

New Jersey Court of Errors and Appeals.

THE STATE,

Defendant in Error,

vs.

HERMAN PLEHM,

Plaintiff in Error.

In Error to Supreme Court.

Brief of Defendant in Error.

HISTORY OF THE CASE.

The defendant Plehm was indicted October 23rd, 1903, for arson committed October 14th, 1903.

Immediately or very soon after the fire, defendant left the jurisdiction of the state, having learned that he was wanted, and, according to his own story, went to Dublin, Ireland, where he remained over a year, and from thence went to South Africa. Defendant returned to New Jersey in September, 1905, and voluntarily surrendered himself for trial. The property burned belonged to the wife of defendant and was insured in the Hartford Fire Insurance Company and was of the value of the face of the policies at the time insured. See testimony of Sibbald, page 19, Case Book.

The defendant's three small children and a woman visitor, Mary Meherstein, were at home at the time of the fire, which occurred about 2 a. m., according to testimony of the inmates of the house, the defendant's wife and eldest son having gone that day to New York, and remained away all night.

There were four rooms up stairs containing beds in each room. There were three rooms down stairs, consisting of a large front room, a dining room and a kitchen.

On the night of the fire Mary Meherstein, the visitor, slept in the front room down stairs with two children, and the defendant slept in the dining room with another child.

About five or six o'clock in the morning James D. Jones, a neighbor, was summoned by Plehm's two small children, and two other neighbors—Van Houten and Pulis—were called by Jones. They found the defendant and the hired man on the roof of the porch throwing water into the front room upstairs. Van Houten tried to go in the front door, but found it locked and nailed, and the key gone. Van Houten and Pulis then went up stairs and discovered fire between the mattresses of the beds in each of the three rooms, and no fire any other place in the house except evidence of a fire having been at the foot of the front stairs, behind the doors.

FIRST AND SECOND ASSIGNMENTS OF
ERROR, to wit :

First. Because the said court erred in per-

mitting the witness, Robert A. Sibbald, to answer the following questions :

Question. At the time you looked at this personal property in this house before you wrote the policy and placed the insurance, what was the value of the property insured ?

Second. Because the said court erred in permitting the witness, Robert A. Sibbald, to answer the following question :

Question. Did you estimate the value of the property at that time ?

These assignments of error can be considered together for the reason that they refer to the same matter. The questions were competent, for the reason it was material to ascertain the value of the property at or about the time of the placing of the insurance, the defendant having been indicted for setting fire to property with the intent of defrauding the insurance company and which was to be followed by evidence that all the property insured was not there at the time of the fire as was subsequently proven by the witness Sibbald at the bottom of page 20 of the Case Book, whereby the witness testified, "I judge the property that was in the house at that time was not the property that was in the house when I examined it before," meaning immediately subsequent to the fire.

THIRD ASSIGNMENT OF ERROR, to wit :

Third. Because the said court erred in permitting the plaintiff to offer in evidence a letter

purporting to be signed by the defendant and which letter was marked Exhibit P-4.

This letter was competent and material. First, the signature of the letter was proven by the witness Sibbald, as appears in line 8, page 22, of the Case Book; secondly, it shows the haste of the defendant in demanding the insurance money; thirdly, gives the defendant's version of the origin of the fire.

FOURTH ASSIGNMENT OF ERROR, to wit:

Fourth. Because the said Court erred in permitting the witness, Robert A. Sibbald, to answer the following question:

Question. You mentioned the fact that you saw another evidence of fire at the foot of the stairs, you mean, in front of the house or the rear?

This question was properly allowed, and its competency and materiality can easily be seen when we call the attention of the court to the fact that it was proven by the testimony of Pulis on the part of the state, at page 31, who attempted to go in the front door and discovered that the door was locked, the key gone, and the door nailed, and who afterwards discovered fire upstairs in the beds between the mattresses in three separate bedrooms, which were far distant from the foot of the stairs and front door. If the fire originated from the explosion of a lamp, as the defendant claimed in his letter marked Exhibit P-4, it could not possibly have caused the fire to ignite in so many impossible places far distant from each other.

FIFTH ASSIGNMENT OF ERROR, to wit :

Fifth. Because the said court erred in refusing to direct an acquittal of the defendant on two following grounds :

First. That it has not been proven by the state that the crime of arson has been committed by any person.

Second. That it has not been proven that the prisoner is guilty of arson beyond a reasonable doubt or has committed any crime.

It is true that the state has not shown by an eye witness the commission of the crime of arson, but the facts as taken from the testimony of Robert A. Sibbald, who made an examination of the property after the fire, and who had previously insured the property, who testified that the personal property in the house was not the property upon which he had placed the insurance, and secondly, the personal property insured, or at least a large portion of it, must have been removed by some one; thirdly, the defendant Plehm was in possession of the property at the time of the fire; fourthly, from the evidence of Van Houten and Pulis who discovered the fire between the mattresses in three separate beds in three separate rooms, having no direct communication with each other, which places were the only ones that showed evidences of fire with the exception of that at the bottom of the stairs, at the front door far distant from the bedrooms and the fact of the front door being nailed, and fifthly, the flight of the defendant to Ireland and

South Africa, according to his own evidence, for fear of being arrested, were sufficient facts to warrant the court in letting the matter go to the jury.

The second reason under the Fifth Assignment of Error is not at all tenable, as the reasonable doubt is solely a matter for the jury.

SIXTH ASSIGNMENT OF ERROR, to wit :

Sixth. Because the said court erred in permitting the witness, Frederick I. Van Saun, to answer the following question :

Question. Did you observe the walls between the rooms ?

This question was competent as rebutting the testimony of George Plehm—line 17, page 51, of the Case Book, also the testimony of Sarah Plehm line 18, page 55, of the Case Book, also the testimony of Frank Sotto—line 20-21, page 59, of the Case Book.

SEVENTH ASSIGNMENT OF ERROR, to wit :

Seventh. Because the said court erred in refusing to direct an acquittal of the defendant on the ground that the state has not proven the commission of the crime of arson at all, and on the further ground the state has not proven beyond a reasonable doubt that the defendant committed this crime, if any crime was committed.

Our answer to this assignment is already covered under the fifth assignment of error.

FIRST CAUSE FOR REVERSAL, to wit :

First. The State, the defendant in error, should not have been allowed to ask the witnesses for the state and have answered by them the questions in the record which showed what Mrs. Sarah Plehm did or said in the absence of the defendant.

On examination of the testimony, I am only able to find conversation had with Mrs. Plehm, the defendant's wife, in the absence of the defendant, by the witness, Frank M. Taylor, at pages 13 and 16. Mrs. Plehm was the owner of the property and this conversation is held with the agent of the insurance company, who held the policies on her personal property, and the conversation refers only to the condition and the location of the personal property the day after the fire, and has no reference whatever to the defendant; therefore, it could not have been harmful in any manner to the defendant.

SECOND CAUSE FOR REVERSAL, to wit :

Second. The court erred in its charge in a statement of fact that was not justified by the facts in the case, to wit :

The state claims that this defendant was in the house that night and was responsible for this fire; it claims that he was either the originator of it, or was instrumental in having the fire started for the purpose of getting money from the insurance company by reason of the insurance policies issued on the goods in the house and on the house.

I am unable to see any error in this portion of the charge of the court, as the statement of the

court in this particular is exactly what the state did claim, and what the state proved.

THIRD CAUSE FOR REVERSAL, to wit :

Third. The court erred in its charge in a statement of law that was not justified by the facts in the case, to wit :

It is your duty to consider all the evidence and believe the witnesses which you think are entitled to be believed and disbelieve the testimony of others, and if you think the state has proved the case beyond a reasonable doubt then you can find him guilty.

It is within the province of the jury and it is their duty to give credence to the testimony of witnesses whom they believe are testifying truthfully, and it is likewise the duty of the jury to reject the testimony of witnesses whom they disbelieve, so there certainly can be no error in this portion of the charge of the court.

I therefore respectfully submit that the judgment below should be affirmed.

ERNEST KOESTER,

Attorney and of Counsel with Defendant in Error

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE,
Defendant in Error,

vs.

HERMAN PLEHM,
Plaintiff in Error,

In Error to Supreme Court.

Brief of Plaintiff in Error.

HISTORY OF THE CASE.

The defendant, Herman Plehm, was indicted and was tried in the Bergen Quarter Sessions Court, holden in and for the County of Bergen, convicted and sentenced by the Court to imprisonment in the State's Prison for the term of seven years; the defendant was taken to State's Prison and served about six months of his term when a writ of habeas corpus was issued by the late Justice Garretson and he was bailed in the sum of twenty-five hundred dollars by Judge Zabriskie of the Bergen Quarter Sessions, a writ of error having been taken out in the meantime to the Supreme Court, which writ of error was argued at the June term, 1906, and the conviction affirmed at the November term, 1906.

This case comes on for hearing before this court on a writ of error, taken out of this court, to the Supreme Court.

On the night of the fire the building which was burned was occupied by more than five persons, one was the defendant and one was a person named Emma Meherstein, and several children of the defendant, three of which children were sworn at the trial; one's name was George Plehm, another Nathan Plehm, and another Ida Plehm; there were also two smaller children who were not sworn. In addition to that there was a Polish man sleeping in the barn; this man was not produced nor sworn and from the testimony he evidently had gone away.

The premises were owned by Mrs. Plehm, who was not home that night, and there was no evidence in this case to charge the defendant with the fire except the fact that he was sleeping in the house with the other persons who were sworn and was found on the property trying to put the fire out with the Polish man by the neighbors who were called.

If it were possible for your Honors to pass upon the innocence or guilt of the defendant from the testimony, giving him the benefit of a reasonable doubt, which the law of this state gives to every defendant, I do not think that your Honors could say that the defendant was guilty of the charge in the indictment, certainly his presence at the fire trying to put it out; page 26, printed book, line 20, testimony of one of the state's witnesses.

Q. Who did you see?

A. Mr. Plehm.

Q. Where was he ?

A. On the piazza roof.

Q. What was he doing ?

A. Carrying water in and throwing it on the beds.

Also page 50, line 20.

Q. Tell us about it.

A. My sister woke up my father and we tried to put it out and we could not get it under control and we went for the neighbors.

That conduct of the defendant is the only testimony outside of his mere presence in the house with others that in any way connects him with this case and the strongest thing that can be said against him is that it raised a mere suspicion and as a matter of law I do not understand that any defendant ought to be convicted because a suspicion is raised against him. He did not own the property, he did not have it insured. There is not a particle of testimony to show that he personally could have acquired any advantage in money from the fire ; the State could just as well have indicted Emma Meherstein, or Nathan Plehm, or Ida Plehm, or George Plehm, or the Polish man that was found there with Mr. Plehm trying to put the fire out.

So that I contend that if your Honors had the power to pass upon the guilt or innocence of the defendant in this case the verdict of this court would be not guilty.

Public Laws 1898, page 915, section 136, says, "and if it appear from such record that the plaintiff in error on the trial below suffered manifest wrong or injury the Appellate Court shall remedy such wrong and injury and give judgment accordingly

and order a new trial, provided no judgment given upon any indictment shall be reversed for any error, except such as shall or may have prejudiced the defendant in maintaining his defence upon the merits." ^{xxx}

Under that statute the court is powerless to remedy the wrong unless the error shall have prejudiced the defendant.

SECOND CAUSE FOR REVERSAL.

The Court erred in its charge in a statement of fact that was not justified by the facts in the case to wit :

The State claims that this defendant was in the house that night and was responsible for this fire ; it claims that he was the originator of it, or was instrumental in having the fire started for the purpose of getting money from the insurance company by reason of the insurance policies issued on the goods in the house and on the house. That charge of the court was error and was harmful error to the defendant and that error was not corrected by anything the court afterwards said.

If your Honors will turn to the brief of the counsel for the state, page 7, in speaking of that same cause for reversal you will see that he says this : " I am unable to see any error in this portion of the charge of the court, as the statement of the court in this particular is exactly what the state did claim and what the state proved. "

That I contend was an absolutely false statement unless the mere presence of the defendant in the house or his presence at the fire and his effort to

put it out would justify such a statement. That statement of the court in its charge was error because it led the jury to believe that in the claim of the prosecutor and in the statement of the court, so made in the charge that they had a right to and were justified in convicting this defendant of the crime of arson from the fact of his mere presence at the time of the fire and his presence in the house previous to the fire.

If this defendant had been the only person sleeping in that house that night and if in addition he had been the only person found at the fire there might have been some excuse for that statement; even then it would have been error, but when with others present there with him, both in the house previous to the fire and at the fire how can it be said that mere presence at the house previous to the fire and presence at the time of the fire doing nothing except to try and extinguish the fire, can raise such a presumption of guilt that would warrant the state in making the claim that this defendant was in the house that night and was responsible for this fire, that statement of the State reiterated and emphasized by the court to the jury and now again reiterated by the prosecutor in his argument to this court can it be said that that statement of the court in its charge was not harmful error to the defendant?

My contention is that the verdict of the jury was based not upon the evidence in the case, but on the court's statement to the jury that the state's claim was that this defendant was in the house that night, and was responsible for this fire.

You may search the book from one end to the other and you will not find any case which would justify the law in that statement which is that the defendant was responsible for this fire.

I therefore claim that the verdict should be set aside and a new trial granted for this cause for reversal and this innocent man should have an opportunity to be again tried by a jury of his peers under a proper construction of law in which there would be no error the same as found in this cause for reversal.

In connection with this cause for reversal I desire to refer your Honors to the following cases:

Sullivan vs. People, 31 Michigan, page 1.

An improper remark made by the Court adverse to the prisoner in the presence of the jury will be considered on writ of error as if it were a part of the charge.

65 Atlantic Reporter, page 986.

Vandergrift Construction Company vs. Camden and Trenton Railway Company.

The Court is justified in controlling a jury in its verdict by a binding instruction in a case in which the testimony will not support a verdict other than that which is directed.

On page 987, Judge Vroom speaking for the Court says,

In my opinion the testimony in the case would not have supported any other verdict than that di-

rected by the trial judge and there was consequently no error in the instruction complained of.

Taking this last case in the Court of Errors and applying it to the case in question it would seem to me that it would be entirely proper to say, using the spirit of the words of Judge Vroom,

That in the opinion of this court, that the testimony in the case is such that it would have supported a verdict of not guilty and that the court's refusal to direct an acquittal, at the end of the state's case, and then making a statement in the charge, that the state claims that this defendant was in the house that night and was responsible for this fire, was an instruction in the case that was not justified and that such instruction in the case made after a refusal to direct an acquittal and when the testimony outside of any claims of the state and outside of any instruction of the court would not support a verdict as suggested by the court's instruction and the claim of the state was harmful error for which error the verdict should be set aside and a new trial granted.

As to the other assignments of error and causes for reversal, they are based upon two errors of the court, first, that the court erred in refusing to direct an acquittal of the defendant at the end of the case of the state.

At that time by an examination of the printed book your Honors will find that the state had no *prima facie* case against the defendant and it was the duty of the court to direct an acquittal; a failure to do so was harmful error for which error the verdict should be set aside and a new trial granted.

The other assignments of error cover the admissions of testimony which was hearsay from other persons other than the defendant in the defendant's absence.

Page 13. The entire page was testimony that grew out of conversations with Mrs. Plehm in the absence of her husband, also pages 16 and 19, printed book. All of which testimony is based directly or indirectly upon conversations had with Mrs. Plehm in the absence of the defendant and all of which testimony was illegal and intended to injure the defendant and was harmful error and for which error the verdict should be set aside and a new trial granted.

I desire also to submit the following cases :

Sam vs. State, 33 Miss., p. 347.

State vs. Roe, 12 Vt., p. 93.

Brown vs. Com., 87 Va., p. 215.

State vs. Carroll, 85 Iowa, p. 1.

Phillips vs. State, 20 Ga., p. 105.

Stallings vs. State, 47 Ga., p. 372.

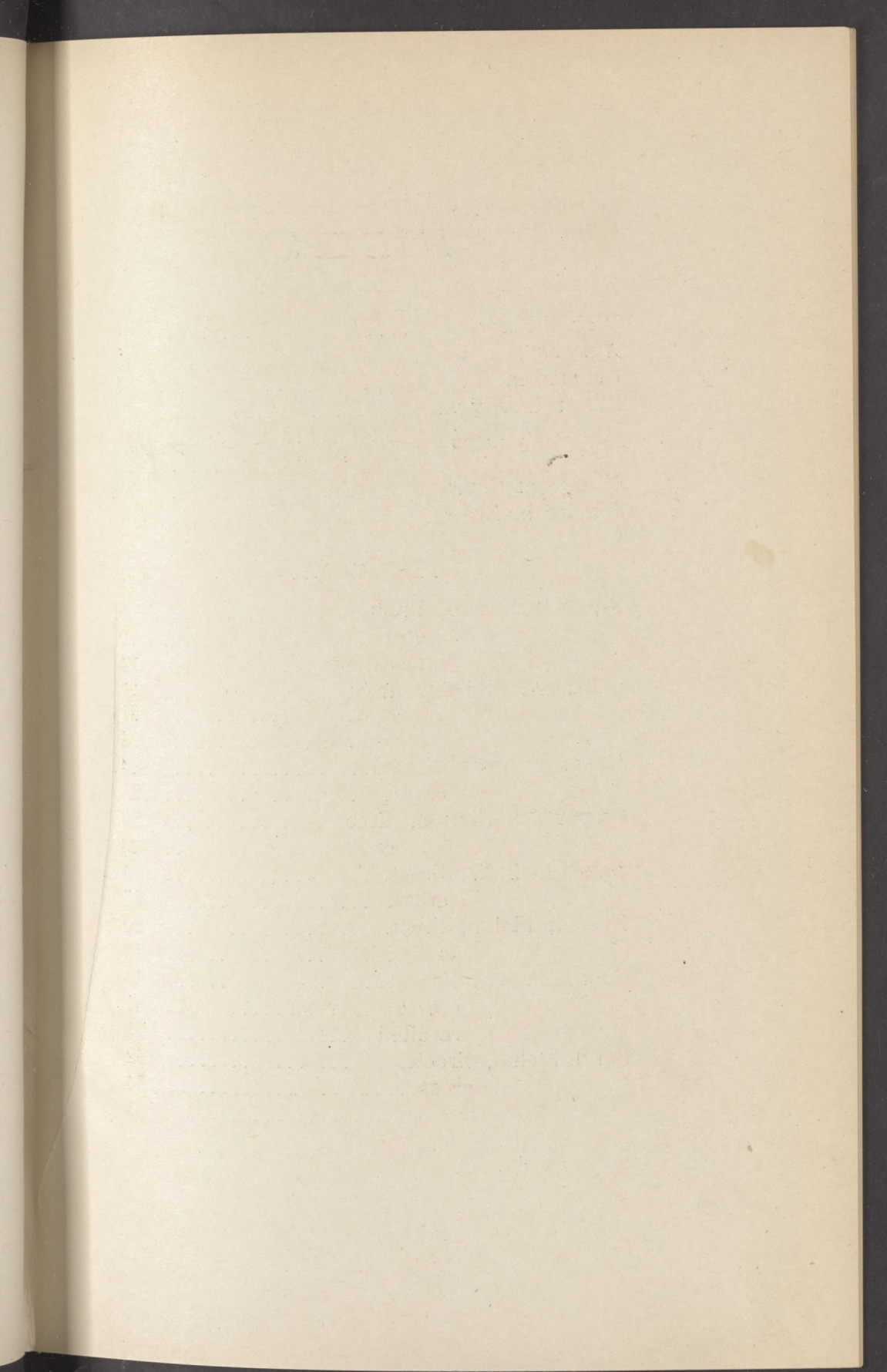
Allen vs. State, 91 Ga., p. 189.

People vs. Burton, 77 Hun. (N. Y.),
p. 498.

Respectfully submitted,

PETER W. STAGG,

Attorney and of Counsel with Plaintiff in Error.



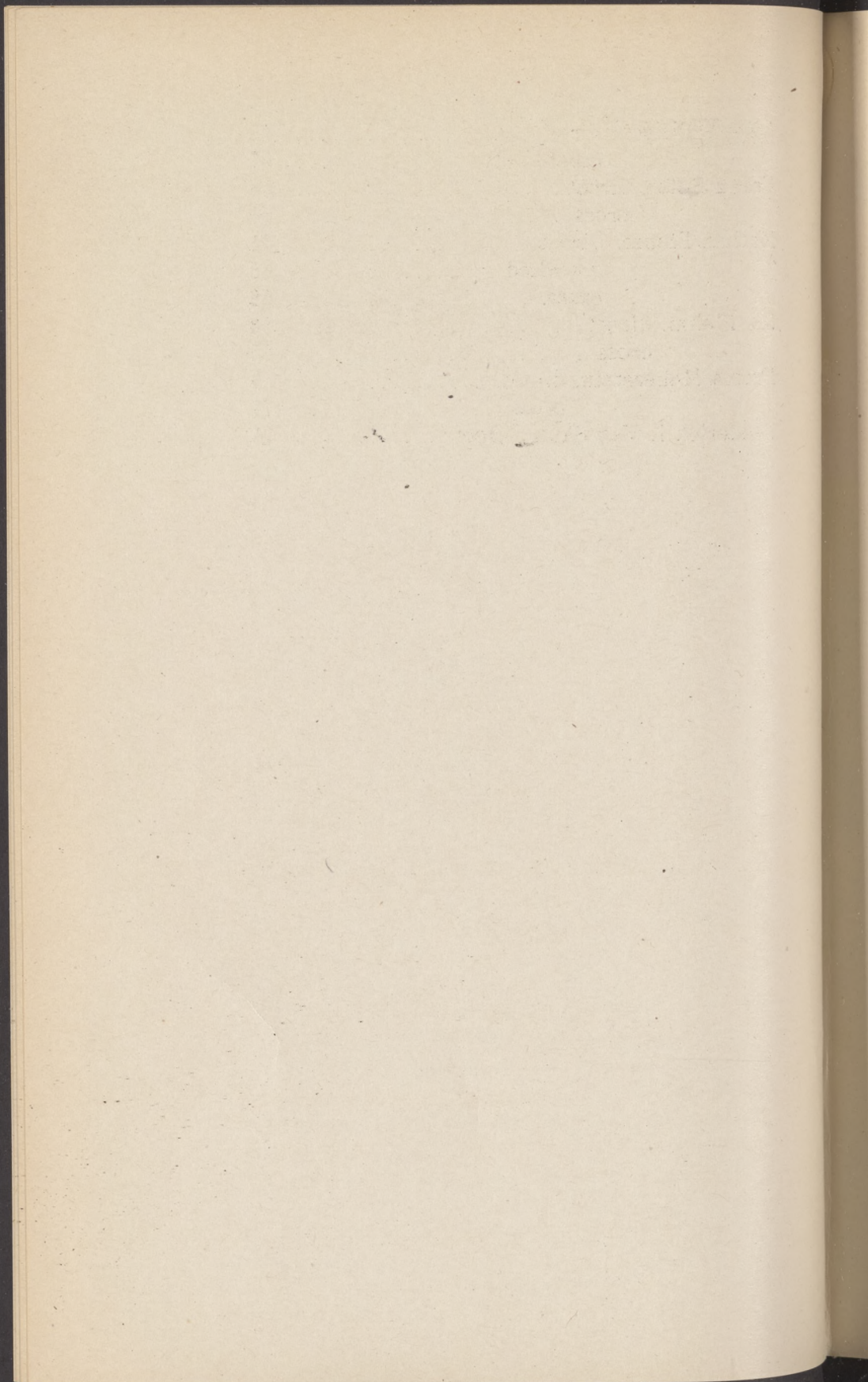
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NEW JERSEY

Court of Errors and Appeals

THE STATE OF NEW JERSEY, }
 Defendant in Error, }
 vs. }
HERRMAN PLEHMS, }
 Plaintiff in Error. }

In Error to
Supreme Court.

WRIT.

(Filed November 27, 1906.)

NEW JERSEY, ss.:

The State of New Jersey to the Chief Justice and other
[L. s.] Justices of our Supreme Court of Judica- 10
ture, Greeting:

Whereas, in the record and proceedings and also in giving of judgment upon a certain indictment against Herman Plehms, late of the borough of Montvale, in the county of Bergen, for that he did, on the fourteenth day of October, in the year nineteen hundred and three, at the borough aforesaid, in the county aforesaid, wilfully and maliciously set fire to and burn a certain building then and there situated, and did then and there set fire to and burn certain goods, wares, merchandise and 20
chattels, then and there within the aforesaid building, the said building and the said goods, ware, merchandise and chattels, being then and there insured by the Hartford Fire Insurance Company against loss or damage by fire with intent to prejudice the said Hartford Fire Insurance Company, which indictment was found by the Grand Jury of the said county of Bergen at the September term of the Bergen Court of Sessions, in the year 1905, and after being tried, and the defendant found

guilty, in said Bergen Quarter Sessions Court of Bergen county, he was sentenced by said court to a term of seven years at hard labor in the State Prison of this State.

And afterwards a writ of error was taken from said final judgment to the Supreme Court of this State, and the judgment of said Court of Quarter Sessions having been our Supreme Court in all things affirmed, and as said manifest error has intervened to the great damage
 10 of said Herman Plehms.

We being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the said Herman Plehms, do command you, that if judgment be thereupon given, and the said judgment affirmed, you distinctly and openly send under your seal the record and proceedings aforesaid, and all things touching the same, to our Court of Errors and Appeals, in the last resort in all cases of law, to be held
 20 at Trenton on the eleventh day of December next, before our judges of our said court; that the record and proceedings aforesaid being inspected we may further cause to be done thereupon for correcting that error, if any there be, what of right and according to the law of the State of New Jersey ought to be done.

Witness, William J. Magie, our Chancellor and president Judge of our said Court of Errors and Appeals at Trenton, this 23d day of November, one thousand nine hundred and six.

S. D. DICKINSON,

30 PETER W. STAGG,

Clerk.

Attorney for Plaintiff in Error.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, C. J. [L. S.]

Writ of Error.

The State of New Jersey to the
Honorable David D. Zabriskie,
Judge of the Bergen Quarter
Sessions, holden at Hacken-
sack, in and for the County of
[SEAL] Bergen, of the September term,
in the year of our Lord, nine-
teen hundred and five.

10

Because in the indictment, record, process
and proceedings and in giving judgment upon
said indictment against Herman Plehm, late of
the borough of Montvale, in the county of Ber-
gen, for that he did on the fourteenth day of
October, in the year nineteen hundred and
three, at the borough aforesaid, in the county
aforesaid, he, the said Herman Plehm, did wil-
fully and maliciously set fire to and burn a cer-
tain building then and there situate and did
then and there set fire to and burn certain goods,
wares, merchandise and chattels then and there
within the aforesaid building, the said building
and the said goods, wares, merchandise and
chattels being then and there insured by the
Hartford Fire Insurance Company against loss
or damage by fire, with intent to prejudice the
said Hartford Fire Insurance Company contrary
to the form of the statute in such case made and
provided, against the peace of the State, the
government and dignity of the same.

21

30

Which indictment was found by the grand
jury of the said county of Bergen, at the Sep-
tember term of the said Court, in the year nine-
teen hundred and five and after being tried and

the defendant found guilty in said Bergen Quarter Sessions, court of Bergen County, was sentenced by said Court to the term of seven years at hard labor in the State prison of this state.

10 And in the said indictment, record, judgment and proceedings as it is said manifest error hath intervened to the great damage of the said Herman Plehm, as from his complaint we have received information, we being willing in this behalf to correct the error in due form and manner, if any there be, and that speedy justice be done to him, the said Herman Plehm.

20 Command you that if judgment be therein given, then that you distinctly and openly send under seal the record and proceedings aforesaid, with all things touching the same to our Supreme Court, to be held at Trenton, the thirtieth day of January, nineteen hundred and six, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Witness Hon. William S. Gummere, Chief Justice of our said Supreme Court at Trenton aforesaid, the ninth day of January, nineteen hundred and six.

WM. RIKER, JR., *Clerk.*
PETER W. STAGG, *Attorney.*

30 Writ presented; the clerk of Bergen County will make return.

DAVID D. ZABRISKIE,
Judge.

Jan. 11, 1906.

Answer.

The answer of the Court of General Quarter Sessions of the County of Bergen.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, I do certify and send to the Justices of the Supreme Court of the Judicature of the State of New Jersey, at Trenton, at the day and year within mentioned in a certain schedule to this writ annexed, as within I am commanded. 10

DAVID D. ZABRISKIE,
Judge.

Bergen County Court of Oyer and Terminer, and General Gaol Delivery, holden at New Barbadoes in and for the county of Bergen, on the second Tuesday of September, in the year of our Lord one thousand nine hundred and three. 20

BERGEN COUNTY, ss :

Be it remembered, that at a Court of Oyer and Terminer and General Gaol Delivery holden at New Barbadoes, in and for the county of Bergen, on the second Tuesday of September, in the year of our Lord one thousand nine hundred and three, before the Honorable Mahlon Pitney, Esquire, Associate Justice of the Supreme Court of the Judicature of the State of New Jersey, and David D. Zabriskie, Esquire, Judge of the Court of Common Pleas of the said county of Bergen, according to the form of the statute in such case made and provided, by the oath of Joseph A. Brohel, Edwin L. D. Hester, John R. 30

Stevens, John A. Brandt, Charles H. Lozier, George Bayliss, Ferdinand Brunner, Sr., Jacob Zahn, Frank L. Vrooman, Edward Mabie, Jacob A. Terhune, Harry Angel, William E. Packer, Charles Hoffman, Smith Chittenden, John M. Bogert, Harry B. Stagg, George W. Wheeler, John H. DeGraw, Jacob Vreeland, Abraham A. Ackerman, Richard E. Cochran, and Nicholas B. Demarest, good and lawful men of the body

10 of the county of Bergen aforesaid, duly summoned and returned, and then and there sworn and charged to enquire in behalf of the State of New Jersey in and for the county of Bergen,

It is presented in manner and form following:

BERGEN OYER AND TERMINER.

September Term, A. D., 1903.

20 BERGEN COUNTY, to wit: The Grand Inquest of the State of New Jersey in and for the County of Bergen, upon their respective oaths present, that Herman Phelm, late of the Borough of Mont Vale, in the said County of Bergen, on the fourteenth day of October, in the year of our Lord, one thousand nine hundred and three, did wilfully and maliciously set fire to and burn a certain building, then and there situate, and did

30 then and there set fire to and burn certain goods, wares, merchandise and chattels then and there within the aforesaid building, the said building and the said goods, wares, merchandise and chattels being then and there insured by the Hartford Fire Insurance Company against loss or damage by fire, with intent to prejudice

the said Hartford Fire Insurance Company, contrary to the form of the statute in such case made and provided, against the peace of the state, the government and dignity of the same.

And the jurors aforesaid, inquiring as aforesaid, upon their oaths do further present that the said Herman Phelm, at the place aforesaid, on the day and year aforesaid, and within the jurisdiction aforesaid, did wilfully and maliciously aid, counsel, procure and consent to the setting fire to the aforesaid building, goods, wares, merchandise and chattels so insured as aforesaid by the Hartford Fire Insurance Company against loss and damage by fire, with intent to prejudice the said Hartford Fire Insurance Company, contrary to the form of the statute in such case made and provided, against the peace of the state, the government and dignity of the same.

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And on the twenty-third day of October, in the year of our Lord, one thousand nine hundred and three, the grand jurors aforesaid, came into the Court aforesaid and presented the Indictment aforesaid, and the Court aforesaid did then and there order the Indictment aforesaid down to the Court of General Quarter Sessions for trial.

20

And afterwards, to wit, on Friday, the thirteenth day of October, in the year of our Lord, one thousand nine hundred and five, at a session of the Court of General Quarter Sessions aforesaid, being as yet of the term of September, in the year of our Lord one thousand nine hundred and five, before the Honorable David D. Zabriskie, Judge of the Court of Common

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Pleas aforesaid, at New Barbadoes aforesaid, in
 the county aforesaid, here cometh the said Her-
 man Phelm, under the custody of James W.
 Mercer, Sheriff of the County of Bergen afore-
 said, in whose custody he at this time being
 brought to the bar in his proper person by the
 sheriff aforesaid, and having heard the indict-
 10 ment read, and forthwith being commanded of
 and concerning the premises in the said indict-
 ment above specified, and charged upon him,
 how he will acquit himself thereof, he saith he
 is not guilty thereof, and thereof for good and
 evil he puts himself upon the country; And
 Ernest Koester, Esquire, Prosecutor, who prose-
 cutes for the State of New Jersey in this behalf,
 doth the like.

Therefore let a jury thereupon come here
 before the Judge aforesaid, at New Barbadoes,
 in the county of Bergen aforesaid, at the ses-
 20 sion of the Court of General Quarter Sessions
 aforesaid, on the nineteenth day of October, in
 the year of our Lord one thousand nine hun-
 dred and five, being as yet of the September
 term, in the year of our Lord one thousand nine
 hundred and five, of twelve good and lawful
 men, each of whom shall be a citizen of the
 state and resident within the county of Bergen
 aforesaid, above the age of twenty-one years
 and under the age of sixty-five years, by whom
 30 the truth of the matter may be the better
 known, and who are not of kin to the said Her-
 man Phelm, to recognize upon their oaths,
 whether the said Herman Phelm be guilty of
 the arson in the indictment aforesaid specified,
 or not guilty, because as well the said Ernest

Koester, Esquire, Prosecutor, who prosecutes for the state aforesaid, in this behalf, as the said Herman Phelm, have put themselves upon the said jury; and the same day is given to the parties aforesaid, at the place aforesaid:

At which day, to wit, on the nineteenth day of October, in the year of our Lord one thousand nine hundred and five, at New Barbadoes aforesaid, in the County of Bergen aforesaid, before the said David D. Zabriskie, Esquire, Judge of the Court of Common Pleas aforesaid, in and for the County of Bergen aforesaid, here cometh as well the said Ernest Koester, Esquire, Prosecutor, who prosecutes as aforesaid, as the said Herman Phelm aforesaid, being brought to the bar in his proper person, and the jurors of the said Jury, by the Sheriff of the County aforesaid for that purpose empanelled and returned, to wit, Henry Lozier, Michael Hecker, Thomas Murray, George A. Coe, Christie Westervelt, John C. Ackerman, Frank Shuart, Peter Kip, Stanley Clarke, Mahlon De-Baun, Henry H. Farr and William W. Elderkin, being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises upon their oath say that the said Herman Phelm is guilty of arson aforesaid, on him above charged in the manner and form aforesaid, as in and by the said indictment is above opposed against him.

And afterwards, to wit: on Friday, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and five, being as yet of the September term aforesaid, it was demanded of him, the said Herman Phelm,

if he knoweth anything to say whereof the Court ought not to proceed to judgment against him, who nothing further saith unless he hath before said.

10 Whereupon all and singular the premises being seen and by the Court here fully understood, the sentence of the law is, and it is by the Court here now considered and adjudged that the said Herman Phelm be confined in the State prison of this state for the term of seven years, and from the expiration of said term until the costs of this prosecution be fully paid.

STATE OF NEW JERSEY, {
COUNTY OF BERGEN. } ss.

20 I, John R. Ramsey, clerk of the county of Bergen, and also clerk of the Courts of Oyer and Terminer and General Quarter Sessions in and for said county, do hereby certify the foregoing to be a true and correct copy of the Judgment Roll, &c., in the said case, as the same remains on file and of record in my office.

30 [SEAL] In testimony whereof, I have hereunto set my hand and affixed the seal of said Court and County at Hackensack, the sixteenth day of January, in the year of Our Lord, one thousand nine hundred and six.

JOHN R. RAMSEY, C.

By W. S. DOREMUS, *Dy. C.*

BERGEN COUNTY QUARTER SESSIONS.

THE STATE

vs.

HERMAN PLEHM.

10

Indictment for Arson.

Transcript of the shorthand notes taken at the hearing in the above stated case, before Hon. David D. Zabriskie, Judge, and a Jury at the Court House, Hackensack, New Jersey, October nineteenth, nineteen hundred and five.

APPEARANCES:

ERNEST KOESTER, PROSECUTOR, for the State.

20

A. C. HART, for the defendant.

FRANK M. TAYLOR, a witness for the State, being duly sworn, testified as follows :

Direct Examination by Mr. Koester :

Q. Mr. Taylor, you are the agent of New Jersey for the Hartford Fire Insurance Company ?

30

A. I am.

Q. Do you know this defendant, Mr. Plehm ?

A. I have met him.

Q. Did your company have any insurance on his property ?

A. We did.

Q. Where ?

A. At Montvale.

Q. Just turn to your records and show what insurance you had and when it was.

10 A. The record shows a policy of fifteen hundred dollars on a building of Sarah Plehm under policy 678 Park Ridge Agency, (witness looks at Ins. Co's Books before testifying), also—

Counsel for defendant asks that the answer be stricken out.

Court so directs.

Q. Did you have any insurance on a building in Montvale under the name of Plehm ?

20 Objected to.

Question over-ruled.

Q. Did you have any insurance on anybody's property in Montvale ?

Objected to.

Question over-ruled.

30 Q. Do your records show that the Hartford Company had any insurance on any property in the name of Sarah Plehm ?

Objected to.

Sustained.

Q. Mr. Taylor, do you recall a fire in the Borough of Montvale on the fourteenth day of October, 1903?

A. I do.

Q. Where was that fire?

A. It was in the building occupied by Sarah Plehm and Herman Plehm.

Q. This defendant?

A. Yes, the husband of Sarah Plehm.

Q. Occupied by him?

10

A. He was living there at the time.

Q. Did the Hartford Fire Insurance Company have any insurance on that building and also on the personal property?

A. On the personal property under policy No. 520 of the Park Ridge Agency we had a policy for \$1,200 on the furniture and there were three large houses, one to be used as a summer boarding house and a small house on which we had policies, one of the items in connection with this loss was \$1,200 on household furniture.

20

Q. What was the insurance on that particular building?

A. Fifteen hundred dollars under policy No. 678.

Q. You are the general agent of the company, you say?

A. Yes.

Q. Through what agency was this insurance taken?

30

A. Robert A. Sibbald of Park Ridge.

Q. He was the local agent?

A. Yes.

Q. Subsequent to the fire you may state

whether a proof of loss was filed and, if so, by whom ?

A. A paper purporting to be a loss was signed by Sarah Plehm.

Q. She was the wife of this defendant ?

A. I suppose she was.

Q. What did the proof of loss amount to ?

A. (Witness produces paper) I have this paper which is the demand.

10 Q. And this was handed to you by whom ?

A. If I remember correctly, by Hart & Hart, attorneys.

Q. When was this given you ?

A. There are two papers here—one under policy, No. 678, proof of loss \$500. The other one is a certified copy of the one which was received and afterwards sent back under instructions of our attorney ; it is a proof of loss on policy No. 520 for \$621.70.

20 Q. This you received, you say, from Hart & Hart, attorneys ?

A. Yes, I believe on one the date of the receipt is marked.

Papers offered in evidence and marked P-1 and P-2 of Exhibits.

Insurance Book is also marked P-3 for identification.

30

Q. When were you notified of this fire ?

A. I was notified the morning after the fire.

Q. By whom ?

A. By Mr. Sibbald.

Q. Then what did you do ?

A. I got a rig at Montvale and drove to the fire.

Q. The building is located in Montvale in this County ?

A. Yes.

Q. Go on.

A. I saw Mrs. Plehm and asked her to show me the extent of the fire, she took me upstairs and we first entered the large room, about the middle of the house, the furniture, &c., was there, thrown down in the middle of the floor, pretty well gone and destroyed. 10

Q. In what way destroyed ?

A. By the fire; I then asked Mrs. Plehm as to the origin of the fire; she said she was not home but it must have come from the lamp.

Q. Did you see Mr. Plehm there ?

A. He was not there.

Q. This personal property that you saw there in the building which you say was pretty well gone, what did it consist of ? 20

A. Why, there was, as I remember, a sewing machine that was somewhat burned, and door coverings, some sheets and a few nicknacks.

Q. Where did you find this stuff ?

A. It was scattered around the front room.

Q. Did you go in the other rooms ?

A. Yes.

Q. What did you find there ?

A. The rear room, in the corner of one room, was a bed; the mattress and the coverings were gone and the springs were there, and in the centre of the bed, probably towards the upper edge was a mark of fire. 30

Q. Which room was that ?

A. The rear room, it was a corner room. The wood work alongside of the bed and the window casing was blackened and charred.

Q. Just describe the number of rooms in that building.

A. I did not make any sketch of it; downstairs outside of the platform to the stairs, there was a fire; the floor had evidence of a fire; outside of that one point there was no fire downstairs. 10 Upstairs there was a small hall and four rooms; the stairs led from the first story to the second; at the top of the stairs you come into a hall; from this hall you go into this large front room where the fire was claimed to have originated; a bed stood in the centre of this room and a cot stood in the center, in the rear room the bed stood in the corner, there was a middle room which had no communication through this large room, except as you go out into the hall and go 20 through another door; there was another room next, and the fire was in each of those three rooms, with no possible means of the flames having communicated from one to the other.

Q. Did anybody go with you?

A. Yes. Mr. Van Saun, my partner in Hack-sack.

Q. Where was Mr. Sibbald at that time?

A. I can't say; I have a letter from Mr. Sibbald, but I can't say whether he was with me or 30 not.

Q. At the time you visited the building, which you say was the next morning, what was the approximate value of the furniture in the building; which you observed?

Objected to.

Objection sustained.

Q. You went all through this building and made an examination of the furniture there, did you?

A. I did.

Q. Just give us a list of furniture that you saw there, that was destroyed.

A. That would be rather difficult for me to answer, as I took no list of furniture destroyed. 10

Q. You did not have this loss at this time (referring to Ex. P-2)?

A. No.

Q. As a matter of fact, was this list of furniture destroyed (referring to Ex. P-2)?

Not answered.

Q. Did you see any wooden beds there? 20

A. I did.

Q. Were they destroyed?

A. Not absolutely.

Q. Any springs on the beds?

A. Yes.

Q. Were they destroyed?

A. Not badly.

Q. How were the iron beds?

A. They were blackened with smoke. 30

Q. And the springs on the same?

A. They might have been slightly damaged.

Q. Were they destroyed?

A. No, sir.

Q. Did you see eighteen pillows there?

A. I did not ; no, sir.

Q. Did you see any of this list of furniture there except the mattresses and the beds ? (Referring to P-2 of Ex.)

A. Some of them could be identified.

Q. As a matter of fact was this furniture destroyed there ?

Objected to.

10

Objection sustained.

Q. Did you see an arm chair there ?

A. I did not.

Q. Did you see curtains there ?

A. Yes.

Q. Mrs. Plehm was there ?

A. She was there.

Q. Did she point out anything to you ?

20 A. She pointed out as well as she could, the fire did not take on the dimensions that would absolutely destroy anything ; it was smouldering fire.

Q. Nothing was destroyed by flames ?

A. Nothing absolutely.

Cross Examination by Mr. Hart :

Q. Did you see all the articles ?

A. I did not.

30 Q. How can you say that none of the articles were destroyed ?

A. From the position in which the fire was.

Q. Can you say that those things were not taken from the building ?

A. By Mrs. Plehm's testimony to me.

ROBERT A. SIBBALD being sworn, testified as follows :

Q. You are the local agent at Park Ridge for the Hartford Fire Insurance Company ?

A. Yes.

Q. You were such an agent in October, 1903 ?

A. Yes, sir.

Q. Are you the agent who placed this insurance on this property ?

10

A. Yes.

Q. Who occupied this property at the time you placed the insurance ?

A. Mr. and Mrs. Plehm.

Q. This defendant here ?

A. Yes.

Q. What was the value of the personal property upon which you placed the insurance at that time ?

Objected to.

20

Objection sustained.

Q. Did you have a list of the furniture at that time ?

A. Yes.

Q. Did you look at the furniture ?

A. I did at that time, prior to this policy.

Q. You looked at it at that time ?

A. Yes.

Q. What was the value of that personal property upon which this insurance was placed, at that time ?

30

Objected to.

Objection sustained.

Q. How long have you been in the insurance business, Mr. Sibbald? What experience have you had in placing insurance on personal property?

A. Twenty years' experience.

Q. In that twenty years how many policies have you written on personal property, including furniture?

10

Objected to because it is irrelevant.

Question allowed.

A. It would be hard to say.

Q. How many?

A. At a guess, about seven hundred.

Q. At the time you looked at this personal property in this house before you wrote the policy and placed the insurance, what was the value of the property insured?

20

Objected to.

Question allowed by the Court.

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

Exception allowed.

Let it be sealed, and it is sealed accordingly.

30

DAVID D. ZABRISKIE, [SEAL]

Judge.

A. At the time I examined the property—as I recollect it—the property was worth what the insurance was that was placed upon it, to the best of my judgment.

Q. Mr. Sibbald, did you go to this house after the fire, and, if so, when?

A. I think it was the day after, on the second day, that we, Mr. Taylor, Mr. Van Saun and myself went.

Q. Whom did you see?

10

A. Mrs. Plehm.

Q. The insured?

A. Yes, sir.

Q. Did you see Mr. Plehm there?

A. No, sir.

Q. Did you examine as to the personal property and as to the building?

A. We went through the house; yes, sir.

Q. Just tell what you saw.

A. I saw a large front room in which set a table, bed and a cot; in that large room there was a bed, on this large bed there was an evidence of fire in the bed; from that room we went into another which opened from it.

20

Q. Did you see any other evidence of fire in that room except the bed?

A. Not in that room; off to the right was another room and a bed there, and in that bed was evidence of fire, and it had communicated with the wood work.

Q. Any other evidence of fire in that room?

30

A. No, sir; that was a little charred, the wood work, around the door.

Q. How far was that from either of the beds?

A. I should judge about six or eight feet, and

passing through the large room we passed into a hall through another bedroom and there we found a third bed in which there was similar evidence of fire, that is the spring was badly marked.

Q. Did you find any other evidence of fire in that room?

A. No.

10 Q. Did you have any conversation with Mrs. Plehm as to the loss?

A. Only in a general way.

Q. Did you take notice of what personal property was there?

A. Yes; I made no list.

Q. Did you estimate the value of the property at that time?

Objected to.

20

Question allowed by the Court.

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

Exception allowed. Let it be sealed and it is sealed accordingly.

DAVID D. ZABRISKIE,

Judge. [SEAL.]

30

A. I judged the property that was in the house at that time was not the property that was in the house when I examined it before.

Q. Was there as much property in the house as when you examined it before?

A. No, sir.

Q. About what difference in the value ?

A. That would be guess work.

Cross Examination by Mr. Hart :

Q. Did you make a list of the chattels in that house at the time of placing the policy ?

A. Nothing, except a personal view of it.

Q. Your comparison of the amount of furniture and the number of articles in the house at the time of the fire—as compared with the time the insurance was placed—is purely guess work ?

10

A. Not guess work, no.

Q. You have placed lots of policies ?

A. Yes.

Q. Examined lots of houses ?

A. Yes.

Q. Appraised lots of furniture ?

A. In a general way.

20

Q. And yet you remember the extent of furniture between those two dates ?

A. I remember that the house was not as I would call it, furnished after the fire.

Q. How do you know that Mr. Phelm occupied that house ?

A. From a common knowledge ; he was supposed to be living with his family.

Q. As a matter of fact, don't you know he lived in New York and worked in the Postal department ?

30

A. I knew he was employed there, and did not come up every night.

Re-direct Examination by Mr. Koester :

Q. I show you a letter or paper and ask you if you received that, and if so, where ?

A. I received this letter either by mail, or it was left at the office.

Q. Do you know Mr. Plehm's signature ?

A. Yes, sir.

Q. (Producing letter) Is that his signature ?

10 A. Yes, sir. I would like to state also there was a fire at the foot of the stairs.

Q. What was that evidence ?

A. Evidence of fire, charred wood work and the floor.

Mr. Koester reads the letter referred to, which is as follows :

“Upper Montvale, Oct. 14, 1903.

“Robert Siebold :

General Insurance Agent,

20 Dear Sir :

As you have been absent this morning, so kindly take notice that a fire damaged my building and also at the same time by saving said building, loss through water, as also on my household furniture, etc. Origin of fire can be only attributed either a lamp explosion or the cat threw the lamp off.

30 Kindly call as soon as convenient for you to ascertain and examine the damage. As my wife being absent yesterday afternoon at N. Y. C. therefore I am giving you notice for her.

Hoping to see you soon,

I am sincerely yours, &c.,

Per SARAH PLEHM,
HERMAN PLEHM.”

Mr. Koester offers above letter in evidence.

Counsel for defendant objects to the offer because it should have been produced in direct examination, and also as it is immaterial and irrelevant.

Court allows letter, and it is marked Ex. P-4. 10

Defendant's Counsel prays an exception to the ruling of the court.

Exception allowed.

Let it be sealed and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL]
Judge. 20

Q. You received it when ?

A. The day of the fire.

Q. You mentioned the fact that you saw another evidence of fire at the foot of the stairs ; do you mean in the front of the house, or rear ?

Objected to.

Question allowed. 30

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

Exception allowed.

Let it be sealed and it is sealed accordingly.

DAVID D. ZABRISKIE, [SEAL]

Judge.

A. It was at the foot of the stairs, right back of the front door.

10 Q. What did the evidence show?

A. The evidence on the floor, the base of the door trim having been blistered, and the walls and woodwork running up the stairs.

JAMES D. JONES, being sworn, testified as follows :

Q. Mr. Jones, where do you live?

A. Montvale.

20 Q. In this county?

A. Yes, sir.

Q. Did you live there on the fourteenth of October? October, 1903?

A. Yes, sir.

Q. How far did you live from Mr. Plehm's place, this defendant?

A. About one hundred yards.

Q. Who occupied that Plehm house?

A. Mr. Plehm.

30 Q. This defendant?

A. Yes, sir.

Q. And his family?

A. Yes, sir.

Q. What did his family consist of? How many in the family?

A. There were seven children and his wife.

Q. How old were the older children?

A. I could not say exactly.

Q. Give us an idea ; how old was the oldest child?

A. About nineteen, I suppose.

Q. How old was the youngest?

A. About three years, I think ; I don't know exactly.

Q. Where were you on the morning of the fourteenth of October, 1903? 10

A. I was in bed.

Q. You were in bed?

A. Yes, sir.

Q. Were you alarmed by any noise?

A. Yes, sir.

Q. At what time of the morning was it?

A. I don't know exactly, but I think it was between five and six o'clock.

Q. Just tell us what occurred. 20

A. The two children came over and said the house was afire inside.

Q. Whose children came over?

A. Mr. Plehm's.

Q. This defendant's?

A. Yes.

Q. How old were they?

A. One was five or six, I guess, and the other about four or something like that.

Q. It was dark at that time of the year? 30

A. Yes.

Q. What did you do then?

A. I jumped out of bed and went over to the fire.

Q. Were the children there ; did they wait for you ?

A. No, they went back.

Q. What did they do when they came first ?

A. They knocked at the door and said the house was afire.

Q. When you got to the door you say you saw them. Saw the two children ?

10 A. I did not see them at my door ; I knew who it was when they spoke.

Q. Did you open the door ?

A. No.

Q. Then you went over to Mr. Plehm's house ?

A. Yes, sir.

Q. How long after you were notified did it take you to get there ?

A. About five or ten minutes.

Q. Who did you see ?

A. Mr. Plehm.

20 Q. Where was he ?

A. On the piazza roof.

Q. What was he doing ?

A. Carrying water in and throwing it on the beds.

Q. Was he carrying water in the room or throwing it in the room ?

A. He was carrying it in the room through the window.

Q. Did you see him throwing it on the beds ?

30 A. I could not tell you.

Q. When you got to the house did you see the two children there ?

A. I saw the children there ; I did not take notice which ones.

Q. Did you see Mrs. Plehm there ?

- A. No.
- Q. Did you see any of the other children ?
- A. I saw the oldest girl.
- Q. How old was she ?
- A. About twelve, I suppose.
- Q. Did you see any more of the children ?
- A. I did not take notice.
- Q. Were the children that you saw dressed, or undressed ?
- A. They were dressed as far as I noticed. 10
- Q. What was the condition of this defendant, Mr. Plehm ? Was he dressed ?
- A. He had clothes on.
- Q. What did you do when you got there ?
- A. I got water and carried it up on the roof.
- Q. Did you go in the house ?
- A. No, there was so much smoke.
- Q. Where was the smoke coming from ?
- A. From the front room.
- Q. Was the smoke coming from any other part of the house ? 20
- A. I could not say.
- Q. How long did you remain there ?
- A. About an hour or so.
- Q. During this entire time you did not go in the house ?
- A. No.
- Q. Were you there when Mr. Van Houten and Mr. Pulis came ?
- A. Yes. 30
- Q. You did not go in ?
- A. No.
- Q. Where was Mr. Plehm all this time ?
- A. He was on the roof and going in and out.

Q. Did you have any conversation with Mr. Plehm?

A. Only when I first came there and asked him how it happened.

Q. What did he say?

A. He said it came through a lamp exploding.

Q. Was any furniture carried out of the house?

10 A. Yes, mattresses.

Cross-Examination by Mr. Hart :

Q. Plehm was trying to put that fire out, was he?

A. Yes.

Q. You stayed at that place for one hour, or something like that, then where did you go?

A. I went home and got my breakfast and went to work.

20 Q. What time was it?

A. I am unable to state the exact time.

Q. You won't state positively that even the children were dressed with all their clothing on?

A. Yes, they were dressed.

Q. You mean they had enough to cover themselves?

A. I did not take notice.

30 *By Mr. Koester :*

Q. Plehm was dressed the same as you had seen him at other times?

A. I did not take notice.

Q. Did the children have their shoes on?

A. I don't know.

Q. What was Plehm doing ?

A. He was carrying water and Johnson, the working man, was carrying water.

By a Juryman :

Q. Do you remember what day of the week it was ?

A. I could not tell you.

10

GARRET VAN HOUTEN, being duly sworn, testified as follows :

Direct Examination by Mr. Koester :

Q. I believe you live in Montvale Borough ?

A. Yes, sir.

Q. You were living there on the fourteenth of October, 1903 ?

A. I was.

Q. How far do you live from the house of Herman Plehm, this defendant ?

A. About one hundred or one hundred and fifty yards.

Q. You remember the fire at the house on the morning of Oct. 14th ?

A. Yes, sir.

Q. Were you at that fire ?

A. Yes, sir.

Q. What time were you called and who called you ?

A. Mr. Jones called me.

Q. The last witness ?

A. Yes, sir.

20

30

Q. About what time in the morning did he call you ?

A. About 5.30.

Q. Was it dark ?

A. Just getting light.

Q. How soon did you arrive at the house after he called you ?

A. As soon as I could get my clothes on ; it might have been about ten minutes.

10 Q. When you got there to the Plehm house, who did you see ?

A. I saw Plehm.

Q. Who else ?

A. He had a working man.

Q. Who else ?

A. Two or three children.

Q. Where was Plehm when you got there ?

A. He stood on the roof of the piazza.

Q. Was he dressed ?

20 A. He had pants on and a pair of shoes ; his shoes were not laced as I saw the strings drag, and he did not have any vest on or hat.

Q. Did he have any stockings on ?

A. I could not say.

Q. Did you see the children ?

A. Yes.

Q. How were they dressed ?

A. As usual, I should say.

Q. Did they have their shoes on ?

30 A. I saw one boy have his shoes on, I could not say about the rest.

Q. What was this defendant doing when you got there ?

A. He was on the roof and throwing a pail of water in the front room.

Q. What was the condition of the house ?

A. The smoke was coming out of the two front windows, but I did not see any anywhere else.

Q. Did you afterwards go in the house ?

A. Yes, sir.

Q. Where ?

A. I went in the back door.

Q. Why did you not go up the front way ?

A. It was locked in front. 10

Q. Did you have any conversation with Plehm about the door being locked ?

A. He said the key was lost and they had driven a nail in it.

Q. How did you go upstairs ?

A. I went up the stairway.

Q. When you got upstairs how was the condition of the smoke in the room at that time ?

A. It was getting more clear inside.

Q. What did you do when you got up there ? 20

A. I went to one of the beds and lifted up the mattress and a flame burst out.

Q. How far away from the window was the bed ?

A. It might have been two or three feet away.

Q. Where was Plehm ?

A. He was there ; he followed me up.

Q. What did you see in the front room ?

A. I saw fire coming out of a mattress on a bed, smoke like a smouldering fire. 30

Q. What did you do ?

A. I lifted it up and flames came out of the ticking, and I and another man threw it out of the window.

Q. How many mattresses were on that bed ?

A. Two mattresses.

Q. Where was the fire ? Between the mattresses ?

A. When I lifted it up the fire crept up along the edge.

Q. Where had it been burned ?

A. About the center of the bed.

10 Q. Was there any other evidence of fire in that room ? Except what you saw in the mattress ?

A. Not to my knowledge.

Q. There was no smoke coming from any other part of the room ?

A. No, sir.

Q. Did you find any other place where there was fire ?

A. Yes, there was a bed in the other room.

Q. What did you see there ?

20 A. That fire had been put out, nothing but smoke ; the fire had been put out.

Q. Where was it coming from ?

A. From the mattresses.

Q. From the bed or between the mattresses ?

A. The mattresses and not the bed.

Q. Had it burned the mattresses ?

A. Yes, sir.

Q. What did you do with that mattress ?

A. We threw it out.

30 Q. Did you go in another bedroom ?

A. Yes, sir.

Q. Where was that fire ?

A. Right in the middle of the mattress on the bed.

Q. What did you do with that mattress ?

A. Threw it out of doors.

Q. Was there any other evidence of fire except the mattress?

A. No, sir.

Q. What was Plehm doing while you were throwing the mattress out?

A. He stood around there.

Q. Did you have any conversation with him about not helping?

A. When I went into the house I asked him what the trouble was and he said the lamp exploded and I said, "It smells of kerosene around," and he said the lamp exploded. 10

Q. Did he assist in throwing those mattresses out of the house?

A. Not as I remember.

Cross Examination by Mr. Hart :

Q. You have had disputes with Mr. and Mrs. Plehm over a milk bill? 20

A. Not to my knowledge.

Q. Did you not have a misunderstanding with Mr. Plehm over a milk bill?

A. No, sir.

Q. Never had a discussion with Mrs. Plehm?

A. Yes, I had a discussion.

Q. You did not like that discussion?

A. The discussion was that they kept a boarding house and bought milk from me, and I sent my boy and they did not pay it, and I went over and asked Mrs. Plehm for the money, and she said that she did not have any money. 30

Q. Did you not tell her you were going to get even with her?

A. No, sir.

Q. What did you say? Didn't you swear at her?

A. I might have said damn it, or something like that.

Q. Were there any other words used?

A. Not that I know of; I simply wanted what was mine.

10 *By Mr. Koester :*

Q. You have no hard feeling against them?

A. No, sir.

Q. You were brought here on a subpoena by the state, were you not?

A. Yes, sir.

JAMES D. PULIS, being sworn, testified as follows.

20 *Direct Examination by Mr. Koester :*

Q. Where do you live, Mr. Pulis?

A. Montvale.

Q. You were living there in October, 1903?

A. Yes, sir.

Q. How far do you live from Mr. Van Houten's house?

A. I suppose a little more than two blocks.

Q. You are a farmer?

30 A. Yes, sir.

Q. Do you know this defendant Plehm?

A. Yes, sir.

Q. Do you know where he lived in October, 1903?

A. I know where his place is.

Q. How did you happen to go to the fire ?

A. Mr. Van Houten called me.

Q. Did you go there alone or with Mr. Van Houten ?

A. I went with Mr. Van Houten.

Q. When you got there what did you observe ?

A. Smoke coming out of the windows from the road, up stairs.

Q. By whom was that house kept ?

A. I could not tell you. I suppose by Mr. 10
and Mrs. Plehm.

Q. Have you seen them living there ?

A. Yes.

Q. When you got there you say you saw smoke coming out of the front windows up-stairs ?

A. The two front windows.

Q. Where was Plehm when you got there ?

A. On the roof.

Q. What was he doing ? 20

A. Just standing there ; he said he was blinded with the smoke.

Q. Where were his children at this time ?

A. I don't know.

Q. Did you see any around there ?

A. I saw them around after a while.

Q. Plehm's children ?

A. Yes.

Q. How many ?

A. I might have seen a couple. 30

Q. Were they dressed ?

A. Yes, they were dressed.

Q. Shoes on ?

A. I could not say.

Q. When you got there what time was it ?

A. About twenty minutes of six.

Q. Dark ?

A. Not exactly, getting daylight.

Q. How was Plehm dressed ?

A. Pants, shirt and hat.

Q. Shoes?

A. I did not look.

Q. What did you do ?

10 A. I tried to look in the window, and I saw a bed with a mattress on and I reached in and tried to pull it out and it went up in a blaze.

Q. Where was the mattress, on the bed or on the floor ?

A. On the bed.

Q. How many mattresses did they have on each bed ?

A. They had two.

Q. Where was the fire ? On the bed or between the mattresses ?

20 A. I could not say; when you lifted it up it would blaze up.

Q. After the smoke had cleared away, did you go in the building ?

A. Not in that room.

Q. How did you go up ?

A. I went up the back way.

Q. Why did you not go up the front way ?

A. Mr. Van Houten said it was locked.

30 Q. Was there any smoke in that room that you pulled the mattress out ?

A. It was not as bad after we put out the mattress.

Q. When you went into the other room where was that located ?

A. There was a room back.

Q. What did you see ?

A. A bed was there and a blaze from the bed, and a terrible smoke.

Q. What did you do ?

A. I went back, and Van Houten went on his hands and knees and got the bed and he told me afterwards he took it out.

Q. How long did you remain there ?

A. About half an hour ; it might have been longer.

Q. Did you remain until the house was cleared of smoke ?

A. No ; not exactly.

Q. After the mattresses were thrown out, was there any more fire ?

Q. Not as I saw.

Q. The house did not burn, did it ?

A. No.

Q. Did you see any other mattresses thrown out ?

A. Yes, some on the ground.

Q. What was their condition ?

A. Were burned and were wet.

10

20

Cross Examination by Mr. Hart :

Q. Do you mean to say that no part of that house was burned except the mattresses ?

A. I could not say.

Q. Don't you know that the windows are burned ?

A. I was not inside.

Q. Will you swear that no part of that house is burned except the mattresses ?

A. I don't know that.

30

Q. You say the mattresses was burning, and Mr. Van Houten had to crawl on the floor to get the mattress and throw it out?

A. Yes.

Q. And had to crawl to get to it?

A. Not in that one.

Q. You had to when you went to get the bed in the front room?

A. Yes.

10 Q. You can't say then that is all that was afire; you took out the mattresses because that was the most prominent feature?

A. Yes, perhaps.

Q. Did you see Mr. Plehm two or three days after the fire?

A. I don't remember.

Q. Have you seen Mr. Plehm since the time of that fire excepting within a short period?

20 Objected to.

Not answered.

STATE RESTS.

Mr. Hart asks the Court to direct an acquittal of the prisoner on the two following grounds:

30 First: That it has not been proven by the state that the crime of arson has been committed by any person.

Second: That it has not been proven by the state that the prisoner

is guilty of arson beyond a reasonable doubt or has committed any crime.

Court denies motion, and allows the case to go to the jury.

Exception asked for on the ruling of the Court.

Exception allowed. Let it be sealed and it is sealed accordingly.

10

DAVID D. ZABRISKIE,

Judge. [SEAL]

HERMAN PLEHM, the defendant, being sworn on his oath, testified as follows :

Direct Examination by Mr. Hart :

Q. Where do you live ?

20

A. In New York City.

Q. Where did you live on the fourteenth day of October, 1903 ?

A. I was at Montvale on my vacation.

Q. Where were you employed at that time ?

A. I was employed about sixteen years in the Postal Department and ten months in Secret Service of the United States.

Q. Who was at home at Montvale on the evening of the 13th of October, 1903 ?

30

A. I was home and my children

Q. Name your children that were home.

A. My daughter Ida, my sons Will and George, and two little children and Miss Meherstein, who was visiting us.

Q. What time did you retire that night ?

A. About eleven-thirty.

Q. Where did you sleep ?

A. Downstairs.

Q. All the occupants of the house slept downstairs ?

A. I slept downstairs and my daughter slept downstairs and the children slept upstairs with their mother when she was home. Cold nights
10 we slept downstairs.

Q. Was that a cold night ?

A. Yes.

Q. Was there any reason you slept downstairs ?

A. I was waiting for my wife who was to come on the eleven o'clock train and we slept downstairs.

Q. Were your other children away from home ?

A. My oldest two sons were working in the
20 city, and they were not at home.

Q. Did you have any lamp burning upstairs ?

A. Yes.

Q. What time was that lighted ?

A. My daughter lighted that lamp because the children were playing in the evening.

Q. Was that lamp put out ?

A. I don't know.

Q. Did you go upstairs that evening ?

A. No, I did not go upstairs.

Q. Did anything unusual occur that evening ?
30

A. About two o'clock in the morning I was fast asleep and my daughter woke me up; she said there was such a smoke and I got up and put my trousers on and shoes on, and I was most suffocated, and I tried to go upstairs, and I

opened the door and a flame came out and I shut it up again. I had a Polish man sleeping in the barn and I woke him up, and he got a ladder near the piazza and he put it up, and I took water and we were trying to extinguish the fire; we were working an hour and a half, and I told my son George to go for Mr. Jones for assistance.

Q. All that time what were you doing?

A. I was working like a beaver getting water and trying to put the fire out.

10

Q. Did you go in the room?

A. I could not go in the room, it was suffocating.

Q. When those gentlemen came what did they do? Mr. Van Houten and the other?

A. They could not get inside.

Q. What did they do?

A. They carried water and they could not get in there.

Q. Did you go upstairs with Van Houten and Pulis after the fire?

20

A. I don't remember exactly.

Q. Did you go up with some men immediately after the fire to pull the mattresses out of the room?

A. I went up with my man.

Q. What did you find there?

A. I found mattresses, tables, chairs and beds burned, and a hole burned through the wall, the doors and sashes.

Q. And water on the floor?

30

A. Certainly, all the water we spilled on it.

Q. Explain to the Court and the Jury just what the extent of the damage to that property

was. I show you first a diagram and ask if this is a true diagram ?

A. Yes.

Q. Just tell the Court and Jury where the fire was in these rooms, as you remember.

A. The fire was in the big room on the second floor (witness points to diagram) and burned the other rooms also ; the table stood in the big room near the mantel, with a lamp on it.

10 Q. Were there any holes in the wall ?

A. There was a hole from the big room into the other room a hole burned through.

Q. The walls all burned ?

A. Yes, the walls and the sashes, and the carpet on the floor all burned.

Q. Any cats in that house ?

A. Three cats.

Q. Where were they ?

A. I could not tell you.

20 Q. Did you set fire to that building ?

A. No, sir.

Q. Did you set fire to anything in that building that night or any other time ?

A. No, sir.

Q. Did you pour kerosene on anything for the purpose of setting fire ?

A. No, sir, I do not know anything about it.

30 *Cross Examination by Mr. Koester :*

Q. You have been away for two years, have you not ?

A. After that fire my vacation was expiring and I went back to my work ; after that a few days Mr. Crotty sent a boy over to me, and said

that I was to be arrested, then he said I needed bail, and I did not have any bail, and I did not have any money. In the meantime I got a letter from my old mother which I had not seen for twenty-seven years ; she wrote me she was sick and in a dying condition, and I went to Ireland ; I have a sister there and I thought they would help me a little with some money. I arrived at Dublin and stayed there for over a year.

Q. Did your mother get well ?

10

A. My mother died.

Q. When did she die ?

A. She died when I was four or five weeks there.

Q. What did you stay there so long for ?

A. I tried to make a little money.

Q. You went to Africa ?

A. Yes, I have a sister there and I was sent there by my firm.

Q. Whereabouts ?

20

A. I do not know just exactly where it is ; it is around Wooster.

Q. How long did you stay there ?

A. I don't know exactly.

Q. What were you trying to do there ?

A. To make a few dollars.

Q. It cost a lot of money to travel ?

A. I had been working for people.

Q. When did you come back ?

A. When I had one thousand dollars to furnish bonds I came back, and my attorney told me to.

30

Q. Where were your family ?

A. They were in Montvale.

Q. Did you correspond with your family sometimes?

A. Sometimes.

Q. Did you send any letter to your family at Montvale?

A. I sent letters to New York.

Q. Didn't you know detectives were watching the post office in New York?

A. I sent letters to Clinton street, New York.

10 Q. Did you not know you were being watched in New York?

A. No, sir.

Q. Was there not a letter in New York for you and your son notified you that it could not be had unless you came for it?

A. They got it for me.

Q. Did you send any letters to your family in Montvale?

20 A. I think I did there. There was no necessity for me going away.

Q. You knew that you did not set fire to that building?

A. I am just as innocent as can be.

Q. Why did you run away?

A. Because they said there was a conspiracy against me, and I would be locked up.

Q. You say you were an officer in the Secret Service?

A. Yes.

30 Q. Then why did you run away?

A. I was ashamed.

Q. Did you tell your mother that?

A. No.

Q. I did not ask you when you came back. When did you come back?

A. I could not tell you exactly ; I have been back a few months ; as soon as I came back I was trying to find out how much bail I needed ; no one was looking for me and I came up, because there was no necessity of my being afraid.

Q. At the time of the fire you say the fire broke out two o'clock in the morning ?

A. About two o'clock in the morning.

Q. You did not send for Mr. Jones until five thirty in the morning ? 10

A. I sent probably in about a half an hour.

Q. How far does he live from your place ?

A. Not far ; he did not say exactly it was half past five.

Q. Did you sleep downstairs ?

A. Yes.

Q. Who else slept down stairs ?

A. My daughter.

Q. How did she happen to be dressed ?

A. When she got up she dressed and she shook me. 20

Q. The first thing you did you dressed ?

A. I put on my pants and shoes ; I did not lace my shoes.

Q. You went out to the barn and called your man ?

A. Yes.

Q. Then you got the ladder ?

A. Yes ; it was standing there.

Q. Where were the other two children ? 30

A. They were sleeping down stairs.

Q. Where was your guest ?

A. She was down stairs.

Q. Did you have beds down stairs ?

A. Yes, there were two beds in one room,

and I slept with my son, George, in another room.

Q. Did you see the fire in those mattresses?

A. It was burning the beds, mattresses and springs, and it was full of smoke.

Q. That was caused by the explosion of a lamp?

A. I could not tell you.

10 Q. Can you explain to me how the mattresses in three rooms got on fire, and the fire was between the mattresses?

Objected to.

Not answered.

Q. How many mattresses did you have on the bed in the front room?

A. I could not tell you exactly; I was simply a guest there.

20 Q. Guest of whom?

A. I was visiting. I lived in New York city.

Q. Visiting your wife?

Q. Yes; I never slept there during the week.

Q. You knew the property was all insured, didn't you?

A. I suppose so.

Q. Did you not know that the property was insured at the time of the fire?

30 A. My wife always kept insured; that had not been the first time.

Q. At the time of this fire you know the building was insured, and that the furniture in the house was insured?

A. She always had it insured; everybody has it insured.

Q. The very same day of the fire you wrote a letter to the insurance company notifying them?

A. My wife was not home, and I simply did it for her.

Q. When did she come home?

A. On the fourteenth, at eleven o'clock.

Q. Did you say that there was a hole burned through that wall?

A. Yes.

Q. How big a hole was it?

10

A. A big hole.

Q. What kind of a wall was it?

A. A wall supporting a partition.

Q. Lath and plaster and wood?

A. Yes.

Q. You say there was a hole burned through?

A. It burned right through and went into the other rooms.

Q. Do you know how that fire got in those beds?

20

A. I do not.

Q. Did Mr. Van Houten tell you that there was a smell of kerosene?

A. No, sir.

Q. Did you help throw any of the mattresses out?

A. I don't remember.

Q. Did you take any of the furniture out?

A. No.

Q. Now, the only things that were thrown out were the mattresses?

30

A. Yes.

Q. And those Mr. Van Houten and Mr. Pulis threw out?

A. They threw out some and I helped them.

I did everything I could to extinguish the fire.

By Mr. Hart :

Q. You voluntarily presented yourself to this Court for trial ?

A. Yes ; no one was looking for me.

Q. And you furnished the bonds when you had the money to pay bail ?

A. Yes.

10 Q. When did you leave these premises ?

A. On the 15th of October.

Q. Was all of the smoke out of the house ?

A. Yes.

Q. Did you go upstairs and look for the lamp after it exploded ?

A. Yes, sir. In the big room.

Q. What did you find in the big front room ?

A. The glass from the lamp laid scattered around in the big room.

20 Q. Did you look in the other rooms to see if there was any glass around the floor ?

A. Only in the big room.

Q. Did you examine the rooms to see if there was any fire in any of the other rooms ?

A. Yes.

By Mr. Koester :

30 Q. You say you went away on your vacation ; when did it expire ?

A. On the 16th day of October, I had to report for work.

Q. Did you report for work ?

A. I did.

Q. Where ?

A. At New York City.

Q. When did you leave then ; how long did you work in New York City after the fire ?

A. I do not know just exactly how long.

Q. Don't you know that the detectives in the Post Office department were looking for you ?

A. They were not looking for me while I was working.

Q. How long did you work ?

A. I don't know ; two or three days.

10

Q. Why did you quit ?

A. Because Crotty sent me word that I needed bonds.

GEORGE PLEHM, being sworn, testified as follows :

Direct Examination by Mr. Hart :

Q. Is this defendant your father, George ?

20

A. Yes, sir.

Q. You lived in Montvale on October 13th, 1903 ?

A. Yes, sir.

Q. You lived in your mother's house ?

A. Yes, sir.

Q. Were you home on the evening of October 13th, 1903 ?

A. Yes, sir.

Q. Who were there ?

30

A. My sister and a girl eighteen years old, and my little brother about three, and another one about five.

Q. Mrs. Meherstein was there ?

A. Yes.

Q. Where did you sleep that night ?

A. With my father.

Q. Where did the others sleep ?

A. Downstairs.

Q. Did any one sleep upstairs ?

A. No, sir.

Q. Why did you sleep downstairs ?

A. Because it was cold and we were waiting
for my mother.

10

Q. Was there a lamp upstairs ?

A. Yes, sir.

Q. Where was that lamp ?

A. On a table.

Q. Where did you go to sleep and when ?

A. Downstairs about 11.30.

Q. Anything occur that evening ?

A. Nothing until two o'clock when the fire
broke out.

20

Q. Tell us about it.

A. My sister woke up my father and we tried
to put it out and we could not get it under con-
trol, and we went for the neighbors.

Q. Was your father dressed ?

A. I could not tell you ; he had something on.

Q. How were you dressed ?

A. I was dressed in my underclothes.

Q. What else ?

A. I put on a pair of pants and shirts.

30

Q. While you were in bed you had on your
underclothes ; was your father undressed fully ?

A. Yes.

Q. Your sister woke him up ?

A. Yes.

Q. What did you do after going for these
men ?

A. I could not do anything.

Q. When did you go upstairs ?

A. I did not go upstairs.

Q. You went up afterwards ?

A. Yes.

Q. What did you see ?

A. I saw holes in the walls, the bed and floors; the walls were burned right through.

Q. (Showing witness diagram) Is this a diagram of your upper floor ?

10

A. Yes, sir.

Q. Just show us where the holes in the wall were ?

A. (Witness points out to the jury where the holes were in the walls.)

Q. Was there lots of water on the floor ?

A. Yes, sir.

Q. How many holes were there burned in the wall ?

A. I did not count them.

20

Q. A good many of them ?

A. Yes, a good many, each going into different rooms.

Q. There were how many, about ?

A. I could not say; there were a whole lot.

Cross Examination by Mr. Koester :

Q. Now, George, were there so many holes you could not count them ?

30

A. I could count them if I took the trouble.

Q. How large were they ?

A. They were large holes. (Witness illustrating with his hand the size.)

Q. Your papa said there was only one hole between the big room and the side room ?

A. I did not hear him say anything of that kind.

Q. How did you come to have your shoes on that morning ?

A. I did not have my shoes on.

Q. You went barefooted to get Mr. Jones ?

A. Yes.

10 Q. You took your little sister with you ?

A. I did not.

Q. Your sister was dressed ?

A. She was not.

Q. She went out in her night clothes ?

A. No.

Q. Where did you leave your shoes ?

A. My shoes were in the house ; I didn't care.

Q. Why didn't you care ?

20 A. I would rather save the house than the shoes.

Q. When did you last see your father after the fire ?

Objected to.

Question ruled out.

SARAH PLEHM, being duly sworn, testified as follows :

30

Direct Examination by Mr. Hart :

Q. You are the wife of the defendant, are you not ?

A. Yes.

Q. Where did you live on October 13th, 1903 ?

A. In Montvale.

Q. (Showing witness diagram) Do you know that house ?

A. I do.

Q. Did your husband live there ?

A. No, sir.

Q. Where was his home ?

A. In New York.

Q. How often did your husband come to Montvale ? 10

A. He used to come once a week.

Q. Mrs. Plehm, were you home the night of October 13th, 1903 ?

A. No, sir.

Q. Where were you ?

A. I was in New York.

Q. Did you come home the next day ?

A. Yes.

Q. Describe the condition of the house when you came, as you found it ? 20

A. I came home at 11 o'clock and the fellow that was working for me he told me there was a fire in my house ; when I came in I see it was burned, all the doors and the wood work to the ceiling burned, and the walls were much damaged and blackened, and in some places the beds were burned, and they were near the doors ; I found an arm chair burned, and some things that were not burned altogether, they were damaged. 30

Q. Were there any holes burned in the walls ?

A. Yes, sir ; and when I came home I found my husband he was nearly choked ; he was not able to talk to me that night.

Cross Examination by Mr. Koester :

Q. You know he wrote Robert Sibbald a letter that same day about the fire ?

A. I was in New York.

Q. You did not know he wrote Robert Sibbald a letter about the fire that day ?

A. When I came home that day he was nearly choked from the smoke.

10 Q. You filed a claim with the Insurance Company for all this personal property ? (Showing witness paper representing a claim.)

Objected to by Mr. Hart as immaterial.

Question allowed.

A. Yes.

Q. You swore to it ?

20 A. Yes, sir.

Q. Did you lose it all ?

A. It was damaged and burned.

Q. How many holes in the wall did you see ?

A. There were several holes in the walls, and the ceiling, too.

Q. All the mattresses in the house were burned up ?

A. No, sir ; burned and damaged.

Q. You lost eighteen pillows ?

30 A. Yes, I did ; I had enough for a hundred people in the summer.

Q. And you had three bedrooms upstairs.

A. It was three or four ; I cannot recollect.

Q. You had three bed rooms, did you have eighteen pillows ?

A. I keep boarders in that house in the summer.

Q. You did not have all the pillows in that house ?

A. I did.

Q. You lost the mattresses off three beds, did you ?

A. I cannot say ; I lost everything, what was not lost, was damaged.

Q. Do you know how that fire burned through the wood work ? 10

A. It was everything burned.

Q. You had three rooms upstairs, and a partition between every room ?

A. We had four rooms upstairs, and a hall, and a partition between them all.

Q. The partitions did not burn down ?

A. The walls and the doors were all burned.

Q. All burned up ?

A. It was standing by the doors it was burned through and through ; that hallway was burned through and through. 20

Q. I cannot understand how the fire could be in three rooms in the beds and the partitions not burned down ?

A. It was in the partitions, beds, doors and everything was afire.

JOSEPH WILSON, being sworn, testified as follows : 30

Direct Examination by Mr. Hart :

Q. Where did you live on the 13th of October, 1903 ?

A. Montvale.

Q. Do you know Herman Plehm?

A. Yes, sir.

Q. Do you know Mrs. Plehm?

A. Yes, sir.

Q. Do you know Mrs. Plehm's house? The house that was on fire?

A. Yes, sir.

Q. Were you there that evening?

10 A. No.

Q. Were you there at the fire?

A. Yes, sir.

Q. Tell us what you saw.

A. When I got there I saw Mr. Plehm carrying water on the roof of the piazza, and I helped him along and we carried water and threw it on the fire, which was in the mattress and the wood work around the windows.

Q. The floors, were they on fire?

20 A. I did not see the floors, I did not look.

Q. What was Plehm doing all that time?

A. He was trying to put the fire out.

Q. Did you see Van Houten and Pulis?

A. Yes.

Q. What were they doing?

A. They were trying to put the mattresses out of the house.

Q. Did you go in the house after the fire was over?

30 A. No, sir.

Q. You do not know anything about the holes in the wall?

A. No, sir.

Cross-Examination by Mr. Koester :

- Q. What relation are you to Plehm ?
 A. No relation.
- Q. Where are you living now ?
 A. In Park Ridge.
- Q. What time did you get to this fire ?
 A. Just about getting daylight ; somewhere around that time.
- Q. Who came with you ?
 A. Nobody. 10
- Q. You saw the smoke and the fire ; did you hear the noise ?
 A. The boy was there and woke up Jones, and he knocked at my door. First he thought Jones lived there.
- Q. Did you go in the house ?
 A. Upstairs, yes.
- Q. What did you see burning ?
 A. The woodwork and the mattresses.
- Q. Did you go in the rear room ? 20
 A. No, sir.
- Q. That was in the front room ?
 A. Yes.
- Q. Was anything else on fire in the front room except the window and the mattress ?
 A. Nothing except the wood work.
- Q. Was the wood work all on fire ?
 A. I could not say. There was so much smoke.
- Q. When the mattresses were thrown out of 30
 the window the fire was put out ?
 A. So far as I know ; I did not see.
- Q. How long did you stay there ?
 A. About half an hour.

Q. After you left the front room, where did you go?

A. I went home.

Q. You went home when Mr. Pulis did?

A. Yes, sir.

Q. When the mattresses were thrown out of the front room, then the fire was put out as far as that room was concerned?

A. As far as I know.

10 Q. How far was the bed from the window?

A. I could not tell you.

By Mr. Hart :

Q. Was it as far as I am away from you, about eight or ten feet?

A. I could not say, I think the mattress was about two feet from the window.

20 Q. The rest of the wood work in the room was burning?

A. Yes, around the window, I could not see about the rest, I had to go through the window to throw water on.

By Mr. Koester :

Q. The only thing thrown out of the house was the bed mattress?

A. No, sir ; I was the last man what came there.

30

FRANK SOTTO, being sworn, testified as follows :

Q. Where did you live on the 13th of October, 1903?

- A. New York.
- Q. What is your business ?
- A. Anything I can put my hand to.
- Q. Carpenter ?
- A. Anything.
- Q. Do you know where Mrs. Plehm lived in Montvale ?
- A. Yes, sir.
- Q. Did you ever live with them ?
- A. Yes, nine years. 10
- Q. Had you lived with them at that time ?
- A. Yes, sir.
- Q. Did you see the upper floor of the Plehm house after the fire ?
- A. Yes.
- Q. Just describe it.
- A. I saw when I went up stairs the doors, windows and beds were all destroyed.
- Q. Plaster ?
- A. Yes, everything. 20
- Q. Did you see any holes in the wall ?
- A. Yes, sir.
- Q. Did you see any furniture burned ?
- A. Yes.
- Q. Did you repair everything ?
- A. Yes, sir.
- Q. That was why you were there ?
- A. Yes, sir.
- Q. When did you fix things up ?
- A. A couple of months after the fire. 30
- Q. Did you do any plastering ?
- A. Yes, sir.
- Q. How much did Mrs. Plehm pay you ?
- A. I stayed with them about four weeks and she paid me twelve dollars a week.

Q. You say you stayed four weeks ?

A. Yes, sir.

Cross Examination by Mr. Koester :

Q. You stayed there four weeks repairing this house ?

A. About three weeks repairing the house.

Q. Did you do the plastering ?

10 A. Yes, sir.

Q. Did you require any lath ? How did you plaster it ?

A. I put slats on it, and then I put the plaster of Paris on.

Q. How much material did you use ?

A. I could not tell you just now.

Q. Did you buy any lumber ?

A. Yes, sir.

Q. How much did you buy ?

20 A. A lot of lumber.

Q. The house was burned so that you needed a lot of lumber ?

A. The doors and windows and things were burned.

Q. How much did it cost to repair this damage, altogether ?

A. About seventy-five dollars, including labor and materials.

Q. Where do you live ?

30 A I live at Coney Island now.

Court adjourns until October 20th, 1905, at 9.30 a. m.

Hearing resumed Oct. 20th, at ten a. m.

NATHAN PLEHM being duly sworn, testified as follows :

Direct Examination by Mr. Hart :

Q. You are a son of Herman Plehm ?

A. I am.

Q. Did you live in Montvale in October, 1903 ?

A. I worked in New York.

Q. Were you at that house in Montvale after the fire ? 10

A. Yes, sir.

Q. Describe about what you saw there.

A. This was about a week or two weeks after, and on going up stairs I found the steps were burned and in the front room—

Objected to by Mr. Koester, as witness was not there until long after the fire. 20

MRS. PLEHM recalled :

Re-Direct Examination by Mr. Hart :

Q. Mrs. Plehm, was there any difference in the condition of your house so far as the effect of the fire of October 13th, 1903, was concerned, within three weeks following the date of the fire ? 30

A. No.

Examination of NATHAN PLEHM resumed :

By Mr. Hart :

Q. Describe what you saw there.

A. On going up there I found the stairs burned, the doors, windows, walls and the window frames, the plaster and the laths all burned and in a very bad condition.

10 Q. The furniture ?

A. It was in the middle of the room, what was there, and if not completely burned, badly damaged by fire and water.

Q. What have you to say about the condition of the walls ?

A. In many places the walls had burned through.

Cross Examination by Mr. Koester :

20 Q. Any holes in the walls ?

A. Yes, sir.

Q. Which walls? The outside walls, or the partitions ?

A. The partitions between the rooms.

Q. How many ?

A. I cannot tell you.

Q. What walls did it burn through ?

A. That connecting the rear rooms, were the holes.

30 Q. Was there a hole burned between the front room up stairs and the rear room ?

A. Yes, sir.

Q. How many holes ?

A. I do not know.

Q. Where was it ?

A. Pretty near in the center of the room there were holes, there were holes near the floor, and right near the door were holes.

Q. The plaster was burned ?

A. Yes.

Q. Burned or smoked ?

A. Burned.

Q. Holes burned through the plaster ?

A. Yes, sir.

Q. When it was burned through was it in the center of the room or the side ? 10

A. I cannot tell.

Q. In the middle of the wall, was it ?

A. So far as I noticed, a hole near the wood work, and a hole about the center.

Q. Don't you know there was a heavy brick chimney that went through the center of the house ?

A. I don't know that it was in the center of the house. 20

Q. Don't you know that there was a table, and a mantel and there was a wide brick chimney and the table stood in front of the mantel ?

A. If I recollect, it was on one side.

Q. You ought to know ?

A. I am not sure.

Q. You do not know where that mantel was ?

A. I never took such notice of that.

IDA PLEHM, being sworn, testified as follows : 30

Direct Examination by Mr. Hart :

Q. You are the daughter of the defendant, Ermhan Plehm ?

A. Yes, sir.

Q. On October 13th, 1903, did you live at your mother's house in Montvale?

A. Yes, sir.

Q. You are the daughter of Mrs. Plehm also?

A. Yes, sir.

Q. You were there the evening of the fire?

A. Yes, sir.

Q. Where did you all sleep that evening?

10 A. Downstairs.

Q. How many of you were there?

A. There were five children, my father and a visitor.

Q. Why did you not sleep upstairs that night?

A. It was cold and damp and we slept downstairs, and my father always slept downstairs.

Q. Was there a lamp upstairs?

A. Yes, sir.

Q. Was it put out?

20 A. I don't remember.

Q. What time did you go to bed that night?

A. About half past eleven.

Q. Anything unusual occur that night?

A. Yes, I woke up—I can't tell what time it was—and I woke my father and he went to the barn and woke the man and I woke Miss Meherstein and she took one child and I took the other.

Q. Was your father fast asleep?

30 A. Yes, sir.

Q. You had to shake him?

A. Yes, sir.

Q. What did he do after that?

A. He took water and tried to put the fire out.

Q. Did you see the rooms after the fire?

A. Yes, sir.

Q. Describe what you saw.

A. Everything was destroyed.

Q. How about the walls?

A. Some places they were burned through, and the ceiling burned and blackened, even the walls downstairs were blackened.

Q. Were there any cats in the house?

A. Yes, sir.

10

Cross Examination by Mr. Koester :

Q. Who lighted this lamp upstairs?

A. I did.

Q. What did you light it for?

A. We waited for my mother; I thought she was coming home.

Q. Why did you not put it out?

A. I don't remember.

Q. You don't remember whether there was a light upstairs after you went to bed? 20

A. I don't.

Q. Was that the first time you slept downstairs?

A. No, we often slept downstairs.

Q. Who told you to sleep downstairs that night?

A. Nobody.

Q. How did you come to do it?

A. I slept where I wanted to.

Q. Did you ask your papa where to sleep? 30

A. No, sir.

Q. Did he tell you?

A. No, sir.

- Q. What was the lady's name that stayed in the house ?
- A. Miss Meherstein.
- Q. Where did she sleep ?
- A. Downstairs.
- Q. Did she always sleep downstairs ?
- A. Yes, sir.
- Q. When you went out were you dressed ?
- A. No, sir.
- 10 Q. Did you dress the children ?
- A. No, sir.
- Q. Did the children have shoes on ?
- A. No, sir ; they did not.
- Q. Did your papa have his shoes on ?
- A. No, sir.
- Q. Did he have anything else on ?
- A. His pants ; I don't remember.
- Q. You say the walls had holes in ?
- A. Yes.
- 20 Q. Were they not simply smoked ?
- A. No, sir ; it was burned through and through.
- Q. There was a hole by the front window where they had pulled the mattress out ?
- A. I don't remember.
- Q. Those windows were burned through where the beds were ?
- A. Yes, s r.
- Q. The bed was close to the window ?
- 30 A. I don't remember.
- Q. The beds all had two mattresses on each bed ?
- A. Not that I know of.
- Q. You had straw mattresses ?
- A. Yes, sir.

- Q. You had feather beds ?
 A. Yes, sir.
 Q. You also had straw mattresses on top of the feather bed ?
 A. We had straw mattresses and a feather bed on top of the straw mattresses.
 Q. They were upstairs, those beds ?
 A. Yes, sir.

By the Court :

10

Q. How many rooms were there upstairs ?
 Four or more.

A. Four.

Q. How many rooms were there down stairs ?

A. Three.

Q. What were they used for ?

A. Kitchen, dining-room, and a large room in front.

Q. What room did you sleep in ?

20

A. The large room.

Q. Where did the rest sleep ?

A. My father slept in the dining room with my brother.

Q. What did you sleep on ?

A. There were two beds in the large room, and a cot.

Q. Who slept upstairs ?

A. My mother and the children.

Q. Why did you light this lamp upstairs ?

30

A. We were waiting for my mother.

Q. Was this lamp in the large room ?

A. Yes.

Q. How many beds in there ?

A. Two beds and a cot.

- Q. What kind of a lamp was it?
A. A glass lamp.
- Q. How soon after the fire did you go up stairs?
A. The next day.
- Q. Did you look for the lamp?
A. Yes, sir.
- Q. Where was it?
A. Broke on the floor.
- 10 Q. When did you light the lamp?
A. In the evening.
- Q. What time?
A. As soon as it got dark.
- Q. When did you make up your mind to sleep down stairs?
A. I always slept down stairs when it was cold. My father always slept down stairs and the children slept with mother, and they would not go up alone because it was cold.
- 20 Q. Was there a stove in the kitchen?
A. Yes.
- Q. Any fire?
A. No.
- Q. Was there a stove in the other room down stairs?
A. No.
- Q. Was this large room down stairs your sleeping room always?
A. Yes, sir.
- 30 Q. Your father slept where?
A. In the dining room, with my brother.
- Q. Where?
A. On a cot.
- Q. Anyone sleep upstairs?
A. No, sir.

Q. What time did your father spend in the house every week ?

A. He came once on Sunday and sometimes once in two weeks ?

Q. Did you have bed clothes in the dining room ?

A. Yes, sir.

Q. Where did you get the bed clothes ?

A. They always was there.

10

By Mr. Koester :

Q. Your mother kept summer boarders ?

A. Yes, sir.

Q. When did the season close ?

A. Season for what ?

Q. How long had the boarders been gone ?

A. I can't tell you.

Q. Only a few days.

A. I don't know.

Q. Your mother had closed the boarding house for the summer and the boarders had all gone to New York ?

20

A. Yes, sir.

EMMA MEHERSTEIN, being duly sworn, testified as follows :

MR. MARSCHNER sworn as an interpreter.

30

Direct Examination by Mr. Hart :

Q. Where did you live on October 13th, 1903 ?

A. At that time I was in Montvale.

Q. Visiting ?

A. Yes ; I was at the house of Mrs. Plehm to visit over eight days.

Q. Where did you sleep while you were there ?

A. Downstairs.

Q. In what room ?

A. The front room.

Q. Where did Mrs. Plehm and the children sleep usually ?

10 A. Mrs. Plehm slept with the children upstairs, and I slept with the rest of them downstairs.

Q. Where was Mrs. Plehm the night of October 13th, 1903 ?

A. In New York.

Q. Did anyone sleep upstairs that night ?

A. We were all down stairs and were waiting for Mrs. Plehm, and she did not come, and we went to bed.

20 Q. What time did you go to bed ?

A. We waited until after eleven o'clock and Mrs. Plehm did not come and we went to bed.

Q. Did anything unusual occur that evening, and, if so, what was it ?

A. Everything was all right when we went to bed ; we woke up about two o'clock and smelled some smoke.

Q. Who woke you up ?

A. The eldest daughter woke me up.

30 Q. That was the last witness on the stand ?

A. Yes, sir.

Q. What did you find going on ?

A. She woke up her father and she said she had a job to wake him up, and then she woke me up, and after that they opened the door and

everything was full of smoke, and we closed the door again, and then I looked for the children and took the little child and woke him up and took care of him, and Mr. Plehm went and got water and tried to kill the fire and the big child of the small ones went and hollered fire.

Q. What did Mr. Plehm do ?

A. He went for water, and he got the Polish man and he and the man tried to kill the fire.

Q. Did you see the result of the fire afterwards ? 10

A. No, I was downstairs.

Q. Did you go upstairs the day after the fire ?

A. After the fire I went upstairs.

Q. What did you see there ?

A. It was all damaged and in bad condition.

Q. From what ?

A. From fire and water.

Q. What was the condition of the walls ?

A. The wall was burned through, and was blackened, and the wood work was mostly all burned, doors and windows. 20

Q. Furniture burned ?

A. Chairs and tables and everything was burned or badly damaged.

Cross Examination by Mr. Koester :

Q. When you got up and went out of the house, which door did you go out ?

A. I could not remember ; I don't know. 30

Q. There were two doors to that house ?

A. I guess so.

Q. A front door and a back door ?

A. Yes.

- Q. The back door opened in the kitchen ?
A. I am not quite sure about that.
Q. How long did you live at this house ?
A. Almost eight days.
Q. How did you happen to be there ?
A. To visit.
Q. Did you notice whether the back door was open or not ?
A. I do not remember.
10 Q. Do you know whether the front door was open ?
A. The front door was open.
Q. When you got up ?
A. There was no door open when we got up.
Q. When you all got up and went out of the house, which door did you go out ?
A. I do not know that. I was very excited.
Q. Did you see whether the front door was open at all or not ?
20 A. I can't remember.
Q. You do not know how you got out of the house, do you ?
A. No.
Q. This fire took place about two o'clock ?
A. I think so, or after two o'clock.
Q. Did you go to sleep right away after you retired ?
A. A few minutes after.
Q. And you did not wake up until you were called by Ida, Mr. Plehm's daughter ?
30 A. Ida hollered for her father.
Q. You can't tell what Mr. Plehm, this defendant, did between the time you went to sleep up to the time of the fire ?

A. Mr. Plehm went to bed before we did, and he slept when they went to bed.

Q. Mr. Plehm went to bed before you went to bed ?

A. Mr. Plehm went first, and we went after.

Q. And Mr. Plehm was in bed when his daughter called fire ?

A. Yes, sir.

Q. You do not know what Mr. Plehm did after you went to bed until you were called about two o'clock, the time of the fire ? 10

Q. I would have heard it if he had got up ; I am nervous and I do not sleep well.

Q. If Mr. Plehm had got out of bed between the time you went to bed and the time of the fire, you would have heard him ?

A. Yes.

Q. You did not hear the cats knocking the lamp off the table ?

A. No. 20

GEORGE PLEHM recalled :

By Mr. Hart :

Q. George you know when your father returned to the city from your house after the fire ?

A. Some days after.

Q. Did you see him some days after ?

A. Yes, sir, Crotty sent me.

Q. Who is Crotty ? 30

A. The Mayor of Montvale.

Q. What did you tell your father ?

Objected to.

Question withdrawn.

By Mr. Koester :

Q. Where did you see your father in New York ?

A. In a house.

Q. Locked up in a house ?

A. No, the doors were open for any one to enter.

Q. He did not go on the street afterwards ?

10

Objected to.

Not answered.

MR. FRANK TAYLOR re-called in rebuttal.

Re-Direct by Mr. Koester :

20 Q. You testified on your direct examination that you had examined this house in company with Mr. Sibbald and Mr. Van Saun, I believe the day following the morning of the fire ?

A. I testified that I had examined it in company with Mr. Van Saun, but I could not remember whether Mr. Sibbald was with us or not.

Q. You made an examination for what ?

A. Ascertain the cause of the fire.

Q. And amount of damage also ?

A. Yes.

30

Q. You went there to represent the company and adjust the loss ?

A. Yes, sir.

Q. It has been testified by the defendant and two or three of the relatives that there were

holes burned through the partitions in the rooms ; is that so ?

A. I desire to say most emphatically there were no holes burned through.

By Mr. Hart :

Q. You saw lots of furniture burned there ?

Objected to.

10

Not answered.

Q. You testified that you went there for the purpose of ascertaining the cause of the fire ; did you talk with Van Houten, one of your witnesses ?

A. I did after I had been there.

FREDERICK I. VAN SAUN, being sworn, 20
testified as follows :

By Mr. Koester :

Q. Do you recall the fire at Montvale in the Plehm house ?

A. I do, sir.

A. Do you recall going to that house on October 14th, 1903 ?

A. It was either the day after the fire or the second day ; I went up there with Mr. Taylor 30
and Mr. Sibbald.

Q. Did you observe the walls between the rooms ?

Objected to.

Question allowed.

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

Exception allowed.

Let it be sealed and it is sealed accordingly.

10

DAVID D. ZABBISKIE, [SEAL]

Judge.

A. I did.

Q. State whether or not there were holes burned through between those rooms in the plaster.

A. There were no holes burned through the partition walls; there were two holes, one under the window casing; the bed in the front room probably stood four feet from this window; there was another hole in the back room under the window, and the bed stood within a foot of that window.

20

Q. Those were the outside walls?

A. Yes.

Q. As to the partition walls between those rooms, there were no holes?

A. There was none.

Q. There was no damage to the surbase between any of the rooms?

30

A. No.

Q. Are you an employee of Mr. Taylor?

A. Partner.

Counsel for defendant takes an ex-

ception to the whole of Mr. Van
Saun's testimony.

By Mr. Hart: -

I renew my motion made at the close of the
State's case for an acquittal of the defendant,
on the ground that the State has not proved the
commission of the crime of arson at all.

Second—That the state has not proved be-
yond a reasonable doubt that the defendant
committed this crime. 10

Court denies motion.

Defendant's counsel prays an ex-
ception to the ruling of the Court.

Exception allowed.

Let it be sealed and it is sealed ac-
cordingly. 20

DAVID D. ZABRISKIE, [SEAL]

Judge.

Charge of the Court to the Jury.

This defendant, Gentlemen, is brought before the bar of this Court charged with a crime. He is charged under Section 126 of the Crimes act of 1898, of this State, which reads as follows :

10 "Any person who shall wilfully or maliciously set fire to, or burn, or aid, counsel, procure or consent to the setting fire to or burning of any building, ship, vessel, or any goods, wares, merchandise, or other chattels, which shall at the time be insured by any persons or corporation against loss or damage by fire, with intent to prejudice any person or corporation that has underwritten or shall underwrite any policy of insurance thereon, whether the same be the property of such person, or any other, shall be guilty, &c. This defendant is indicted under this section of the Crimes Act.

20 Every defendant in a criminal case is presumed to be innocent until the State proves him guilty beyond a reasonable doubt. The defendant in this case is presumed to be innocent until the State proves his guilt beyond a reasonable doubt from the evidence produced on the stand. You are the sole judges of the testimony of the witnesses as to whether they are telling the truth, or not telling the truth, and you are to arrive at a verdict as to what you believe to be the truth in the case, from the evidence of the
30 witnesses sworn.

The state claims that the defendant's wife was the owner of the house in which the fire occurred, and the owner of the personal property in the house, and that both the house and

personal property in the house were insured, that on the fourteenth day of October, 1903, early in the morning, a fire broke out in the house, and that in three rooms upstairs mattresses were on fire; the state claims that this defendant was in the house that night and was responsible for this fire; it claims that he was either the originator of it, or was instrumental in having this fire started for the purpose of getting money from the insurance company by reason of the insurance policies issued on the goods in the house and on the house. Of course you gather from the testimony of the witnesses that there was a fire there, but that is not sufficient; you must find that this defendant was instrumental in starting this fire with intent to prejudice the companies who had underwritten the policies of insurance on the property; there might have been a fire there, but if he was not concerned in it, he is not guilty. If the fire was started by him, or by somebody else for him for the purpose of defrauding the insurance company, the state must satisfactorily prove that beyond a reasonable doubt, before you can find this defendant guilty.

Now the defendant says that his wife, the owner of the building and property, was away from home, and says that the only occupants of the house that night was a visitor, some of the children and himself. The children say, I do not know whether the defendant said so or not, that they expected the wife home, but she did not come home, and after a time they went to bed. The daughter said in anticipation of the mother's coming home, she lighted a lamp up-

stairs, supposing the mother would come home and occupy a room upstairs with some of the children, that she did not know what became of the lighted lamp; that she went to bed with the children and the visitor down stairs, and the defendant went to bed in the dining room on a cot; they claim no one knew anything about the fire until they smelled the smoke and woke the father up, and he woke up the man and started to put the fire out. They claim they do not know how it started, whether the lamp exploded or not. If you believe what they say is true, that they were in bed and the fire started from the lamp and this defendant had nothing to do with it, of course, you cannot find him guilty.

You should give this case your earnest consideration, and determine it from the evidence, and find a verdict from the evidence only, it makes no difference where the defendant comes from. In considering this case you must give the defendant the benefit of a reasonable doubt, a reasonable doubt on the whole evidence, not a fanciful doubt, but a doubt as reasonable as has after considering all the evidence as a whole, as to whether the defendant is guilty or not. In all cases the state must establish the guilt of the defendant beyond a reasonable doubt. It is your duty to consider all the evidence and believe the witnesses which you think are entitled to be believed and disbelieve the testimony of others, and if you think the state has proved the case beyond a reasonable doubt, then you can find him guilty, and if you think the state has not proved his guilt be-

yond a reasonable doubt, then you cannot find this defendant guilty.

Counsel for defendant takes a general exception to the charge of the Court.

Exception allowed.

Let it be sealed and it is sealed accordingly.

DAVID D. ZABRISKIE,

Judge. [SEAL] 10

The jury found the defendant guilty of arson.

The foregoing is the entire record of the proceedings had upon the trial of Herman Plehm on an indictment for arson at the September term, 1905, of the Bergen County Court of General Quarter Sessions.

DAVID D. ZABRISKIE, [SEAL]. 20
Judge.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE STATE, <i>Defendant in Error,</i> vs. HERMAN PLEHM, <i>Plaintiff in Error.</i></p>	}	<i>On Writ of Error.</i>
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Assignments of Error.

NEW JERSEY, SS :

20 Afterwards to wit, on the return of the said writ before the said Supreme Court of the State of New Jersey, at Trenton, came the said Herman Plehm, by Peter W. Stagg, his attorney, and says that in the record and proceedings aforesaid, and also in giving of judgment aforesaid, there is manifest error.

First. Because the said Court erred in permitting the witness, Robert A. Sibbald, to answer the following question :

30 Question. At the time you looked at this personal property in this house before you wrote the policy and placed the insurance, what was the value of the property insured ?

Second. Because the said Court erred in permitting the witness, Robert A. Sibbald, to answer the following question :

Question. Did you estimate the value of the property at that time?

Third. Because the said Court erred in permitting the plaintiff to offer in evidence a letter purporting to be signed by the defendant and which letter was marked Exhibit P-4.

Fourth. Because the said Court erred in permitting the witness Robert A. Sibbald to answer the following question: 10

Question. You mentioned the fact that you saw another evidence of fire at the foot of the stairs, you mean in front of the house or the rear?

Fifth. Because the said Court erred in refusing to direct an acquittal of the defendant on two following grounds: 20

First. That it has not been proven by the state that the crimé of arson has been committed by any person.

Second. That it has not been proven that the prisoner is guilty of arson beyond a reasonable doubt or has committed any crime.

Sixth. Because the said Court erred in permitting the witness Frederick I. Van Saun to answer the following question: 30

Question. Did you observe the walls between the rooms?

Seventh. Because the said Court erred in re-

fusing to direct an acquittal of the defendant on the ground that the State has not proven the commission of the crime of arson at all and on the further ground the State has not proven beyond a reasonable doubt that the defendant committed this crime, if any crime was committed.

PETER W. STAGG,

10 *Attorney and of Counsel with Herman Plehm,*
Plaintiff in Error.

The plaintiff in error in the above entitled cause in addition to his assignments of error, hereby specifies the causes in the record relied upon for relief and reversal.

20 First. The State, the defendant in error, should not have been allowed to ask the witnesses for the State and have answered by them the questions in the record which showed what Mrs. Sarah Plehm did or said in the absence of the defendant.

Second. The Court erred in its charge in a statement of fact that was not justified by the facts in the case, to wit:—

30 The State claims that this defendant was in the house that night and was responsible for this fire; it claims that he was either the originator of it, or was instrumental in having the fire started for the purpose of getting money from the insurance company by reason of the insurance policies issued on the goods in the house and on the house.

Third. The Court erred in its charge in a statement of law that was not justified by the facts in the case, to wit :

It is your duty to consider all the evidence and believe the witnesses which you think are entitled to be believed and disbelieve the testimony of others, and if you think the state has proved the case beyond a reasonable doubt then you can find him guilty.

10

PETER W. STAGG,

*Attorney and of Counsel with Herman Plehm,
Plaintiff in Error.*

20

30

NEW JERSEY SUPREME COURT.

	THE STATE,	}
	<i>Defendant in Error,</i>	
	vs.	
10	HERMAN PLEHM,	
	<i>Plaintiff in Error.</i>	

Joinder in Error.

And hereupon comes Ernest Koester, Prosecutor of the Pleas of the State of New Jersey in and for the county of Bergen aforesaid, and says that there is no error, either in the record and proceedings aforesaid, or in the giving of judgment aforesaid, and in behalf of the State of New Jersey, he prays the Supreme Court of New Jersey before the justices thereof here may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed, etc.

ERNEST KOESTER,

30 *Prosecutor of the Pleas of the State of New Jersey
for the County of Bergen, for the Defendant
in Error.*

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,	}	In Error.
<i>Defendant in Error,</i>		
<i>vs.</i>		
HERRMAN PLEHMS,		
<i>Plaintiff in Error.</i>		

AFFIRMANCE AND REMITTIUR.

The Court having heard the argument of counsel, and inspected the judgment removed by the writ of error in this cause, and duly considered the causes assigned for error, 10

It is ordered that the said judgment be in all things affirmed, and that the record be remitted to the Bergen County Court of Quarter Sessions to be proceeded in according to law.

Entered November 20th, 1906. on motion of
 ERNEST KOESTER,
Attorney.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is 20 a true copy of a rule made by said Court in the above-stated cause and entered in the minutes thereof.

In testimony whereof I have set my hand and the [L. s.] seal of said court at Trenton, this twenty-seventh day of November, A. D. nineteen hundred and six.

WM. RIKER, JR.,
Clerk.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p>THE STATE, <i>Defendant in Error,</i> <i>vs.</i> HERRMAN PLEHMS, <i>Plaintiff in Error.</i></p>	}	In Writ of Error.
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ASSIGNMENTS OF ERROR.

(Filed March 5, 1907.)

10 *To the Supreme Court of the State of New Jersey:*
NEW JERSEY, ss.:

Afterwards, to wit, on the return of the said writ before the said Court of Errors and Appeals of the State of New Jersey, at Trenton, came the said Herman Plehms, by Peter W. Stagg, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error that was harmful to the plaintiff in error—

20 *First.* Because the said Court erred in refusing to direct an acquittal of the defendant on two following grounds: First, that it had not been proven by the State that the crime of arson had been committed by any person. Second, that it had not been proven that the plaintiff in error was the person who had committed said crime, if any had been committed.

Second. Because the Court erred in its charge in a statement of fact to the jury that had not been testified to by any witness in the case, in that that the plaintiff in error had been instrumental in having the fire started for the purpose of getting money from the insurance company.

30 *Third.* In affirming the conviction of the Court of Bergen County Quarter Sessions despite the many illegal admissions of testimony against the plaintiff in

error as set forth in the assignments of error in the court below and made a part of these.

PETER W. STAGG,
Attorney and of Counsel of Plaintiff in Error.

I hereby consent that the above be filed as of time and of copy.

ERNEST KOESLER,
Prosecutor.
per JOHN S. MACKAY,
Assistant. IO

