Van Riper, 1 N. J. Eq. 476.

> "An answer must answer the immaterial as well as the material, part of the bill."

Hogencamp vs. Ackerman, 10 N. J. Eq. 267.

"Where there are particular charges, they must be answered particularly, although the general answer may amount to a full denial of such charges."

Everly vs. Rice, 4 N. J. Eq. 553.

> "Defendant is bound to state in his answer all the circumstances of which he intends to avail himself by way of defense, and to apprise complainant in a clear and unambiguous manner of the nature of the case he intends to set up."

Moores vs. Moores, 16 N. J. Eq. 275.

"If defendant to a bill in chancery submits to answer, a general denial is not sufficient; but he must answer each material allegation of fact in the bill not only as to his own knowledge, but also as to information and belief, if he has any."

Thompson vs. North, 67 N. J. Eq. 278, 63 Atl. 164.

"There is another rule for answering, which, as it seems to me, has been departed from in this answer. It is this; where a matter is charged in the bill which must, if true, be within the knowledge of the defendant, the substance of the charge should be answered directly, not evasively, nor by way of negative pregnant. And I must be permitted to add, that where the circumstances charged are suspicious, or have the appearance of collusion and fraud, a defandant must be held to strict rule in answering."

Chancellor Halstead, Smith vs. Loomis, 5 Equity 75.

"Where transactions are charged involving fraud, either actual or constructive, and especially where direct interrogatories are put in relation to particular facts, the Court cannot be satisfied with a general answer, one in any way evasive."

Scull vs. Heeves, 3 N. J. Eq. 84.

"An answer denying knowledge and leaving the complainant to make proof, is not a compliance with the requisites of good pleading in this respect."

Ch. Runyon in Reed vs. Ins. Co. 36 E. 153.

"The response, in an answer, to a material allegation of the bill, that "having no personal knowledge thereof, leaves the said complainant to make such proof as he may be advised," is insufficient, since defendant may have information or belief of a very strong character."

Ryan vs. Anglesea R. Co., 12 Atl. 539.

"An examination of the answer has led me to the conclusion that it is insufficient in the particulars claimed. I do not find it a full, frank and explicit response to the allegations of the bill above stated, etc."

Ch. Magie in Flitcroft vs. Allenhurst Club, 69 E. 14.

An examination of the answer of Alexander G. Nicholson (page 46 and 47) will disclose that it is not in accordance with the foregoing rules. There is no answer to any of the interrogatories, prayers or allegations in the complaint, no discovery of any nature given or made, consequently the Court erred in denying complainants' motion and making the order, (page 51) thus prejudicing complainants and preventing them from obtaining the discovery they sought as well as casting upon complainants an additional burden of proving facts which should have been disclosed.

For the error committed, the decree should be set aside and nothing holden.

POINT II.

THE COURT ERRED:

1. In failing to grant complainants motion to strike out the answer of Gladys Nicholson upon the ground that the same is not responsive, insufficient and the defendant has failed to fully answer all material allegations charged in the bill.
2. In that the defendant Gladys Nicholson has failed to make a full, frank and explicit discovery and disclosure of all matters necessary and material to be answered.
3. In that the said answer is not in compliance with the rules and practice of the Court of Chancery with respect to the requisite of good pleading and making a full, frank and explicit discovery of all matters necessary and material to be answered.

For the reasons and authorities set forth in Point 1 and the failure of Gladys Nicholson to make a proper answer to the prayers for relief and to paragraphs eleven to thirty-one of the bill, which answer is set forth on Page 39-40-41, the Court erred in making the order of Mar. 20th, 1924, (page 51), and for this reason the decree should be set aside and for nothing holden.

POINT 3.

THE COURT ERRED IN REFUSING TO STRIKE OUT THE CROSS-BILLS OF THE DEFENDANTS ALEXANDER G. NICHOLSON AND GLADYS NICHOLSON FOR THE FOLLOWING REASONS:

1. The said cross-bills are predicated upon a written contract in which the defendants have an adequate remedy at law and the same does not disclose a ground for equitable relief.
2. That there was then and still is pending and undetermined in the United States District Court of New Jersey, an action at law wherein the said Alexander G. Nicholson and Gladys Nicholson are parties plaintiff and your appellants are parties defendant for the same cause of action as set forth in the alleged cross-bill.

The Bill of complaint in this cause was filed on July 4th, 1923, the answers of Alexander and Gladys Nicholson were filed on December 1st, 1923. Service in this case was effected by publication; suit was brought in the New Jersey Supreme Court by Gladys Nicholson and Alexander G. Nicholson against these complainants by summons tested October 25th, 1923. Complainants motion to strike out (page 49-50) was predicated upon the ground set forth as Point 3.

The defendants have by their own election chosen the forum wherein they desired to try their case which was an action on the policies or contracts of insurance and consequently could not maintain the two actions for the recovery of damages for the same cause of action; the learned Vice

Chancellor denied complainants motion by the making of the order of Mar. 20th, 1924, (page 51) causing complainants to file the replication and answer to cross-bill set forth (page 51-61) wherein we have set forth defenses under the insurance contract. It is to be observed that the separate defense of fraud pleaded in this replication is entirely foreign and different from the allegations of fraud set up in the bill of complaint with respect to the procurement of the insurance policies, consequently complainants having chosen the Court of Chancery by filing this bill for discovery, reformation of the $25,000 mortgage and deed to Gladys Nicholson and the cancellation of the policies and the defendants before filing any answer in Chancery, having elected to bring their action in the law court, the parties should have been left in their respective forums.

> "The general rule is, that as between Courts of con-current and co-ordinate jurisdiction, the Court that first obtained possession of the controversy must be allowed to dispose of it without interferring from the co-ordinate Court."

Riggs vs. Johnson County, etc. 6 Wall 166 (U S.)

Peck vs. Jeuness, 7 How. 624 (U. S.)

The reasoning in the foregoing is clearly distinguishable from the cases of Howe Ins. Co. vs. Howell, 24 E. 238, and N. J. Zinc Co. vs. Franklin Ins. Co., 29 E. 431; giving Chancery jurisdiction over the entire controversy but here the causes of action are clearly distinguishable in that, defendants' action is upon a contract wherein they have

an adequate remedy at law in a forum which the defendants chose, while complainants relief could only be obtained in Chancery.

For the reasons herein assigned, the decree should be set aside and for nothing holden.

POINT 4.

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19, 1927, marked Exhibit "A" hereto attached for the following reasons:

1 and 2 Petition of Appeal.

1. That the final decree as made and entered is not in conformity with the decision rendered by the Court as set forth in the letter to counsel, dated July 6th, 1927, a copy of which is hereby attached and marked Exhibit "C".

2. That the Court has failed to incorporate in the decree any decision with respect to the cross-bills filed in the cause by Alexander G. Nicholson and Gladys Nicholson.

Due notice of this appeal has been given to the learned Vice Chancellor about Nov. 21st, 1927; the Notice of Appeal was filed on Jan. 3rd, 1928 and the opinion of the Vice Chancellor has not been filed on May 3rd, 1928, so that all we had to guide us with respect to the conclusions or determination of the Court was the letter of July 6th, 1927, (page 12), from which letter it was fair to conclude that the Court had changed his mind with respect to his conclusion in refusing to strike out the cross-bill referred to in Point 3 of this Brief

and to this extent, complainants were successful, in that, it was the expressed intention of the Court to dismiss the cross-bill upon the theory that defendants had an adequate remedy in the forum they had originally chosen or elected to bring their action, BUT THE FINAL DECREE FAILS TO MAKE ANY DISPOSITION OF THE CROSS-BILL, notwithstanding the fact that the issue raised by the cross-bill and replication was tried by the Court below.

For this reason the final decree is erroneous and should be set aside.

POINT 4-a

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19th, 1927, marked Exhibit "A" hereto attached, FOR THE FOLLOWING REASONS:

3, 4, 5 and 11 Petition of Appeal

3. That the testimony in this cause clearly and conclusively established that the shrubbery, if any, in and around the Jacobson Mansion had been burnt or destroyed by fire prior and previous to October 27th, 1922; that by reason thereof, the said Alexander G. Nicholson and Gladys Nicholson made a false and fraudulent claim against the National Fire Insurance Company of Hartford and that the decree should have been in favor of the said National Fire Insurance Company of Hartford.

4. That the testimony adduced in the cause has clearly and conclusively established that the personal property, if any, contained in the said Jacobson Mansion in Hackensack, was the property of Alexander G. Nicholson; that by reason thereof the said Gladys Nicholson made a false and fraudulent claim against the National Fire Insurance Company of Hartford and that the decree should have been awarded in favor of said National Fire Insurance Company of Hartford.

5. That under the terms, convenants and conditions of the policies of your appellants Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, National Fire Insurance Company and Phoenix Assurance Company and the testimony in this case, the defendants, Gladys Nicholson and Alexander G. Nicholson have failed to establish liability for loss and damage and by reason thereof the decree should have been in favor of the said Firemen's Fund Insurance Company, Scottish Union and National Insurance Company, National Fire Insurance Company and Phoenix Assurance Company.

11. That the form of the decree is erroneous in that, this Court has failed to render any decision or opinion with respect to each or any of the separate defenses alleged and set forth in the replication of your appellants.

The defendants by way of replication have specifically pleaded:

> "If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, etc." (Lines 5 to 15, Ex. C-9, page 294 Second Separate Defense Replication, page 53.)

This covenant of the contract must be strictly complied with to give defendants the notice required but the case is absolutely devoid of any proof of any notice in writing to any of the complainants insuring the property against loss and damage by fire. This fire occurred on Oct. 27th, 1922 and the first written notice is sent on Dec. 18th, 1922 by William Martin Moore, Mr. Nicholson's attorney, (Ex. ABC-2, page 307) and the first notice received by complainant, Phoenix Assurance Company is evidenced by Ex. C-28 on Jan. 8th, 1923, consequently under the doctrine laid down by Justice Parker, speaking for our Supreme Court in Maachia against Scottish Union Insurance Company, 128 A. 244, not officially reported, supported by the pronouncement of Justice Katzenbach, speaking for this Court in Lehrhoff vs. Continental Insurance Co., 128 A. 245, not officially reported, complainants were and are entitled to a decree in their favor.

The complainants have set up as the Third Separate Defense:

> "If fire occur, the insured within sixty days after the fire shall render a statement to this company, etc." (Lines 5 to 20, Ex. C-9, page 294.)

This contract of insurance says 'the insured' and the insurance companies have a right to expect and require that the sworn statement be made by the 'insured' for after all a "policy of insurance is a personal contract", Kase vs. Hartford Fire Ins. Co., 58 L. 34, and it is 'a contract of indemnity and one of the utmost good faith' and it is the sworn

statement of the 'insured' that is contemplated by this contract and not the sworn statement of any agent or attorney, except in the event of legal incapacity that the law excuses, but no sworn statement as contemplated by lines 15 to 20 of Ex. C-9, page 294, has ever been delivered or furnished to complainants, notwithstanding complainants' notices and demands, (Ex. C-28, page 324; Ex. C-29, page 326; Ex. C-30, Ex. C-31, Ex. C-32, page 328) and again the complainants have put these defendants on notice that they required a personal compliance by the 'insured (Ex C-28, page 324, Ex. C-29, page 329, Ex. PA-4, page 313, Ex. C-30, page 328; Ex. PA-2, page 308; Ex. C-31, page 328; Ex. PA-6, page 312; Ex. C-32, page 328; Ex. PA-3, page 312; Ex. C-26, page 331) and again complainants have put defendant, Gladys Nicholson on notice when they say:

> "The same will have to be presented by you personally in accordance with the terms, etc." (Ex. C-33, page 333.)

By reason of the failure of the defendant Gladys Nicholson, to comply with this covenant, complainants were and are entitled to a decree in their favor and by reason of the premises the decree is erroneous.

By the uncontradicted facts and testimony of the firemen as well as the photographs and Mr. Nicholson's admissions, (page 151, lines 128 to 135), it is established beyond any doubt that the 'shrubbery' insured in the sum of $3000 by the National Insurance Company of Hartford was not in esse on Oct. 27th, 1922, and consequently the

Proof of Loss (Ex. PA-4, page 313) is false and fraudulent, rendering the entire policy (Ex. C-14) null and void, this complainant was and still is entitled to a decree in its favor and by reason of the premises, the decree is erroneous.

The testimony of Alexander G. Nicholson on page 144, 145 clearly indicates that the personal property, if any, on the premises, was the property of Alexander G. Nicholson and that since (Ex. C-14) the policy of the National of Hartford did not insure Alexander G. Nicholson, there was no liability on the part of this complainant in the premises, consequently this complainant was and still is entitled to a decree in its favor and for this reason the decree is erroneous.

By reason of my endeavor to shorten this brief, I refrain from specifically arguing the Fifth and Sixth Separate Defenses although the record (Ex. C-28, page 324, Ex. C-29, Ex. C-30, Ex. C-31, Ex. C-32) disclosed due demands made by complainants for a compliance with the policy conditions set forth in the Fifth and Sixth Separate Defenses and a failure to comply therewith. This also applied to the Seventh, Eighth, Ninth, Tenth and Twelfth Separate Defense, the false swearing with respect to Ex. PA-2, PA-3, PA-4, PA-5 and PA-6, the several proofs of loss made by Alexander G. Nicholson as attorney in fact for Gladys Nicholson, provided this Court would hold that under this contract or policy of insurance the insured thereon designated, without legal incapacity, may delegate to an agent the duty of making and swearing to a proof of loss then the fradulent conduct of the agent for the benefit of the principal, in

making a false proof of loss, ought to defeat a recovery.

From my examination of the testimony and exhibits in this case, it appears to me that the complainants have established by a fair preponderance of evidence each and all of the separate defenses from the first to and including the "Twelfth Separate Defense" as pleaded in the replication and answer to the cross-bill sufficient to have moved the learned Vice Chancellor to have rendered a decree in favor of complainants on the said replication and for this reason the decree is erroneous.

POINT 4-B

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19TH, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 8, Petition of Appeal, Record page 6)

> 8. That there is no determination by this Court as to the consideration, if any, which Alexander G. Nicholson paid for the alleged mortgage of Twenty-five thousand dollars on the property.

This bill having been filed primarily for discovery and reformation, by the refusal of the Court to strike out the answers as filed by Alexander G. Nicholson and Gladys Nicholson, the complainants were deprived of their equitable right to have this discovery and the relief prayed for in the prayer No. 6 of the Bill of Complaint and there is no determination of the proposition either in the let-

ter of Vice Chancellor Lewis (Record page 12) or the final decree (page 9) and the decree is erroneous, in that, it is predicated upon only one of nine prayers for relief and for this reason should be reversed and for nothing holden.

POINT 4-C

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19th, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 9—Petition of Appeal, Record, page 6)

> 9. That there is no determination by this Court of the consideration, if any, which passed from Gladys Nicholson or Alexander G. Nicholson to William H. Snyder or Harriet F. Snyder for the transfer of the property.

The argument that I make as to Point 4-B respecting the eighth assignment of error in the Petition of Appeal is equally applicable to the Ninth assignment of error, except that complainants have clearly established by the evidence in this case that there was no cash consideration, that Harriet F. Snyder in exchange for the conveyance by her husband to Gladys Nicholson of the Jacobson Mansion in Hackensack, subject to two mortgages, totaling $7000, received a conveyance of the Brooklyn property from a deceased person, the policies of insurance being contracts of indemnity, what is the loss the Nicholsons have sustained for which they seek indemnity? What

has Gladys Nicholson or Alexander G. Nicholson put into this Hackensack property? The final decree is silent and prayer No. 2 in the bill remains unanswered; for this reason the final decree is erroneous and should be set aside.

POINT 4-D

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19TH, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 10—Petition of Appeal, Record page 6)

> 10. That this court has not determined the value of the building on October 27th, 1922, as a determining factor with respect to the bona fides of the appellants application to this Court for relief.

All of the expert witnesses with respect to the cash value of this building as of October 27th, 1922, have placed the value between $12,000 and $18,000, except Mr. Nicholson's friend and employer, Ike Jersey who made an appraisal about a year or two before the fire, which appraisal was based upon contemplated repairs. Dr. Snyder had this building in the market for sale for $16,000. What did he receive? Nothing. He did, however make a mortgage to his wife for $6500 prior to making the conveyance to Gladys Nicholson. Why? Dr. Snyder made a $500 mortgage to Nicholson which was later assigned to Dr. Snyder's wife. Why? Mrs. Snyder also received a deed from Mary T. Ward who at the time of this conveyance had

already passed away. These facts may help this Court in determining why Harriet F. Snyder only received $8300, standing in the impregnable position of a mortgagee. (Reed vs. Firemen's Ins. Co., 81 L. 523) after making a claim in the sum of $10,007.19, (Ex. P-2, P-6, P-8 and P-15) and Alexander G. Nicholson did not put anything into the Hackensack property but on the contrary upon assignment of the $500 mortgage (Ex. P-14, page 315) to Harriet F. Snyder, (Ex. P-13) must have received some consideration. Gladys Nicholson put nothing into the property and Mary T. Ward had passed away. In view of these facts, were the complainants justified in asking the Court of Chancery for discovery? Would not the cash value of this building on October 27th, 1922 as compared to the $51,000 insurance therein be a determining factor as to the bona fides of complainants' application, yet the learned Vice Chancellor passed subsilento over this matter and for the reason assigned, the decree should be set aside and for nothing holden.

POINT 4-E

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19TH, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 12 and 15—Petition of Appeal, Record page 7)

> 12. The form of the final decree, dated September 19th, 1927, is erroneous and prejudicial to appellants in the action at law by the defendants Alexander G. Nicholson and Gladys Nicholson upon the same

> cause of action set forth in the cross-bills filed by them in this cause, wherein your appellants have pleaded by way of answer, each and every one of the defenses set forth in the replications filed by your appellants in this cause and wherein there defendants Nicholson have filed a reply, a copy of which is hereto attached marked Exhibit D, and wherein they specifically plead that this decree is res adjudicata of each and every special defense set forth in the replication filed in this cause.
>
> 15. That the said decree is erroneous, in the following language: "This Court believes that the damage so claimed by the defendants should be ascertained by a Court of law," leaving it to inference that the Court has decided and ruled against appellants on each and all of the separate defenses set forth in appellants replication to the cross-bill and that the only defense afforded to your appellants in a law action is the measure of damages sustained by defendants Alexander G. Nicholson and Gladys Nicholson.

This final decree fails to make any mention of the Court's disposition of the cross-bill, replication and answer thereto, although the Court has received the evidence after denying complainants' motion to dismiss the cross-bill. Notwithstanding all of this, the defendants Alexander G. Nicholson and Gladys Nicholson have pleaded in the law action in the United States District Court, by way of reply, (Ex. D. in Petition of Appeal, record

page 13) that this final decree (record page 9) is res adjudicata of each and all of the separate defenses which complainants have set up by way of answer in the law action; all of which separate defenses are set forth in the 'replication' (Record page 51-61) filed in this cause, thus the stating part of the Final Decree (page 9-10) contains erroneous recitals which have not been adjudicated and may be greatly prejudicial to complainants in the law action and for these reasons the decree should be set aside and for nothing holden or so remoulded as to contain a correct recital of the adjudication by the learned Vice Chancellor.

POINT 4-F

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19TH, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 6, 7, 13—Petition of Appeal, Record page 6-7)

6. In awarding a counsel fee as against your complainants, notwithstanding complainants inability to move the court in granting appellants relief prayed for, as the testimony clearly and conclusively establishes such a meritorious case as to have warranted the court in a refusal to grant any counsel fee against appellants.

7. That the defendants Alexander G. Nicholson and Gladys Nicholson have failed to maintain, sustain or establish the allegations of their cross-bill and by reason thereof, the said cross-bill should be dismissed and the dismissal of the cross-bill,

in view of all the facts and circumstances in the case would warrant the Court in refusing to grant the defendants Alexander G. Nicholson and Gladys Nicholson a counsel fee against appellants.

13. That the Court erred in the exercise of discretion under the testimony and facts in awarding a counsel fee as against your appellants.

It is my firm conviction that this Honorable Court upon an examination of the record and this brief will conclude that the defendants, Alexander G. Nicholson and Gladys Nicholson have not made out a prima facia case for recovery against any of the complainants on the certificates of insurance; that the complainants companies have by a preponderance of evidence made out a case that would warrant any Court in directing a verdict in favor of the companies on the facts produced in support of each and all of the separate defenses set forth in the replication; furthermore, if the defendants, Alexander G. Nicholson and Gladys Nicholson had filed answers as contemplated by the rules and practice in Chancery, together with the evidence that was adduced, it is quite apparent to me that the learned Vice Chancellor should have been impressed with the meritorious application on behalf of complainants, sufficient to have warranted the Court in a refusal to allow a counsel fee against complainants and the question of ability to pay a counsel fee should not have entered into any consideration.

Then again, after the Court had denied com-

plainants' motion to strike out the cross-bills and subsequently after receiving all of the evidence disclosing a state of facts developed in this case inferentially decides to dismiss the cross bills, isn't it an abuse of discretion to penalize complainants by allowing $1000 as a counsel fee against them?

The complainants having been successful at least to this extent of having the Court inferentially (but not judicially) decide that complainants should succeed in their motion for the dismissal of the cross-bills and the meritorious case adduced, why are the complainants not entitled to a counsel fee against these defendants.

"Equity considers that done which ought to be done." Upon the record in this case, the allowance of counsel fee against complainants is an erroneous abuse of discretion sufficient to warrant the setting aside of this final decree.

POINT 4-G.

THE COURT ERRED BOTH IN SUBSTANCE AND FORM IN THE DECREE DATED SEPTEMBER 19TH, 1927, marked Exhibit "A" hereto attached, for the following reasons: (No. 16—Petition of Appeal, Record page 8)

> 16. Appellants, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company and Phoenix Assurance Company have no interest in the controversy with the defendants Alexander G. Nicholson and Gladys Nicholson and should have been dismissed as party complainants, thus the Court erred in awarding a counsel fee as against them.

It is to be observed by the letter of Mr. Ashmead of Lindabury, Depue & Faulks, the solicitors of defendants, William H. Snyder and Harriet F. Snyder, (Record page 67) dated April 8th, 1925 and Ex. P-7, P-9, P-17, page 313, and P-16, page 314, that the controversy between complainants, Phoenix Assurance Company, Insurance Company of North America, Mercantile Insurance Company and London Assurance Company, with William H. Snyder and Harriet F. Snyder had been terminated in the early part of 1925, but by reason of my interpretation of the practice as laid down by Chancellor Walker in Hudson Trust Co. vs. Boyle, 84 Atl. 715, and my agreement with counsel, the final decree should have relieved these complainants of any further participation or responsibility in the matter since they were not interested in any controversy with the Nicholsons; after the receipt of Vice Chancellor Lewis' letter of July 6th, 1927, (page 12) I expected to be noticed for the settlement of the terms of the decree in accordance with the Chancery Practice, but was never noticed for this purpose although I submitted a form of Final Decree to my adversaries, on August 2nd, 1927, (Record page 65) in accordance with my construction of Vice Chancellor Lewis' letter of July 6th, 1927. On or about Sept. 7th, 1927, I learned that a final decree had been entered without any notice to me and thereupon I caused the Caveat to be filed, (Record page 64) and forthwith noticed my adversaries (Record Page 66) for the purpose of setting aside the final decree. I neg-

lected to call the Vice Chancellor's attention to the letter of April 8th 1925, written to him by Mr. Ashmead and to incorporate same in the form of decree as submitted until after the making of the second final decree (Page 9) which is practically the same as the first decree and then I presented the matter by filing a petition to re-open the decree (Hudson Trust Co. vs. Boyle, ibed) upon the grounds set forth in page 66 to 73 of this record, since these complainants have disposed of their controversy, why should they be burdened with the payment of a counsel fee and if they are to pay a counsel fee, how is the same to be apportioned.

For this reason the decree should be set aside or remoulded to do equity.

POINT 5.

The Court erred in making the order of November 21st, 1927, in that, the petition for re-hearing clearly discloses that the appellants, Insurance Company of North America, Mercantile Insurance Company, London Assurance Company and Phoenix Assurance Company have no controversy with defendants Alexander G. Nicholson and Gladys Nicholson and should have been dismissed from the proceeding and relieved of the award of the counsel fee as against them.

I have argued this matter in Point 4-G upon the reason assigned in the Petition of Appeal. I now wish to point out that the learned Vice Chancellor erred in failing to relieve complainants, Insurance Company of North America, Mercantile Insurance

Company, Phoenix Assurance Company and London Assurance Company of any liability for a counsel fee after pointing out to the Court in the petition for re-hearing (record, page 66-73) that these complainants had no interest in the controversy. Upon what theory are these complainants to be charged with a counsel fee when they never had any controversy or litigation with Nicholsons; their application for relief was directed against the Snyders and was disposed of in April of 1925. Are they to be penalized because the other complainants insured the same property?

I respectfully submit that the final decree is erroneous in this respect and should be set aside or remoulded to do equity.

SUMMARY

As a meritorious proposition, complainants Insurance Company of North America, Mercantile Insurance Company, London Assurance Company seek to be relieved of any part of this litigation since they have no controversy with Alexander G. Nicholson or Gladys Nicholson nor are they parties defendants in the law action which have been instituted by Alexander G. Nicholson and Gladys Nicholson against the Insurance Companies, since the controversy which they had with the Snyder interest has been disposed of. Why should they be burdened with the payment of any counsel fee in this matter. As far as the complainants Star Insurance Company is interested, they issued a policy covering the rental value of the premises in the name of Gladys Nicholson. The testimony has

clearly demonstrated that while Alexander G. Nicholson as attorney in fact, did execute a lease to somebody by the name of Catherine T. Masterson, no discovery has been ever made as to who, what, when or where Catherine T. Masterson is, or whether she ever existed and the mere fact that Alexander G. Nicholson did have such a lease prepared and did cause the same to be recorded is no evidence of the fact that there was a valid lease; furthermore, the testimony clearly discloses that Catherine T. Masterson, if there is such a person, never went into actual possession of the premises and that the premises were destroyed prior to the time for Catherine T. Masterson to enter into possession.

Furthermore, from the facts and circumstances it is reasonable for this Court to assume and to find that $3600 a year was not the fair rental value of such a building as was destroyed by the fire of October 27th. $3600 a year for the rental is a lot of money and for a person to undertake the payment of such a sum, that person must have or be able to disclose the financial responsibility of such a person for the payment of that amount of money, furthermore, the evidence clearly discloses that at no time was there ever a prima facia case of liability made out under the contract of the Star Insurance Company, consequently under the evidence in this case they should have been relieved of liability.

With respect to the policy of the National Fire Insurance Company of Hartford which covered $3000 on household furniture in the name of Gladys Nicholson, the testimony clearly and conclusively discloses that the property, if any, which was in

the building, was the property of Alexander G. Nicholson and not of Gladys Nicholson and by reason of this fact the National Fire Insurance Company should have been relieved of liability. Furthermore, the same company under the same policy also insured $3000 in shrubbery. Now it is evident from the testimony in this case that the shrubbery had been destroyed by previous fires; that on Oct. 27th, 1922, there was no shrubbery in esse, consequently there was no liability of the National of Hartford on this item of their contract. The other item of the National of Hartford is $9000 on the building itself. They then come in the same category with the Firemen's Fund, Scottish Union & National and Phoenix Assurance Company, however, the National Fire of Hartford can rely and could rely upon the false statements or sworn proofs of loss wherein Nicholson, as attorney in fact for his daughter, swore that the loss and damage to the household furniture was $3000 and the loss and damage to the shrubbery was $3000 and if he swore falsely in this respect it abrogated the entire contract so that in that event the National of Hartford should have been relieved of liability, so as to the other three complainants covering $26,000 on the building, the facts are these:

In May of 1918, Dr. William H. Snyder and Alexander G. Nicholson agreed to make some sort of a trade, involving the Jacobson Mansion in Hackensack or whatever equity or interest Alexander G. Nicholson may have had in the property at 215 Foster Avenue, Brooklyn, N. Y., which stood in the name of Nicholson's sister, Mary T. Ward and which was the subject of a foreclosure suit and what are the facts. Prior to the conveyance by Dr.

Snyder to Gladys Nicholson, the daughter of Alexander G. Nicholson, upon Alexander G. Nicholson's direction, in October of 1918 Dr. Snyder had executed two mortgages covering the Jacobson Mansion in the total sum of $7000 and subject to these two mortgages, conveyed the property to Gladys Nicholson. In return therefor, the deed of Mary T. Ward to Harriet F. Snyder was made. Now what was the equity of Nicholson, Gladys Nicholson or Mary T. Ward in this property at 215 Foster Avenue, Brooklyn, which was the subject of conveyance and the subject of a foreclosure suit? This surely ought to be some evidence of the value at which Dr. Snyder carried the Jacobson Mansion in Hackensack. The testimony clearly discloses that Dr. Snyder had this Jacobson Mansion in the market for sale for $16,000 and that for at least ten years prior to making this conveyance, he carried insurance on this building in the sum of $16,000 and the appraisement made by Mr. Van Saum, Mr. Anderson and Mr. Robinson, all tend to throw light upon what might have been the value of this property at the time of its destruction by fire. The maximum value placed upon this building at the time of its destruction is approximately $18,000, notwithstanding the same, there was $51,000 insurance upon the Jacobson Mansion. The complainants have already paid to date $8300 whereas the equity of the Snyders in this property was only $7000 at the most. It is apparent from the proofs of loss filed by Harriet F. Snyder that the taxes from the time of the conveyance and interest on the mortgages have never been paid until the time of the settlement made by the Insurance Companies with Harriet F. Snyder. If the value of the building was what Dr. Snyder held it at and what the experts have testified to, upon what theory can the $25,000 mortgage which Gladys Nicholson made to her father be reconciled with the facts in the case except if the mortgage was executed for some ulterior motive? Does it stand to reason that a building such as this was had a rental value of $3600 a year? Is not the fact that there were previous fires to the one of Oct. 27th, 1922 together with the fact and circumstances surrounding the actual destruction of the building and the fact that there was $51,000 insurance on the same, indicative of a motive for the removal of the property as in the language of Mr. Robinson, one of the witnesses "The land was better off with the building off than on it." Under all the facts in this case, what is the actual consideration or investment or equity which the Nicholsons had in this building? At its best, it would only have been the equity of redemption which Alexander G. Nicholson, or Mary T. Ward might have had in this Brooklyn property which was then the subject of foreclosure, and Dr. Snyder has testified that all Nicholson asked him to loan him prior to the consummation of the arrangement for the transfer of the property was $800. While it may be true that complainants have been unable to identify any person as having actually set this place on fire or are unable to charge specifically that some particular person did it, hasn't the destruction of the building all the earmarks of it being destroyed with a motive? Isn't it rather singular that within a week or ten days prior to the destruction of the building by fire that Alexander G. Nicholson should have had pictures tak-

en of the building? What was the object of the taking of these pictures? As a matter of indemnification, Dr. Snyder or Harriet F. Snyder have lost nothing because all that they had was $7000 represented by mortgages, for which they have received $8300. What have the Nicholsons lost? Nothing, for the deed which Harriet F. Snyder received for the Brooklyn property can be of no valid force or effect, since it is clearly and conclusively demonstrated that at the date of the making of the deed, that is in May of 1918, Mary T. Ward, the alleged vendor had passed away. The deed is not recorded until October which was apparently the time of the final consummation of the entire transaction, so that, neither Nicholson nor his sister Mary T. Ward or Gladys Nicholson have parted with any consideration at all which they have put into this property.

Upon the merits of the proposition, it appears to me that the complainants were and are entitled to relief in the Court of Chancery, that this decree has burdened them with a counsel fee of $1000 which under the testimony and facts in the case is unwarranted; that the form of the decree itself is erroneous and would be highly prejudicial to the complainants in the defense of their action at law in the United States District Court if they are called upon to defend the action.

I respectfully submit that the decree should be set aside or remoulded in some way to meet the exact facts and issues in this case.

Respectfully submitted,

JOSEPH T. LIEBLICH,

Solicitor and of counsel with complainants.

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Filed May 24, 1928

IN CHANCERY OF NEW JERSEY

Between Firemen's Fund Insurance Co., Scottish Union & National Ins. Co., et als., Complainants, and Alexander G. Nicholson, et als., Defendants.	On Bill, etc.

MEMORANDUM

Joseph T. Lieblich, Esq., Solicitor for Complainants.

Messrs. Ward & McGinnis, Solicitors for Defendants.

LEWIS, V. C.:

The bill in this case is filed to cancel policies of insurance on the ground of fraud. It is lengthy and in it there are six fraudulent acts charged. The first is that, for the purpose of inducing complainants to issue the policies, the defendants falsely represented the value of their property at Sixty Thousand Dollars ($60,000.00). Secondly, it is charged that the defendant, Alexander G. Nicholson, for the purpose of defrauding The Star Insurance Company, caused to be executed to a Miss Masterton a fictitious lease for the purpose of obtaining insurance in the event the property was destroyed. The third charge is that Alexander G. Nicholson, in order to carry out a fraudulent

scheme, secured the execution of a mortgage for Twenty-five thousand dollars ($25,000.00) by his daughter to him. The fourth allegation appears in paragraph twenty-four of the bill. It is to the effect that Alexander G. Nicholson was the true owner of the building and not his daughter. As a fifth charge, it is alleged that the property had a market value of less than Fourteen thousand dollars ($14,000.00). The last charge against the defendants is found in paragraph twenty-seven and relates to the suspicious circumstances surrounding the fire.

Gladys Nicholson was the record owner of the property covered by the policies of insurance. There is not one line of testimony offered by the complainants that establishes the fact that Gladys Nicholson ever came in contact with the insurance companies. Hence the charges of fraud in the bill must be laid at the door of her father, Alexander G. Nicholson. This fraud, if proved, could only go to the extent of Mr. Nicholson's mortgage rights and could not affect his daughter's insurance.

The alleged misrepresentation as to the value of the property ,which appears to be the charge upon which the complainants mainly rely, is not in any way satisfactorily established. The fact is that one of the experts produced at the hearing fixed a value of Fifty Nine Thousand Dollars ($59,000.00) less ten percent for depreciation. I find no proof that Nicholson ever represented the property to be worth Sixty Thousand Dollars ($60,000.00). If this was the fact, however, all

the complainants were called upon to pay was the actual loss. The insurance companies had every opportunity to inspect and ascertain the true value of the property, as it remained unchanged from the issuance of the policies until the fire. The charge that the mortgaging of the property by Gladys Nicholson to her father was a part of the scheme to defraud the companies and the charge that the leasing of the property to a Miss Masterton was done for the same purpose, are not supported by any evidence.

The allegation of the bill relative to the actual ownership of the property by Alexander G. Nicholson is not sustained. The evidence discloses a conveyance to Gladys Nicholson from one Snyder. If it appeared that Nicholson directed the title to be taken in his daughter's name, this does not prove fraud. There is testimony, however, to the effect that a substantial consideration passed between him and his daughter.

As to the charge that the property had a market value of less than Fourteen Thousand Dollars ($14,000.00), I find no evidence whatever to support it.

There is some testimony offered as to suspicious circumstances surrounding the fire but none of which brought about the defendant, Alexander G. Nicholson's indictment for arson, which was attempted in Bergen County, and the evidence before me does not establish complainants' claim that he had to do with bringing about the conflagration.

Fraud should not be presumed. Fraud must be proven by clear and positive evidence and, after going over the testimony and considering the same again, I still hold the view entertained and expressed by me at the conclusion of the oral hearing; that the complainants have failed to sustain the allegations of the bill and that it should be dismissed.

A cross bill was filed asking affirmative relief against the company. As to this affirmative relief asked for by the defendants, viz; the damage sustained, I have concluded that their proper action should be at law. It is pre-eminently a question for the jury.

I shall advise a decree in accordance with these views.