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NOTE.—The pleadings, orders, decree and appeal papers which follow are in the suit between complainants and defendant Philadelphia Fire and Marine Insurance Company. Since the papers in the separate suits against defendants Globe & Rutgers Fire Insurance Company and Newark Fire Insurance Company are identical so far as the issues in this appeal are concerned, they have not, by stipulation of counsel, been printed.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Melton Bros., Inc., a corporation organized under the Laws of New Jersey, having its principal office in the City of Jersey City, County of Hudson and State of New Jersey, and George Melton and Meter Melton, of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows that:

1. At all times mentioned herein, the complainant, Melton Bros., Inc., was a corporation organized under the Laws of New Jersey and was the occupant of the premises known as the brick building occupied as stores and dwellings situated No. 620 Washington Street, Hoboken, N. J.

2. At all times mentioned herein, the defendant was and still is a corporation authorized to do business in the State of New Jersey with power to insure risks by fire.

3. On or about May 20, 1925, the said Melton Bros., Inc., was the owner of certain goods and chattels located on the said premises mentioned in paragraph one of this complaint and described in the policy hereinafter referred to and being desirous to procure its said property to be insured againt fire, did, at Hoboken, N. J., enter into a contract with the defendant, Philadelphia Fire and Marine Insurance Company, in consideration of the stipulations named in said insurance policy and Twenty-six ($26) Dollars premium to it paid, whereby the said defendant did insure the said complainant for the term of one year from May 20, 1925 at noon to May 20, 1926 at noon, against all direct loss or damage by fire, except as thereinafter provided, to an amount not exceeding Twenty-five Hundred ($2500) Dollars to the following described property, while located and contained as described therein and not elsewhere, to wit:

$750.00 On merchandise consisting principally of that usual to the confectionery business, including stock manufactured, unmanufactured, and in process of manufacture, including full and empty packages, boxes, samples, and supplies the property of the insured, or held in trust or on commission or sold but not delivered or removed.

$1750.00 On store furniture and fixtures, including counters, shelving, racks, scales, show cases, cash registers and all such implements and utensils used in the insured's business.

All while contained in the brick building occupied as stores and dwellings situated #620 Washington Street, Hoboken, N. J.

4. When the said defendant insurance company had so agreed with the said Melton Bros., Inc. to

insure for the considerations aforesaid said property described in said policy of insurance and as mentioned in paragraph three of this bill of complaint, and intended to be insured by the defendant insurance company as aforesaid, it was well known to the said defendant insurance company that the said Melton Bros., Inc. was the owner of the said property and the said defendant insurance company furthermore well knew that the said Melton Bros., Inc. intended by the said contract of insurance to insure and protect its said interest in the said property.

5. Thereafter on or before May 20, 1925, the said defendant insurance company with the intention and design to carry into effect the said agreement or to defraud the complainant, Melton Bros., Inc. of its rights in said contract and in the policy of insurance hereinafter mentioned, executed and delivered to the complainant, Melton Bros., Inc. its said policy of insurance No. 76600 by which it intended or pretended to insure the said Melton Bros., Inc. as owner of the said goods and chattels mentioned in paragraph three of this bill of complaint and described in said policy as aforesaid, which said policy by mistake or fraud of the said defendant insurance company named George Melton and Peter Melton, doing business as Melton Bros., Inc., as the party insured as owner of the said goods and chattels described therein as aforesaid.

6. The said policy of insurance inadvertently or fraudulently and through accident and mistake or through the fraud of the said defendant insurance company and without the knowledge of the said

Melton Bros., Inc. or the complainants, Peter Melton and George Melton, described the party insured thereby as owner in respect of the said goods and chattels as George Melton and Peter Melton, doing business as Melton Bros., Inc., whereas, the party intended by the defendant insurance company and the said Melton Bros., Inc., the contractors, to be insured thereby as owner of the said goods and chattels, was the said Melton Bros., Inc.

7. After the issuance of the said policy and until after the fire which greatly damaged the aforesaid goods and chattels on December 15, 1925, the complainant, Melton Bros., Inc. and the complainants, George Melton and Peter Melton, were in complete ignorance that in and by the terms and legal effect of the said policy any interest in said property other than that of the complainant, Melton Bros., Inc., as owner, was insured, and understood that the interest of the said Melton Bros., Inc., in the said goods and chattels mentioned in paragraph three of this bill of complaint and described in said policy of insurance was thereby insured and protected in accordance with the said Melton Bros., Inc. directions to and an agreement with the said defendant insurance company as aforesaid.

8. The said complainant, Melton Bros., Inc. and the complainants, Peter Melton and George Melton, were unaware of the fact that said policy by its terms named George Melton and Peter Melton, doing business as Melton Bros., Inc. as the assured, as owner, and did not discover the same until after the aforesaid fire and after the said goods

and chattels were greatly damaged by fire, for which said loss and damage, the defendant insurance company issued its said policy of insurance and intended or pretended thereby to insure the said Melton Bros., Inc. on and in respect of its interest in the said goods and chattels as aforesaid.

9. Said policy of insurance among other things contained a provision that in the event of a disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

10. On April 6, 1926, in accordance with the aforesaid provision, the said defendant insurance company and the said Melton Bros., Inc. entered into an appraisal agreement dated April 6, 1926. On April 10, 1926, the appraisers designated in said appraisal agreement appointed an umpire a copy of said appraisal agreement and appointment of umpire is attached hereto and marked Schedule A and hereby made a part hereof.

11. Notwithstanding the terms and conditions of the said appraisal agreement mentioned in par-

agraph ten of this bill of complaint, the said Davis Weinstock, the appraiser named by said defendant insurance company in said agreement, wilfully, fraudulently and with the intent to defraud and cheat the complainant of its rights under said agreement, and in collusion with the said defendant insurance company and with one Bernard Ginsberg, suggested said Bernard Ginsberg an intertested party, as umpire, and the said S. Walter Silverman, the appraiser named by the complainant in the appraisal agreement, in ignorance of the said facts, agreed to appoint said Bernard Ginsberg as umpire, a copy of which appointment of umpire is attached hereto and marked Schedule B and made a part hereof.

12. On or about April 28, 1926, and before the appraisers appointed under the appraisal agreement had disagreed as to the amount of loss of damage in accordance with the said appraisal agreement, the said Bernard Ginsberg and Davis Weinstock fraudulently and contrary to law and contrary to the terms of the appraisal agreement and in collusion with the defendant insurance company and with the intent to defraud the complainant, Melton Bros., Inc., made an alleged award, a copy of which is attached hereto and marked Schedule C and made a part hereof.

13. The complainant's loss by reason of the fire mentioned in paragraph seven of this bill of complaint was Forty-one Thousand Seven Hundred Thirty-three Dollars and Sixteen ($41,733.16) Cents.

14. Said policy of insurance among other things contains a provision that no suit or action on said

policy for the recovery of any claim shall be sustainable in any court of law or equity, unless commenced within twelve months next after the fire. In order that the complainant, Melton Bros., Inc. may not be prevented by reason of said provision from obtaining a recovery on said policy for the loss sustained by it as a result of the aforesaid fire, the complainant, Melton Bros., Inc. has lately brought an action in the New Jersey Supreme Court against the defendant, Philadelphia Fire and Marine Insurance Company, for the recovery of the said loss, and the said defendant company has set up, as a defense, that in said policy the complainant, Melton Bros., Inc. is not named as the assured and that the claim of the complainant, Melton Bros., Inc. should be based on the aforesaid alleged award.

15. The complainant, Melton Bros., Inc. has been and still is ready, willing and able, at all times, that a proper award be made pursuant to the terms and conditions of the aforesaid policy and appraisal agreement, but the defendant has refused and continues to refuse to have a just and proper award made.

16. Complainant, Melton Bros., Inc. avers that while the said alleged award apparently is a valid and proper award, it is really void and of no effect by reason of the improper, illegal, irregular and fraudulent manner in which the said award was executed and made.

17. Complainant, Melton Bros., Inc. avers that it is at the peril of an unjust and unconscionable verdict and judgment in the said action at law and

that because of the circumstances as herein shown equitable remedies which the complainant, Melton Bros., Inc. has in connection with the matters herein stated, will not be available to it on a trial of the action so brought by the complainant, Melton Bros., Inc. in the New Jersey Supreme Court.

18. Complainant, Melton Bros., Inc. avers that it is entitled to have the decree of this Court setting aside, cancelling and rescinding the said alleged award, Schedule C, because the same is not a proper award for enforcement against the complainant and because the said defendant insurance company has not properly performed the appraisal agreement made as aforesaid.

19. Complainant, Melton Bros., Inc. avers that the action of the said Philadelphia Fire and Marine Insurance Company in pleading said alleged award as a defense to the said action at law is a fraud on the complainant, said fraud being the attempt of the said defendant insurance company to enforce the said alleged award as a valid and proper award and to bar the complainant of its just and legal rights under the said policy of insurance and appraisal agreement.

Complainant, Melton Bros., Inc. is without adequate or complete or sufficient remedy in the courts of law and therefore prays:

1. That the Philadelphia Fire and Marine Insurance Company, the defendant to this suit, may answer this bill of complaint and each statement therein made.

2. That the said policy of insurance may be reformed by substituting therein the name of the said Melton Bros., Inc. for and in place of George Melton and Peter Melton, trading as Melton Bros., Inc. as the party insured therein and thereby.

3. That the defendant, Philadelphia Fire and Marine Insurance Company until the final determination of this proceeding in equity, be enjoined from proceeding with or setting up at law against the action heretofore instituted by the complainant, Melton Bros., Inc. in the New Jersey Supreme Court against the said insurance company for a recovery for the said loss by fire under the said policy any defense or objection based on the fact that the policy names Peter Melton and George Melton, trading as Melton Bros., Inc., instead of Melton Bros., Inc. as the insured owner of the said goods and chattels described in said policy.

4. That until the final hearing and determination of this cause all proceedings in the said action at law heretofore brought by the said complainant, Melton Bros., Inc., against the defendant, Philadelphia Fire and Marine Insurance Company, be enjoined and restrained.

5. That the said paper, Schedule C, being the alleged award, illegally, improperly and fraudulently executed and made as aforesaid may be set aside, rescinded, cancelled and discharged by the decree of this court.

6. That the defendant, Philadelphia Fire and Marine Insurance Company, until the final determination of this proceeding in equity, be enjoined

from proceeding with or setting up at law against the action heretofore instituted by the complainant, Melton Bros. Inc. against the defendant, Philadelphia Fire and Marine Insurance Company, in the New Jersey Supreme Court, for a recovery for the said loss by fire under the said policy, any defense or objection based on said illegal, improper and fraudulent award.

7. That a writ of subpoena may issue commanding the said defendant, Philadelphia Fire and Marine Insurance Company to answer this bill of complaint and to abide by such decree as this court may make in the premises.

8. That the complainant have such other and further relief as may seem fair to this Honorable Court and be agreeable to equity and good conscience.

And complainant will ever pray, &c.

KINKEAD & KLAUSNER,
Solicitors of Complainant.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

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

1. At all times mentioned in the foregoing bill of complaint, I was and I still am the President of Melton Bros., Inc., one of the complainants in the foregoing bill of complaint. I have read the bill of complaint and the matters, facts and things therein stated are true, except as to any matters therein stated to be on information and belief, and as to those matters, I believe the same to be true.

2. At all times mentioned in this affidavit, I was duly authorized and had personal charge of the placing and contracting for all of the insurance required by the said Melton Bros., Inc., and that in all of the transactions and matters mentioned herein, I had personal charge and control of all interests of Melton Bros., Inc.

3. At all times mentioned herein, Melton Bros., Inc. was a corporation organized under the Laws of the State of New Jersey, and was the occupant of the premises known as the brick building occupied as stores and dwellings situated No. 620 Washington Street, Hoboken, N. J.

4. On or about May 20, 1925, the said Melton Bros., Inc., was the owner of certain goods and chattels located on the said premises mentioned in paragraph three of this affidavit and described in the policy hereinafter mentioned and being desirous to procure its said property to be insured against fire, did at Hoboken, N. J., enter into a contract with

the defendant, The Globe and Rutgers Fire Insurance Company, in consideration of the stipulations named in the said policy and Twenty-six ($26) Dollars premium to it paid, whereby the said defendant did insure the said complainant for the term of one year from May 20, 1925 at noon to May 20, 1926 at noon, against all direct loss or damage by fire, except as thereinafter provided, to an amount not exceeding Twenty-five Hundred ($2500) Dollars to the following described property, while located and contained as described therein and not elsewhere, to wit:

$750.00 On merchandise consisting principally of that usual to the confectionery business, including stock manufactured, unmanufactured and in process of manufacture, including full and empty packages, boxes, samples and supplies, the property of the insured, or held in trust or on commission, or sold but not delivered or removed.

$1750.00 On store furniture and fixtures, including counters, shelving, racks, scales, show cases, cash registers and all such implements and utensils used in the insured's business.

All while contained in the brick building occupied as stores and dwellings situated #620 Washington Street, Hoboken, N. J.

5. When the said defendant insurance company had so agreed with the said Melton Bros., Inc. to insure for the considerations aforesaid said property described in said policy of insurance and as mentioned in paragraph four of this affidavit, and intended to be insured by the defendant insurance company as aforesaid, it was well known to the said

defendant insurance company that the said Melton Bros., Inc. was the owner of the said property and the said defendant insurance company furthermore well knew that the said Melton Bros., Inc. intended by the said contract of insurance to insure and protect its said interests in the said property.

6. Thereafter, on or before May 20, 1925, the said defendant insurance company, with the intention and design to carry into effect the said agreement, or to defraud the complainant, Melton Bros., Inc. of its rights in said contract and the policy of insurance hereinafter mentioned, executed and delivered to the complainant, Melton, Bros., Inc., its certain policy of insurance No. 3539412 by which it intended or pretended to insure the said Melton Bros., Inc. as owner of the said goods and chattels mentioned in paragraph four of this affidavit and described in said policy as aforesaid, which said policy by mistake or fraud of the said defendant insurance company named George Melton and Peter Melton, doing business as Melton Bros., Inc., as the party insured as owner of the said goods and chattels described therein as aforesaid.

7. The said policy of insurance inadvertently or fraudulently and through accident and mistake, or through the fraud of the said defendant insurance company and without the knowledge of the said Melton Bros., Inc., described the party insured thereby as owner in respect of the said goods and chattels as George Melton and Peter Melton, doing business as Melton Bros., Inc., whereas, the party intended by the defendant insurance company and the said Melton Bros., Inc., the contractors, to be insured thereby as the owner of the said goods and chattels, was the said Melton Bros., Inc.

8. After the issuance of said policy and until after the fire which greatly damaged the aforesaid goods and chattels on December 15, 1925, the complainant, Melton Bros., Inc. and the complainants, George Melton and Peter Melton, were in complete ignorance that in and by the terms and legal effect of the said policy any interest in said property other than that of the complainant, Melton Bros., Inc. as owner, was insured and understood that the interest of the said Melton Bros., Inc. in the said goods and chattels mentioned in paragraph four of this affidavit and described in said policy of insurance was thereby insured and protected in accordance with the said Melton Bros., Inc. directions to, and agreement with the said defendant insurance company as aforesaid.

9. The said complainant, Melton Bros., Inc., and the complainants, George Melton and Peter Melton, were unaware of the fact that said policy, by its terms, named George Melton and Peter Melton, doing business as Melton Bros., Inc. as the assured, as owner, and did not discover the same until after the aforesaid fire and after the said goods and chattels were greatly damaged by fire, for which said loss and damage, the said insurance company issued its said policy of insurance and intended or pretended thereby to insure the said Melton Bros., Inc. on and in respect of its said interest in the said goods and chattels as aforesaid.

10. Said policy of insurance, among other things, contained a provision that in the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent

and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first elect a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

11. On April 6, 1926, in accordance with the aforesaid provision, the said defendant insurance company and the said Melton Bros., Inc. entered into an appraisal agreement dated April 6, 1926. On April 10, 1926, the appraisers, designated said appraisal agreement, appointed an umpire, a copy of said appraisal agreement and appointment of umpire is attached hereto and marked Schedule A and hereby made a part hereof.

12. Deponent is informed and verily believes that Davis Weinstock, the appraiser named by the said defendant insurance company in the appraisal agreement wilfully, fraudulently and with the intent to defraud and cheat the complainant, Melton Bros., Inc. of its rights and the said agreement and in collusion with the said defendant insurance company and with one Bernard Ginsberg had suggested said Bernard Ginsberg, an interested party, as umpire, and S. Walter Silverman, the appraiser named by the complainant, Melton Bros., Inc. in the aforesaid appraisal agreement, in ignorance of said facts, agreed to appoint said Bernard Ginsberg as um-

pire, a copy of which appointment of umpire, is attached hereto and marked Schedule B and made a part hereof; and that on or about April 28, 1926, and before the appraisers appointed, under the appraisal agreement, had disagreed as to the amount of loss and damage in accordance with the said appraisal agreement, the said Bernard Ginsberg and Davis Weinstock fraudulently and contrary to law and contrary to the terms of the appraisal agreement, and in collusion with the defendant insurance company and with the intent to defraud the complainant, had made an alleged award, a copy of which is attached hereto and marked Schedule C and made a part hereof.

13. The loss of the complainant, Melton Bros., Inc. by reason of the fire on December 15, 1925, hereinbefore mentioned, was Forty-one Thousand Seven Hundred Thirty-three Dollars and Sixteen ($41,733.16) Cents.

14. The said policy of insurance among other things contains a provision that no suit or action on the said policy for the recovery of any claim shall be sustainable in any court of law or equity, unless commenced within twelve months next after the fire. In order that the complainant, Melton Bros., Inc., may not be prevented by reason of said provision from obtaining a recovery on said policy for the loss sustained by it as a result of the aforesaid fire, the complainant, Melton Bros., Inc., has lately brought an action in the New Jersey Supreme Court against the defendant, The Globe and Rutgers Fire Insurance Company for the recovery of the said loss and the said defendant insurance company has set up, as a defense, that in said policy the complainant,

Melton Bros., Inc., is not named as the assured and that the claim of the said complainant should be based on the aforesaid alleged award.

15. The complainant, Melton Bros., Inc., has been and still is ready, willing and able, at all times, that a proper award be made pursuant to the terms and conditions of the aforesaid policy and appraisal agreement, but the defendant has refused and continues to refuse to have a just and proper award made.

ANTHONY MELTON.

Subscribed and sworn to before me this 30th day of December, 1926.

HERMAN LIPSCHITZ
Master in Chancery of New Jersey.

Affidavit of S. Walter Silverman.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } SS.:

S. WALTER SILVERMAN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the appraiser named in the appraisal agreement, a copy of which is attached hereto and marked Schedule A.

2. Davis Weinstock, the other appraiser mentioned in said agreement, suggested Bernard Ginsberg as umpire and on the 10th day of April, 1926, Davis Weinstock and myself appointed the said Bernard Ginsberg umpire.

3. At said time, I was not aware of the fact that Bernard Ginsberg was an interested party.

4. A few days after the said 10th day of April, 1926, Bernard Ginsberg, Davis Weinstock and myself went to 620 Washington Street, Hoboken, N. J., to inspect the loss mentioned in the foregoing bill of complaint, and at that time, we spent about an hour there and merely glanced over the stock without going into the loss in detail.

5. Subsequent to this time, neither Bernard Ginsberg nor Davis Weinstock and myself ever went to examine said loss together.

6. Subsequent to said 10th day of April, 1926, I inspected said loss alone and prepared an itemized inventory of the loss sustained by Melton Bros., Inc.

Affidavit of S. Walter Silverman.

7. On numerous occasions, I requested Davis Weinstock to accompany me for an inspection of the said loss, so that we both could make an itemized list of the loss sustained, but the said Davis Weinstock continually refused to do so, and suggested that we make separate visits and both make a separate itemized list. Shortly prior to the 28th day of April, 1926, Davis Weinstock and myself had a meeting at the office of the said Davis Weinstock, at which meeting we discussed the loss with reference to the stock of said Melton Bros., Inc., and at said meeting, I was prepared and did submit bills for the stock to Davis Weinstock. However, the said Davis Weinstock was not prepared to discuss this loss item by item and suggested that we postpone the meeting to a future date. Subsequently, said Davis Weinstock and myself and Bernard Ginsberg made an appointment to meet at Bernard Ginsberg's office on the 28th day of April, 1926, and at this meeting, both Davis Weinstock and myself were to go over the entire loss sustained by Melton Bros., Inc., item by item, according to the conditions and terms of the appraisal agreement mentioned in the foregoing bill of complaint, and on said occasion, I went to the said office with an itemized list of the losses sustained and was prepared to go over each item separately with Davis Weinstock in an attempt to arrive at an agreement respecting the same. On the said occasion, Davis Weinstock and myself first discussed the loss sustained by Melton Bros., Inc., upon the household furniture, which was covered by another insurance policy and not included in the above mentioned appraisal agreement, and I submitted my itemized figures to him and he submitted his figure to me, but did not have an itemized state-

ment. Upon disagreeing as to the amount of loss upon the household furniture, we submitted the figures to Bernard Ginsberg, and finally arrived at a figure agreeable to both, and thereupon, I concurred and signed an award respecting the same. However, as to all other matters of loss with reference to stock and fixtures and all other items described in the insurance policy mentioned in the foregoing bill of complaint, Davis Weinstock was not prepared with an itemized list, but stated that he had arrived at a figure between Four Thousand ($4,000) Dollars and Five Thousand ($5,000) Dollars. I then said to him that I had prepared an itemized list of the loss in accordance with the appraisal agreement and that I had arrived at the sum of Twenty-nine Thousand Six Hundred and Forty-nine Dollars and Seven ($29,649.07) Cents and I was prepared to tell how I arrived at said figure, item by item, and was prepared to discuss the same with him, and that according to said agreement, it was necessary that we go over each item of loss separately and discuss the manner in which we had arrived at the loss. At this point, Bernard Ginsberg stated that the matter was closed, as he had already arrived at an award and thereupon presented to me an alleged award, a copy of which is attached hereto and made a part hereof, and marked Schedule C, and stated that he had prepared the alleged award about two weeks previous to the date of the said meeting. I thereupon said to Bernard Ginsberg that I could not understand how he could make a proper award under the terms of the appraisal agreement under which he had been appointed, for at no time had there been any differences submitted to him by Davis Weinstock and myself, in accordance with the

terms of the appraisal agreement, and that under said agreement, it was necessary for him to adjust only matters upon which we had disagreed, and that I also stated that I objected to Bernard Ginsberg acting as umpire in this matter because I had then learned that he was not a disinterested party. Thereupon, Bernard Ginsberg stated that that was his way of doing business and that he had arrived at the figures submitted in said alleged award about two weeks prior to the date of the meeting. I thereupon refused to sign said alleged award.

8. At no time after the date of the appointment of Bernard Ginsberg as umpire, had Davis Weinstock and myself discussed, item by item, the loss sustained by Melton Bros., Inc. in the fire that occurred on December 15, 1925, and at no time had any differences been submitted by Davis Weinstock and myself to the said Bernard Ginsberg, but the said Bernard Ginsberg nevertheless, contrary to the terms of the appraisal agreement and contrary to the terms of his appointment as umpire, submitted said alleged award.

9. Said alleged award was contrary to the terms of the agreement because Bernard Ginsberg was not a disinterested party; because Davis Weinstock never submitted to me, although often requested, his itemized inventory of the loss; because Davis Weinstock and myself never discussed item by item as provided in said appraisal agreement the loss sustained by Melton Bros., Inc. and also because said alleged award was made in a lump sum and at the time of the meeting between Davis Weinstock and myself in the office of Bernard Ginsberg, neither

Affidavit of S. Walter Silverman.

Bernard Ginsberg nor Davis Weinstock had an itemized list, but the alleged award as shown to me by Bernard Ginsberg and signed by said Bernard Ginsberg and Davis Weinstock was prepared long before any meeting was held between Davis Weinstock and myself.

S. WALTER SILVERMAN.

Subscribed and sworn to before me this 30 day of December, 1926.

ROSALIE MELVIN
Notary Public of N. J.

SCHEDULE A.

APPRAISAL AGREEMENT.

IT IS HERBY stipulated and agreed by and between Melton Brothers, Inc., of the first part, and Netherlands Insurance Co., American Equitable Insurance Co., Northern Insurance Co. of London & Newark Fire Insurance Co., National reserve of Dubuque, Iowa-Globe & Rutgers Ins. Co., Philadelphia Fire & Marine Ins. Co., Springfield Fire & Marine Ins. Co.-Pennsylvania Ins. Co., each acting for itself and not as agent for the other, and each as party of the second part, that S. Walter Silverman 260 Riverside Drive, N. Y. C., designated by the parties of the first part, and Mr. Davis Weinstock, 302 Bway., New York City, designated by the parties of the second part, shall ascertain, pursuant to the terms and conditions of the policies of insurance issued by said companies to the party of the first part, the sound actual cash value of the property of said party of the first part, on the 15th day of December, 1925, which is more particularly described in the policies as per form attached as well as the actual direct loss and damage caused thereto by a fire which occurred on that day and/or, if this agreement contemplates personal property, in such case damage if any caused by removal from premises endangered by fire; that the said two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree, shall submit their differences only, to the umpire. An award, in writing, so itemized, of any two when filed with the insurance companies above designated shall determine the amount of sound value and of loss or damage. Such loss or damage shall be ascertained according

Schedule A.

to the actual cash value of said property at the time of the occurrence of said fire, with proper deductions for depreciation however caused, and shall in no event exceed what it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowances for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, but such appraisement does not in any respect waive any of the provisions of conditions of said policy or policies of insurance, or any forfeiture thereof, or the proof of such loss and damage required by the policy or policies of insurance thereon.

Each appraiser shall be paid by the party selecting him and the expense of appraisal and umpire shall be paid by the parties equally.

New York, April 6, 1926.

MELTON BROTHERS, INC.
President.

Anthony Melton.
by S. W. Walton.

Netherlands Insurance Co.
American Equitable Insurance Co.
Northern Insurance of London.
Newark Fire Insurance Co.
National Reserve of Dubuque, Iowa.
Globe & Rutgers Insurance Co.
Philadelphia Fire & Marine Ins. Co.
Springfield Fire & Marine Ins. Co.
Pennsylvania Ins. Co.

Witness as to Anthony Melton,
Harry Silverman.

SCHEDULE B.

APPOINTMENT OF A THIRD PERSON.

We, the undersigned, do hereby appoint Bernard Ginsberg, 116 Nassau St., New York City, as umpire, as provided for in the within agreement.

April 10th, 1926.

S. WALTER SILVERMAN,
D. WEINSTOCK,
Appraisers.

DECLARATION.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

We, the undersigned, do solemnly swear that we are not interested, either directly or indirectly, as partners, creditors, or otherwise, or related to either of the parties to the foregoing agreement; that we will act with strict impartiality in making an appraisement agreeably to the foregoing appointment, according to the best of our knowledge, skill and judgment.

Witness our hands, this 10th day of April, 1926.

S. WALTER SILVERMAN,
D. WEINSTOCK,
Appraisers.

Sworn to before me by said Samuel W. Silverman and D. Weinstock and subscribed by them in my presence, this 10th day of April, A. D. 1926.

JACOB P. DENNISON,
Commissioner of Deeds,
New York City.

SCHEDULE C.

AWARD.

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY, that we have truly and conscientiously performed the duties assigned us, agreeably to the foregoing stipulations, and have appraised and determined the actual cash values of each item of said property on the 15th day of December, 1925 and the actual direct loss and damage thereto by the fire on that day, to be as follows, (see itemized schedule attached hereto) to wit:

Total actual Net Cash Value stock $4,037.86 fixtures and improvements $12152.20, total $16190.06.

Total Actual direct Loss and Damage Stock $3853.80 fixtures and improvements $6087.15, total $9940.95.

Witness our hands, this 28th day of April, 1926.

W. WEINSTOCK,
.....} Appraisers.

B. GINSBERG,
Umpire.

Order to Show Cause and Restraining Order.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,

Complainants,

and

PHILADELPHIA FIRE and MARINE INSURANCE COMPANY, a corporation,

Defendant.

} On Bill, &c.

Upon reading and filing the bill of complaint in the above cause with the affidavits thereto annexed:

It is on this 31st day of Dec., 1926 on motion of Kinkead and Klausner, solicitors of the above named complainants ORDERED that the above named defendant show cause before the Chancellor, at the Chancery Chambers, in the City of Jersey City, on the 17th day of Jan., 1927, at 10 o'clock in the forenoon of said day, why an order should not be made restraining and enjoining all proceedings in the action lately instituted in the New Jersey Supreme Court by the complainant Melton Bros. Inc., against the defendant, Philadelphia Fire and Marine Insurance Company for a recovery on the policy of insurance mentioned in said Bill of Complaint and annexed affidavits;

And it is FURTHER ORDERED that in the meantime and until the further order of this Court to the contrary, all proceedings in the said action in the New

Order to Show Cause and Restraining Order.

Jersey Supreme Court be, and the same are hereby, enjoined and restrained;

And it is FURTHER ORDERED that a copy of this order, certified by the solicitors of complainants be served upon the said defendant, Philadelphia Fire and Marine Insurance Company, or upon their solicitors within 5 days from the date hereof, and that a copy of said bill of complaint, with the affidavits thereto annexed, certified by the solicitors of complainants be served within the same period on said Philadelphia Fire and Marine Insurance Company, or their solicitors.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

Interlocutory Restraining Order.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,

Complainants,

and

PHILADELPHIA FIRE and MARINE INSURANCE COMPANY, a corporation,

Defendant.

On Bill, &c.

This matter being opened to the Court by Kinkead and Klausner, Solicitors of the Complainants, in the presence of Arthur T. Vanderbilt, Solicitor for the defendant, Philadelphia Fire and Marine Insurance Company, on application by the complainants, Melton Bros., Inc., and George Melton and Peter Melton, for an order restraining and enjoining all proceedings in the action lately instituted in the New Jersey Supreme Court by the complainant, Melton Bros., Inc. against the defendant, Philadelphia Fire and Marine Insurance Company for recovery on the policy of insurance mentioned in the bill of complaint filed herein, and it appearing to the Court that said application should be granted;

It is on this 17th day of January, 1927, ORDERED that all proceedings in the said action in the New Jersey Supreme Court be and the same are hereby restrained and enjoined until the final determination of this couse.

Interlocutory Restraining Order.

It is further ordered that a true copy of this order be served upon the solicitor of the defendant, Philadelphia Fire and Marine Insurance Company, within 3 days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

Answer.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants,
and
PHILADELPHIA FIRE and MARINE INSURANCE COMPANY, a corporation,
Defendant.

} On Bill, &c.

Defendant Philadelphia Fire and Marine Insurance Company, a corporation, answering the bill of complaint, says that:

1. It has no knowledge or information sufficient to enable it to form a belief as to paragraph 1 of the bill of complaint, and it therefore denies the same.

2. It admits paragraph 2 of the bill of complaint.

3. It has no knowledge or information sufficient to enable it to form a belief as to the allegation of paragraph 3 of the bill of complaint that on or about May 20, 1925 said Melton Bros., Inc. was the owner of said goods and chattels located on the premises mentioned in paragraph 1 of the bill of complaint and described in the policy therein referred to, and it therefore denies the same. It admits the delivery of the policy mentioned in paragraph 3 of the bill of complaint and as to the terms and conditions

thereof begs leave to refer to said policy and its records thereof. It denies the allegations of paragraph 3 of the complaint insofar as they are inconsistent with said policy.

4. It denies paragraphs 4, 5, 6, 7 and 8 of the bill of complaint. Defendant is informed, and verily believes, that complainants George Melton and Peter Melton were at the times mentioned in the bill of complaint, and still are, stockholders, directors and officers of complainant Melton Bros., Inc. Complainants George Melton and Peter Melton retained said policy for many months and until after the fire of December 15, 1925, mentioned in the bill of complaint without notifying defendant of the alleged mistakes or fraud mentioned in the bill of complaint. Complainants George Melton and Peter Melton, by reason of their conduct, and complainant Melton Bros., Inc., by reason of the conduct of its officers, directors and stockholders, are barred from asserting that said policy does not state truly and correctly the contract and agreement of the parties thereto.

5. It admits paragraph 9 of the bill of complaint and as to the terms of said policy begs leave to refer to said policy and its records thereof.

6. It admits paragraph 10 of the bill of complaint.

7. It denies paragraphs 11, 12 and 13 of the bill of complaint. Complainants have known of said award since April 28, 1926, and have raised no objection thereto, except by the institution of this suit many months after the making of said award and complainants' knowledge thereof, and complainants

are therefore in laches in asserting at this time that said award is improper. By reason of the lapse of time since said fire of December 15, 1925, and the dissipation and disappearance of the evidence with respect to said loss by fire, it would be impossible now or at any later date for any appraiser and umpire to make an intelligent or equitable award, and complainants are therefore estopped from asserting that said award is improper.

8. It admits the first sentence of paragraph 14 of the bill of complaint. Said policy of fire insurance mentioned in the bill of complaint is a standard fire insurance policy in the form required by the statutes of New Jersey. This suit was not commenced within twelve months next after the fire mentioned in the bill of complaint and this suit is therefore barred by the terms of said policy. It denies the allegation of paragraph 14 of the bill of complaint that complainant Melton Bros., Inc., brought suit in order that it might not be prevented by reason of said provision of the policy from obtaining a recovery on said policy. It admits that Melton Bros., Inc., has brought an action in the New Jersey Supreme Court against it and that it has set up in said suit the defenses mentioned in paragraph 14 of the bill of complaint.

9. It denies paragraphs 15, 16, 17, 18 and 19 of the bill of complaint and repeats the statements made in paragraph 7 of this answer.

ARTHUR T. VANDERBILT,
Solicitor of Defendant.

Replication.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,

Complainants,

and

PHILADELPHIA FIRE and MARINE INSURANCE COMPANY, a corporation,

Defendant.

On Bill, &c.

The complainants join issue on the answer of the defendant.

KINKEAD & KLAUSNER,
Solicitors of Complainants.

Order Amending Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,

Complainants,

and

PHILADELPHIA FIRE and MARINE INSURANCE COMPANY, a corporation,

Defendant.

On Bill, &c.

This matter being opened to the Court by Kinkead and Klausner, Solicitors of the complainants, and in the presence of Arthur T. Vanderbilt, Solicitor of the defendant, and it appearing that due notice of this application has been given to the defendant, and it appearing to the Court that the prayer for relief of the bill of complaint filed herein should be amended:

It is on this 5th day of March, 1928, ORDERED, that the prayer for relief of the bill of complaint filed herein should be amended by adding the following:

6. (a) That the complainant and the defendant shall be directed to enter into a new agreement substantially as the aforesaid appraisal agreement of April 6, 1926 (except as to the names of appraisers and umpire heretofore selected under and by virtue of said agreement), and that the complainant, Melton Bros., Inc., designate therein, as their appraiser, a person other than the aforesaid S. Walter Silverman, and that the defendant designate therein, as its appraiser, a person other than the afore-

said Davis Weinstock, both of whom, before entering upon a discharge of their duties, to first select a competent and disinterested umpire and that a proper award be made pursuant to the terms and conditions of the new appraisal agreement.

6. (b) That the aforesaid agreement of April 6, 1926, shall be considered as abrogating the aforesaid appraisement clause contained in said policy of insurance, and in the event that a proper award is not made pursuant to the terms and conditions of the aforementioned new appraisal agreement, then the aforesaid agreement of April 6, 1926, and the aforesaid award purporting to have been made thereunder be inoperative as against the aforesaid complainants in such suit at law as is now pending between the complainant, Melton Bros., Inc., and the defendant based upon the policy of insurance aforesaid, or any suit at law or in equity hereafter instituted by the complainant, Melton Bros., Inc., against the defendant, Philadelphia Fire and Marine Insurance Company, based upon said policy, and that the said defendant be enjoined from setting up or relying upon, as a defense to any such action or suit, the agreement and/or award aforesaid, or the appraisal clause contained in the aforesaid policy of insurance hereinabove referred to.

Respectfully advised,

E. R. WALKER,
C.

JOHN J. FALLON,
V. C.

NOTE:-

an amended bill of complaint, incorporating paragraphs 6-A, and 6-B, as set forth in the order, was filed on March 5, 1928.

Final Decree

IN CHANCERY OF NEW JERSEY.

Between
MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants,
and
PHILADELPHIA FIRE AND MARINE INSURANCE COMPANY, a corporation,
Defendant.

On Bill, &c.

This cause coming on regularly to be heard in the presence of Kinkead and Klauser, Solicitors of the Complainants, and Arthur T. Vanderbilt, Solicitor of the Defendant, and the Court having read and considered the pleadings and having taken testimony orally and in open Court, and having heard and considered the arguments of counsel thereon, and it appearing that the defendant, Philadelphia Fire and Marine Insurance Company, entered into a contract with the complainant, Melton Bros., Inc., to insure them as owners of the goods and chattels mentioned in a certain policy of insurance number 76600, evidencing such contract, which said policy was executed and delivered by the said defendant to the said complainant, Melton Bros., Inc., and which, by mistake of the defendant, named George Melton and Peter Melton, doing business as Melton Bros., Inc., as the insured, and that the said policy of insurance should be reformed by substituting therein the name of Melton Bros., Inc., in lieu of George Melton and Peter Melton, doing business as

Melton Bros., Inc., as the insured, and the solicitor for the defendant consenting in open Court to such reformation of said policy of insurance; and it further appearing that said policy contains a clause providing that in the event of disagreement as to the amount of loss thereunder, the same shall be ascertained by two competent and disinterested appraisers, and the latter to select a competent and disinterested umpire, the appraisers together to estimate the loss, stating separately sound value and damage, and failing to agree, to submit their differences to the umpire, and the award in writing of any two to determine the amount of such loss, yet, notwithstanding such provision, the said complainant and the defendant entered into an agreement dated April 6, 1926, which was in substitution of the aforesaid appraisement clause of said policy, and being somewhat different from it, in effect abrogated it; and it further appearing that the said complainant in and by said agreement of April 6, 1926, designated S. Walter Silverman as the appraiser, and the defendant designated Davis Weinstock as its appraiser, to ascertain, pursuant to the terms and conditions of the said policy of insurance and the requirements of said agreement, the sound, actual cash value of the property of the said complainant on the fifteenth day of December, 1925, more particularly described in the said policy, as well as the actual direct loss and damage caused thereto by a fire which occurred on that day, and that both of said appraisers on April 10, 1926, pursuant to authority conferred upon them in and by said agreement, and before assuming the performance of the duties devolving upon them thereunder, did first select and appoint Bernard Ginsberg as a competent and disinterested person to act as umpire who,

in the event of the said appraisers, S. Walter Silverman and Davis Weinstock, failing to agree in estimating and appraising the loss of the said complainant, stating separately the sound value and damage to each item of property, was thereby authorized to have submitted to him the differences only, of the said appraisers; and it further appearing in and by said agreement that an award in writing, itemized as aforesaid, of any two of the aforesaid S. Walter Silverman, Davis Weinstock and Bernard Ginsberg, filed with the defendant, was to be regarded as a determination of the amount of sound value and of loss or damage suffered by the said complainant to their aforesaid property occasioned by fire; and it further appearing that neither of the aforesaid appraisers, S. Walter Silverman and Davis Weinstock, performed the duties devolving upon them under and by virtue of the aforesaid agreement, in the manner therein and thereby required of them; and it further appearing that the aforesaid umpire, Bernard Ginsberg, in disregard of the aforesaid appraisers and their rights in the premises, unwarrantably assumed the right to perform the duty of umpire prior to having been advised that said appraisers were in disagreement as to loss and/or damage suffered by the complainants as a result of the fire aforesaid on property of the said complainant insured under and by virtue of the aforesaid policy of insurance, and prior also to having been advised as to the differences only of the said appraisers, and thereupon the said Bernard Ginsberg, together with the said Davis Weinstock, did make an alleged award in writing on April 28, 1926, of the loss and damage suffered by the said complainant to their aforesaid property by reason of the said fire; and it further appearing

that appraiser, Davis Weinstock, and umpire, Bernard Ginsberg, did not in the making of the aforesaid award, state separately sound value and damage to each item of property constituting the said complainant's loss, and consequently, the amount of sound value and of loss or damage to each item of the said complainant's property, constituting such loss, was not ascertained by the said appraiser and umpire; and it further appearing that in and by the aforesaid award, appraiser Davis Weinstock, and umpire, Bernard Ginsberg, who signed the same, therein declared that they had appraised and determined the actual cash value: "of each item of said property on the 15th day of December, 1925, and the actual direct loss and damage thereto by fire on that day to be as follows (see itemized schedule attached hereto) to wit:", whereas, in fact, no itemized schedule was attached to said award, and said appraiser and umpire had not, in fact, made such appraisement and determination; and it further appearing that the aforesaid umpire, Bernard Ginsberg, exceeded his authority as umpire, and prematurely assumed to perform the duties devolving upon him as umpire by virtue of the aforesaid agreement, by reason whereof the effect of his action in the premises and of his joining with the aforesaid Davis Weinstock in signing the award aforesaid, whether done consciously or by mistake, was improper and rendered said award void; and it further appearing that neither the aforesaid appraisers, Davis Weinstock and S. Walter Silverman, or the aforesaid umpire, Bernard Ginsberg, performed the duties devolving upon them in the manner required of them under and by virtue of the aforesaid agreement of April 6, 1926, and that such animus existed between the aforesaid appraisers,

Davis Weinstock and S. Walter Silverman, and the aforesaid umpire, Bernard Ginsberg, that neither the said complainant, nor the defendant, could or may reasonably expect to obtain from said appraisers and umpire an unbiased judgment as required of them under and by virtue of said agreement, and that said appraisers and umpire ostensibly acting in the performance of their duties acted in an injudicious manner, and failed to manifest due regard of the duty entrusted to them, and that said appraiser, Davis Weinstock, and said umpire, Bernard Ginsberg, manifested such an acrimonious disposition of hostility toward said appraiser, S. Walter Silverman, and the said appraiser, S. Walter Silverman, manifested such an acrimonious disposition of hostility toward said appraiser, Davis Weinstock, and said umpire, Bernard Ginsberg, that a fair, unbiased judgment could not and may not reasonably be expected of any of said parties, making it inequitable to continue said parties as appraisers and umpire, respectively, in the premises; and counsel for the complainants having manifested to the Court that said complainants are willing to enter into a new agreement with the said defendant substantially as the aforesaid agreement of April 6, 1926 (except as to the names of appraisers and umpire heretofore selected under and by virtue of said agreement), and to designate therein, as their appraiser, a person other than the aforesaid S. Walter Silverman, and that the defendant designate therein, as its appraiser, a person other than the aforesaid Davis Weinstock, both of whom, before entering upon a discharge of their duties, to first select a competent and disinterested umpire, who, in the event of the appraisers so designated, failing to agree in estimating and appraising the loss

of the complainant, stating separately the sound value and damage to each item of property, to have submitted to him, for his consideration and determination, the differences only of the said appraisers, and counsel for the defendant having manifested to the Court that the defendant is not willing to enter into such a new agreement; and it further appearing that the said complainant, Melton Bros., Inc., should be permitted to proceed with a certain action heretofore instituted by it in the New Jersey Supreme Court by summons issued November 26, 1926, against the said defendant, for a recovery of money damages for the loss occasioned by said fire:

It is thereupon on this 5th day of March, 1928, ORDERED, ADJUDGED and DECREED, that the award aforesaid be and is hereby declared void;

And it is further ordered, adjudged and decreed that the said complainant, Melton Bros., Inc., be and is hereby permitted to proceed with the aforesaid action at law based upon the policy of insurance aforesaid, for loss claimed thereunder;

And it is further ordered, adjudged and decreed that the aforesaid agreement of April 6, 1926, abrogated the aforesaid appraisement clause contained in said policy of insurance and that the aforesaid agreement of April 6, 1926, and the aforesaid award purporting to have been made thereunder, be inoperative as against the aforesaid complainants in such suit at law as now pending between complainant, Melton Bros., Inc., and defendant, based upon the policy of insurance aforesaid, or any suit at law or in equity hereafter instituted by the complainant, Melton Bros., Inc., against the defendant, Philadelphia Fire and Marine Insurance Company, based upon said policy; and that the said defendant be and is hereby enjoined from setting up or relying upon, as a defense to any such action or suit, the agreement and/or award aforesaid, or the appraisal clause contained in the aforesaid policy of insurance, hereinabove referred to;

And it is further ordered, adjudged and decreed that the policy of insurance aforesaid be and is hereby reformed by substituting therein the name of Melton Bros., Inc., in lieu of George Melton and Peter Melton, doing business as Melton Bros., Inc., as the insured under said policy;

And it is further ordered, adjudged and decreed that the allegations of laches and estoppel, respectively, urged by the defendant against the complainants, have not been substantiated by the defendant;

And it is further ordered, adjudged and decreed that the defendant pay to the complainants or their solicitors the costs of this suit to be taxed, including a counsel fee of Four Hundred Dollars, which is hereby allowed to said complainants within 20 days after the service upon the defendant, or its solicitor, of a certified copy of this decree and a statement of taxed costs as made up by the clerk of this Court, and that in default of such payment, execution issue therefor against the defendant, according to the practice of this Court.

Respectfully Advised.

E. R. WALKER,
C.

JOHN J. FALLON,
V. C.

A True Copy.
THOMAS BARBER,
Clerk.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON, Complainants-Respondents, and PHILADELPHIA FIRE AND MARINE INSURANCE COMPANY, a corporation, Defendant-Appellant.	On Appeal from the Court of Chancery.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Philadelphia Fire and Marine Insurance Company, a corporation, the appellant in the above entitled cause, respectfully shows that:

Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walke; Chancellor of the State of New Jersey, on the fifth day of March, 1928, in a certain cause in said Court of Chancery wherein Melton Bros., Inc., a corporation, and George Melton and Peter Melton, were complainants and the said Philadelphia Fire and Marine Insurance Company, was defendant, in these respects, to wit:

That the said decree adjudges that the award be declared void;

That said decree adjudges Melton Bros., Inc., be permitted to proceed with its action at law;

That said decree adjudges that the agreement of April 6, 1926, abrogated the appraisement clause contained in the policy of insurance;

That said decree adjudges that the aforesaid agreement of April 6, 1926, and the aforesaid award made thereunder be inoperative in such suit at law as now is pending between complainants and defendant based upon the policy of insurance aforesaid, or any suit at law or in equity hereafter instituted by the complainants against the defendant Philadelphia Fire and Marine Insurance Company based upon said policy;

That the said decree adjudges that the defendant be enjoined from setting up or relying upon as a defense to any such action or suit the agreement or award aforesaid or the appraisal clause contained in the aforesaid policy of insurance;

That the said decree adjudges that the allegations of laches and estoppel urged by the defendant against the complainants have not been substantiated by said defendant;

That said decree adjudges that the policy of insurance involved in this cause be reformed by substituting therein the name of Melton Bros., Inc., in lieu of George Melton and Peter Melton, doing business as Melton Bros., Inc., as the insured under said policy;

That said decree adjudges that the defendant pay to complainants or its solicitors the costs of said

suit to be taxed including a counsel fee of Twelve Hundred Dollars ($1200.00).

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in the following respects:

A. The Court below erred in finding that the appraisers did not perform the duties devolving upon them under the aforesaid award.

B. The Court below erred in finding that the umpire acted unwarrantably and prematurely under said appraisal agreement.

C. The Court below erred in finding that the appraiser Davis Weinstock and the umpire Bernard Ginsberg did not properly appraise sound value and loss to the property involved in the fire, and that they did not make a proper award under the aforesaid appraisal agreement and the appraisal clause in the policy.

D. The Court below erred in finding that said appraisers and umpire acted in an injudicious manner.

E. The Court erred in finding the award aforesaid void.

F. The Court below erred in permitting complainants to proceed with the action at law based upon the policy of insurance.

G. The Court below erred in finding that the agreement of April 6, 1926, abrogated the appraisal clause contained in said policy of insurance and in finding the aforesaid agreement of April 6, 1926, and the award made thereunder inoperative as against aforesaid complainants in such suit at law as now pending between complainants and defendant, based upon the policy of insurance aforesaid or any suit at law or in equity hereafter instituted by the complainants against the defendant upon said policy.

H. The Court below erred in decreeing that defendant be enjoined from setting up or relying upon as a defense to any such action or suit the agreement or award aforesaid, or the appraisal cause contained in the aforesaid policy of insurance.

I. The Court erred in finding that the allegations of laches and estoppel respectively urged by the defendant against the complainants were not substantiated by the defendant.

J. The Court below erred in decreeing that the policy of insurance involved in this cause be reformed by substituting therein the name of Melton Bros., Inc., in lieu of George Melton and Peter Melton doing business as Melton Bros., Inc., as the insured under the said policy.

K. The Court below erred in finding that the defendant pay to the complainants or its solicitors the costs of this suit to be taxed including a counsel fee of Twelve Hundred Dollars ($1200.00).

Petition of Appeal.

L. The Court below erred in not finding that the bill of complaint was to be dismissed with costs.

Your petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that the petitioner may have such other relief in the premises as to this court shall seem proper.

ARTHUR T. VANDERBILT,
Solicitor of and of counsel with defendant-appellant, Philadelphia Fire and Marine Insurance Company.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants,
and
PHILADELPHIA FIRE AND MARINE INSURANCE COMPANY, a corporation,
Defendant.

On Bill, &c.

Defendant, Philadelphia Fire and Marine Insurance Company, a corporation, hereby appeals from the final decree made by the Chancellor on the advice of Vice-Chancellor Fallon in the above entitled cause on March 5, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

ARTHUR T. VANDERBILT,
Solicitor of Defendant, Philadelphia Fire and Marine Insurance Company.

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

ARTHUR T. VANDERBILT,
Of Counsel with Defendant, Philadelphia Fire and Marine Insurance Company.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON, Complainants-Respondents, and PHILADELPHIA FIRE AND MARINE INSURANCE COMPANY, a corporation, Defendant-Appellant.	On Appeal from the Court of Chancery.

The answer of Melton Bros., Inc., a corporation, and George Melton and Peter Melton, the above named respondents, to the petition of appeal of Philadelphia Fire and Marine Insurance Company, the above named appellant.

These respondents, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admit that a decree was, on March 5, 1928, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

KINKEAD & KLAUSNER,
Solicitors for and of Counsel with Respondents.

Case.

IN CHANCERY OF NEW JERSEY.

Between MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON, Complainants, and PHILADELPHIA FIRE & MARINE INSURANCE COMPANY, a corporation; GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation; and NEWARK FIRE INSURANCE COMPANY, a corporation; Defendants.	On Bill, etc. Minutes of Final Hearing.

Before—Hon. JNO. J. FALLON, *Vice-Chancellor.*

APPEARANCES:

Messrs. KINKEAD & KLAUSNER, for Complainants.

ARTHUR T. VANDERBILT, Esq., for Defendants.

Chancery Chambers, Jersey City, N. J.,
October 4th, 1927.

The Vice-Chancellor: I read the complaint and answer in one of these sets of papers—I presume they are all practically the same?

Mr. Klausner: Practically the same; there is just a little distinguishing feature, and I think it is fair

to the Court that I give you a resumé of the entire situation: Melton Bros., Inc., a corporation of New York, had a soda and confectionary store at 620 Washington Street, Hoboken. Prior to December 15th, 1925, they were insured in nine different companies. These insurance companies had insured them against a loss by fire, etc. On December 15, 1925, a fire occurred in these premises. Subsequently to that time, Mr. Anthony Melton, the President of Melton Bros., acting on behalf of Melton Bros., signed an appraisal agreement—the kind that is usually signed under the terms of the Standard Fire Insurance Clause of New Jersey—and Mr. Walton (I believe it was Mr. Walton himself) on behalf of the Insurance Companies, signed this same appraisal agreement. They could not come together, and they each appointed appraisers, and, under the terms of that agreement, those two appraisers were to appoint an umpire. The appraiser appointed by Melton Bros. was Samuel Silverman; the appraiser appointed by the Insurance Companies was a man by the name of David Weinstock—and I will go into it later in great detail—and these two, under circumstances, appointed as umpire a man by the name of Ginsberg. Then, subsequently, a certain award is alleged to have been made, and for certain reasons Mr. Silverman refused to sign that alleged award; and then Melton Bros. came to our firm and we then proceeded to see if we could not adjust the matter, and we took the matter up with Mr. Vanderbilt, who represented these various insurance companies, and there was delay, delay and delay (as will be shown by certain correspondence), on behalf of the insurance companies, as is usual, and on behalf of Mr. Vanderbilt, (as will be shown by these letters), until finally the year was

approaching its end within which suit must be brought, and we went out to Vanderbilt's office twice—two or three times—and once he was busy, and then the next time we had an examination, and then we had correspondence as to whether it could be adjusted, and Mr. Vanderbilt was going to take it up with the companies, and it was delayed again, until finally, they were procrastinating so long that we could not take any chance on the matter being adjusted, and, as it ought to come in within the one year period, as set forth in the policies, we started suit on the nine different policies in the Supreme Court, Hudson Circuit. Then, as to those nine policies, Mr. Vanderbilt, on behalf of six of the companies, removed six of them to the United States District Court—a little more delay—and they were removed to the law side, of course, of the United States District Court; so we are now in a position where we have three law actions pending on three of the policies in the New Jersey Supreme Court, Hudson Circuit, and six of the actions pending in the United States District Court, on the law side. Answers were filed on behalf of the various insurance companies in the six actions in the United States District Court, and in the three actions in the State Court, and in those answers, amongst other things, they set up this alleged award. Of course, realizing that we could not object to the award because we believed that the alleged award was illegal and fraudulently made and contrary to the terms of the appraisal agreement, we had to go into the Court of Chancery to have this alleged award set aside, and to enjoin the setting up of the alleged award as a defense in the law action, which we proposed to do, and did do, in the six actions in the United States District Court, and likewise in

the three actions in the State Court. Now, what was the situation with reference to this award? The Appraisal Agreement (and I think it is very important for me, at this time, to read certain provisions of that Appraisal Agreement—I think it will make the matter clearer) first, on behalf of these companies, and then on behalf of Melton Bros., distinctly says as follows, amongst other things, upon which we particularly base this action: "That the said two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two, when filed with the insurance companies above designated, shall determine the amount of sound value and of loss or damage."

The Vice-Chancellor: That is substantially what each one of the policies of insurance says?

Mr. Vanderbilt: Exactly the same.

Mr. Klausner: Yes, sir; exactly the same; and what we particularly call your Honor's attention to is that the said two appraisers together shall then estimate and appraise the loss, stating separately sound damage to each item, and failing to agree, shall submit their differences only to the umpire. This is a little different from the case decided a little while ago by Vice-Chancellor Church (which I think perhaps your Honor is looking at; we are not complaining, in this action, that the appraisers, as in that case, did not take the proper things into consideration—I believe that was the crux of the situation in that case.

The Vice-Chancellor: But you are complaining in this case that the umpire was not impartial? In

that case they said that he was impartial, but you are claiming that he was partial?

Mr. Klausner: We claim he was partial—but, more important than that, that the two appraisers in this transaction did not disagree, item by item, and did not, in accordance with the terms of the policy (or in accordance with the terms of the Appraisal Agreement, which we submit, of course, superseded the terms of the policy) item by item go over the transaction and see if they disagreed, item by item, and did not submit only their differences to the umpire—that is, they never had an item by item disagreement, which it was their duty, under the terms of the Appraisal Agreement to set out.

The Vice-Chancellor: Does it state "item by item"?

Mr. Klausner: Yes, sir.

The Vice-Chancellor: I don't know that it does. It says they shall state—

Mr. Klausner: May I read it again, your Honor—"that the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item."

The Vice-Chancellor: From that, you conclude that must go over it item by item?

Mr. Klausner: Item by item; and we have a number of cases that I can cite to your Honor where they say that "state separately the sound value and damage to each item" of course means "item by item".

The Vice-Chancellor: You claim, in this action, the Appraisers did not have an opportunity to disagree, but that one of the Appraisers tied up to the umpire and then made an award, and then put it up to the other man to sign it, and he refused to sign?

Mr. Klausner: Yes; and I believe it was only just because I realize the shrewdness and sagacity of my opponent—and he will bring it out any-way, whether it is material, or not, and we claim it is not material, but—

The Vice-Chancellor: He may not bring it out.

Mr. Klausner: Oh, I know Mr. Vanderbilt too well, so I want to show the whole situation, so there is no camaufiage—we went to the United States District Court and went ahead on those six policies up there, and Judge Bodine—

The Vice-Chancellor: How does that get in before me? With all the astuteness Mr. Vanderbilt is possessed of, he can hardly get before me anything in this other court, unless it is material; and then there has got to be better evidence than somebody's say-so. (To Mr. Vanderbilt.) Do you expect to get any such stuff as that in? If you do, I will let him go on and talk.

Mr. Vanderbilt: Well, I am not complaining, your Honor. May it please the Court, the last time the issues which are here involved were tried it was the Appraiser for the Insurance Companies and the Umpire—who was supposed to be neutral—who were the objects of attack, but I notice, in this instance, from the opening, that it is counsel for the defendants that is under attack.

The Vice-Chancellor: No—he is saying that you, by sinister means, would undertake to impress upon the Court things that might not be altogether correct.

Mr. Vanderbilt: Well, I have known your Honor long enough to know that you know that I would not try it.

The Vice-Chancellor: When counsel was talking about your astuteness, and perhaps your ability to

get before the Court immaterial matters, I was going to suggest that perhaps he has not had enough experience with me yet.

Mr. Vanderbilt: Well, I know enough not to try that. Now, the facts are very simple in this case: A fire occurred; I believe there were nine companies involved in all; and, after the fire, the insured, through their adjuster, Mr. Silverman, failing to come to any agreement with the companies' adjuster, agreed that they would submit the question of determining the sound value and loss to appraisers, under the provisions, as Mr. Klausner says, of the Standard New Jersey Fire Insurance Policy. The insured designated as their Appraiser Mr. Samuel Silverman, the brother of Mr. Harry Silverman. The companies designated as their Appraiser Mr. David Weinstock. The two appraisers met and agreed upon a man mutually known to them as the umpire, Mr. Ginsberg; and that was all done in accordance with the terms of the policy; no objection was made to it, and I believe it met with consent. If they had not agreed, as your Honor knows, they could have gone before a Common Pleas Judge for the appointment of an umpire. We claim that, following the appointment of the umpire, the Appraisers went to the scene of the loss, and made an effort to agree, were unable to agree, and then finally went to the umpire with their case.

The Vice-Chancellor: You say they both went to the umpire with their case?

Mr. Vanderbilt: They both went to the umpire with their case, and met with the umpire. The umpire, acting with them, determined the amount of the loss; and Mr. Weinstock, representing the insurance companies, concurred in that finding, and those two signed the award, under the provisions of

the arbitration agreement. Now, it is our defense, first, that the award was had legally and according to law, under the terms of the policy; secondly, that the complainants are in *laches* in coming forward at this time and objecting to the award. Suit was started at law in all of these cases on November 26, 1926, and the first we knew that the award was objected to, or that it was questioned, was when these suits in equity were started—the three in this Court, as Mr. Klausner, and a corresponding number in the U. S. District Court. In other words, the plaintiff stood by from April, 1926, when the award was made, until January of this year, when the bills in Chancery were filed, without raising a single objection to that award; and it was not until after the defendants had completed the award (as necessarily they had to do as one of the defenses to the action at law) that anything was done about it. Now, I think we will show to the Court, on our part, that if the award is to be set aside the action must be taken promptly.

The Vice-Chancellor: I notice, from your answer, that you also seem to plead that the suit was not brought within one year?

Mr. Vanderbilt: The action in equity. The third point on which I rely is that they are estopped at this time to deny the validity of the award by reason of the changed conditions which we are now met with. If this award were to be set aside, your Honor, and the parties were to be left to the making of a new appraisal and award, all the material from which they would have to judge is gone—the *debris* has been thrown out; we don't know where the things that were saved are; we don't know whether they are in the same condition—in other words, by reason of the lapse of time and

change in the condition of these goods, we are not in a position now, if the award were set aside at this time, to go back and have a new award made, except by the rankest kind of guessing and speculation on the part of the appraisers and the umpire; so we say the third point is that they are estopped to deny the validity of the award at this time. Your Honor has raised the point that the suit was not started in one year—I have looked up that point rather thoroughly, and I find the law to be well-established that if an action at law is started within a year, the twelve-month period does not apply to any collateral proceeding on an award; so I do not press that defense in this suit.

The Vice-Chancellor: Let me ask you, Mr. Klausner: Is your contention here in this proceeding as to the unfairness of the umpire—do you claim that he, in any wise, was not an impartial person, or do you claim that he perpetrated any fraud in this matter; or do you merely complain that his act, in putting a value upon the property, was a little too previous—in other words, that the other two appraisers had not disagreed yet, and consequently he had no right, at the time he acted, to act?

Mr. Klausner: We are claiming both; but, before coming to that, your Honor, I omitted to state (and perhaps at this time Mr. Vanderbilt may consent to it) that in two of the policies of the whole nine it is the fact that they were inaptly (whether through mistake, or otherwise) drawn—that is, they were inaptly prepared. Seven of the policies read "Melton Bros., Inc.", but two of the policies, either through ignorance or mistake, or something, read, "George Melton and Peter Melton, doing business as Melton Bros., Inc." In addition to coming

into this Court to set aside the award, we are asking to have those two policies reformed.

The Vice-Chancellor: Well, I don't see that the other side can have much objection to that, inasmuch as they agreed to the arbitration proceedings, because they must have waived, by that, any technicality of that kind, didn't they?

Mr. Vanderbilt: Well, I don't believe, your Honor, that we did waive it by that, but I do not have any objection to the reformation of those policies to read "Melton Bros., Inc." In other words, I want to get my position clearly before the court; the only position I am taking is one going to the merits of the award. I contend that the award was properly made, and that, after this lapse of time, cannot be upset.

The Vice-Chancellor: Well, you have the burden upon you, then, Mr. Klausner, to show, under the terms of that agreement, that there was no disagreement between the Appraisers, and, therefore, there was no necessity for the umpire to act.

Mr. Klausner: Exactly.

The Vice-Chancellor: In addition to that, you are claiming that the umpire was not fair in the matter—that, for some reason or other that you are going to disclose, he perpetrated a fraud.

Mr. Klausner: Yes. Then, I take it, there is no question about the reformation?

The Vice-Chancellor: Counsel says that he will consent to it, and so, if the thing goes your way ultimately, then, when it comes to preparing a decree that can be taken care of. You agree that it is not necessary to go into that, Mr. Vanderbilt?

Mr. Vanderbilt: Yes; I have already said that, your Honor.

Mr. Klausner: Now, with reference to the defenses, as to the estoppel and as to the laches, I

think we will be able to clearly show to your Honor, by means of correspondence and otherwise, that the award was objected to, right after it was made, by our firm acting as attorneys for Melton Brothers, and by taking the matter up with Mr. Vanderbilt to have the matter adjusted, and not to accept the award.

The Vice-Chancellor: I judge, from what you said before, that you are going to show some excuse in that respect, by reason of some dealings you had with some representative of the company, and, subsequent to that, by some dealings you had with Mr. Vanderbilt; you stated quite positively you went to Mr. Vanderbilt's office, etc.

Mr. Klausner: Yes. Now, with reference to the defense of not being able to get a new award if this award is set aside, I think that that is not at all germane to this subject.

The Vice-Chancellor: Well, it would be germane in one respect—if his point is well taken, as I understand, that you did not make known any grievance that you had in that respect diligently, then I can see where they would be hurt; but if you had made it known promptly, I think they would have taken some means to have the *res* protected.

Mr. Klausner: I mean if we showed that we immediately, or within a reasonable time, objected to the award, the mere fact that the material has been removed I think is a matter for argument later on.

The Vice-Chancellor: Well, we will take care of that; I do not want to be assuming too much in the beginning.

Mr. Klausner: It is stipulated between counsel that the three actions of Melton Bros., Inc. et al. v. Globe & Rutgers Fire Insurance Company, Philadelphia Fire & Marine Insurance Company, and

Newark Fire Insurance Company of Newark, N. J., shall be tried at the same time?

Mr. Vanderbilt: That is consented to by us.

THE CASE FOR THE COMPLAINANTS.

ANTHONY MELTON, sworn.

DIRECT EXAMINATION BY MR. KLAUSNER:

Q. Mr. Melton, where do you live at the present time? A. 289 York Street, Jersey City.

Q. And are you one of the officers of Melton Bros., Inc., the complainant in these actions? A. Yes, sir.

Q. What officer? A. President.

Q. And was Melton Bros. the occupant of the premises known as the building—that is, the store and cellar of the building—at 620 Washington Street, Hoboken? A. Yes, sir.

Q. Were they the occupants of that store and those premises in 1925 and prior thereto? A. Yes, sir.

Q. During their occupancy there did you have charge of the placing of the fire insurance? A. Yes, sir.

Mr. Vanderbilt: We admit the policies.

(Mr. Klausner offers in evidence Policy No. 76600, Philadelphia Fire & Marine Insurance Company; Policy No. 3539412, Globe & Rutgers Fire Insurance Company; and Policy No. 10364, Newark Fire Insurance Company of Newark, N. J.; all of which are admitted without objection, and are marked, respectively, Exhibits C-1, C-2 and C-3.)

Q. These three policies, which were admitted in evidence, were in effect on December 15, 1925? A. Yes.

Q. Was there a fire in these premises on December 15, 1925? A. Yes, sir.

Q. And after that fire did you appoint an adjuster—did you employ an adjuster? A. I did.

Q. And what was his name? A. Harry Silverman.

Q. And that adjuster did not settle the fire loss, did he? A. No, sir.

Q. Did you, thereafter, enter into an appraisal agreement with the various insurance companies for the settlement of this fire loss? A. Yes, sir.

Mr. Klausner (To Mr. Vanderbilt): I suppose you admit that?

Mr. Vanderbilt: We admit the Appraisal Agreement.

(The Appraisal Agreement is offered in evidence by Mr. Klausner, admitted, and marked Exhibit C-4.)

Q. And, under the terms of the Appraisal Agreement you appointed an appraiser in your behalf? A. Yes, sir.

Q. And whom did you appoint? A. S. Walter Silverman.

Q. And he is a brother of Harry Silverman? A. Yes.

Q. Now, did you learn of an alleged award under the terms of that Appraisal Agreement?

Mr. Vanderbilt: I object to that.

The Vice-Chancellor: An objection stated, without grounds, under the ruling of the upper court, does not seem to be of any consequence.

Mr. Vanderbilt: Well, on the ground that whether he learned of it is immaterial; I think it has no bearing on this issue.

The Vice-Chancellor: I will sustain the objection.

Q. What did you next do, after entering into the Appraisal Agreement, and after the appointment of Silverman, with reference to the collection of this insurance? A. I went to my attorneys, Kinkead & Klausner's office.

Q. And about when was that? A. I think it was after the award, April 27th, 1926.

Q. Now, that alleged award might have been April 28th, 1926, might it not? A. Yes, around that time.

Q. You went to your lawyer's office? A. Yes.

Q. Why did you go to your lawyer's?

Mr. Vanderbilt: I object to that.

The Vice-Chancellor: I will sustain the objection.

Q. And did you ever get paid any money under these insurance policies? A. No, sir.

The Vice-Chancellor: I think the other side will undoubtedly concede that.

Mr. Klausner: Yes; it is just a question leading up, to make it clear.

Q. Did you, at any time after April 28, 1926, object to this alleged award?

Mr. Vanderbilt: I object to that question as immaterial and irrelevant.

The Vice-Chancellor (to Mr. Klausner): What do you mean by "objecting to it,"—I would like to know just what you mean about that.

Mr. Klausner: Perhaps I am going into the matter too rapidly; perhaps I may be a little premature, but I think it will merely speed up the case, rather than bring him on after they put in their defense.

The Vice-Chancellor: Is it not apparent that he has objected to the award?

Mr. Klausner: I want to show how soon thereafter it was done, to overcome the defense of laches.

The Vice-Chancellor: You had better show, if you can, just what was done, and then we will know just what it was.

Q. What did you do, after April 28, 1926, with reference to the collection of this insurance? A. I went to my lawyers, Kinkead & Klausner's office.

Q. And then, do you, of your own knowledge, know what they did with reference to the collection of this insurance? A. Yes.

Q. What did they do? A. The award was not legal—

Mr. Vanderbilt: I object to that.

Mr. Klausner: I submit that that be stricken out, your Honor. I will withdraw the question.

Q. What did you next do, after you went to the office of Kinkead & Klausner? A. I directed the lawyers to sue the companies.

Q. Then, what did you do after that? A. After that we went to Mr. Vanderbilt's office.

Q. You went to Mr. Vanderbilt's office? A. Yes.

Q. Who went to Mr. Vanderbilt's office? A. We went twice—Judge Kinkead and I, and Mr. Sam Silverman.

The Vice-Chancellor: Will it be stipulated on the record that the Mr. Vanderbilt he is referring to is the Mr. Vanderbilt who is the attorney of the defendants in this suit?

Mr. Klausner: Yes.

Mr. Vanderbilt: Yes.

Q. Now, you went twice to Mr. Vanderbilt's office? A. Yes, sir.

The Vice-Chancellor: Can you fix the dates when he went there?

Q. When did you go? A. The first time I went with Mr. Klausner was in July.

Q. The first time you went with Mr. Klausner? A. Yes.

Q. Who went the first time with you? A. Mr. Klausner, Mr. Sam Silverman, and my brothers.

Q. And yourself? A. And myself.

Q. And did you, at that time, in Mr. Vanderbilt's office, refuse to accept the award? A. Yes, sir.

Q. And then, when was the next time you went? A. The second time Mr. Klausner was on his vacation, and we went with Judge Kinkead, together.

Q. And when was that? A. In August.

Q. Now, who went the second time? A. Sam Silverman, I and my brothers and Judge Kinkead.

Q. And when you say "in July and August," do you mean of 1926? A. 1926.

Q. Now, the first time that you went with Mr. Klausner and Mr. Sam Silverman and your brothers at Mr. Vanderbilt's office, was anything done at that time? A. No, sir; Mr. Vanderbilt was busy that day, and it was postponed—the meeting.

Q. And the next time you came to Mr. Vanderbilt's office you say you went in August with Judge Kinkead? A. Yes, sir.

Q. Mr. Silverman and your brothers? A. And my brothers.

Q. Was anything done at that time? A. Yes, sir.

Q. What was done? A. Examination.

Q. Who examined? A. Mr. Vanderbilt.

Q. Examined you? A. Yes, sir.

Q. And examined your brothers? A. No, sir.

Q. Just you? A. Just me, yes.

Q. But all of you were present at the same time? A. All, yes.

Q. And, after that, were you ever present in the office of Kinkead & Klausner when they called Mr. Vanderbilt on the 'phone? A. At various times.

Q. And who called him? A. Judge Kinkead called him.

Q. And that was after August? A. Yes, sir.

Q. You say "various times"—can you tell us, approximately, how many? A. I can recall about over ten times.

Q. Over ten times? A. Over ten times, yes.

Q. And then, after those various telephone calls, what did you do in order to collect the insurance? A. I directed my lawyers to go ahead with my case —to sue the companies.

Q. Did you ever receive letters from E. D. B. Walton & Son, adjusters of the various insurance companies? A. Yes.

Q. Addressed to you? A. Yes.

The Vice-Chancellor: Who were those parties, did you say—Walton & Son?

Mr. Klausner: Walton.

The Vice-Chancellor: Are you going to show some connection between them and the insurance companies?

Mr. Vanderbilt: I will admit on the record that Mr. Samuel Walton was the adjuster of that firm. He was the adjuster who operated with Mr. Harry Silverman, representing the assured, immediately after the fire, and when they were unable to come to a settlement then the Appraisers Sam Silverman and David Weinstock were appointed.

Q. Now, after the fire, did you, on your behalf, have anyone prepare an inventory of the loss of the fire, for the purpose of presenting it to Mr. Walton, the Adjuster of the insurance companies? A. Yes, sir.

Q. And who did you have prepare that inventory? A. Harry Silverman.

Q. Harry Silverman? A. Yes.

Q. Who was your adjuster? A. Yes.

Q. And Mr. Walton was the adjuster of the insurance companies? A. Yes, sir.

Q. Did you and Mr. Harry Silverman, or you alone, have conversations with Mr. Walton with reference to this loss? A. A lot of times.

Q. And did you ever have any conversation with reference to obtaining an offer from the insurance companies? A. No, sir.

Q. That is, did you ever ask Mr. Walton for an offer? A. Yes, I did ask for an offer—yes.

Q. But you never got an offer?

Mr. Vanderbilt: I object to that, as immaterial.

The Vice-Chancellor: It is immaterial; I will sustain the objection.

Q. Now, after the fire, did you pay the rent for these premises?

Mr. Vanderbilt: Objected to, as immaterial.

The Vice-Chancellor: What is the materiality of that?

Mr. Klausner: The purpose of it is that we kept the evidence of the loss as long as possible, to give the insurance companies and their Appraisers all the opportunity in the world to go there and make an item by item statement of the loss, which they never did.

The Vice-Chancellor: Well, how would your reply from this witness, if he was to reply in the affirmative that he paid the rent of those premises, prove that the goods remained in the premises? I will sustain that objection as made.

Q. Did you see the condition of the premises directly after the fire on December 16, 1925?

Mr. Vanderbilt: Objected to, as immaterial.

The Vice-Chancellor: I will permit it; it cannot harm you.

Q. And how long did that condition and did that situation continue to exist?

Mr. Vanderbilt: Objected to, as immaterial.

The Vice-Chancellor: What you want to know is just how long these goods which were called "debris" continued on these premises.

Mr. Klausner: If they had asked us for an opportunity to look at it, we could have arranged that.

The Vice-Chancellor: I will overrule the objection in this respect—I will let you show where they were taken to, and when.

Mr. Vanderbilt: We urge this further objection, your Honor—we say the matter was all determined as of the date of this award, and what happened after that with the goods, and what they did with them after that, has no bear- until the time comes when there is an application made to set aside this award. Now, from April to December no effort was made to set aside this award, which was affirmatively binding.

The Vice-Chancellor: They are insisting, I understand, that, in the matter of estoppel, wherein you indicated, as you stated heretofore, that if this award is set aside now it would be an injustice to the defendant companies because the defendants would not have an opportunity of observing or inspecting these goods—

Mr. Vanderbilt: Of course I cannot object to the order of the proof here, but if this was a court of law I should object to it.

Mr. Klausner: I am only trying to speed it up.

Mr. Vanderbilt: Well, you cannot speed it up by trying to put in evidence that ought never to come in.

The Vice-Chancellor: I think you had better hold back your evidence; you see you may be anticipating something which may or may not be brought up by the other side.

Mr. Klausner: All right. You may take the witness.

CROSS EXAMINATION BY MR. VANDERBILT:

Q. You were out to my office on two occasions, Mr. Melton—one in July and one in August, 1926? A. Yes.

Q. And you came there in response to a letter from me calling for examination under oath, under the terms of the policies, did you not? A. Yes, sir.

Mr. Vanderbilt (To Mr. Klausner): Will you produce the letter.

Mr. Klausner: Dated when?

Mr. Vanderbilt: I think June 26th, if I am not mistaken.

(Mr. Klausner produces a paper which he hands to cross examining counsel.)

Q. I show you a carbon copy of a letter and ask you if you received the original of that? A. (After examining the same) I had an examination, but I never received—

Q. No, did you receive the original letter of which this is a copy? A. The original letter?

Q. Yes; this is my office copy, and apparently the original was mislaid, but we used this before—do you recall seeing that? A. I think I did, yes.

Q. And was it in response to this letter that you came to my office in July, 1926? A. Yes, sir.

Mr. Vanderbilt: I desire to offer the carbon copy in evidence.

The Witness: I had a previous examination with Mr. Walton before.

Mr. Vanderbilt: I move to strike that out as not responsive to any question.

The Vice-Chancellor: I will strike it out; Mr. Klausner can bring it out if he thinks it is

material. The paper may be marked for identification at this time.

(The carbon copy identified by the witness is marked D-1 for identification.)

Q. And was it in response to this letter, D-1 for identification, Mr. Melton, that you came to my office with Mr. Klausner and with Mr. Silverman and your brothers? A. Yes, sir.

Q. What took place upon the occasion when you came out in response to this notice, July 26th? A. I had an examination.

Q. Did we have the examination that time, or was I tied up in court and we did not have the examination? A. The first time?

Q. Yes. A. No, we didn't have the examination at that time; it was postponed.

Q. And why was it postponed? A. You postponed it, on account you were busy.

Q. Then what took place next? A. We postponed it for another week, and for another week—for two or three weeks separate we postponed it.

Q. And finally, in August, you came out to my office for the second time? A. Yes.

Q. And on that occasion we had an examination under oath which was mentioned in this Exhibit D-1 for identification? A. Yes.

Q. I show you a transcript of shorthand notes and ask you if this is a transcript of the examination under oath which was had in my office, under date of August 3d, 1926?

The Vice-Chancellor: How can he possibly tell that, Mr. Vanderbilt? I don't suppose he transcribed it.

Q. Well, did you give the testimony which is set forth in this transcript?

The Vice-Chancellor: Can not you authenticate that transcript, or will you (Mr. Klausner) concede that it is a correct transcript? There is no use of us going into any technicalities about it.

Mr. Klausner: I never saw the copy; I don't believe I read it, so I would not want to take the time of the Court to go into it.

The Vice-Chancellor: Ordinarily, the view I have of the law in respect to these transcripts is that they are not evidential unless authenticated.

Mr. Vanderbilt: Well, I will call the stenographer.

The Vice-Chancellor: Yes; all you need do is call the stenographer and let him testify to his notes.

Mr. Klausner: We will admit that, if Mr. Vanderbilt says the stenographer will so testify; we will admit it.

Mr. Vanderbilt: He would. It is to save time, that is the only purpose.

(The transcript was thereupon marked Exhibit D-2 for identification.)

Q. And on this second occasion was the last time you were ever in my office, wasn't it? A. Yes, sir.

Q. And that was the time that Judge Kinkead and Mr. Samuel Silverman were there? A. Yes.

Q. And Mr. Samuel Walton, the Companies' Adjuster? A. Yes.

Q. And do you remember that there was a stenographer there who took down all that was said and done by us? A. Yes, sir.

Q. Mr. Herman Winarsky? A. I don't know his name.

Q. Well, a light, blond-haired young man? A. Yes.

Q. Nothing was said in reference to the case on the first occasion when you were out there on July 2d, was there, Mr. Melton? A. On the first occasion in July?

Q. Yes. A. No, there wasn't said anything.

Q. And the only thing that was done on that occasion was to adjourn the case because I was tied up? A. Exactly.

Q. And the time when you really saw me out there was on August 3d, 1926, when we had this examination in the presence of the stenographer, which has been transcribed into Exhibit D-2 for identification? A. Yes.

Q. You did not say anything to me, when you were out to my office, Mr. Melton, about refusing to accept the award? A. Why, you knew all about it, Mr. Vanderbilt.

Mr. Vanderbilt: I move to strike that out.

The Vice-Chancellor: Strike it out. Answer the question.

A. No, I did not.

Q. And you knew the purpose of this examination under oath, which I conducted on August 3d, 1926, didn't you, Mr. Melton? A. Yes.

Q. What was its purpose? A. Examination—different questions from the inventory, to try to prove the losses.

Q. And you knew that the Companies were questioning then, and they had been previously questioning their obligation to pay Melton Bros., Inc., under these policies, didn't you? A. Yes, sir.

Q. And that the purpose of the examination was to comply with the provisions of the policies with

respect to an examination under oath? A. Yes, sir.

Q. Which the policies provided for? A. Yes, sir.

Q. When was it that you first told Kinkead & Klausner to bring suit against the Companies? A. After the award was made.

Q. How soon after the award was made? A. I think a day, or a couple of days afterward—a couple of days after the award—the same time when I heard about the award.

Q. Did you ever tell them to bring suit to set aside the award? A. I did.

Q. When? A. The same day.

Q. On April 28th, or 29th, 1926? A. Whenever it was; I can't recall it.

Q. Well, a day or so after the award was made? A. Yes.

Q. Did you ever write the Insurance Companies, or any of their representatives, saying that you refused to accept the award? A. No.

Q. When were the goods moved from the store where they had been damaged by fire? A. The last part of April.

Q. Before or after the date of the award? A. Before.

Q. They were removed before the award was made? A. Yes—at the same time, the same day the award was given, they were moving out of the store already.

Q. Well, your time was up on May 1st—you had to get them out before May 1st? A. Before May 1st, yes.

Q. Did you know about the award before you removed the goods? A. I don't get you right.

Q. (Question repeated).

The Vice-Chancellor: What is the significance of this, Mr. Vanderbilt?

Mr. Vanderbilt: Well, I think it has a great bearing, Vice-Chancellor, on the question as to whether he had that knowledge of the award and was objecting to it, and, at the same time, making it impossible to make another award.

The Vice-Chancellor: All right, I will receive it.

A. At that time the goods was moving.

Q. At the time you knew of the award the goods were in the process of being moved? A. Yes.

Q. When you heard of the award did you stop their being moved? A. No, sir; I moved the whole thing.

Q. When you heard of the award did you tell Kinkead & Klausner that you were moving the goods? A. I think, at that time, the goods were all moved.

Q. You think, at the time you went to see Kinkead & Klausner the goods had been moved? A. It was the last part of April.

Q. Can't you tell us what day in April you moved the goods, all of them? A. I think we started to move in the month of April, I cannot give you the exact date, I can't tell you, Mr. Vanderbilt.

Q. You cannot give the exact date? A. No, sir.

Q. Well, then, it might have been before you heard of the making of the award? A. Well, I believe the goods was moved before the award was given.

Q. At any rate, before you knew of the making of the award? A. Yes, sir; I never knew of the award, I think, before the goods was moved.

Q. Now, you went to see Kinkead & Klausner after hearing of the award, and what did you tell

them to do? A. I told them to bring action against the Companies.

Q. For what? A. First, to set aside the award.

Q. To set aside the award? A. Yes.

Q. And what else? A. And to bring a suit against the Companies.

Q. Did you tell them that you had already caused the goods to be removed? A. Yes, sir.

REDIRECT EXAMINATION BY MR. KLAUSNER:

Q. Now Mr. Melton, at the time that the award was made, do you know whether or not the Appraiser and the Umpire went to the place where the goods were removed, to examine them? A. Yes, sir.

Q. So that after the goods were removed, the Appraiser of the Insurance Company and the Umpire examined the goods where they had been removed? A. Yes, sir.

The Vice-Chancellor: Do you mean that—after they had been removed?

Mr. Klausner: Yes, sir—after the goods were removed from the store, and in order to make the award, the Appraiser of the Insurance Company and the Umpire examined them in the place where they had been removed.

Q. That is so, is it not? A. Yes, sir.

Q. No, just a minute—and why did you have to move the goods? A. Because I had to move the 1st day of May.

Q. Well, why did you have to move before the 1st day of May? A. The landlord wants to fix up the building.

Q. And were you able to pay the rent? A. I was paying it right along.

Q. (Showing the witness a paper) Did you receive that? A. Yes, sir.

Mr. Klausner: Now, if your Honor please, I have a file of letters here, and I intend to offer every one of them in evidence; now, I think it might save the time of both the Court and the stenographer if I showed these letters to Mr. Vanderbilt, and offered them all at one time, rather than to make each one separately.

Mr. Vanderbilt: If Mr. Klausner will put them in chronological order, I think I can admit all of them, to save time.

Mr. Klauser: I have done that.

The Vice-Chancellor: Then I think you had better put them in such shape, fastened together, that they can be marked as one exhibit.

Mr. Klausner: I have done that; I have them here in chronological order (exhibiting the package of letters to Mr. Vanderbilt). Now, if your Honor please, these letters are admitted by Mr. Vanderbilt.

Mr. Vanderbilt: I consent, your Honor, to their going in as communications between the parties, without admitting that they are all of them relevant. They are admitted as communications between the parties, subject to their relevance and as the Court passes upon them.

The Vice-Chancellor: I will receive them in that way.

Mr. Klausner: The Court will pass upon them, anyway.

The Vice-Chancellor: You can be heard on them later, if a question arises as to the relevancy of any of the letters; I cannot tell offhand.

Mr. Klausner: Well, they will be admitted, except if Mr. Vanderbilt objects to any particular one as to its relevancy?

Mr. Vanderbilt: I do not object to their admission, provided that Vice-Chancellor understands that I do not concede that they are all relevant, but will leave them to be passed upon by the court in the regular course.

The Vice-Chancellor: I do not think I can receive them in that way.

Mr. Vanderbilt: All right; I will admit them all.

(The papers, 28 in number, one of which appears to be a statement or bill, are admitted in evidence as one exhibit, and the package is marked Exhibit C-5).

Mr. Klausner: Now, if your Honor please, here is another batch I would like to offer in evidence, and I want to see if Mr. Vanderbilt objects, and, if so, I will offer each one separately.

Q. Did you, after the fire, receive a notice from Walton, the Adjuster, to come for an examination?

The Vice-Chancellor: That is clearly objectionable; why not show him the paper and ask him if he received that letter.

Q. (Showing the witness a paper): Did you receive that letter?

Mr. Vanderbilt: I object to that, or to the admission of that paper, because it is dated February 16th.

The Vice-Chancellor: He is merely asked now whether he received the letter.

A. Yes, sir.

Mr. Klausner: I offer this letter in evidence, for the purpose of showing that examinations were held prior to the time that we were in Mr. Vanderbilt's office.

The Vice-Chancellor: What is your objection now?

Mr. Vanderbilt: Objected to as immaterial, and objected to on the further ground that it is two months before the appraisal and award and has no connection with it—that it is without the issues in this cause, and utterly irrelevant.

The Vice-Chancellor (To Mr. Klausner): Are you not anticipating again that which you think Mr. Vanderbilt may offer in evidence against you here?

Mr. Klausner: Well, he has brought out, or tried to bring out, the purpose of an examination in his office.

The Vice-Chancellor: I know, but the policy specifically requires that before you institute a suit you must comply with all the conditions of the policy, and one of the conditions is that you must submit to an examination.

Mr. Klausner: And I want to show that we always did. We are alleging fraud in this case on behalf of the Insurance Companies.

The Vice-Chancellor: You are alleging fraud, as I understand in this case, only as to the appointment of the Umpire.

Mr. Klausner: And also as to the making of the alleged award by the Umpire and the Appraiser of the Insurance Companies; we allege that they fraudulently got together and

made this appraisal contrary to law, contrary to morals, contrary to everything under the sun.

The Vice-Chancellor: Let me see the letter you are offering.

(Mr. Klausner handed the letter to the Court.)

The Vice-Chancellor: I will overrule the objection, and admit that.

(The letter is marked Exhibit C-6).

The Vice-Chancellor: It relates, I may say in passing, to a demand on behalf of the Insurance Company that the insured furnish verified plans and specifications of the machinery and fixtures destroyed or damaged. I do not know what the reason for that demand was—however, I suppose it will appear sometime in the case.

Mr. Klausner: I think it will, your Honor.

Q. Did you also receive this notice (showing the witness another paper) from Walton & Son? A. Yes, sir.

Q. And did you receive that notice at the same time (showing the witness another paper dated February 16th)? A. Yes, sir.

Q. And as the result of those notices, were you subsequently examined by Mr. Walton, or someone on behalf of the Insurance Companies?

Mr. Vanderbilt: I object to that, as immaterial and irrelevant.

The Vice-Chancellor: I will sustain the objection. If he was so examined, I suppose there is a record such as was offered in the other matter. He may think he was examined, and he

may not have been examined; I don't know what you mean by "examined"; you see, if he was examined and there was testimony given, I presume it was transcribed.

Mr. Klausner: I do not want to offer the testimony, I am merely trying to show the sequence of events, so we can properly lay the whole matter before the Court and have the Court see the full situation; I think it is only fair and just that we should submit all these facts to the Court, so the Court can see the whole situation.

The Vice-Chancellor: If there were letters sent to this witness requesting his appearance at a certain time and place, you can show that he appeared as the result of those letters; but if you are going to show what transpired there—

Mr. Klausner: No, I am not.

Q. Did you subsequently, as a result of that notice and other notices—

The ViceChancellor: I will sustain the objection as to "other notices," because you see you are going one at a time, so you had better go that way; the other side have a right to object seriatim. Has this been marked—the one you directed his attention to already?

Mr. Klausner: I offer those two, last shown the witness, in evidence.

Mr. Vanderbilt: I object to that as not within the issues, and entirely irrelevant; there is no issue before the Court as to whether or not there was an examination under oath. There is no issue as to the performance of any of the

policy conditions here; the only issue before the Court is whether or not there was an award made in accordance with the terms of the policy. This is simply lumbering up the record with matters not at all germane to the issues.

Mr. Klausner: I submit that, in order to have this matter fully before the Court, it is our duty to present this.

The Vice-Chancellor: I will admit the letters just to show that a request was made that he appear at the time and place stated in them; then if you show that he complied with the request and went there, I will admit that as evidence, too.

Mr. Klausner: That is what I want to show. (To Mr. Vanderbilt) Do you admit that he went there in response to this notice?

Mr. Vanderbilt: Yes.

The Vice-Chancellor: I will say, at this time, too, that I cannot see the particular relevancy in it, but I cannot see the harm in it.

Mr. Vanderbilt: I do not see the harm in it, but I do not think it is at all relevant.

The Vice-Chancellor: Well, if you do not think that it is harmful to you, I will admit it at this time in order to shorten the case.

(The two papers are marked respectively Exhibit C-7 and C-8).

Q. Did you receive, in April, this notice (showing the witness a paper)—did you receive this notice dated April 6, 1926? A. I did.

Mr. Klausner: I offer that in evidence.

Mr. Vanderbilt: I object, on the ground that it is entirely irrelevant to the issues, and is im-

material. It was rejecting the proofs of loss; if the proofs of loss had not been rejected there never would have been any appraisal or any suits or any award.

The Vice-Chancellor: I don't know, but I suppose counsel thinks the offer of these papers will serve him as against your claim of estoppel.

Mr. Vanderbilt: Of course it is all prior to the date of the award.

The Vice-Chancellor: I cannot see the relevancy at this time, but as long as you say you do not see any harm in it I will receive it.

(The paper is marked Exhibit C-9).

Q. And did you, in compliance with that notice, appear at the place mentioned therein for the purposes set forth?

Mr. Vanderbilt: I do not think we ask him to appear anywhere, in that letter.

Mr. Klausner: Well, I withdraw the question.

Q. Did you, in compliance with the letters and notices which have been marked Exhibits ~~C-5 and 6~~ C 6 and 7, subsequently appear as requested?

Mr. Vanderbilt: I object; that has already been testified to.

Mr. Klausner: I did not ask the question, Mr. Vanderbilt; I intended to, but it was not asked.

Mr. Vanderbilt: I thought I heard it.

A. Yes, sir.

The Vice-Chancellor: If you are going to use this witness in any way for it, why not get into the pith of your case with respect to the alleged fraud which is said to have been perpetrated?

Mr. Klausner: This man is not qualified to be used for that purpose, your Honor.

The Vice-Chancellor: All right.

RECROSS EXAMINATION BY MR. VANDERBILT:

Q. You testified that Mr. Weinstock, the Appraiser named by the Company, and Mr. Ginsberg, the Umpire, saw these goods after they had been moved from Washington Street—they also saw these goods in the place where the fire was, didn't they? A. Yes, sir.

BY THE VICE-CHANCELLOR:

Q. How soon before they were removed from the place was it that they saw the goods in your place of business, or at what period prior to their removal was it that they saw them? A. It was in the beginning of April.

Q. In the beginning of April they saw them in your place? A. Yes.

Q. And it was the latter part of April that they were moved from your place? A. Yes, sir.

Q. When was it, then, they saw them after the removal from your place? A. I recall, your Honor, that when this Appraiser came down to my place, that day we started moving the place, you see; we had some stock in Railroad Avenue, Jersey City, and some stuff was laid down there.

Q. You mean, in Washington Street? A. Yes.

Q. Well, you haven't answered my question: I asked you when was it, after the removal of the

goods, that this Appraiser saw the goods at the place that they had been removed to? You have stated that this Appraiser saw the goods after they were removed from Washington Street? A. Yes, sir.

Q. Now, when and where did the Appraiser see those goods after their removal from Washington Street? A. The same day we went down to Hoboken, in Washington Street, and he saw some of this stuff in Washington Street; then we took the car and went up to Railroad Avenue, Jersey City, and they saw the rest of it.

By Mr. Vanderbilt:

Q. Now, this time that the Umpire and the Appraiser named by the Companies saw the goods, part in your place and part in Railroad Avenue was before you learned of the award? A. Yes, sir.

Rudolph Magnus, sworn.

Direct Examination by Mr. Klausner:

Q. What is your occupation? A. Police photographer, City of Hoboken.

Q. And have been for how many years? A. Well, about twenty years, twenty-five years.

Q. And did you, at the request of Melton Bros.—

The Vice-Chancellor: I do not think you mean that.

The Witness: Well, we have been doing the Police work for twenty-five years—my father and myself.

Q. Well, how long have you been in the photography business? A. Since I was fourteen years of age.

Q. How old are you now? A. Thirty nine now.

Q. And did you, at the request of Melton Bros., take photographs of the premises 620 Washington Street, Hoboken, N. J.? A. I did.

Q. I show you eleven different photographs and ask you if they show different parts of the premises at 620 Washington St., Hoboken, N. J.? A. It does.

Q. Now, can you tell us just when those photographs were taken? A. February 11th and 12th, 1926.

Mr. Klausner: I offer these photographs in evidence. Have you any objection to those?

Mr. Vanderbilt: No objection.

(Photographs were admitted and marked, as one exhibit C-10).

Q. Now, Mr. Magnus, did you, on the back of each photograph, make a little notation of what each photograph generally represents? A. I did.

Q. Now, will you just tell us what the store at 620 Washington St., Hoboken, N. J., consisted of, with reference to its general plan—I mean, how many rooms there were, and where the store was, and where the rooms were, by drawing a little diagram (handing the witness a sheet of fools-cap paper and a pencil)? A. (The witness complied).

Q. Now, that is a rough sketch of it? A. Yes.

Q. And where is the entrance to the store? A. The entrance goes in this way (indicating).

Q. You say the entrance is there? A. Yes (marking it as "Entrance"). There is a soda fountain on this side (indicating on the right-hand side).

The Vice-Chancellor: Mark it "Soda fountain."

(The witness complied).

Q. As to the door into the store, you have marked it "Entrance" A. Yes.

Q. Then, going in, you say, on the right-hand side, is the soda fountain? A. Yes.

Q. And you marked that "Soda Fountain"? A. Yes. On the left-hand side is the candy counter (marked "Candy Counter" on the sketch).

Q. Then, going from the front to the back of the store, what is in back of the store? A. The parlor, the Soda Parlor. (So marking it).

By the Vice-Chancellor:

Q. A Soda and Ice Cream Parlor, is it not? A. Yes; on the right-hand side, as you go into the store, at the end of the soda fountain, to the rear, there is an entrance on the right-hand side.

By Mr. Klausner:

Q. An entrance to what? A. To a room used as a kitchen, and marked "Entrance to kitchen."

Q. And this would be the kitchen (indicating)? A. Yes; (so marking it).

Q. The kitchen being where? A. On the left-hand side, as you go inside of the door.

Q. Speaking of the entrance to the kitchen? A. Yes.

Q. So that the kitchen is practically to the right of the soda and ice-cream parlor? A. That is right; and as you went inside the entrance, toward the kitchen, on the right-hand side, is a sort of a closet which is directly under a pair of stairs.

Q. To the right-hand side of the entrance to the kitchen, is a closet underneath the stairs? A. Yes (so marked).

Q. And the closet you refer to, underneath the stairs, is the photograph that has on the back of it "No. 4, Closet in rear of store, under stairs leading to floor above"? A. That is right.

Q. And these photographs truly represent the conditions on those days, February 11th and February 12th? A. Yes.

Q. Will you just make a general diagram of the cellar underneath the stair at that address? A. (The witness complied drawing a diagram on the same paper upon which the previous diagram was drawn). This is the entrance down here (indicating).

Q. The entrance from where? A. From the street to the cellar (so marking it).

Q. Is it to the left of the store? A. The entrance is under the left-hand window.

Q. The cellar was divided in what manner, as you went down into the cellar? A. This is the front (indicating); there is a little room here (indicating); as you go into the back, there is a room.

By the Vice-Chancellor:

Q. In the right rear of the cellar? A. Yes; and then there is another little entrance in here (indicating), on the left-hand side of the store, to another room.

Q. You have indicated on the sketch now the way the rooms are located? A. Yes, sir.

By Mr. Klausner:

Q. That is, generally, the situation? A. Yes.

CROSS EXAMINATION BY MR. VANDERBILT:

Q. These photographs have certain designations —"Room 2", "Room "2", "Room, 1, "Room, 2", on the back of them? A. Yes.

Q. Do they refer to rooms in the cellar, as they are designated here, "1," "2," "3," "4," "5," on the sketch made January 8th, 1926—are those the numbers that you put on these rooms to identify them and tie them up with these photographs of yours? A. Well, you see this entrance here—

Mr. Klausner: Suppose you look at each one separately.

A. I cannot get this one here in my head, right here (indicating "Room 2"); I cannot get that in my head, what it is supposed to be, because I have not seen the pair of stairs on that at all. Now, this (indicating) is supposed to be Washington Street, and that is the rear of the building (indicating).

Q. That is right—a basement view? A. Well, I will just show you—there is one more picture there—

Q. Well, those four there have markings on the back—will you tell us what they refer to? This (selecting one of the four photos designated) is marked "Room 2,"—what does that refer to? A. This is that room here (indicating), alongside of the windows here.

Q. Well, that is marked here "Room 3", is it not? A. Yes, that is Room 3 on there, but I am taking that as Room 2.

Q. Where did you start to number your rooms from, front or back? A. From the front.

Q. Well, if the front is Room 1, how can this one away back here be room 4?

The Vice Chancellor: Is not that Room 2?

The Witness: You see, this cellar, in the front of it, was partitioned off; this here (indicating) is the pair of stairs that you have in there, that I did not see at all (indicating); I never took notice of that. If I had, it would be on here (indicating).

BY THE VICE CHANCELLOR:

Q. Referring to what? A. In this picture here the stairs would be over here (indicating).

Q. What is written on the back of the picture? A. "View of the cellar, rear", that is the front part of the cellar (indicating).

Q. Well, this is marked "View of cellar, rear", is it not? A. Yes; that is the rear of the regular front brick building before the extension was put on; that is, there is an extension that leads out from here (indicating).

Q. Shown on another picture, is it? A. No, it is not shown on any of these pictures.

Q. Well, you are just after referring to some other picture? A. No, you see here is the rear of the brick wall (indicating).

Q. Referring to the picture upon the back of which is written what? A. "Room in back of cellar, rear." There is a brick wall there, and that is the extension that leads out underneath the Ice Cream Parlor.

BY MR. VANDERBILT:

Q. Now, referring to this "4"—what does that "F" on the back of it refer to? A. I did not put that on.

Q. You did not put that on? A. No, I did not put them marks on.

Q. That is on the back of what picture? A. Cellar front. I did not put any of those marks in pencil on there; I put them in ink.

Q. Or these marks "B"? A. No, I did not; I did not put any of those pencil marks on at all; the mark I put on was in ink.

Q. Was there a room in the back of the cellar that was not at all touched by fire? A. I did not take notice of any.

Q. You mean you did not go back there to see whether it was there or not? A. I did not know it was there; I did not go back to see.

Q. You were only inside of the other rooms? A. The rooms that were shown to me by Mr. Silverman and Mr. Melton.

Q. You only took pictures of what they pointed out to you? A. Yes.

Q. You had not complete observation of the rear of the building? A. I had not.

Q. You didn't know there were two or three rooms in the back that you had not photographed at all? A. I did not.

SAMUEL W. SILVERMAN, sworn.

DIRECT EXAMINATION BY MR. KLAUSNER:

The Vice Chancellor: I have been wondering why you are not offering these pictures.

Mr. Klauser: I think it will come out later.

The Vice Chancellor: All right.

Q. Mr. Silverman, where do you now live? A. 216 Grand Street, Jersey City.

Q. And your full name is S. Walter Silverman? A. Samuel Walter Silverman.

Q. And are you the Mr. Silverman who is named as Appraiser under this Appraisal Agreement which I show you, marked Exhibit C-4? A. Yes, sir.

Q. And that is your signature on there? A. Yes, sir.

Q. Now, Mr. Silverman, will you just tell us, from the beginning, your transactions in this case?

The Vice Chancellor: I think you had better put the questions, because I do not know where it is going to lead to.

Q. When were you first notified of your appointment as Appraiser? A. About April 8th, 1926.

Q. And after your appointment as Appraiser, what did you next do? A. I immediately, after I received the papers, got in touch with Mr. Weinstock and informed him that I was appointed Appraiser, and I understood that he also represented the Company, and when we could get together, and we got together on April 10th, about 8:30 in the morning; I met Mr. Weinstock in his office at New York City, and we went into the subject of picking an umpire.

Q. Will you just speak slowly, please? A. I submitted half a dozen names as umpire, and Mr. Weinstock submitted some names, and we could not agree; finally we agreed upon Mr. Bernard Ginsberg as umpire.

BY THE VICE CHANCELLOR:

Q. Who suggested the name of Mr. Ginsberg? A. It is a question in my mind who suggested the

name; I believe it was Mr. Weinstock; and when the name of Ginsberg was suggested I immediately called up Mr. Sonnenfeld to inquire who Mr. Bernard Ginsberg was, and he told me that I knew this Ginsberg because he was in the same office where he is, and I decided all right, we would take Mr. Ginsberg.

Q. Who was Mr. Sonnenfeld? A. He was also an adjuster.

Q. Well, Sonnenfeld and Ginsberg occupied the same office together? A. The same office together.

Q. Why is it difficult for you to remember whether or not it was Mr. Weinstock who suggested the name of Ginsberg? A. Well, I am pretty sure he suggested it, because I asked him who this fellow Ginsberg is, and he said, "You ought to know him, he is an adjuster".

Q. Well, did you suggest Ginsberg? I want to know how he happened to be mentioned as umpire? A. Well, it is pretty sure in my mind it was Mr. Weinstock.

Q. Did you know Ginsberg before that time? A. I knew him, but I could not place him, until I called up Mr. Sonnenfeld's office; then I remembered that I knew Ginsberg years ago.

BY MR. KLAUSNER:

Q. Then what did you do? A. Then we filled out the papers, and decided upon Mr. Ginsberg to be umpire.

Q. And that was on April 10th? A. On April 10th. And then we decided, a few weeks later, to meet in my office and have Mr. Ginsberg come over and make a general survey of the loss.

BY THE VICE CHANCELLOR:

Q. Where is your office in Jersey City? A. At Jersey City—15 Exchange Place.

BY MR. KLAUSNER:

Q. So that, before either you or Mr. Weinstock made any appraisal, or made any inspection of the premises, you both agreed that Ginsberg should go there for the first time when you went there? A. Yes, sir.

The Vice Chancellor: I do not know whether that is a fair question based upon anything that hase come out heretofore.

Q. Well, you just told us that you and Weinstock agreed—that was after you signed the Appraisal Agreement? A. Yes.

Q. What did you do then? A. Mr. Weinstock suggested that we go at the loss.

Q. By that, you mean to go to 620 Washington Street? A. Yes; so he suggested the best arrangement to be made was that he would meet me at my office at 12 oclock, a few days later, and I should notify Ginsberg and have him there, and we would go up there and make a general survey of the loss, and after that we will decide on the loss.

Q. So that when you and Weinstock agreed to have have Ginsberg go to the loss with you, at that time, had you seen the loss? A. No.

Q. Do you know whether or not Weinstock had seen the loss? A. I don't think he did.

Q. And you agreed that Ginsberg should go with you? A. And Mr. Weinstock.

Q. And Weinstock—the first time, to view the loss? A. Yes.

Q. Was that the understanding? A. Yes.

Q. And as a result of the conversation with Weinstock, did you communicate with Mr. Ginsberg? A. I did.

Q. And as a result of that communcation did Mr. Ginsberg call at your office? A. He did.

Q. And when was it that the three of you met for the first time? A. A few days after April 10th, I imagine, I am not positive, it might have been two days later that Mr. Weinstock and Mr. Ginsberg called at my office.

Q. Was that communication with Ginsberg by 'phone? A. By 'phone.

Q. And you say, a few days after April 10th? A. Yes—I imagine April 12th.

Q. About what time of day did Ginsberg arrive at your office? A. About quarter past twelve, to be exact.

Q. And how soon thereafter did Weinstock arrive? A. About five minutes.

Q. And did the three of you, at that time, have any conversation with reference to the loss, at your office at 15 Exchange Place? A. We did.

Q. What was that conversation? A. We spoke about the loss, and I suggested "Let us go out immediately," and they went in my car, and we drove to Hoboken; we spent about half-an-hour at Hoboken, going over the loss. I gave Mr. Weinstock—or I gave Mr. Ginsberg, I believe, at that time, an inventory.

Q. You talk too fast for me. A. I believe I gave Ginsberg an inventory, and Mr. Weinstock had his inventory, and we just checked upon a few items; and while we were there they were in the process of moving some of the goods, and—

Q. (Interrupting) Who was in the process of moving some of the goods? A. Mr. Melton.

BY THE VICE CHANCELLOR:

Q. Where did you get this inventory from? A. I received the inventory from my brother, who was the Adjuster for Mr. Melton.

BY MR. KLAUSNER:

Q. You received an inventory? A. Yes.

Q. Do you know whether that was a copy of the inventory which was attached to the Proof of Loss? A. Yes, it was.

BY THE VICE CHANCELLOR:

Q. You had not, up to that time, surveyed the loss? A. No.

BY MR. KLAUSNER:

Q. And the first time you surveyed the loss was when the three of you were there? A. Yes.

Q. And, at that time, you had a copy of the inventory? A. Yes.

Q. And you gave a copy of the inventory to— A. (Interrupting) I had my girl make a true copy, and I gave the copy to the Umpire.

Q. And the inventory we speak of was the one that was attached to the Proof of Loss? A. Yes, sir.

Mr. Klausner (to Mr. Vanderbilt): May I have the copy of the Proof of Loss for each one of these three Companies? Notice to produce was served.

Mr. Vanderbilt: I have two of them here, Mr. Klausner (handing the same to Mr. Klausner).

Mr. Klausner: I offer in evidence, at this time time, the Proof of Loss in reference to the Newark Fire Insurance Company of Newark, N. J., which has annexed thereto an inventory. (Admitted and marked Exhibit C-11).

Q. Is this inventory a copy of the inventory you had in your possession at the time you went, for the first time, to the loss with Mr. Weinstock and Mr. Ginsberg? A. That is part of the copy of the inventory; there is a little bit of misunderstanding between the inventory I received from Mr. Harry Silverman and the inventory attached to the proofs.

Q. Well, in any event, you had a copy of an inventory, Ginsberg had a copy, and Weinstock? A. And Mr. Weinstock, yes.

Q. And you got there about what time? A. We got there about quarter to one.

Q. Quarter to one? A. Yes.

Q. And how long did you stay there? A. We stayed there about twenty minutes, or half-an-hour, at the most, and then we adjourned and went to Railroad Avenue, Jersey City, to look at the remainder of the goods, and we stayed there about half-an-hour.

Q. So, when you first got to the loss, for the first time, with Ginsberg and Weinstock, you stayed there only twenty minutes? A. Twenty minutes to half-an-hour, about.

Q. And then did you, at that time, see Weinstock or Ginsberg make any item by item examination of the loss? A. No, sir; they hadn't made any.

Q. They did not, at that time? A. No, sir.

Q. Well, what did they do in your presence? A. We just checked up a few items, to see if the goods were there and tallied with the inventory, and just at random we picked out an article and looked around to see if we found them there, and then we went to Railroad Avenue and looked at the remainder of the goods.

Q. You say you went to Railroad Avenue? A. Jersey City, yes.

Q. And who went? A. Mr. Weinstock and Mr. Ginsberg and myself.

Q. And there were some goods there of the loss? A. Yes.

The Vice-Chancellor: He says "the remainder of the goods."

Q. And how long did you stay there? A. Oh, I stood there about half-an-hour, or maye three-quarters of an hour.

Q. Did the three of you, at that time, make an item by item examination? A. No, we just checked up to see if the goods were there that was called for in the inventory.

BY THE VICE-CHANCELLOR:

Q. Did you find them there? A. Yes, sir.

BY MR. KLAUSNER:

Q. Then, after that day, what did you personally do with reference to making an appraisal of the loss? A. After we made our general survey, then they went home, and then Mr. Weinstock and I decided to go over again by ourselves and check up

the whole thing, and, in case we had any disputes, then we would call in the Umpire.

Q. That was your understanding? A. Yes. I called Mr. Weinstock a few times to go over, and Mr. Weinstock was always a busy man; so finally I went over myself, and spent about eight or nine hours myself, and checked up on the complete loss.

Q. You spent that time yourself? A. Yes.

Q. And checked up the complete loss? A. The complete loss; and I made notations of what I thought the sound value of the loss was, and the damages. On one occasion when I was over there, I met a man checking up, also. I asked him who sent him there, and he said—

Mr. Vanderbilt: I object.

The Vice-Chancellor: I will sustain the objection.

Q. Do not tell us that, Mr. Silverman; you checked up your own item-by-item statement? A. Yes; then I went to Mr. Weinstock's office, on numerous occasions, and tried to straighten it out with him.

Q. Well, did you, after that first occasion, ever go to the loss with Mr. Weinstock again? A. No, not as I recall.

Q. Did you, after that first occasion, ever go with Mr. Ginsberg to the loss again? A. Never.

Q. So that the only time that the three of you were at the loss was on the first occasion, when you all first saw the loss, for the first time? A. About April 12th, yes.

Q. And after you made your item-by-item appraisal you say you went to the office of Mr. Weinstock? A. On numerous occasions, yes.

Q. And did you see him there? A. I did.

Q. About when was that? A. Oh, I must have been there on the 15th of April, I believe, and I was there, I believe on the 17th, and I believe I was there on April 20th.

Q. You are not exactly certain of the dates? A. No.

Q. But were they between—

Mr. Vanderbilt: He does not say any certain dates, at all.

The Vice-Chancellor: He says, "about".

Q. But it was sometime between April 12th and the date of the alleged award, April 28th? A. Yes, sir.

Q. And when you went to Weinstock did you go over the loss with him, item by item? A. No; we took up the furniture loss.

Q. Well, that furniture loss had nothing to do with this loss? A. No; but we never took up the fixture loss.

Q. You started to tell us about the furniture loss —just to clarify the situation, what did you mean by that? A. I had two losses—I was Appraiser for two losses, one on household furniture and on on the stock and fixtures.

Q. That was the household furniture? A. Upstairs, yes—and one on the stock and fixtures in the store.

Q. And the only question here was the one on the stock and fixtures? A. Stock and fixtures.

Q. There is no question about household furniture in this case? A. No, sir.

Q. Now, you say you took up the question of the furniture loss—did you ever go over, item by item,

with Mr. Weinstock, each item of loss on the stock and also on the fixtures? A. Never did.

Q. What did you do with Mr. Weinstock? A. On our three meetings that I had with Mr. Weinstock he was more concerned just merely in looking over the bills of the stock; he was interested mostly in looking over the bills for the stock, which I had produced.

Q. You produced the bills? A. Yes; and finally, at the last time I was there, he suggested to me that on account of every time we would meet there there was so much noise in his office (he was a very busy man, he was interrupted every two minutes on his 'phone—he has so many cases that he is adjusting) that we would meet on April 27th, I believe, at Mr. Ginsberg's office, in a private room, that we could sit there and go over the whole loss, and if we disagreed then we would have Mr. Ginsberg right there with us, to go over the whole matter with us.

Q. You were to meet him on April 27th? A. Yes.

Q. And in the event you differed you could then call in Mr. Ginsberg? A. Yes, call in Mr. Ginsberg.

Q. Did you meet him on April 27th? A. No; a couple of days before April 27th I recall that Mr. Weinstock had written me that he had to be in court, and would we make it on April 28th.

Q. Is that the letter you refer to, dated April 23d, addressed to you (showing the witness a paper); is that the letter you are now referring to? A. Yes, sir.

The Vice-Chancellor: Contained in Exhibit what?

Mr. Klausner: Contained in Exhibit C-5.

Q. And you say that he wrote to you that he could not meet you on the 27th, but could meet you on the 28th? A. Yes.

Q. And did you, as the result of that letter, meet him? A. I suggested to meet him at 12:30 instead of 2:30, because my folks had come from Miami that afternoon; so I met him about 12:30.

Q. Where? A. At Mr. Ginsberg's office.

Q. When you came there was Mr. Weinstock already there? A. Mr. Weinstock and Mr. Ginsberg were there when I arrived.

Q. Where did you find Mr. Weinstock? A. In with Mr. Ginsberg, in his office at 116 Nassau Street, I believe, in New York City.

Q. And when you came into the office there, what was said—will you just tell us, from the beginning, the entire conversation? A. We spent about five minutes going over old times, as it had been a good many years since we three got together, and we spoke about various losses; then I told him that my folks were coming back from Miami this afternoon, and I wanted to get away as soon as possible, and then I said, "Gentlemen, now I am here as the appraiser on household furniture and also on the stock and fixtures"; I says to Weinstock, "Let us get together at one thing at a time," and Mr. Weinstock and I sat down on the household furniture loss.

Q. Just the two of you? A. Just the two of us.

Q. Was Ginsberg there at that time? A. Ginsberg was sitting right alongside of us; we spent about ten minutes on the household furniture loss; I wanted something like seven hundred and some odd dollars, and Mr. Weinstock made it about four hundred and some odd dollars, and we could not agree, and we had it item by item; so finally I—

Q. Did you have the item-by-item statement between you? A. Yes.

Q. Over the furniture loss? A. Over the furniture loss. Then Mr. Ginsberg went over the figures, and he made it $625, and I said, well, it was not satisfactory, but it was a fair appraisal, and the three of us signed the appraisal blanks—Mr. Weinstock, myself and Mr. Ginsberg.

Q. Now, that was done first—then what happened? A. That occupied about fifteen minutes of our time; then I said, "Now, gentlemen," I says, "we are through that one thing, that is the household furniture loss; before we start in on the stock and fixture loss I want to object to Mr. Ginsberg being here as the umpire on the ground that since I have agreed for him to be appointed I find that he is not an impartial man, that he is very friendly with Mr. Weinstock in his private business dealings, etc., and I do not think that he ought to be the right man to act as umpire"; and I stated four or five objections; so Mr. Weinstock says, "Well," he says, "let us talk of losses," he says, and overruled my objection. I said, "Well, if you gentlemen feel that way," I says, "let us get together." So Mr. Weinstock said, "Give me your figures, and we will go over each item." I pulled out my inventory that I had all prepared, with the figures, which I went over; I had spent about seven or eight hours on it; Mr. Weinstock said, "I haven't got my figures with me," he says, "but I figure the loss at $4,000."

Q. Weinstock said that? A. Yes—"I haven't got my figures with me, but I have figured the loss at $4,000."

Q. And he had no item-by-item statement? A. He had none at all. I said, "How can you figure the loss at $4,000 if you haven't got your figures

here?" and, furthermore, I said, "I figure the loss about twenty-nine or thirty thousand dollars"; I said, "there is quite a big difference"; I says, "maybe you are right, and maybe you are wrong; let us sit down and go over each item, and see who has made the mistake"; so Weinstock said, "We don't have to have that—let the umpire decide; we can't agree." I said, "Wait a minute, I take an exception; you see we haven't made any attempt to agree on any figure"; I said, "if you will produce your figures, or go over my figures, and if we cannot agree, then we will let the Umpire decide, although I object to the Umpire because I do not believe he will give a fair decision because he is very friendly towards you." "It don't make any difference, he says; Mr. Umpire, it is up to you." Mr. Ginsberg pulled out of his pocket a paper and said, "Gentlemen, there is the award," and he hands me over a typewritten award, also a bill for his fees.

Q. That is, Mr. Ginsberg? A. Stepped right in, and said, "Gentlemen, here is the award," and he hands me over a typewritten letter with the award, also a bill for his fees.

Q. Do you mean he took out of his pocket a paper and said, "Here is the award"? A. "Here is the award,"—and gave me a copy, and gave Mr. Weinstock a copy.

Q. Well, had Ginsberg gone over with you, or with Weinstock, item by item, the figures? A. No, sir, never spoke about it.

Q. Prior to him handing you that? A. Never did; the whole thing took about fifteen minutes.

The Vice-Chancellor: The witness says Weinstock did not go over it item by item, so Ginsberg could not.

The Witness: Exactly.

Q. And he had that all prepared? A. All prepared; he said, "Gentlemen, there is the award."

Q. And is that the paper he gave you (pointing to a paper as one of those marked Exhibit C-5)? A. That is the paper, yes.

Q. It is dated "April 28, 1926," addressed to "Messrs. S. W. Silverman and D. Weinstock, Re Appraisal of Melton Brothers, 620 Washington Street, Hoboken, N. J.", signed "B. Ginsberg"? A. Yes, sir.

Q. And that is the paper he gave you? A. Yes, sir.

By the Vice-Chancellor:

Q. This letter indicates that there was some difference between you fellow-appraisers—it says, "I have carefully considered the differences submitted to me by you two gentlemen in the above matter"—what do you say as to that? A. That is what surprised me, because we had never had any differences, never spoke about it; and he brings out that paper as the award, and I objected to it immediately.

By Mr. Klausner:

Q. Did you ever see Ginsberg personally between the time that you first went there, on about April 12th, when the three of you went there for the first time, and the time that you went on April 28th? A. No, sir, I did not.

Q. Did you ever submit any differences to Mr. Ginsberg prior to April 28th? A. No, sir, I did not.

Q. You say you were surprise to have him give you that? A. I was astonished; I was thrown off my feet when he pulled it out of his pocket; I said, "Here, how could you make an award? I never

called you in." He said, "I had a man working on that for ten days," he said.

Q. And, together with that, he handed you a bill? A. A bill, yes.

Q. Did you say anything further to him when he handed you this proposed award? A. I said this—I says, "Gentlemen"—I addressed both of them—I said—"I see I am licked;" I says, "as long as the Umpire has given an award," I says, "let the Umpire show me his figures." He says—"If you gentlemen want my figures I will give you a copy." I said, "That is what I want." He said, "I will mail it to you."

Q. You asked Ginsberg for a copy of his figures upon which he based his award? A. Yes.

The Vice-Chancellor: Is there not some reference in that letter to Mr. Ginsberg's willingness to give them a copy?

Mr. Klausner: Yes.

The Vice-Chancellor: What does it say?

Mr. Klausner: He says, "If any of you gentlemen would like to have a copy of the same I will gladly furnish you with the same."

A. And I immediately demanded it, according to his statement, and he said he did not have it; he said—"I will mail it to you to-night."

Q. So you asked him for a copy of his figures upon which he based this award? A. Absolutely.

Q. And this (referring to the copy of the award) did not come to you through the mail? A. Oh, no, it was handed to me right there.

Q. Did you receive a copy of the figures from Mr. Ginsberg upon which he based this award? A. I did not.

Q. Did you ever receive a copy through the mail, or from Mr. Ginsberg personally—a copy of the figures upon which he based this award? A. I did not.

Q. Although he said he would mail you a copy that night? A. Yes; and I also demanded it—I wrote and requested a copy.

Q. Was that on April 30th? I show you a copy of a letter dated April 30th, 1926, addressed to "B. Ginsberg, 116 Nassau Street, re Appraisal of Melton Bros., 620 Washington St.," and ask whether that is a copy of the letter which you sent? A. It is.

Q. And in there you request again for a copy of his figures? A. I do.

Q. And, on the same date I notice another letter (both these letters are part of Exhibit C-5), a copy of another letter, addressed to Mr. Davis Weinstock, dated April 30th? A. Yes.

Q. You mailed that letter to Weinstock? A. I certainly did.

Mr. Klausner: May I ask your Honor to look at the two letters we just spoke about?

The Vice-Chancellor: All right.

Q. And I show you what purports to be a true copy of a report regarding stock and fixtures? A. Yes.

Q. I ask you whether you gave a copy of this to the Umpire and the Companies' Appraiser, as you set forth in that? A. I did, on the same day we were there.

Q. On the same day you gave them a copy of this? A. Yes.

Mr. Klausner: I offer that in evidence.

Mr. Vanderbilt: No objection.

(Admitted and marked Exhibit C-12.)

BY THE VICE-CHANCELLOR:

Q. Whose statement is this said to be? A. That is my statement, in conjunction with my inventory, which each one received a copy of.

BY MR. KLAUSNER:

Q. That was given to them when? A. At the time we had our meeting, on April 28th, at Mr. Ginsberg's office.

Q. Now, after that—after writing these letters that we have just pointed out—to Weinstock and Ginsberg, did you report to Melton Bros? A. I told Mr. Melton exactly what transpired, and I told him it was up to him to see an attorney, as I stepped out of the picture and I was no more in the case.

Q. And this is the report you gave to Melton Bros. (showing the witness a paper)? A. Yes, sir.

Mr. Klausner: I offer it.

Mr. Vanderbilt: I object. That is not binding on the defendants.

The Vice-Chancellor: How can that be evidence?

Mr. Klausner: All right; I withdraw it.

Q. After that, now, you reported to Melton Bros. and said you were "out of the picture"? A. Yes, sir.

Q. Did you explain the whole situation to him? A. I explained the whole situation, and told him I felt sorry for him—

Mr. Vanderbilt: I object to that.

Q. Oh, no—did you explain the whole situation? A. I explained, yes.

The Vice-Chancellor: How can that possibly mean anything to me—that he "explained the whole situation"? I am not expected to know what that means.

Mr. Klausner: I am just showing the sequence of events, your Honor.

The Vice-Chancellor: I know; you are asking him to "explain the whole situation"—that cannot be of any value to me.

Q. Did you tell Mr. Melton everything that transpired?

The Vice-Chancellor: That don't mean anything to me, either. Let him tell what he did say.

Q. What did you tell Mr. Melton? A. I told him about the various meetings I had with Mr. Weinstock, as his appraiser; and I told him of the last meeting I had in Mr. Ginsberg's office, and exactly what happened, and how the award was given; and I told him, in my opinion, that he did not get a square deal, and that the award was not according to law; that I did everything in my power, as his appraiser, to be fair, but I was treated unjustly, and it was up to him to see a lawyer and have the award set aside, or start an action against the Insurance Companies. He asked me who would I suggest; I said, "I don't suggest no lawyers, because everybody is my friend; "I said "suit yourself."

Recess until two o'clock, p. m.

(Afternoon Session)

Hearing of the matter resumed at two o'clock, p. m.

SAMUEL W. SILVERMAN, recalled.

DIRECT EXAMINATION RESUMED BY MR. KLAUSNER:

Q. Now, about how soon after April 28th, did you have that conversation with Mr. Melton? A. The following day.

Mr. Klausner: I would like to call the Court's attention, at this time, to some of the letters in Exhibit C-5—first, a letter dated May 11, 1926, addressed to E. D. Walton & Son (they being the Adjusters in the case) from Kinkead & Klausner (handing the same to the Court).

The Vice-Chancellor: Yes—well, you say nothing in there about this award, do you?

Mr. Klausner: Nothing is definitely said in there, other than just generally to take up the matter. Generally, to the same effect, I call your Honor's attention, in the same Exhibit, to a letter dated May 18, 1926, to the same people (handing the same to the Court).

The Vice-Chancellor: All right.

Mr. Klausner: I would like to call your Honor's attention, in the same Exhibit, to a letter dated May 24th, to the New York Board of Fire Underwriters (handing the Court the same).

The Vice-Chancellor: How can that be possibly used as evidence against these people?

Mr. Klausner: If your Honor will read them, I think your Honor will see the various people there who represent the various Insurance Companies. We received that information, and then wrote to them. Your Honor can notice that the Insurance Companies answered these letters, and I just want to show how it came into Mr. Vanderbilt's hands. The letter your Honor is now looking at was a letter that was offered in evidence by the defendants, and, on June 26th, it shows that Mr. Vanderbilt now has the matter in his hands. We had written to Mr. Vanderbilt, your Honor will notice, on June 1st.

The Vice-Chancellor: What is the date of that letter, did you say, from Vanderbilt?

Mr. Klausner: June 26. And your Honor will notice that on the same date that he wrote to Melton Bros. he wrote to Kinkead & Klausner, advising of this examination. On June 28th, I particularly call your Honor's attention to a letter addressed to Arthur T. Vanderbilt from Samuel Silverman—a copy of it—I particularly call your Honor's attention to that letter, and also to a copy of a letter which was enclosed in that.

Q. I ask you, Mr. Silverman, if this is a copy of the letter, a copy of which you enclosed with the letter of June 28 (showing the witness a paper)? A. Well, I will have to look at the letter first to find out.

Q. A letter dated June 28th, addressed to Mr. Vanderbilt (showing the witness the letter referred to in the Exhibit C-5); is that a copy of the letter which you wrote to Melton, that you enclosed? A. Yes, his is the report to Melton, yes.

Mr. Klausner: I offer it in evidence; that is a copy of the letter which was sent to Mr. Vanderbilt.

The Vice-Chancellor: Have you the original?

Mr. Klausner: Have you the original, Mr. Vanderbilt?

The Vice-Chancellor: What is the purpose of this unless it is to meet the charge of laches?

Mr. Klausner: Exactly; on April 30th they knew it, and on June 28th, beside the telephone calls, he had this in his hand.

(The original letter called for is produced by Mr. Vanderbilt, and is offered in evidence by Mr. Klausner.)

The Vice-Chancellor: I will admit it for that purpose.

(Marked Exhibit C-13.)

The Vice-Chancellor: It seems to me that is a secondary consideration for me to have here before me, though; the primary consideration ought to be the charge you make—

Mr. Klausner: That they never agreed?

The Vice-Chancellor: Yes—all that is concerned with that, and the fraud you allege against the Companies.

Mr. Klausner: Yes, but I want to show the whole situation in the case.

The Vice-Chancellor: Yes; but you are anticipating the other sides' case, you see. It might not get that far in this case—I don't know—assuming that the award of the arbitrators is to be regarded as a lawful proposition; in other words, your charges may be held not to be proved, then the other matters would not be of any consideration.

Mr. Klausner: Exactly.

The Vice-Chancellor: I think you ought to try to direct your attention to the primary consideration; and then, if you feel advised that there is any necessity of your going into this matter, I suggest that you do that later. I mention that particularly because I see you save so many different letters and other indicia of evidence there that you are referring to from time to time, that I am inclined to think it will take up considerable time.

Mr. Klausner: Yes, sir.

Q. Can you tell us whether any of the stock or fixtures which were at the loss at 620 Washington Street was removed to other premises? A. Yes, the fixtures were moved to Railroad Avenue.

Q. Jersey City? A. Jersey City.

Q. And did you see the fixtures there? A. I did.

Q. Do you, of your own knowledge, know whether they are still there? A. I understand they are in the basement of the building yet.

Q. They are still in the building? A. They are still in the building, I understand.

BY THE VICE-CHANCELLOR:

Q. When did you last see them? A. Oh, I haven't seen them since the award, but I passed there about four months ago, and they were still in that same place—an old building on Railroad Avenue near Grove.

BY MR. KLAUSNER:

Q. Did you go with Mr. Weinstock and Mr. Ginsberg and see those fixtures, at the time of the first inspection? A. Yes.

Q. About that time? A. Yes.

Q. And some of those goods had already been removed from the place where the loss took place at the time you made your first inspection? A. Yes.

The Vice-Chancellor: Yes; he testified that they went from Washington Street over to Railroad Avenue.

Q. Oh, did you ever go to Mr. Vanderbilt's law office after April 28th ? A. Yes, two or three different times.

Q. Can you tell us about when? A. I think it was in the months of July and August.

Q. Do you remember whom you went with in the month of July? A. The first time I went with you and the two Melton boys; and the second time I went with Judge Kinkead and the Melton boys.

Q. Did you have conversation with Mr. Vanderbilt on either one of those occasions? A. I believe on two occasions I did, yes; I tried to get him to promise to settle this thing up, as a sort of an arbitrator.

Q. Well, will you tell us what your conversation was with Mr. Vanderbilt with reference to this award—or, just a minute, I withdraw that, I am again getting ahead—

The Vice-Chancellor: You are anticipating something that may not arise.

Mr. Klausner: Exactly; I think that is all.

The Vice-Chancellor: I will reserve you the right to inquire further, if you wish to, with respect to these matters that you are now foregoing; but it appears to me your queries are anticipating some defense that may or may not be offered.

CROSS EXAMINATION BY MR. VANDERBILT:

Q. Mr. Silverman, you have been in the insurance adjusting business for a great many years, haven't you? A. Quite so.

Q. And for how many years? A. Oh, twenty, twenty-one or twenty-two—something like that.

Q. And you are thoroughly familiar with adjusting on behalf of the insured? A. Yes.

Q. And you are thoroughly familiar with arbitrations on behalf of the assured? A. I am.

Q. And also as umpire? A. Yes, sir.

Q. When Mr. Weinstock and you met on this arbitration it was not the first time that you had met each other? A. Oh, of course not.

Q. You knew him well? A. Very well.

Q. And he knew you? A. Very well.

Q. As a matter of fact, you knew Ginsberg well? A. I hadn't known Ginsberg, or I hadn't seen Ginsberg, or I hadn't seen Weinstock for quite a few years before that.

Q. But you were not concerned any with Ginsberg as an umpire, all you were concerned with was the Ginsberg, Bernard Ginsberg? A. Yes.

Q. And he was recommended to you as acceptable to you, on the part of Sonnenfeld? A. Oh, no.

Q. Well, how long had you known Sonnenfeld? A. Twenty years.

Q. You have been in business with him? A. Fifteen years ago, yes.

Q. You and he were in the insurance adjusting business here in Jersey City? A. Yes.

Q. And in New York?

Mr. Klausner: I object to that as entirely immaterial.

The Vice-Chancellor: I will permit it.

A. Yes.

Q. And you knew that Ginsberg and Sonnenfeld had office room together? A. No, I never did.

The Vice-Chancellor: The reason I am permitting this is that I want to have the fullest information about the identity of Ginsberg.

Q. When you first had Ginsberg on the 'phone you recognized him as a man you had known before and had had business dealings with? A. No, not exactly.

Q. You told us, when you went to Ginsberg's office you spent fifteen minutes "talking over old times"? A. Well.

Q. How could you "talk over old times" with a man you had not had any "old times" with? A. Well, at that second time, when I had Ginsberg appointed—

Q. When you had Ginsberg appointed? A. No, when we had Ginsberg appointed—we.

Q. Didn't you mean exactly what you said when you said you?

Mr. Klausner: If you will read back you will find it was "when Mr. Ginsberg was appointed."

The Vice-Chancellor: I understood the witness to say what Mr. Vanderbilt is now saying, and if he is mistaken he can say so.

Q. Now, as a matter of fact, had you not talked Ginsberg over with Sonnenfeld two or three days before you and Weinstock met to appoint the umpire? A. No, sir; when the name was suggested—if you want me to go into details—

The Vice-Chancellor: I think you have answered the question; now I think you had better answer them as we go along.

Q. Sonnenfeld had also, and is still acting as an adjuster for the insured in various cases, is he not? A. That is his business in New York, yes.

Q. Well, now, when you first saw Ginsberg, after the appointment had been made, you recognized him as a man you had met before? A. Oh, yes.

Q. Where had you met him? A. We have had dealings together.

Q. What kind of dealings? A. Adjusting losses, fifteen or twenty years back.

Q. And in those losses Ginsberg represented the assured? A. Represented the assured.

Q. And, as far as you know, Ginsberg has not been a Company representative?

The Vice-Chancellor: Well, he says "fifteen or twenty years back", so I think that is very remote.

Q. I mean, up to date? A. I didn't know what he had been doing in the past fifteen years.

Q. Didn't you inquire, before or after the appointment, of Sonnenfeld? A. Only at the time I went to Weinstock's office; I said "Mr. Weinstock, before I agree who the name is I want to find out who he is;" he said,—"Call up Sonnenfeld, he will tell you". Sol called up Sonnenfeld.

Q. What did Sonnenfeld tell you? A. He said, "You know Barney Ginsberg, he is in my office; you remember him years ago." I said, "Well, do you think he is all right?" He said, "Sure he is all right." "Well," I said, "if you think he is all right, I will agree to have him appointed." Then Mr.

Weinstock spoke to Mr. Sonnenfeld a few minutes, and finally I said,—"All right, I think I will accept Mr. Ginsberg."

BY THE VICE-CHANCELLOR:

Q. That was on the 10th? A. That was on the 12th of April, about ten o'clock in the morning, in Weinstock's office.

Q. What was the date you met him? A. On the 12th—two days later.

BY MR. VANDERBILT:

Q. In your office? A. Yes.

BY THE VICE-CHANCELLOR:

Q. And at that time you repudiated Ginsberg? A. No, sir; that was later.

BY MR. VANDERBILT:

Q. You met Ginsberg in your office by arrangement with Weinstock? A. Yes.

Q. And you 'phoned Mr. Ginsberg to come to your office on April 12th? A. That is right.

Q. On that occasion, at your office, you did not object to Ginsberg, did you? A. No.

Q. The appointment still looked all right to you? A. Well, at that second time, yes.

Q. And on that occasion you gave him a copy of the inventory? A. Yes.

Q. That copy of the inventory you said was somewhat different from some of the others, so later you sent him another copy of the inventory? A. Yes.

Q. Following that? A. Yes.

Q. Well, before you sent him the copy of the inventory, Ginsberg and Weinstock and you went out to look at the loss in the place where the loss had occurred, and also the part that had been removed to Railroad Avenue? A. Yes, sir.

Q. And you spent about an hour doing that? A. All told, yes.

Q. All told, about an hour: and there was no question raised, was there, Mr. Silverman, but that the count of the goods was accurate—I mean, you did not have to re-check a number of those articles? A. Well, we did; that was our purpose of re-checking—to see that the inventory tallied with the goods that were really there.

Q. And all parties were satisfied that the quantity of goods there conformed to the typewritten inventory that you were all using? A. That is right; yes, sir.

Q. And it was when you got out there to the scene of the fire, and also at Railroad Avenue, that it was discovered that Ginsberg's copy of the inventory did not conform in all respects to that which you were using and which Weinstock was using, and so you told him you would send him a copy of the inventory? A. Yes; that was discovered at the Hoboken place, at the first meeting.

Q. And you did send him a copy later? A. I gave him my copy, yes.

Q. How much later than April 10th was it? A. I mailed him the copy, I believe, about a day later.

Q. About a day later? A. I imagine so.

Q. I show you papers, and ask you if that is the inventory that you sent to Ginsberg a day or two later? A. I cannot say that this is the exact copy.

Q. Well, I direct your attention to the last page —see if there is anything in the last three lines to

refresh your recollection that it is the paper that you sent to Ginsberg? A. No; this might have been the copy which I left there the day we agreed, and the day when we had the fight about the figures.

Q. Well, at any rate, it is the paper which, either on that occasion, or a later occasion, you gave to Ginsberg? A. Yes, that was, I believe, and I am pretty positive that this particular inventory which I am looking at now was left on Mr. Ginsberg's desk the day when Mr. Weinstock and I were there on the 28th of April, because they were the original figures that I figured the loss of $32,000.

Q. Those are the figures which you took to them that day as representing your total of values—is that correct? A. Yes; but I had changes made; show me that copy that you had this morning—the copy showing the award of $29,000. (Paper shown the witness). This is the paper that I had referred to, Exhibit 12; and on the other inventory I had the figures revised from $32,000, to $29,649.00—I had them revised right there.

BY THE VICE-CHANCELLOR:

Q. It appears as $32,000 on the paper shown to you by Mr. Vanderbilt, does it? A. Yes.

BY MR. VANDERBILT:

Q. Well, this paper I am now showing you, of $32,000, must have been the first figure you submitted to Ginsberg? A. No; that was submitted on the same day which I was there.

Q. You mean you gave him the $32,000 figure, and the same day the $29,000 figure? A. Yes, yes; exactly.

Q. Well, how did you hope to do business on any such basis as that? A. Because I figured the loss at $32,575.02—

Q. Why didn't you speak of it then? A. Well, because during that night, before I went over to the meeting, I spent the whole evening going over it, and I figured that I had figured a little bit too high.

Q. Three thousand dollars too high? A. Well, it was a forty thousand dollar loss; so then I revised my figures, and I made this amendment which you see here (referring now to Exhibit C-12), and I amended it with the inventory, of which this is a copy of the inventory; but where is the copy of this which he had also?

The Vice-Chancellor: That don't mean anything on the record, the way you are stating it, —"this is a copy of this."

Q. Do you mean to have us understand, Mr. Silverman, that you, as an adjuster of more than twenty-five years experience, would go into a clinch with your fellow-arbitrator, and the umpire, armed with two different papers, one of which states a figure of $29,000, and the other of which states a figure of $32,000—is that what you want us to understand?

Mr. Klausner: I object to the form of the question.

The Vice-Chancellor: I think the form of the question is objectionable, as to what he might do; I will sustain the objection.

Q. Well, you want us to understand, Mr. Silverman, that you took both of these papers to this conference with Ginsberg and Weinstock, and that was

the first time you had presented either of them to Ginsberg? A. Yes, sir.

The Vice-Chancellor: That is, either of what two papers?

Mr. Vanderbilt: Either the one I am now offering, or the Exhibit C-12.

The Witness: Yes, sir.

Mr. Klausner: I object to the presentation of these.

The Vice-Chancellor: They are not being presented yet.

Mr. Klausner: Well, to the witness—when they have different notations on there.

The Vice-Chancellor: You had better wait until he concludes, now, because he may not offer it in evidence, and you are not hurt.

Mr. Klausner: All right, I withdraw the objection.

Q. Why didn't you change your typewritten figures on the bottom of this inventory that you offered to Ginsberg to conform to C-21? A. I didn't have to. This speaks for itself (referring to Exhibit C-12); it speaks for itself.

Q. Well, now, what does Exhibit C-12 cover? A. It has "Record stock bills presented, total amount for a period of months was $14,189.96"—

Q. Of course that has not the remotest thing to do with sound value, has it? A. Well, if I read it I perhaps—

Q. (Interrupting) I mean, that, itself has not? A. Well, that would give you an idea how to figure up to find out what the man purchased, and then you could see how much goods he had there.

Q. But you don't know how much he sold, do you? A. Well, in this way I show it—goods pur-

chased by average monthly record of above bills is $4,585; so every month he was averaging that much money in merchandise, and we examined the stock and investigated and saw at least $6,000 worth of goods in sight; taking into consideration the store —that is, the length of time they were there, and so forth, and the monthly purchase of the goods by the bills presented—I have taken for granted that the inventory as submitted by the assured is correct, amounting to $13,217.99; I have deducted 15% for over-value, and made a sound value of $11,235.32, and deducted 10% for the depreciation from any sound value, thereby leaving a balance of $10,111.79, which is my honest opinion of the loss on the stock. That is how I arrived at my figure. It is very hard for any appraiser to arrive at a loss on a big building, when the building is on fire; the thing is all bulked together; you cannot obtain the accuracy of the thing; a man must judge on that. Now, many times, in a man's anxiety in filing a bill, he will over-value his stock; so I took into consideration the over-value, and also took into consideration the stock being old and the depreciation in it.

BY THE VICE-CHANCELLOR:

Q. And, on the other hand, the representative of the Company would minimize the value, wouldn't he? A. Exactly.

Q. Each one sparring for his own interest? A. That is the idea.

BY MR. VANDERBILT:

Q. Then you have to take the thing in bulk, don't you? A. Yes, sir.

Q. These red figures on here are not yours, are they? A. No.

Mr. Vanderbilt: I ask to have this marked for identification.

(The paper was marked Exhibit D-3 for identification.)

Q. Is this place in Railroad Avenue, Jersey City, a place where Pottberg has a place of business? A. No, sir.

Q. Now, what was the next that you saw of Ginsberg between the date of April 10th, I think it was, that you met at your office, and April 28th? A. April 12th and April 28th.

Q. Up to April 28th nothing had occurred which had shaken your faith in Ginsberg as Umpire, had it? A. Yes, sir, it had, before April 28th.

Q. What had occurred that had shaken your faith in Ginsberg? A. Why, the way he acted by sending men around to look at the place; and when I called him up on the 'phone and asked him "What is the idea?" he says,—"Well, I am handling this loss my own way," and he says, "I am not acquainted with fixtures, and I have got an expert man to go over it.

BY THE VICE-CHANCELLOR:

Q. Had he, up to that time, been asked by you two appraisers to consider any disagreements? A. Oh, never.

BY MR. VANDERBILT:

Q. But you had asked him to go over there and look at the stock, with you, hadn't you? A. Just to

make a general survey; that is very common among umpires and appraisers.

Q. You were merely following the accepted practice in that respect? A. Sometimes.

Q. Well, now, when you went to this meeting at Ginsberg's office on April 28th you spent the first fifteen minutes talking over old times? A. Yes.

Q. Your relations to Mr. Ginsberg, up to that moment, had been very friendly? A. We are, even to-day; we are friendly even to-day, as far as I am concerned.

Q. Well, you are a friend of everybody's? A. Yes.

Q. So you spent the first fifteen minutes talking over old times, and, in those fifteen minutes, you raised no objection to Ginsberg as the Umpire, did you? A. Why, yes, I spoke to him about it, and about private affairs.

Q. What do you mean? A. Well, we were speaking about real estate and other matters.

Q. Well, I mean, in the first fifteen minutes you raised no objection to Ginsberg as the Umpire?

The Vice-Chancellor: My recollection of his testimony is that when they got together they got to talking about some old affairs, and about some losses that they might have had experience with; and then the witness said,—"Now, we are here for a purpose; let us get down to business", and then they started in on this matter and he immediately objected.

Q. Well, you started in on the furniture loss, didn't you? A. Well, before we started anything I made a general objection; I made five objections at that time.

Q. What were the five? A. Well, I don't remember the whole five. First, I did not think he was impartial.

Q. Did you tell him why you did not think he was impartial? A. Well, because he was in business, I understood, with Mr. Weinstock.

BY THE VICE-CHANCELLOR:

Q. You are asked whether you told him that? A. Yes, I told him I understood they were both in business together, and were very friendly, and I didn't think I could get a square deal.

BY MR. VANDERBILT:

Q. That is one reason—what else did you urge? A. Oh, I don't know—oh, yes, then I told him I found out from Mr. Sonnenfeld and through my brother that Mr. Ginsberg had helped the assured to make an inventory, or proof of loss, I mean—to file a proof of loss.

Q. Helped Melton make up the proof of loss? A. Yes.

BY THE VICE-CHANCELLOR:

Q. Helped Melton? A. Yes, helped Melton, on behalf of Sonnenfeld to make up the proof of loss.

Q. What had Sonnenfeld to do with the proof of loss—was Sonnenfeld representing Melton? A. Sonnenfeld was working in conjunction with my brother, for Melton.

BY MR. VANDERBILT:

Q. So your brother, Harry Silverman, and Sonnenfeld were really Melton's Adjusters? A. Yes.

Q. And Sonnenfeld had got Ginsberg to help make up the proof of loss? A. Yes.

Q. Well, how did that make you feel, or make you think, rather, that Ginsberg was unfriendly to the assured? A. Well, I took into consideration —I said to Mr. Ginsberg I didn't think it could be fair on either side; I says,—"Here, on one occasion you have made an inventory and proof of loss for that assured; on the other hand, you are acting as the Umpire, and," I says, "you are friendly with Mr. Weinstock, which I have found out now, and which makes me believe that I will not get a square deal."

Q. In other words, the only thing that worried you was you feared that Ginsberg might be unfriendly to the Insurance Companies? A. No, I never did; I never did; he has never been unfriendly to the Insurance Companies; I take an exception to that, Mr. Vanderbilt.

Q. You will take an exception? A. Yes.

Q. Well, I hope the Court will note it. Now, give me the other three reasons? A. I don't recall exactly, but those are practically the reasons which I objected to at that particular day.

Q. This was a very important matter, wasn't it, Mr. Silverman? A. Yes.

Q. And if you had three more good reasons, then you could remember them now, couldn't you? A. I have practically told you all my reasons.

Mr. Klausner: I think the third reason he mentioned was that the Umpire said—

Mr. Vanderbilt: I do not think counsel should do that.

The Vice-Chancellor: He did mention it, but I do not think you ought to say what they are; you can object, if you want to.

Mr. Klausner: I object to him saying those were the only two reasons, when the witness has stated more than two reasons.

The Vice-Chancellor: Well, I remember what he said—at least, I think I do; if I do not, remind me afterwards of it in the argument.

Q. Then, as I recall it, after you talked over old times for fifteen minutes you entered a general objection, with these five reasons, two of which now always have remained in your memory, to Ginsberg as Umpire? A. Yes.

Q. And then you proceeded to adjust the household furniture loss? A. The household furniture, yes.

Q. And you permitted Ginsberg to act as Umpire in that matter? A. Well, my objection had been overruled, and I allowed him to go ahead because he didn't know practically anything about the furniture.

Q. And you went ahead and signed the award, then and there, of Ginsberg? A. Yes, for $625.

Q. In other words, you stood by without making these objections, and co-operated with the Umpire, whom you knew and believed to be not impartial, whom you thought was in business with the other appraiser, and you let him cut your figure down, and you signed the award agreeing to it, on the furniture? A. I said,—"Let us get that out of the way."

Q. (Showing the witness a paper) And this is your signature on the award? A. Yes.

Mr. Vanderbilt: I offer that in evidence.

Mr. Klausner: I object to that, as being entirely immaterial.

The Vice-Chancellor: What have you got to say to it, Mr. Vanderbilt?

Mr. Vanderbilt: He said he objected to Ginsberg first, and then proceeds, within the next five minutes after, when Ginsberg cuts his figure down from $684 to $625, and signs the award with Ginsberg—an objectionable Umpire.

The Vice-Chancellor: I will receive it, subject to your objection. I remember what he said. The witness's figure was very much in disproportion with the figure of the other Appraiser, and Mr. Ginsberg fixed the figure at six hundred and something, and then this witness says,—"Well, I don't think it is hardly enough, but, nevertheless, it is a fair amount, I will agree to it"—substantially that.

Mr. Klausner: Yes.

The Vice-Chancellor: Well, I will permit it; it cannot, perhaps, influence your case as much as the other side may think it can, in my estimation; but I think it is some evidence of his acts with respect to Ginsberg. I will permit it.

(The paper is marked Exhibit D-4 for identification.)

Mr. Klausner: Well, it would be improper for me to object to it, because it is merely offered for identification.

Mr. Vanderbilt: "For identification" is what I said.

Q. These goods that were involved in this loss, Mr. Silverman, were all of them ordinary, everyday, standard goods, weren't they? A. What are you referring to—stock, or fixtures?

Q. Both? A. The stock was ordinary candy stock and the raw materials for manufacturing, and the

raw ice cream materials, etc., and the ordinary fixtures you find in stores along in that vicinity.

Q. Well, I mean so that if you had an inventory available to you, you would know what was meant by that inventory, and a competent man, versed in that business, would know the value to assign to them? A. You would get your values from the various dealers, etc., and compare the figures.

Q. Now, you went over to this conference at Ginsberg's office on the 28th, armed with these two papers, D-3 for identification, and C-12? A. Yes.

Q. Did you have detailed figures? A. Yes, sir.

Q. Where are they? A. I will ask you for the inventory—the same copy as this—as to how I arrived at my figures.

Q. Who has got it? A. Why, you people had a copy; Mr. Weinstock had his copy.

Q. Well, your copy? A. The attorney had a copy here just a little while before. I asked where the copy was of this paper known as Exhibit C-12; I gave my copy to Mr. Melton; I brought a copy to your office when we were there; you saw it yourself—how I arrived at the figures.

Q. So it is still somewhere in the possession of you or Mr. Melton?

The Vice-Chancellor: And you too.

Mr. Vanderbilt: I did not have it; it saw it.

The Vice-Chancellor: He says he gave it to you.

The Witness: I gave it to you, and you sent it back with the bills.

Q. You got it back? A. I got it back from you, yes; I don't know where it is now; we had it in Trenton, I know.

Q. Have you got your detailed figures? A. I cannot find them here now.

Q. Were they typewritten, or in pencil? A. They were typewritten, the same as this (referring to Exhibit D-3), and I put my checks alongside my figures of the sound value and damages.

Q. You have not got that paper available now? A. No, I have not.

Q. Now, referring to the proof of loss, which you had before, Mr. Silverman (referring to Exhibit C-11), this proof of loss is the ordinary form of proof of loss, is it not? A. It is.

Q. Customarily used by all Adjusters? A. By all Adjusters and brokers in the insurance business.

Q. And on page 2 it refers to how many items? A. Two items—"Stock" and "Fixtures".

Q. "Stock" and "Fixtures"? A. Yes, sir.

Q. Were you there when the award was made out?

The Vice-Chancellor: What do you mean by that?

Mr. Vanderbilt: In Mr. Ginsberg's office.

The Vice-Chancellor: He said Mr. Ginsberg took it out of his pocket.

Q. No, the award—were you there when the award was made out?

Mr. Klausner: I object to the form of the question, because of the fact that there is no award in this case; our contention is that there is no award, there is a "proposed award."

The Vice-Chancellor: Has that paper got an exhibit number yet?

Mr. Vanderbilt: No, not yet.

Mr. Klausner: The paper that has been offered in evidence is just a copy of the Appraisement Agreement.

Q. Were you there when this paper was made out? A. I was.

Q. Does it contain an award on each of those two items—stock and fixtures? A. I can explain to you how this was made.

Q. Does it?

Mr. Klausner: It speaks for itself, your Honor; I object to it; it speaks for itself.

The Vice-Chancellor: I think that objection is proper, because the paper, if it does contain what counsel seems to imply in his question, ought to show it.

Q. Well, I will ask you this, Mr. Silverman—as an experienced insurance adjuster, does the award conform to the Proof of Loss?

Mr. Klausner: I object to that.

The Vice-Chancellor: I sustain the objection; I think the award ought to be put in, and then I will determine whether or not it conforms to it.

Mr. Vanderbilt: May I have it marked for identification.

(The paper was thereupon marked Exhibit D-5 for identification.)

Q. As I understand, Mr. Silverman, you were in a hurry to get away because you wanted to reach a boat coming in from Miami? A. Yes.

Q. But this was all signed up before you went away?

Mr. Klausner: I object to that; it is not yet in evidence.

Mr. Vanderbilt: Well, D-5 for identification?

The Vice-Chancellor: You are asking whether D-5 was already signed up before he went?

Mr. Vanderbilt: Was already signed up, before he went away.

The Vice-Chancellor: I think he can answer that.

A. It was.

Q. And Mr. Ginsberg offered to send you a statement of his figures, didn't he?

The Vice-Chancellor: Well, is that contained in that D-5, now, or is that another paper?

Mr. Vanderbilt: No, that is another paper.

A. He said so in his letter with the award, but he never did it.

Q. You are sure you never received a copy of it? A. Absolutely positive; I 'phoned him and wrote to him about it.

The Vice-Chancellor (to counsel): Now, do you folks distinguish between the award, strictly so called, and this other paper that Mr. Ginsberg is said to have taken out of his pocket and handed over?

Mr. Klausner: Yes, your Honor.

Mr. Vanderbilt: This paper he took out of his pocket was merely his figures, that he had come to that determination.

The Vice-Chancellor: All right; I just want to make the distinction.

Q. What did you do while that award, D-5, was being filled out?

Mr. Klausner: I object to the word "award" being in that question.

The Vice-Chancellor: Well, refer to "Exhibit D-5 for identification."

A. Well, I will have to lead up to that—Mr. Ginsberg pulled the award out of his pocket; Mr. Weinstock immediately pulled out of his pocket the appraisal agreement and started to write out the figures which Mr. Ginsberg gave him, and he puts his name on, and he says—"Sign that." The umpire signed it, and said, "Here, put your name on it." I said, "What do you mean I should sign that?" I said, "That is not a legal award." He said, "Well, we two have ruled;" he says, "if you don't want to sign it, you don't have to." I said, "All right, gentlemen, if you feel that way, good day," and then we left after a little argument.

Q. What was the argument? A. About the unfairness of the umpire being called in when he hadn't agreed or disagreed.

Q. Well, had Weinstock and you had any conferences between April 12th and April 28th? A. We had.

Q. How many? A. Three or four.

Q. Where? A. In Mr. Weinstock's office.

Q. What about? A. Pertaining to the household furniture, and also to the bills of the stock only.

Q. Did you come to an agreement? A. We did not; he wanted more bills; we never spoke about the fixtures.

Q. Did you come to an agreement on the fixtures? A. We never spoke about the fixtures.

Q. Never talked about the fixtures? A. Never talked about the fixtures; we spoke about the household furniture and the stock.

Q. Did you come to an agreement on either of them? A. We did not.

Q. Did you come to an agreement on the fixtures that day, in Mr. Ginsberg's office? A. We did not.

Q. When was the first day, after April 12th, that you learned that Ginsberg was not an impartial umpire? A. A few days before April 28th.

Q. Then why did you go to Ginsberg's office to meet him, to go over your differences? A. We went to Mr. Ginsberg's office so we could have quiet and peace when we went over the figures, without interruption.

Q. That was the only place you and Weinstock could agree on? A. That was suggested by him as a very nice, quiet place.

By the Vice-Chancellor:

Q. Is that the time you say you remonstrated against the continuance of Mr. Ginsberg as Umpire? A. Yes, April 28th.

By Mr. Vanderbilt:

Q. And three days before that you knew that he was, in your judgment, not an impartial umpire? A. Absolutely; but the appointment had been made seven days before that.

Q. But you kept the appointment, didn't you? A. Why, yes, because many times we have umpires, and we never call the umpire; the other appraiser and I will agree. I bet ninety per cent of our losses are agreed on without the umpire.

Q. But you don't go to the umpire's office to agree, do you? A. Yes, we do that in dozens of cases.

Q. You bother the umpire? A. We don't bother the umpire—we sit down, and if we cannot agree we call the umpire in and let him determine the difference.

Q. And you did that in this case? A. No; we did not do that in this case; we never did attempt to go over the figures.

Q. Everybody was out of step that day but you?

Mr. Klausner: I object to that.

The Vice-Chancellor: I sustain the objection.

Mr. Vanderbilt: I will withdraw that question. That is all.

Redirect Examination by Mr. Klausner:

Q. The paper that has been offered as Exhibit D-5 for identification—

The Vice-Chancellor: Are you going to examine on that, now?

Mr. Klausner: I don't think I had better; no further questions.

HARRY SILVERMAN, sworn.

DIRECT EXAMINATION BY MR. KLAUSNER:

Q. Mr. Silverman, you were the Adjuster appointed and employed by Melton Bros. in this loss? A. I was.

Q. And did you make an inventory of the goods for the loss? A. I did.

Q. And did you prepare the inventory that is annexed to the Proof of Loss? A. I don't know, without looking at it.

Q. I show you Exhibit C-11, which seems to be The Newark Fire Insurance Company's—will you examine that inventory and tell us if you were the one who prepared that inventory? A. I was.

Q. And you went to the loss—

Mr. Klausner: Again, your Honor, I am afraid I am going to anticipate the defense.

The Vice-Chancellor: I was just looking at the papers, to see whether or not you want this witness.

Mr. Klausner: No, I withdraw the witness, I was anticipating the defense; I withdraw all the questions for the time being.

The Vice-Chancellor: But, Mr. Vanderbilt, you have the right to cross-examine him, if you want to.

Mr. Vanderbilt: No.

The complainant rests.

THE CASE FOR THE DEFENDANTS.

DAVIS WEINSTOCK, sworn.

DIRECT EXAMINATION BY MR. VANDERBILT:

Q. Mr. Weinstock, I show you a paper, which has been marked Exhibit D-4 for identification, and ask you if that is your signature? A. It is.

Q. What is that paper?

Mr. Klausner: Just a minute.

The Vice-Chancellor: I don't think he can characterize the paper, can he?

Mr. Vanderbilt: Well, I offer it in evidence.

Mr. Klausner: I object to that, if your Honor please, on the ground that the same is immaterial to this case.

The Vice-Chancellor: I will receive it, subject to your objection.

(The paper is admitted in evidence, and retains its original marking.)

Q. I show you a paper that has been marked D-5 for identification, and ask you if that is your signature? A. It is.

Q. Do you know whose signature that is immediately below yours? A. I do.

Q. Whose signature is it? A. The Umpire's—Ginsberg's.

Mr. Vanderbilt: I offer that in evidence.

(Admitted, without objection, and retains its same marking.)

Q. Mr. Weinstock, after you were designated as the Appraiser in this matter by Mr. Walton, what

did you first do? A. I communicated with my co-appraiser, Mr. Silverman.

Q. And what did you do? A. On the following morning after my communication he called at my office.

Q. Then what did you do there? A. We agreed upon an Umpire.

The Vice-Chancellor: I will strike that out, about his saying "we agreed"; whether they agreed is for me to determine, you know.

Q. What did you do there? A. We were discussing about getting an Umpire; and I gave him half a dozen, all practical men in this business, and he refused; and then he submitted the name of B. Ginsberg.

BY THE VICE-CHANCELLOR:

Q. Who submitted it? A. Mr. Silverman.

BY MR. VANDERBILT:

Q. Then what did you do? A. I says, "Is Sonnenfeld not involved in this case?" He says, "No, no, Sonnenfeld has no interest in the Melton case,"—because I know that Ginsberg is in the same office with Sonnenfeld—"Well," I says, "if he is not, I will accept him"; and as soon as I said it, he immediately took out this paper, in his own handwriting, and he put in the name "B. Ginsberg".

Q. That is in Silverman's handwriting—Exhibit D-5? A. Yes; on both of them, yes, sir, and immediately before I signed it. This is his handwriting.

Q. By the way, is Ginsberg in business with you? A. He never was.

Q. Did you have any business relations with him, as partner, or co-adventurer, or anything of that kind? A. We never had, no, sir.

BY THE VICE-CHANCELLOR:

Q. How long did you know him? A. I have known Mr. Ginsberg twenty years—probably more than that.

Q. And you never had any business relations with him? A. He represented the assured.

BY MR. VANDERBILT:

Q. I mean, did you have any things in common with him, in business? A. No.

Q. Were you on the same side together? A. No, sir.

Q. Whatever dealings you have had with him, he has represented the assured, and you have represented the insurance company? A. Exactly.

Q. Well, after Silverman wrote in Ginsberg's name as Umpire on these two appraisement agreements, what happened next? A. Silverman insisted we should go down immediately, claiming that, in a few days, they must vacate the premises; and we went the very same day; we went down there to Hoboken, at Washington Street, Hoboken,—six hundred and something—and looked over the stock and fixtures and in regards to the furniture.

Q. Who was there on that trip? A. Silverman and myself.

Q. And not the Umpire? A. No, no.

Q. How long were you there? A. I don't know how many hours, but I know it was late already—when I left there it was night.

Q. Did you discuss figures that day? A. We did discuss figures.

Q. Who? A. Silverman and I; but he promised he would call the next day at my office with bills to substantiate what he claimed.

By the Vice-Chancellor:

Q. Tell us what you remember of what you discussed? A. Well, in fact, I couldn't see much of the stock down there; he claimed that the boys walked in that place and took it away.

Q. You say you discussed something—I am anxious to know just what it was you discussed—how far you had gone? A. Well, he had an inventory and I had an inventory or list, and I couldn't find this item, I couldn't find the other item, I couldn't find the items which he claimed were down there.

By Mr. Vanderbilt:

Q. I show you a paper and ask you if that is your inventory list you had on that occasion? A. This is the one.

Mr. Vanderbilt: I ask that that be marked in evidence (showing the same to Mr. Klausner).

Mr. Klausner: I object to any of these figures in lead pencil going in.

Q. What are those lead pencil figures? A. My figures, made at that time down there.

Mr. Vanderbilt: I offer it with the figures.

The Vice-Chancellor: I will admit it; I do not see that that can harm you; it is some notations that the Appraiser has made upon these sheets, evidently for his own information; I presume your man has done likewise.

(The paper is admitted and marked Exhibit D-6.)

Q. When were you first there with Mr. Silverman and Mr. Ginsberg, the Umpire? A. Well, a few days later, after my first visit; I don't remember it exactly.

Q. How did you come to take Ginsberg there? A. Because, on the following day, when Silverman called at my office, and we couldn't agree—

By the Vice-Chancellor:

Q. Tell us what you mean by that; that is very important for me to know; you say "we couldn't agree". A. Well, we couldn't agree on the items.

Q. Tell us what conversation passed between you, and then I will find out whether you could not agree; that is the really important matter? A. I had figured only $2464—

By Mr. Vanderbilt:

Q. For what? A. Well, I have got to see the total; I can't remember, you see; (after examining the paper) I had on the fixtures $2464, and the stock was so very little—I only saw of the stock $295.45 worth, I mean—just the way my figures were there (indicating).

By the Vice-Chancellor:

Q. You mean you only saw that amount of stock? A. Yes, something like that.

Q. Well, did you try to find the rest of the stock that you did not see? A. Well, if they were not there, how could I find them?

Q. Well, I am asking you. A. Well, they were not there, I could not find it there. Then Mr. Silverman says, "I will meet you at your office tomorrow with bills." Then he came in my office the next day morning, that following morning, and he and I took the bills what he produced to me for the whole year and from whom they purchased goods, and the recapitulation was that all what he purchased during this year was eleven thousand and ninety-nine dollars and some cents. I says, "That makes it out as purchasing one thousand dollars of stock every month, on an average—probably one month a little more, one month a little less." He claimed at that time $5948.10. I said, "How do you claim $5948 worth on stock, when his purchases average $1000 a month?" And I said at that time, "You know, candy, when it sets a week or ten days, gets stale, and he is in the heart of Jersey City, and every day he can get fresh goods." "Well", he says, "we will have to submit it to the Umpire; we can't agree."

Mr. Klausner: May I ask that date be fixed?

BY THE VICE-CHANCELLOR:

Q. What date was that? A. That must have been on the next day after the day that we were down there, Silverman and myself; it must have been on the 11th.

BY MR. VANDERBILT:

Q. What next? A. Then, at my office, he gets the telephone and he calls up the Umpire; he didn't

even have to look up the number, he knew the number by heart; he called it up, and while he was talking to the Umpire he came to me and spoke to me, and he says, "The Umpire said in case that he has got to employ an expert on the fixtures, or some items, he shall have to have the privilege to do so, and the expenses shall be borne by the appraisers." I said, "All right"; and on that day he made an appointment—at that time, I mean, when he spoke into the telephone, he made an appointment with the Umpire for the following day, to meet him at the office of Silverman in 15 Exchange Place, Jersey City—I don't remember the hour. I came over at the appointed time, and found there Mr. Ginsberg, the Umpire, and Mr. Silverman. All three together, we proceeded to the premises in Washington Street, or Washington Avenue (I don't know the number there) in Hoboken. And then we went through the same articles which we saw at that place the time we were there, and the Umpire asked that we shall submit our figures to him, which I did; but Silverman had another kind of schedule—he had, on the first day when I was with him, a list which did not exactly correspond to the lot numbers the way my schedule was. On the first day he said he was going to have a correct schedule with him, but at this time he forgot to take it along, but I don't remember exactly what he said.

BY THE VICE-CHANCELLOR:

Q. Well, you and he did not have the same schedule, did you? A. Well, some pages didn't agree, and some items were more than that, and some items were less than that—I don't know why; but that is the way I had it (indicating).

Q. Then you did not compare your schedule with his schedule to know that you each had a similar schedule? A. We did compare it, and the explanation he made at that time was that he had that schedule which was made up right the first day after the fire, and then, when he filed with the Company, he had to correct it a little bit; I cannot remember exactly the exact wording.

BY MR. VANDERBILT:

Q. Well, now, what took place this day when you, the Umpire and Silverman were together? A. When I came the second time I found some of the show-cases were not there which I saw at the first time, and I asked where they were; Silverman said they were moved to a store on Railroad Avenue; then, when we got through down there, we all three went to Railroad Avenue, where the fixtures were, and submitted it to the Umpire.

BY THE VICE-CHANCELLOR:

Q. Why did you submit it to the Umpire—weren't you supposed to agree among yourselves first? A. We couldn't agree.

Q. Well, you had no disagreement over on Railroad Avenue, did you? A. We had it in our office.

Q. All right; tell the story as fully as you can, because all I know thus far was that you disagreed as to some things; now, if you disagreed as to all things, tell me. A. We disagreed to everything we saw down there.

The Vice-Chancellor: (To counsel) Bring your case out in your own way; this witness is hard to understand.

BY MR. VANDERBILT:

Q. What did you do down there? Did the Umpire express any opinion as to the figures that day that you first went to Washington Street and then to Railroad Avenue? A. No.

Q. Now what happened next, then, after you met the Umpire and Silverman that day—what took place next? A. Just let me refresh my memory.

Q. All right. A. I remember, when Silverman was to my office on the following day, after the first time we were there—I asked him what—

Mr. Klausner: I object to this; this is not responsive to any quesiton Mr. Vanderbilt has asked.

The Vice-Chancellor: Well, the other side is the one to object to its not being responsive; you cannot object to its not being responsive, can you? (The examination at this point was repeated by the stenographer at the request of the Court). I think the witness ought to be permitted to refresh his memory, because we want to elicit the truth.

Mr. Klausner: All right.

The Witness: I had, in the schedule, enumerated the fixtures, on each and every item, and I asked Silverman, "What is your figures on the fixtures; show it to me—

Mr. Klausner: Pardon me, I would like to have the date of this.

The Vice-Chancellor: He said it was at the first meeting with Silverman.

The Witness: No, that was not on the day that I was with Silverman, but the following morning, when he was at my office.

The Vice-Chancellor: The following day after the first time?

The Witness: Yes.

The Vice-Chancellor: Now, can you tell us when that was?

The Witness: On the next morning—that must have been on the 11th.

BY MR. VANDERBILT:

Q. All right; now, you are telling us something that happened on the morning of the 11th at your office? A. Yes.

Q. With Silverman and you present? A. Yes.

Q. What was it? A. I had figures made on each and every item on the fixtures, and I asked him what was his opinion about the fixtures, and he says, "I don't know that I have to make figures on each and every item, but I would agree to have a lump sum of money"; I says, "we have got to make figures on each and every item." He says, "I don't know." "Well," he says, anyway, we are so far apart on the start, we will have to submit the stock and the fixtures to the Umpire."

BY THE VICE-CHANCELLOR:

Q. Now, were you far apart—tell me something about that? A. I don't remember how much it was on the fixtures, I remember how much it was on the stock.

BY MR. VANDERBILT:

Q. How much on the stock? A. On the stock it was $5948.

Q. What was your figure on the stock? A. It is $295 on the stock that I saw down there.

BY THE VICE-CHANCELLOR:

Q. You say you only appraised that which you could see? A. Yes, that is all.

Q. Well, how did you expect the Umpire to be able to put a value on something you could not see? A. Well, we tried to, you see, by judging from the bills.

Q. When he submitted the bills, then, to you, and put a new figure on it, did you increase or decrease your figure? A. No, I did not increase it, but, according to the bills, I was willing to say $1000 were his purchases a month.

Q. How did you consider that the Umpire could be of any assistance to you, if the goods could not be seen? A. Well, he would have to use judgment, as well as I use it.

Q. In other words, guess at it? A. Well, the best guess.

Q. That is what he did—guess? A. Well, according to the bills—on his purchases a month.

BY MR. VANDERBILT:

Q. Well, what happened further between Silverman and you that morning—please give it to us, Mr. Weinstock, without my breaking it up; tell what happened there? A. Where was I?

Q. You were telling us what took place on this morning with Silverman and you at your office.

The Vice-Chancellor: You said you were so far apart that you would have to submit it to the Umpire.

A. He called up the Umpire from my office, and it had been arranged for the following day to meet

there. Silverman did not let us off a minute; he was in a hurry to dispose of his case; he claimed that Melton must vacate that place in a few days. On the following day we met. I met the Umpire, Mr. Ginsberg at the office of Silverman in Jersey City, if I am not mistaken, at eleven o'clock in the morning—maybe a little later, I don't know—and Silverman took us in his car and drove us to Hoboken; and then I showed to the Umpire—I gave him my list with my figures on it, to the best of my knowledge—but the Umpire asked whether anyone had a clean schedule, without figures; and I don't know whether I had a duplicate, or Silverman had it, but I know we gave him a blank schedule.

By the Vice-Chancellor:

Q. Well, now, from where did the blank schedule come? A. Well, it was a copy from this one.

Q. Well, that schedule you are referring to is not a blank schedule, it is an inventory of goods with prices set opposite? A. Well, I mean a blank, without my figures on it.

Q. You mean a schedule without notations made on it by either you or Mr. Silverman? A. Right. Then I noticed there were some show-cases, which I saw previously, a few days before, were not there; and Silverman told me that they were trying to move, that they had got to vacate the premises, and those show-cases were moved away to Railroad Avenue; and then we all three went to Railroad Avenue.

By Mr. Vanderbilt:

Q. Now, did Ginsberg fix any figures, either on stock or on fixtures, this day that you were there

for the first time together, which, as I recall your testimony, was April 12th? A. Well, he made notations; he did not tell us anything.

Q. All right; now, what next took place, after the three of you parted on April 12th? A. What next took place—Silverman called me up several times that he has got to get through; he assured us Melton Bros. must vacate the premises. I said, as soon as the Umpire would be ready with the award I am ready to receive it. One day he called up, and he said he had the Umpire on the wire, or had information, and that he wanted to make an appointment for the 27th of April—I believe it was the 27th—I consented to that day, but I found out that I was busy, after that, and I wrote a letter and asked a postponement for the 28th; and on the 28th we came to the Umpire, Mr. Ginsberg, and Ginsberg said, "I have your figures with me,"—

By the Vice-Chancellor:

Q. Said to whom? A. To the two of us.

By Mr. Klausner:

Q. What date was this? A. On the 28th. And he said—

Mr. Klausner: May I interrupt and ask that Mr. Ginsberg leave the room at the present time?

The Vice-Chancellor: I do not think there is any necessity for it at this time; I have got to assume that these men are going to tell the truth.

A. (Resuming) I believe at that time, he said,—"I wonder if you two men can come together a little

nearer,"—you know it is quite natural, the Umpire doesn't want to decide too big a difference, they would like to have the two sides come a little nearer —"although," he said, "I have made my figures already, because I had your figures before—for ten or twelve days, in my hand, your figures,—and I have reached my opinion; but before I give you my opinion I would like to see if you can get nearer together."

BY THE VICE-CHANCELLOR:

Q. Now, you said that he told you that he had received your figures—do you mean he had received figures from you and figures from Silverman? A. Yes, sir.

Q. Do you mean to say that Mr. Silverman submitted figures to the Umpire? A. Yes, sir; positively.

Q. And you submitted figures to him? A. Oh, yes; this schedule was submitted right on that day; that was not in my possession, that was in the Umpire's, with my figures.

BY MR. VANDERBILT:

Q. On April 12th? A. On April 12th, surely.

BY THE VICE-CHANCELLOR:

Q. Well, on April 12th, or at least before April 12th, you received a typewritten inventory—that is what you are talking about when you say a "schedule" is it not? A. Yes, sir.

Q. And you have that now before you here, and you appear to have made pencil marks on it—when were they put on there? A. On the 10th.

Q. On the 10th? A. On the 10th, and some on the 11th.

Q. And did you give a paper like that to the Umpire, with pencil marks on it, accordingly? A. This is the identical paper we gave to him.

Q. Oh, that is the identical paper? A. Yes.

Q. Which is marked Exhibit D-6? A. Yes.

Q. And these lead-pencil marks—whose figures are they? A. They are all my figures.

Q. Now, you have not put any figure opposite all of the items on this, have you? A. Well, anything I could not find I didn't put anything down—I put a dash.

Q. Well, are you prepared to say now that these items that you had the dash opposite were not on the premises, or you could not find them? A. I could not see them.

Q. Well, did you tell Mr. Silverman you could not see them? A. Oh, sure; he knew it.

Q. And did Mr. Silverman, in your presence, put a dash opposite his figures at the time you did this? A. He had his papers; I don't know what he did.

Q. Were you concerned with what figures he was putting on his papers? A. I was concerned. Now, I will explain to your Honor the way the procedure of the appraisal goes.

Q. No, do not tell me the procedure in appraisal —I want to know what was done in this particular case, because you have heard Mr. Silverman testify that you and he did not come together; now you are saying that you did; I want to know who is telling the truth, and I want to find out, as minutely as I can, what you did, and how you did it? A. Very often we do not want to discuss that in the presence of the assured, and Silverman and I was in cases before, and he knows it, that the assured usually ex-

aggerate their claim. He says,—"Well, you make notations—

Mr. Klausner: I don't know what this has to do with it.

The Vice-Chancellor: Well, I think the cases indicate, and human experience indicates that if a man is appointed to represent the property-owner he magnifies the items—that is reasonable, I suppose—and, on the other hand, with the man who represents the insurance company, it is natural to expect that he is going to minimize them. However, they are expected to be fair and impartial; nevertheless there is bound to be some little bit of divergence there, it seems to me.

A. (Resuming)—and we made out to meet on the following morning at my office, when we would go over these figures in detail.

BY THE VICE-CHANCELLOR:

Q. Did you put those figures in that paper, that you have before you now, this Exhibit D-6, in the presence of Mr. Silverman? A. I had it with me.

Q. Did you put those figures down in his presence? A. I did; I didn't call him to look at this, you know; I had the figures. There is 54 candy plates (indicating)—I found 18 there.

Q. You checked it with him, did you, in the store? A. In the store.

Q. And when you checked up and only found 18 you put this in here? A. I did. Now, for instance, I found a dumb waiter; well I made a notation on this. Here is another, here is "2 doz. sundae cups" —I found 8, and I made a notation to that effect.

The Vice-Chancellor: Proceed, Mr. Vanderbilt; I am trying to elicit what you tried to elicit, but I have not succeeded very much.

BY MR. VANDERBILT:

Q. Now, what happened after this meeting on the 12th, with the Umpire and Silverman and you—what happened next between that and the 28th—did you do anything at all? A. No.

Q. Well, when did you next hear from either Silverman or Ginsberg? A. Well, an appointment was made to meet.

Q. On the 27th, but you could not keep it? A. Yes, and on the 28th—

Q. Then you met on the 28th? A. With Ginsberg, yes, at Ginsberg's office.

Q. Who arranged that? A. Silverman.

Q. What took place when the three of you met in Ginsber's office on the 28th? A. The Umpire, Mr. Ginsberg, first said, "Although I have made my figures already and formed my opinion, and have my figures in detail as to the amount of the loss, but before I release it, I would like you two to come together a little nearer, because you are too far apart."

BY MR. VANDERBILT:

Q. Well, had you told Mr. Ginsberg what your detail figures were at that time ? A. Oh, he knew it before that; not at that time; he had it since the 12th.

BY MR. VANDERBILT:

Q. He had your list and your figures from April 12th? A. From April 12th.

Q. Did he have Silverman's?

Mr. Klausner: If your Honor please, he can say whether he knows it.

A. Yes, I do know it, because Silverman said he was going to mail it to him that night, on the 12th; he said he would mail him his figures.

Q. Well, that does not answer the question. A. Well, at that time he had before him my list and Mr. Silverman's—he had the two schedules.

Q. On the 28th? A. Yes.

By the Vice-Chancellor:

Q. You say that on the 12th you gave him your own figures? A. Yes; on the 28th—

Q. I asked you whether Silverman gave him the figures on the 12th? A. No, to the best of my knowledge, I believe Silverman said he was going to mail his figures on that day.

The Vice-Chancellor: Mr. Klausner was objecting to your question, and he said he knew it.

The Witness: I knew he had it when we came there on the 28th.

By Mr. Vanderbilt:

Q. On April 28th did the Umpire have your inventory with your figures, and another copy of Ginsberg's? A. Yes.

Q. And he said he wanted you to come nearer together? A. Yes.

Q. Then what happened? A. Well, I don't know what other conversations; we couldn't get together;

I said I believed by figures were fair, and Silverman thought that his figures were fair, of course, as usual. Then Silverman says,—"Oh, let us take up that furniture first, on the second floor; "I couldn't see any objection to this one; I said, "All right." The Umpire, Mr. Ginsberg, gave the figures on the Melton furniture. When I saw the way I led him on some items, I looked for them, and I saw them and give him the price—

The Vice-Chancellor: This is in reference to the furniture.

Mr. Vanderbilt: Well, it is all continuous, as to what happened on this date.

A. (Resuming)—then Silverman jumps up and says,—"What right have you to criticize the opinion of the Umpire? The Umpire was selected by the two of us; whatever he says goes; you have no right, at this late minute, to criticize his action."

By the Vice-Chancellor:

Q. Now, you are directing your attention specifically to the furniture? A. To the furniture of the Melton Brothers. I said, "You are right." The award came in, it was given in by the Umpire, $625, and I filled it in—the award—and Silverman signed it, and the Umpire signed it.

By Mr. Vanderbilt:

Q. All right; then what happened? A. Then we disposed of this, and then we took up the stock and fixtures from the store.

BY THE VICE-CHANCELLOR:

Q. I wish you would tell me as fully as you can, as Mr. Vanderbilt is asking you? A. I will tell you the best I can remember; of course it has been over a year.

Q. That is all you can be expected to do. A. He kept on talking about the stock in the cellar; and the Umpire says, "Why," he says, "besides the time I was with you together, I was there again;" he says, "I wanted to make sure of my actions, of my figures;" and I don't remember what else that was said in exactly the same wording; and he says, "I will be frank to tell you, there is the figures, but I believe that man is getting more than he is entitled to."

BY MR. KLAUSNER:

Q. Who said that? A. The Umpire.

BY THE VICE-CHANCELLOR:

Q. You told us, a moment ago, that the umpire told you and Mr. Silverman to try to get together a little closer? A. Yes, that was before that; that was before we took up the furniture, when we first went in there.

Q. All right; what did you and Silverman do to get together a little closer? A. I said, "I don't want to get away from my figures;" I thought my figures were all right; and Silverman thought his figures was right.

Q. Then did you and Silverman try to agree on the figures—did you try to give and take—or did you just stand arbitrarily aside and say, "I stand on my figures," and is that what he said about his,

on this occasion? A. I was ready to go and give him a thousand or twelve hundred dollars.

Q. Did you tell Silverman that? A. I told him at that time, in the presence of everybody and the umpire.

Q. You mean the umpire heard you say you were willing to change your figures by allowing him a thousand or twelve hundred dollars? A. I don't remember whether he heard it, or not; I don't know.

Q. You say he was there? A. Yes; when three people talk together I cannot tell whether anybody heard it, or not; I don't know whether I said exactly a thousand dollars, but I know I said "I am willing to give it;" but he was still talking $29,400; I said, "There is no use to get nearer that, I couldn't give him half of the amount what he claims."

The Vice-Chancellor (to counsel): You can appreciate the purport of the questions I am putting; I am trying to elicit, as fully as I can from this witness, the best he can give us. Now, if you can bring out anything that will enlighten me I would be glad to have you do it.

The Witness: Well, that is the best I can remember on that day, your Honor.

BY MR. VANDERBILT:

Q. Did you and Silverman, on the 28th, when he left, go over your figures again? A. Not over the figures again, we didn't.

The Vice-Chancellor: I think you had better ask him what was done, because I can see the difficulty with this witness, and if you ask that question the way you just asked it, it might not

bring about the results that ought to be brought about in a different way.

Q. What did you and Silverman do that day with respect to the stock and fixture loss, if anything? A. Silverman didn't have any items scheduled on the fixtures; I remember he said, "My figures I gave to the Umpire," and it was on the last page where he said, "So much and so much for the fixtures," in one bulk; I had the fixtures in detail, in items, and he had it in the bulk.

Q. Did you see Silverman's figures that day, that he had handed in to the Umpire? A. I did; it was on the last page, and not in handwriting, but in typewriting.

Q. Is this Silverman's figures as they were handed to the Umpire that day (showing the witness Exhibit D-3 for identification)? A. That is the schedule what I saw.

Q. And the umpire had that at that time? A. And the umpire had it at that time.

Mr. Vanderbilt: I offer that in evidence.
(Admitted and retains its same marking.)

BY THE VICE-CHANCELLOR:

Q. I want to know what you and Silverman did about coming together, if you did anything at all, by way of agreement as to your respective figures on that day, the 28th? A. Now, Silverman's claim amounted, for the fixtures, the way he claimed, so much less 25% for salvage; and I said, "This cannot be considered, at all; I want the figures on each and every item."

Q. Well, did you leave anything for salvage on your items? A. Oh, sure.

Q. What percentage did you allow for salvage? A. According to the article; not everyone was alike; one was more damaged, and one was less damaged. I remind myself again—when I said this Silverman said, "What is the difference, anyway;" he says, "Let the umpire give his figures; I have got to go away;" some of his relatives, or his father and mother, had got to come from somewhere, I don't know.

Q. Then you and Silverman did not hand the inventory, or the schedule, as you have been calling it, of the fixtures? A. Why, certainly, we did hand them.

Q. You handed him yours, but Silverman did not hand him his, did he? A. When I came down there he had it on his desk.

Q. But you are after telling me he did not have an itemized list of the fixtures? A. Not itemized, but in the bulk.

Q. Then Silverman did not hand the umpire his list of figures, itemized, with respect to the fixtures? A. No; I can say this—he only says in there "25% for salvage."

Q. Now, you are referring to Exhibit D-3; have you any independent recollection of the matter other than your reference to that exhibit? A. I don't think so.

Mr. Vanderbilt: I don't know whether your Honor has read these amounts, have you?

The Vice-Chancellor: I did not; but I am trying to find out whether he has an independent recollection. Well, you examined the witness about it, but it has Silverman's figures, understand, Mr. Vanderbilt, without looking at the paper, in bulk, has it not?

Mr. Vanderbilt: Yes.

The Vice-Chancellor: What I am trying to find out is whether or not Silverman had individuated the items, and then written out the figures; this witness says he did, he itemized the fixtures and put his figures opposite each item; he says Silverman did not, he says he bulked it.

The Witness: I remember he bulked it.

BY THE VICE-CHANCELLOR:

Q. I ask you again, have you any independent recollection of what Silverman did with respect to the fixture matter, other than your reference now to this Exhibit D-3? A. I don't remember.

BY MR. VANDERBILT:

Q. Well, what happened next—did the umpire present his figures? A. The umpire presented his figures.

Q. Well, what happened then—go ahead and tell us what happened? A. Then I took his figures and I filled it in the award, the same as I did in the previous matter.

BY THE VICE-CHANCELLOR:

Q. You told us a little while ago that the umpire said that he would like to have you and Mr. Silverman get a little closer together; now, I tried to find out from you what you and Silverman did after the umpire made that statement to you, with a view of enabling you to get closer together. A. I explained, your Honor, from the beginning; the stock—he had it in bulk—and he had so much here for the stock

"five thousand and some odd dollars;" and I said, "I can't see the half of it;" and then Silverman says, "I am in a hurry; I have got to get my relatives; and, he says, "Anyway, the umpire knows all about it, because he had our figures before yet; let him show his figures."

Q. Was the umpire with you at the time you made this check-up on the inventory—you say you checked up and could not find some of the goods? A. That was the second time I was with him.

Q. Was the umpire with you at the time you did the checking up? A. The second time, yes.

Q. Then he could not see the goods there? A. Neither could he.

Q. How could you expect the umpire, then to put a value on those, if you expected him to give any value on goods not seen? A. Well, I told you before, your Honor, he had to be guided by the circumstances, how much it was burnt, and what the general conditions were.

Q. But you expressed your willingness to Silverman or the Umpire to give a thousand or twelve hundred dollars from what you had in your figures? A. Well, I meant all together.

Q. Well, no matter what it was, you were willing to give up a thousand to twelve hundred dollars then? A. Yes.

Q. Well, when you say "all together" you are referring now to the stock, are you not? A. I am referring to the stock.

BY MR. VANDERBILT:

Q. Well, then the umpire gave his figures—was that the next thing? A. Yes.

Q. Was the award signed by the umpire and you? A. Yes, sir.

Q. During the course of this conversation on April 28th, at Ginsberg's office, did Silverman, at any time, say anything by way of objecting to Mr. Ginsberg as the umpire? A. No, he did not object to Ginsberg as the umpire; but when he was giving his figures he objected and said it was not enough; and he said Melton had got an additional expense to pay, for the tracing and other expenses, I don't remember exactly.

Q. But, before the award was expressed by the umpire, did he, at any time, on April 28th, raise any objection to Mr. Ginsberg as the umpire? A. He did not.

Q. Tell us what he said about Ginsberg, if anything, and then we will know? A. He said, a little while before this award was given, when Ginsberg gave the figures on the household furniture, and I tried to complain that his figures were too high, he said, "What right have you got to criticise the umpire's award; we have agreed upon the umpire; whatever he says must be honored by the two appraisers.

BY THE VICE-CHANCELLOR:

Q. Now, that was said with respect to the household furniture? A. Yes, that was a little while before.

BY MR. VANDERBILT:

Q. Did he say anything else, prior to the giving of the figures, as to Ginsberg, except this that you have just narrated about the household furniture? A. Not a word.

Q. Well, on any occasion, previous to April 28th, had he ever criticised Ginsberg as the umpire? A. No, sir.

BY THE VICE-CHANCELLOR:

Q. I want to call your attention to a letter bearing date April 30/26, addressed to you by S. W. Silverman, that is contained in the list of exhibits here marked C-5 and ask you to look at that and see whether that refreshes your recollection as to whether or not Silverman, on the 28th, made any objection to Ginsberg? A. I remember this letter, and I know, where the letter was given to me there was not a syllable of truth in this letter.

Q. Did you reply to that letter? A. I did.

Q. Did you say to Mr. Silverman, in your reply, that there was no truth in that letter? A. I believe I did.

The Vice-Chancellor (to counsel): Have you got the letter in reply?

Mr. Klausner: Yes, sir, I have it here (producing a paper).

Q. I show you a letter bearing date May 1, 1926, addressed from you to S. W. Silverman, and ask you if that is the reply that you have reference to? A. That is the one.

CROSS EXAMINATION BY MR. KLAUSNER:

Q. Mr. Weinstock, I understand, according to your story, that on April 10th was the date upon which you agreed on Ginsberg as the umpire? A. Yes—well, if the paper says so.

Q. Suppose you look at it (showing the witness the same). A. That is it—April 10th.

Q. And that on April 11th you had a meeting with Silverman? A. I knew it was the following day.

Q. Well, that is April 11th? A. I suppose so.

Q. You had a meeting with Silverman, and you say to us that on that day you both decided that you could not agree with one another? A. Yes, sir.

Q. That is what you say? A. Yes.

Q. Now, did you examine the loss at 620 Washington Street, item by item, prior to that meeting on April 11th? A. Yes.

Q. And in one day you came to the conclusion that you could not agree, and agreed that Ginsberg, the Umpire, should be called in? A. Yes, sir.

Q. And on April 12th you called in the Umpire, and the three of you went to the loss? A. Yes, sir.

Q. And on April 12th, you tell us, you gave him your figures?

The Vice-Chancellor: That is, the Umpire?

Q. You gave the Umpire your figures? A. To the best of my recollection, yes.

Q. That is what you testified to on direct examination? A. Yes.

Q. And those were your final figures in this loss? A. That was my figures on this loss.

Q. And then, from April 11th to April 28th you did nothing further until Ginsberg decided the case? A. Yes, sir.

Q. You are positive about that? A. To the best of my recollection.

Q. That is, you disagreed on April 11th, according to your story, and on April 12th you called in

the Umpire, and then the Umpire, between April 12th and April 28th, made his investigations, and you did nothing further with reference to the inventory—an item by item inventory—from April 12th to April 28th—is not that so? A. That is the best of my recollection.

Q. Right. Then, on April 28th, when you came there, you came there for the purpose of settling the loss? A. Yes.

Q. On April 28th? A. Surely.

Q. Now, can you tell us how you came to write a letter on April 20th asking for bills from Mr. Silverman, if you were no longer interested and you had disagreed? A. Now, let me tell you—

Q. Just answer that question. A. Yes, I will give you my recollection.

Q. Yes. A. After we submitted to the Umpire on the 12th, and I based my figures on the stock according to the bills submitted by Silverman at that time, it showed a purchase only at the rate of a thousand dollars per month; then he said he didn't bring all the bills, he has more bills; I says,—"If you have more bills, bring them over, I will change my opinion, 2—now, I don't remember that exactly, but of course the letter refreshes my memory.

Q. But you say, on April 12th you submitted your differences to the Umpire? A. Yes, sir.

Q. Now, if you submitted your differences to the Umpire, what necessity was there of a further, on your part, getting bills? A. Well, at that time Silverman said he would bring more bills, and he will show the purchases—he will show that he purchased more in amount than he brought before. I said,—"If you produce more bills I will be willing to reverse myself and raise my estimate."

Q. So, that when you, on April 11th, say that you disagreed—a day after your first meeting with Sil-

verman—a day after your first meeting—you say you went over the whole thing—a loss claimed to be $40,000 by the insured, and about $29,000 by Mr. Silverman as Appraiser—in one day you went over the whole thing, from April 10th to April 11th, and on April 11th disagreed without looking at any bills? A. We looked at the bills on the 11th. I got the bills on the 11th.

Q. Well, you did not have all the bills before you on the 11th? A. On the 11th I had all the bills, that is, what he forwarded to me, and I copied it on my paper; but afterward, when he submitted to the Umpire, he says he will get more bills. I said,—"Go ahead; if you can produce bills that he purchased more goods than the bills you show to me, I will be willing to look over the matter."

BY THE VICE-CHANCELLOR:

Q. I do not know that I understand you on that—you say you told Silverman if he would submit more bills to you, you were willing to reconsider the matter? A. Right.

Q. Now, he did submit bills to you pursuant to your letter, to which your attention is now directed, of April 20th, did he not? A. No; I had the bills from the 11th.

Q. Read the letter again and see if that letter refreshes your recollection? A. Well, maybe I am a little mixed up in the date; I know he brought bills to me. That is a copy of the bills which I had here (referring to a paper produced by the witness); I was not sure when he brought them to me.

Q. According to your letter it was April 20th. A. On April 20th?

Q. According to the letter of April 20th, it says here,—"At our conference this morning when we

went over the bills which you submitted to me." A. That may have been April 20th.

Q. You think the paper you had and were referring to, containing your items, must have been April 20th? A. April 20th—I had no date here.

Q. Just compare the total in your paper that you took from your pocket with the total in this letter of April 20th, and see if that will refresh your recollection as to the matter? It refers to a total of $12,900—now, does that paper which you just took from your pocket relate to $12,900 of bills? A. Yes—one year, $12,900, I had it here.

Q. When did you put that there—is not this your total on the back of the paper? A. It is not the total; this Silverman claimed up to $18,217; Silverman deducted—

Mr. Klausner: What has that got to do with it?

The Witness: This has got to do with what Silverman claimed to me at that time.

Mr. Klausner: At what time?

The Witness: Oh, I haven't got the date; I don't know exactly what time.

Mr. Klausner: Well, this is all at the same time, is it not?

Q. Well, was it after April 12th? A. That must have been after April 12th.

Q. Well, if that be so, then you had not disagreed on April 12th, absolutely, had you? A. Well, wait a minute—just a minute—and I will straighten you out.

Q. Think it over carefully, because all you are expected to do is to give us your best recollection? A. Your Honor must know it is a year and a half, and I try to do my best.

Q. Well, before you answer me, answer this—it has been said you are a very busy man—you have had many of these appraisements within the past year and a half, haven't you? A. Yes.

Q. About how many a day? A. Oh, not a day, but a week.

Q. I mean, how many a week? A. Two or three.

Q. So you have had possibly more than a hundred in the last year? A. Well, not more—well, about one hundred.

Q. And is that the reason your mind is not so very fresh as to this transaction—that you cannot recollect because your mind is confused with other figures and other cases? A. Possibly.

Q. Have you any data in your office that would throw any enlightenment on this matter? A. Not any more than what we have here; I have a calendar of last year, or two years, which shows the dates when they were made.

By Mr. Klausner:

Q. You have gone over this case several times before coming here to-day? A. One time I was in the United States Court; this is the second time. I did not look at any papers before I came over here.

Q. You knew you were coming over here to-day? A. Well, I thought I would testify to the best of my recollection.

Q. So you change your testimony? A. Well, if I had seen a copy of the letter I would change it.

Q. So, on April 11th, you had not disagreed? A. We disagreed with them bills, and the amount of the stock, that day; some stock we had seen down there—very little.

Q. Well, in order to really come to the value of what a loss is, as you have explained to the Court, you have to have the bills, don't you? A. Yes, sir.

Q. You have to have bills? A. I got to know what he purchased, yes.

Q. So, on April 11th, you did not have the bills? A. No.

Q. You only got the bills on April 20th? A. It seems so.

Q. So that on April 11th you had not disagreed? A. Well, we could disagree without the bills.

Q. Just on general principles?

The Vice-Chancellor: He is asking you had you disagreed—you said you could without the bills.

A. Well, I believe we did disagree.

Q. Without the bills? A. I will tell you—because, at that time, without the bills, I had only $295 on the stock.

Q. But, in order to properly prepare an appraisal of the loss on a fire, where the goods had disappeared, you need bills? A. I need bills.

Q. To honestly prepare the appraisal—is that right? A. That is right.

Q. And you did not have the bills on April 11th, you only got them on April 20th—that is right, is it not? You have just told us that? A. I believe I had the bills—I don't remember that.

Q. Well, look at your letter—doesn't that refresh your recollection? A. Well, that don't refresh my recollection whether I had the bills in my possession, or not; it may be I had them in my possession; I might have had the bills prior to this; but I don't remember what it was about the bills, I really couldn't say; that really confuses me—the dates.

Q. This little paper that you prepared yourself was prepared on April 20th, is not that so? A. That was prepared on April 20th, yes.

The Vice-Chancellor: Have that marked, so we will know it.

The Witness: This paper is not one written by myself, it was written by Silverman also; it is not my handwriting.

The Vice-Chancellor: Well, have that marked.

Q. So Silverman prepared this on April 20th? A. Yes.

(The paper is offered in evidence by Mr. Klausner and is marked Exhibit C-13).

Q. Now, we want no question about it—this was a paper that was prepared on April 20th; it is marked Exhibit C-13? A. Yes.

Q. Now, Mr. Weinstock, you have been acting for Insurance Companies for a number of years, haven't you? A. I have been.

Q. And you still are acting for these Insurance Companies? A. And sometimes for the assured, also.

Q. But more of your business is for the insurance company than for insurers, is it not? A. Yes, sir.

Q. And you have known Mr. Ginsberg for a number of years? A. I had.

Q. About fifteen or twenty years? A. Yes, sir.

Q. Have you ever had any real estate transactions with Mr. Ginsberg? A. No.

Q. Have you had any transactions with mortgages, with Mr. Ginsberg? A. No.

Q. Positive of that? Have you ever had any business dealings, outside of insurance dealings, with Mr. Ginsberg? A. Well, I have, something like twenty-five years ago.

The Vice-Chancellor: We would not be concerned about that.

Q. No, within the past few years? A. In the last ten or fifteen years, no.

Q. You are just good friends? A. Just acquaintances—the same as with Mr. Silverman.

Q. And, on the day of the appraisal agreement, when you came together, in whose office did you come together to sign this appraisal agreement? A. Which signing?

Q. The appraisal agreement that was signed on April 10th? A. It was in my office.

Q. In your office?

Mr. Klausner: Oh, this is the wrong one; D-4; there is another one; this is the one I want—Exhibit C-4 (showing the witness the same).

Q. This Exhibit C-4, and the copy of it, were signed on April 10th by you and Mr. Silverman? A. Those two are the same thing.

Q. That is right, is it not? A. Yes.

Q. Now, about what time in the day was that? A. Early in the morning.

Q. And did you, at that time, arrange with reference to the appointment of the Umpire? A. Yes, sir.

Q. Now, at that time you say that you suggested four or five names, and Silverman suggested Ginsberg? A. Yes.

Q. Was that the first one that he suggested? A. Oh, I don't remember that.

Q. You don't remember that? A. Oh, I don't know, but I know that he gave the name of Ginsberg.

Q. And, as soon as he gave the name of Ginsberg you signed up on it? A. I said "Providing Sonnenfeld is not interest in the case."

Q. Why did you ask, "Provided Sonnenfeld is not interested"? A. I knew Sonnenfeld was in partnership with Silverman—Harry Silverman, and, being that they were in one office—Ginsberg and Sonnenfeld—I thought it would not be fair that he should be the Umpire in this case.

Q. Now, do you remember Mr. Silverman calling Sonnenfeld, at Ginsberg's office? A. I don't remember that; but as soon as he said that—"No, he is not interested in it, because he knows about the cases—

Q. (Interrupting) Didn't you say before that you called up Ginsberg after the appraisement was signed? A. I never said that.

Q. Did you say that Mr. Silverman called him? A. No; that is, Silverman called him on the 12th—two days later after we couldnt agree on the 11th—I don't remember, but not on that date; not on the date we agreed upon him.

Q. Do you recall Mr. Silverman, at the time before you agreed upon Ginsberg, calling Mr. Sonnenfeld on the wire? A. He did not; I remember, as soon as I consented to Ginsberg's name, Silverman signed his name to the paper.

By the Vice-Chancellor:

Q. I understood you to say, a moment ago, you didn't remember whether he did, or not; now you

say he did not? A. Well, the best I remember I told you.

Q. Well, are you in any wise certain whether he did or did not call him up—can you remember, or have you any recollection about it? A. To the best of my recollection he did not call him.

Q. Do you think you recollect something about that? Do you, or are you just giving a guess at it? A. That is the best of my recollection; I don't really recall it.

Q. Well, what impresses you with the recollection that you think he did not call him? A. The reason was, when I said "if he is not interested with Sonnenfeld, is not a partner, I will accept Ginsberg," I know he then put in that name.

By Mr. Klausner:

Q. Now, Mr. Weinstock, you had an inventory given to you by the Insurance Companies? A. Yes.

Q. And did you have that on the first day that you saw Mr. Silverman? A. I did.

Q. Did he have a copy? A. When did you mean—the first day, on the 10th?

Q. Yes. A. I believe he had; yes, I am sure he had.

Q. He had a copy, now, at that time; what did you do after you agreed upon the Umpire? A. We made up to go there—or I don't know right away—an hour later, or two hours later—I don't know.

Q. What? A. To go to the premises of the fire.

Q. In an hour or two, or later, or something, you went where? A. To Hoboken.

Q. You wanted to go to Washington Street, Hoboken? A. Yes.

Q. Well, do you remember whether you went that day, or you went the next day? A. We went that day; I am almost sure we did.

By the Vice-Chancellor:

Q. You, Silverman and the Umpire? A. No, Silverman and I.

By Mr. Klausner:

Q. You are almost sure, but you are not positive? A. I am almost positive.

Q. You are almost positive? A. Well, I am positive.

Q. Well, how long did you stay there? A. I know when I left down there it was dark.

Q. How long did you stay there? A. I don't remember.

Q. Ten minutes? A. I was there more than three hours.

Q. You were there more than three hours the first day that you met Silverman? A. On the first day; yes, sir.

By the Vice-Chancellor:

Q. I understood Silverman to say you were there about twenty minutes or half-an-hour? A. I am not responsible for what he says.

Q. But you are positive that he was wrong? A. I am positive he was wrong; because it was late when I went home.

By Mr. Klausner:

Q. Well, you only met him the first time on April 10th, didn't you? A. Yes.

Q. You are a very busy man, aren't you? A. Yes, I am.

Q. And you sacrificed everything, and didn't have any other appointment on April 10th, or on April 11th—you spent all your time on this business? A. When he came and persuaded me to leave everything to go with him, for old time's sake, and said "I knew you for twenty years."

Q. So you had no other appointment on April 10th or 11th? A. If I had I probably cancelled it and let it go, and I went with him.

Q. Now, what was your estimate of the loss? A. On the stock when I saw on the premises. $295—what I said before.

Q. Then you felt that the whole loss on this fire, on the stock, was $295? A. No, I didn't believe that it was only $295—only what I saw.

Q. Well, what did you estimate the loss to be? A. I firmly believed that the man should get a little more, but I didn't know how much more. I asked for the bills; there was show-cases down there; I said, "Where are the candy and show cases?" Silverman says that boys walked in that place and they probably took it out.

By the Vice-Chancellor:

Q. Then you did not estimate the loss on the candy or stock in trade, did you? A. Well, I thought that, with this billing, goods should not be included—

Q. (Interrupting) But you did not estimate it in a formal way, as an appraiser or adjuster? A. No, but I could see, in a general way, that a store like this should have about a thousand dollars worth of stuff, but that I didn't figure, it was just a general opinion; it might have been more or less.

Q. Did you say that to Silverman? A. In that way I spoke to Silverman.

Q. Why didn't you allow him the thousand dollars, if you thought he should have that— I mean, on your figures? A. I explained, your Honor, that the figures were based on the evidence which I seen in the store.

Q. Yes, but you also said that even though you did not see some of the items, you realized that the man should have a greater amount of loss granted? A. Yes.

Q. What I am trying to find out from you is, did you conceive in your mind how much the amount should be that the man should be allowed for the loss? A. I figured it about $1,000.

Q. Did you make a note of that on paper in any way? A. No, I don't know what I did make it on paper, or not.

Q. Did you make known to the Umpire that that was your thought? A. That is what I said at that time--that I believed that.

Q. Did you tell the Umpire that your thought was that he should be allowed $1000, or approximate that, for his stock? A. Yes; that is what I said; and then Silverman said he would submit bills to show there was more.

Q. And then you said if he submitted other bills you would reconsider the matter—what did you mean by that? A. Well, I would give him more than that.

BY MR. KLAUSNER:

Q. So that you never definitely told Mr. Silverman the exact amount that you offered in this appraisal, did you? A. I told him my opinion, and I said—

Q. Just as a general opinion, but you never gave him a definite opinion?

BY THE VICE-CHANCELLOR:

Q. Did you tell Silverman how much you would agree to allow his party for the loss on the stock? A. Yes, sir—a thousand dollars, I said, right at the beginning.

Q. Well, why did you mention that $295 in your idea of the loss? A. I did not put any notation on the goods which I could not see. He claims they were stolen.

BY MR. KLAUSNER:

Q. What did Silverman ask for his stock? A. $5948.00.

Q. He never asked for more? A. Oh, in the beginning they asked for more, but he was willing to come down.

Q. And he was willing to take five thousand? A. Yes, I don't remember what he said in the beginning.

Q. Now, do you recall, on April 28th, seeing a paper something like this, where Silverman asked twenty-nine thousand for the whole thing—do you remember that Silverman asked twenty-nine thousand for the whole loss? A. No; I remember seeing that paper down there (referring to Exhibit D-3, now shown the witness).

Q. You say you saw this paper, D-3, is that right? A. Yes.

Q. When do you say you saw that paper? A. On the 28th, when he came to the office.

Q. That is your story? A. Yes.

Q. What did he ask for on that day? A. On the start he claims ten thousand dollars.

Q. So it was more than five thousand he was claiming? A. Sure.

Q. But just a minute ago you said he never asked more than five? A. To me.

Q. Yes, to you—do you want to change that now? A. I still say this was the amount he asked me—what I made in the notation.

Q. Five thousand? A. Yes.

Q. He did not ask you then, for ten? A. No.

Q. You saw it (referring to a paper shown the witness)? A. When he asked me for this one, I did not see this one (indicating).

Q. When did you see this one (not indicating to the stenographer the identity of the paper referred to)? A. On the 28th.

Q. So you saw this on the 28th? A. Yes.

Q. And that asks for $10,000? A. Yes.

Q. So you know that he asked for ten thousand dollars? A. Yes.

BY THE VICE-CHANCELLOR:

Q. On the 28th did he show you this Exhibit C-12? A. I did not see it.

BY MR. KLAUSNER:

Q. A minute ago you told us that all he asked was $5,000? A. $5,948.00; and he gave me the reason why he asked for it.

BY THE VICE-CHANCELLOR:

Q. You say that was on the 20th? A. That was on the 20th.

BY MR. KLAUSNER:

Q. And on the 28th he asked for $10,000? A. I don't know when this was submitted (referring to the paper in the hands of the witness).

Q. Well, when did you see it? A. On the 28th.

Q. So it was submitted, you say, on the 28th? A. I don't know; I did not see it submitted on the 28th; I found it on the Umpire's desk.

Q. All right—on the 28th you knew he was asking for ten thousand? A. I don't know when he gave this in.

Q. I know, but on the 28th you knew he was asking for ten thousand dollars? A. Yes; he didn't mean it when he asked for it.

Q. Oh, you knew he did not mean it? A. Yes, I knew he didn't mean it when he asked for it; I am used to that.

Q. Now, in going over the bills did he point out the various bills to you, and show you why he asked for ten thousand dollars? A. No; in going through the bills—this is his handwriting himself (indicating), he copied this in the bill and filled that copy in—he said, "Here is what I put in, here is my handwriting,' and we recapitulated this one (indicating), and then we came in down there (indicating) and we figured it out, and it amounted, total for one year, $12,904.53.

Q. That was the total amount of bills per year? A. That was the total amount of bills per year.

Q. And that was according to your letter of April 20th? A. Yes.

Q. Where did you get that total of twelve thousand? A. There probably was another paper, when he didn't get any more bills in, I suppose.

Q. What is the total on the bottom of that paper? A. This is $11,099.99.

Q. So the top item is $12,904.53? A. Yes; there is a thousand dollars and more, at least, probably; I don't know where the other part of the paper is.

BY MR. KLAUSNER:

Q. Now, Mr. Weinstock, you remember going, on April 12th, with Ginsberg, you and Silverman to the loss? A. I do.

Q. How long did you say at 620 Washington Street? A. Oh, a couple of hours; I don't remember exactly.

Q. You don't remember? A. I don't remember exactly.

Q. How long did you stay at Railroad Avenue, do you remember that? A. Probably an hour, or more than that.

Q. Did you ever go to Railroad Avenue after that day? A. I did not.

BY THE VICE-CHANCELLOR:

Q. What did you do at Railroad Avenue? A. They removed some show-cases since the first day I was there; he said they had got to vacate the premises, and in the meantime they moved some show-cases.

Q. They moved them to Railroad Avenue? A. Yes.

Q. You went down there to show him? A. I went down with the Umpire to show him.

Q. When you went down to Railroad Avenue did it take you an hour to see those things down there? A. Well, I don't know what it took; it was an hour, probably; I can't remember exactly the time; I know we stayed there until night.

BY MR. KLAUSNER:

Q. Do you remember going back to your office that day? A. No—wait a minute now, I will tell you—I remember, yes; I remember Silverman took me home in the car.

BY THE VICE-CHANCELLOR:

Q. Before you said you went direct home? A. That was the first time, I said, on the 10th.

Q. I am only trying to get the truth of the matter; I don't want you to be misled now. A. I remember I said the 10th I went with Silverman alone, then I went direct home; but the second time I was with the Umpire, Silverman took us in the car, and he brought me home, and he took Ginsberg.

BY MR. KLAUSNER:

Q. When you took Ginsberg on April 12th, did you go item by item over each figure? A. When you say "I took Ginsberg"—in Silverman's office?

Q. Yes. A. Yes.

Q. Now, on that day you did not go over all the figures, item by item, did you? A. Why not?

BY THE VICE-CHANCELLOR:

Q. How could you, when Silverman did not have the items of the fixtures? A. But I had it.

Q. You mean you went over the items as per your list? A. As per my list.

BY MR. KLAUSNER:

Q. But Silverman did not have his items? A. I don't believe he had.

Q. And then, after that, you and Silverman had several conferences, is not that so? A. I am sure we had a conference on the 20th, according to the letter.

Q. Did you have any other conferences? A. I don't remember them.

Q. You had at least one? A. Yes; if I hadn't seen the letter, I wouldn't even remember that conference.

Q. You wouldn't even remember that conference? A. I would not.

Q. And what were those conferences about? A. What conferences?

Q. That you had with Mr. Silverman after April 12th? A. Well, he was to submit these additional bills.

Q. So that he submitted additional bills, and you were going over the inventory? A. Yes.

Q. In order to appraise the loss—is that right? A. No, that was a question of the missing items. On the goods which we saw down there we made figures, but the question was on the missing ones.

Q. Let me ask you—were you ever in the furniture business?

Mr. Vanderbilt: Objected to, as immaterial.

The Vice-Chancellor: Well, a lot of this that has been coming in is quite immaterial, but I do not know that you are questioning the validity of that matter.

Mr. Klausner: I am attacking his credibility, your Honor.

The Vice-Chancellor: Well, do not go too far. I will admit it.

Mr. Vanderbilt: I will withdraw the objection.

Q. Have you ever been in the fixture business? A. Yes, twenty-five years ago.

Q. When did you give up the fixture business? A. I told you twenty-five years ago.

The Vice-Chancellor: Is it not fair to assume that inasmuch as this man has been shown to have been an appraiser and adjuster for the insurance company, that he has had much to do with the appraising fixtures for all these years; he did not have to be in the business in order to do that. I would not waste much time on that.

Mr. Klausner: All right.

Q. Now, Mr. Weinstock, on April 28th you met Mr. Silverman at the office of Mr. Ginsberg? A. I did.

Q. How long were you there all together, that day? A. I don't remember; it must have been about an hour and a half, or two hours; I don't know; that is the best I can recollect.

Q. Now, prior to that time did you and Mr. Silverman go over any inventory, item by item? A. Mr. Silverman and I?

Q. Yes? A. Only on the question of the details that were missing.

Q. You only went over the question of the details that were missing? A. He did not want to go into—

Q. Please answer my question. A. Yes—what is it?

Q. Prior to that time did you ever go over the inventory, item by item, with Mr. Silverman? A. On the day he was at my office.

Q. April 11th? A. April 11th.

Q. Did you go over them, item by item? A. I had my items, yes.

Q. Did you go over it with him? A. He said he had it in bulk.

BY THE VICE-CHANCELLOR:

Q. He is asking you a plain question: Did you go over it, item by item? A. I showed him my items.

Q. That is not answering the question? A. He says he don't know much about fixtures, and he has got it in the bulk; when I told him I would allow him ten dollars for this and twenty dollars for that, he said, "I am not a fixture man; I want so much for the fixtures."

BY MR. KLAUSNER:

Q. But you did not go over, item by item, the inventory? A. I had my items.

Q. Now, I am asking you, yes, or no,—did you and Mr. Silverman go over and appraise each figure, item by item, of the loss? A. I had my figures, and he had it in bulk, that is all.

BY THE VICE-CHANCELLOR:

Q. Did you try to reconcile your figures—did the two of you try to give and take, in order to come to an agreement? A. He said—

Mr. Klausner: The answer can be yes, or no —did you, or did you not?

Mr. Vanderbilt: I object to the question, because it is ambiguous; you see the proof of loss mentioned two items, one of stock and one of fixtures; the question is ambiguous, as to whether he means the question of stock, or of

fixtures, or whether he means each little individual thing.

The Vice-Chancellor: I will sustain the objection to the form of the question, for the purpose of getting it a little more explicitly; make it more explicit.

BY MR. KLAUSNER:

Q. Did you go over, with Mr. Silverman, prior to April 28th, each individual item of the inventory which was submitted?

Mr. Vanderbilt: I object to that. There is nothing in the policy which makes it essential or necessary for these two appraisers and the Umpire (where he is called in) to go over these things as to each individual item; no jury in the world ever would do it, and I do not think these appraisers are called upon to do it. The word used there refers to the items in the proof of loss; there are only two items in the proof of loss; and the award, your Honor will observe, is divided into those two items—"stock" and "fixtures". It would be preposterous for them to go over every one of several hundred items.

The Vice-Chancellor: Well, your own witness seems to disagree with you, because he said he took issue with Mr. Silverman on the question of the fixtures; he says Silverman wanted to bulk the fixtures, and he insisted that it be itemized; would not that justify that question? I will permit the question. At the present time I am frank to say that I do not know whether it is a proper question with respect to "items" —I do not know what the word "items" means,

but when I get a chance to read this policy and read that agreement, it may elucidate the matter. My present recollection is that there is something in that agreement upon which this question can be predicated. Where is that agreement?

Mr. Vanderbilt: There is nothing in the policy, your Honor, but in the Appraisal Agreement it refers to "item by item (handing the agreement to the court).

The Vice-Chancellor: Now, this agreement says that they are to estimate and appraise the loss, stating separately sound value and damage on each item—now, what do you say that means?

Mr. Vanderbilt: Well, that was the two items in the Proof of Loss—Item 1 and Item 2.

Mr. Klausner: That would be ridiculous.

The Vice-Chancellor: Well, do not say that. I will admit it for the purpose of the case, and I will try to determine afterward whether what Mr. Vanderbilt contends for may be considered the reasonable construction or whether it is some other one (Last question repeated). I will overrule the objection.

A. I showed him in my figures where I had the items; I said there was a lot of entries that he claimed that was not there at all—

Q. I ask you to answer that "yes" or "no" (question repeated)—yes, or no, did you, or did you not? A. I cannot answer it "yes" or "no"; I must give an explanation.

The Vice-Chancellor (To cross-examining counsel): The witness may be confused on what you mean by "items".

Q. You had before you, you say, an inventory? A. I did.

Q. And you say that you asked Mr. Silverman, on the fixtures, to go over separately each item? A. Yes.

Q. Is that true? A. Yes.

Q. By "each item" you mean "To 1 small fudge melter; 36 electric bulbs; 6 pair of lace curtains on windows"? A. Yes.

Q. You wanted Mr. Silverman to go over, you say, each item, calling that "an item of the fixtures"? A. Yes.

Q. Is that true—did you, or did you not want him to do that? A. I wanted him to do that.

The Vice-Chancellor: All right.

BY MR. KLAUSNER:

(Former question repeated, as follows: Q. Did you go over, with Mr. Silverman, prior to April 28th, each individual item of the inventory which was submitted?) A. I showed him my figures.

Q. In one breath, Mr. Weinstock, you tell us that you wanted Mr. Silverman to go over each individual item, by that meaning each separate fixture, and now I ask you did you and Mr. Silverman, before April 28th, go over this fixture loss and the stock loss, item by item? A. Well, I am telling you that I showed him my figures. I said to Silverman—

BY THE VICE-CHANCELLOR:

Q. He is not asking you about "figures", he is asking you about "items"—do not get confused about the distinction between "items and figures";

if you don't understand the question, say so; if you do understand it, try and answer it, if you can. A. Can I remember exactly every word that was spoken at that time? No one can do it. I don't want to commit myself in any way. I remember I showed him my figures—whether he looked at them I don't know; he was always very busy; he said,—"I don't care about the figures"; he said, "how much does it amount to?" I said, "I am predicating my total on total figures in the schedule."

Q. Well, you thought it was important to go over the items you had in the inventory, didn't you? A. Yes.

Q. And you made your calculations accordingly? A. Accordingly, yes.

Q. So the items you thought you had to consider were the items contained in the inventory? A. In the inventory.

By Mr. Klausner:

Q. Now, did you separately check each individual item set forth in the inventory, with Mr. Silverman, prior to April 28th? A. I don't think I did, because he did not want to listen to me.

Q. You did not do it—you did not do it before April 28th, did you? A. He saw my figures, each and every one.

Q. Did you ask Mr. Silverman,—"What is your figure on 20 gallons of chocolate syrup"? A. Yes; he says he didn't care for the figures."

Q. Did you tell him what your figures were? A. I don't know on that particular item, but, in general, I asked him.

Q. All right; now, did you ever tell Mr. Silverman how much you figured the 6 silk flags in the

inventory were worth—sound value? A. He just struck it down "silk flags."

Q. Did you tell him that? A. Yes, because we looked for the flags, and we found one, just one; he said,—I will put "flags" down there.

Q. Now, did you go over each item? A. I don't say each item; I went over at random.

Q. Oh, at random you went over them—now, you and Silverman did not go over each item, did you? A. I don't believe we did go over each item.

Q. You did not do it before April 28th, and you did not do it on April 28th, did you? A. If you want it your way, have it your way.

Q. Well, I am asking you? A. Well, I know, but I cannot give you an answer "Yes" or "No."

Q. Now, did you go over with Mr. Silverman and ask him for his figure for the total appraisal of his on the fixtures, and for the total appraisal of his on the stock—did you ever ask him for that? A. Why, of course I did.

Q. When? A. Right on the next day; he admitted to me—

Q. When? A. In my office; he says he didn't know anything about fixtures.

Q. I asked you when—when is "the next day"? A. Well, it must have been on the 11th.

Q. All right, did you tell him what your figures were? A. I did.

Q. Did he tell you what his figures were? A. He had no figures; he only wanted more money, that is all, as much as he can get—"How much can I get for this?"

Q. What were your figures—will you tell us what your figures were on the fixtures, and will you tell us what your figures were on the stock? A. On the

stock I was willing to give $1295; I had it $295 instead, and the thousand makes it $1295.

Q. I asked you what was the total figure? A. For the stock, $1295.

Q. When did you tell that to Mr. Silverman? A. Oh, I don't know; I don't remember that; you are trying to mix me up on these papers.

Q. What was your total figure on the fixtures? A. $2465.

Q. When did you tell him that? A. Right the next day, when he called in to my office.

Q. So, for the fixtures you told him on April 11th, but the stock you don't remember when you told him? A. Because there was a total loss, they were missing, and he would produce the bills; the fixtures we could see down there, and the stock was gone; then I had to rely more on bills, and I had to wait a little more for that.

Q. So, on April 11th you did not tell him what your appraisal was on the stock? A. I told him at that time that probably the stock was a thousand dollars, unless I received bills that there were heavier purchases.

Q. You did not have any definite figure on the stock? A. Without the bills, no.

Q. And the first time you had a definite figure on the stock was when—was it on April 28th? A. April 28th, and April 20th, when I looked through the bills.

Q. April 20th? A. When I looked through the bills.

Q. Mr. Weinstock, do you recall, on April 28th Mr. Silverman going over these figures on the stock and telling you how much it was, and on the fixtures how much it was—on April 28th (referring to Exhibit C-12)—do you remember going over "For

labor and carpenter work the assured is entitled to $1,000"? A. I really don't remember.

Q. You don't remember? A. I don't remember that.

Q. You do not? A. I really do not.

At this point the further hearing of the cause was continued until Monday, October 10th, 1927, after the hearing of motions.

Chancery Chambers, Jersey City, N. J.,
Oct. 10, 1927.

Hearing of the cause resumed at two o'clock p. m. in the presence of the counsel for the respective parties.

BANET GINSBERG, sworn.

DIRECT EXAMINATION BY MR. VANDERBILT:

Q. Where do you live? A. 1820 Loring Place, the Bronx, New York City.

Q. And where is your place of business? A. 116 Nassau Street, New York City.

Q. What is your business? A. Public Fire Insurance Adjuster.

Q. That means that you adjust fire losses for the people? A. For the people.

Q. Not for the insurance companies? A. Not for the companies.

Q. When did you first hear that you had been appointed Umpire in respect to this loss of Melton Bros., Inc. for the household furniture and the stock and fixtures? A. In the early part of April.

Q. '26? A. '26.

Q, How did you hear about it? A. Well, I was telephoned for by Mr. Silverman.

Q. Which Mr. Silverman—the Appraiser? A. Yes; he called me up and told me he was at Mr. Weinstock's office, and that I was selected to act as the Umpire for Melton Bros., and that they had disagreed, and, if it was possible, for me to arrange a meeting for the following day.

BY THE VICE-CHANCELLOR:

Q. He told you they had disagreed before you were appointed? A. I was appointed, and he told me I was selected, and that they had disagreed.

BY MR. VANDERBILT:

Q. All right; what else did he say? A. So I told him I could go on the following day.

Q. All right; what happened next? A. Well, I told Mr. Silverman "I will accept it as the Umpire on one condition—if I can employ a fixture man in case I should get him to enlighten me on those items and he was willing to stand the expense on it."

Q. What did he say about that? A. He told me to hold the wire for a second, and he was talking to Mr. Weinstock, and he told me it was all right, they were satisfied.

BY THE VICE-CHANCELLOR:

Q. On what date was that? A. I couldn't exactly say; it was around the 9th, 10th or 11th of April—in the first part of April.

BY MR. VANDERBILT:

Q. Well, what happened next? A. On the following day they made an appointment to meet in Mr. Silverman's office.

Q. Where? A. At 15 Exchange Place.

Q. Jersey City? A. Jersey City.

Q. And did you come here? A. And I came there at the meeting in Mr. Silverman's office.

Q. Who was there? A. Mr. Silverman himself—in his private office.

Q. Was Mr. Weinstock there? A. No.

Q. Did he come in? A. Well, he came in afterward.

Q. All right; now, did anything take place while Silverman and you were alone, waiting for Weinstock? A. Well, Silverman told me,—"Ginsberg," he says, "you know I could have had the Umpire appointed by the Court," he says—

The Vice-Chancellor: What is the materiality of this—what he and Silverman talked about? Silverman's preference of him, I presume he is going to say. However, go ahead, I will receive it.

Mr. Klausner: I do not object to it.

The Vice-Chancellor: I will let it go in.

A. (Resuming)—and Mr. Silverman told me, he said,—"Now, Mr. Sonnenfeld told me that you would be just as good, and therefore I accepted you, I preferred your name and accepted it as Umpire."

Q. All right; what took place next? A. Mr. Silverman said,—"We can make money out of it;" he said, "We can make real money." I told him, "Sam," I said, "I don't belong to the "we"—I told him I

was selected to act impartially, "and that is what I am going to do."

BY THE VICE-CHANCELLOR:

Q. Well, you hadn't been selected at all, then, had you? A. Oh, yes, I was selected when he called me up the first time on the wire; he told me I was selected as Umpire and they had disagreed.

Q. Up to that time had you been given a paper indicating that you had been selected as the Umpire? A. Papers, no; he simply called me up and told me if I could be at the appointment on the following day, which I told him "All right."

BY MR. VANDERBILT:

Q. All right; what happened next? A. Now, Weinstock came in while our conversation was on, and we stopped and went over to Washington Street.

Q. Hoboken? A. Hoboken, N. J.—I think it is 620, something like that—myself, Silverman and Weinstock.

Q. Well? A. When we came into the premises at 620 Washington Street, Hoboken, I had no inventory, and Mr. Silverman gave me an inventory. While we were calling out the items my inventory did not correspond with theirs—with Mr. Weinstock's also; the articles possibly were right, but they were mixed up in the items; so, naturally, I made memorandums of those items, and I asked him to give me a corrected inventory, which he promised to do so.

Q. How long were you at Washington Street? A. At Washington Street? I must have been there for about, I should judge, two hours.

Q. Silverman and Weinstock were with you? A. All the time.

Q. And you were going over what goods you could see?

Mr. Klausner: I object to that, as leading.

Mr. Vanderbilt: I withdraw it.

Q. What were you doing? A. Then we went over to, I think—

Q. (Interrupting) What did you do that two hours? A. We were going through the items. Now, while I was there I started in with the stock; I called off the stock—the items in the inventory.

BY THE VICE-CHANCELLOR:

Q. Do you say you could not see any? A. I could not see anything; and I said to Mr. Melton, I says, "Where is the stock?"—

BY MR. VANDERBILT:

Q. Which Mr. Melton is that—this Mr. Melton (indicating Mr. Anthony Melton, here present)? A. That Mr. Melton: He says,—"Some boys broke in the place." I thought to myself—"the boys broke into the place"—it was supposed to be stock in show cases.

The Vice-Chancellor: I do not mind hearing testimony, but I do not care for suppositions or thoughts.

A. Well, all right. Well, I looked at the items—looked at the surroundings there—and, from my ex-

perience in the time I have been an adjuster of losses—

Mr. Klausner: Well, now, if your Honor please, he is trying to make a speech.

The Vice-Chancellor: You have been sitting there silent.

Mr. Klausner: I at this time object, and ask to have the witness instructed to only give us what he did.

The Vice-Chancellor: State what people said to you and what you did, not what you looked at.

A. I looked at the surroundings there, and examined the premises—looked over the fire; the fire started in a dumbwaiter right in the cellar.

By the Vice-Chancellor:

Q. How did you know that? A. I examined it; they told me they had a dumbwaiter there.

Q. Well, how could you know the fire originated there? A. Because he told me the fire started in the cellar.

Mr. Klausner: I ask that that be stricken out, because this witness insists in conjecturing.

The Vice-Chancellor: It would not make any impression on me.

By Mr. Vanderbilt:

Q. Who told you where the fire started? A. I was talking to Mr. Melton.

Q. This gentleman here? A. That was the gentleman, right here, yes.

Q. Was he the one that told you? A. He is the one.

By the Vice-Chancellor:

Q. Without telling us where the fire started, tell us what you found there, and what you did? A. The fire came in right through the dumb waiter, upstairs, where there was a kitchen, a small kitchen; that kitchen was entirely burned out. Now, I asked him where the stock was; he told me certain of it was in the cellar—if you give me the schedule I can easily show you that—I said, "Whereabouts in the cellar?" He said, "In the front room there." Now, I figured up the schedule when I came home, and the amount of stock amounted, if I am not mistaken, to over a thousand dollars worth of merchandise in the cellar.

By the Vice-Chancellor:

Q. Well, are you mistaken? A. If I am not mistaken; I don't think I am mistaken.

Q. You are guessing at it, are you? A. If I had the schedule I could tell you in two minutes.

Q. I know, but you have not got it before you? A. Well, I can remember, all right.

The Vice-Chancellor: This kind of testimony is not going to impress me, when he says "if I am not mistaken."

By Mr. Vanderbilt:

Q. Just tell what you saw? A. Well, that is what I am talking about; I figured up how much amount of stock was there.

Q. All right. A. And to my estimation it couldn't have been as much stock in the cellar—that class of stock. I checked up articles over there which I could possibly find, a few items; I checked it off.

Q. All right; what did you do after you left that store in Washington Street? A. We went over to Railroad Avenue.

Q. Who is "we"? A. Weinstock and Silverman.

Q. Did Melton go with you? A. No, sir.

Q. What did you do there? A. Well, there was supposed to be fixtures there that were removed from this place—show cases and chairs and other articles over there.

Q. What did you do there? A. I checked up every item over there.

Q. How long were you there? A. I must have been there, I should judge, about an hour and a half.

Q. What did you do after that? A. After that we went home, and I told Mr. Silverman and Mr. Weinstock that I would like to get their figures.

Q. Did they give you their figures? A. Mr. Weinstock gave me his figures right then and there—the schedule with his figures on it.

Q. I show you a paper and ask you if this is the paper that you got from Weinstock with his figures on it, Exhibit D-6? A. Yes, sir.

Q. All right; what happened next?

BY THE VICE-CHANCELLOR:

Q. I would like to show when and where did you get that paper? A. The first paper—while we were there.

Q. Well, can you give me the date of that? A. I couldn't, really; it must have been maybe the 12th or 13th; exactly I don't exactly remember.

BY MR. VANDERBILT:

Q. Was it the day after Silverman called you up and told you he wanted you to act as Umpire? A. Exactly—on the following day.

Q. Now, did you ask Mr. Silverman to get his figures? A. I asked Mr. Silverman the same thing, and he told me he would give me it tomorrow, or mail it to me.

BY THE VICE-CHANCELLOR:

Q. Had you, at the time you had that paper, D-6, any paper that indicated that you had been appointed Umpire? A. Oh—

Q. (Interrupting) I mean, had you any such paper? A. Myself?

Q. Yes. A. No, sir.

Q. Did you ever have any such paper? A. No, sir; only I seen the award; I saw the paper with my name on it, with our signatures.

Q. Do you mean that was the first paper they showed you with your name in it? A. Yes.

Q. This was the first time you saw it, when you put in your award? A. Exactly.

BY MR. VANDERBILT:

Q. I show you Exhibit D-3, and ask you whether or not that is the paper that Silverman sent to you with his figures on it? A. Yes, sir; that is the one.

Q. And when did you receive that? A. On the following day; before I left that time I told Mr. Silverman I may come back on the following day.

Q. Well, that is two days after you learned you had been appointed Umpire? A. Exactly.

BY THE VICE-CHANCELLOR:

Q. Let me ask you—is there anything on these papers by which you can identify them as being the papers that you received from Weinstock and Silverman? A. My handwriting (indicating).

Q. That is your handwriting? A. Yes; and then there are my figures (referring to Exhibit D-3)—all of those (indicating).

Q. You mean the red letters? A. All of it.

Q. Red and black? A. Yes; that is what I mean (indicating).

Q. That is all yours? A. All mine.

Q. And you have written on the back of that, "Silverman's Claim and Value"? A. "Silverman's Claim and Value."

Q. Now, refer to D-6, and tell me if there is anything that you can found on that? A. (The witness examined the paper).

Q. You have written there "Weinstock's Claim and Value"? A. Yes.

Q. When did you write that on it? A. When I received it from them.

Q. How did those papers get out of your possession? A. In the Federal Court.

Q. And did you have them in your possession until you got into the Federal Court? A. Absolutely.

Q. And you have not had them since? A. Not since then, except down here.

Mr. Vanderbilt: He had them this afternoon.

BY MR. VANDERBILT:

Q. Now, referring to Exhibit D-3, on the last page—does that, by its typewritten terms, contain Silverman's figures? A. When Mr. Silverman gave

me the figures I looked at it; I said, "Figures made by S. W. Silverman, appraiser for the assured: Stock, sound value, $13,217.99, less 20% for overvalue," but he claims $10,574.39; "Fixtures, sound value, $29,334.17, less 25% for salvage and overvalue—Loss, $22,000.63."

Q. All right; after you had received the figures from Mr. Weinstock and from Mr. Silverman, what did you do next? A. When I received the figures from Mr. Silverman, on the following day I had been there with a fixture man to enlighten me on certain items.

Q. That would be the 2nd, or 3d? A. That was on the 2d day—that is, the third day after I was appointed, yes.

Q. I show you three pages of typewriting, and ask you if you can tell me what they are? A. Yes; this is the figures of the fixture man.

Q. And when did you receive that? A. Well, I received that a couple of days after—that is, the second day I was there; that is, twice I was there; once I was there myself with the appraisers and the assured, and the following day I was there with the fixture man; and on the third day the fixture man was there himself; and I received it from him maybe about three days later.

Mr. Vanderbilt: I ask to have this marked in evidence.

Mr. Klausner: I object to that.

The Vice-Chancellor: How can that possibility be made evidence?

Mr. Vanderbilt: Well, they had agreed that he was to get the service of an expert adviser; he went over there with him, showed the man the thing, and this is the set of figures that the man gave him.

The Vice-Chancellor (to Mr. Klausner): What is your objection?

Mr. Klausner: I object to it; it is a paper that he said his fixture man got up. Well, I will withdraw the objection, and let it come in for what it is worth. I do not see the materiality of the whole thing.

(The paper was thereupon admitted and marked Exhibit D-7.)

Mr. Klausner: May I point out to your Honor that there seems to be a pencil mark "D-10" on here.

Mr. Vanderbilt: That was an exhibit in the other case.

Mr. Klausner: I see.

Q. Now, what happened next with respect to this loss? A. Now, after I had been up with the fixture man, that is, on the following day, the fixture man was there by himself.

Q. Well, what happened next? A. A few days after, I received the figures of the fixture man.

Q. All right; we are up to that; I want to know what happened after that? A. After what?

Q. After you got the figures from the fixture man? A. Well, I made up my figures; I ran through his figures and I ran through my own figures, and there it is on the inventory.

Q. You made up your own figures? A. Yes, sir.

Q. All right; then what happened next? A. After I made up my figures I came to the conclusion of the amount—loss and damage.

Q. All right; what happened next? A. Mr. Silverman called me over one day and asked me to call a meeting for the award, and I called a meeting.

Q. Where—where were you to meet? A. We were supposed to meet in Mr. Weinstock's office on the 27th.

Q. Yes. A. And that was changed to the 28th, in my office.

Q. Who changed it? A. Mr. Weinstock could not come in on the 27th.

Q. Well, who told you about the change? A. Mr. Silverman.

Q. Well, when did you meet? A. On the 28th.

Q. Of April? A. Of April.

Q. Where? A. At my office.

Q. Tell us what happened when you met—did all three of you meet there? A. All three of us, yes.

Q. That is, Mr. Silverman, Mr. Weinstock and yourself? A. And myself.

Q. What time of day was it? A. It must have been, I think, around noon-time.

Q. All right; tell us what happened when you three were all together at your office? A. When they came into my office I told them, "Gentlemen, I have examined your figures, and I have my figures made up, and I haven't got anything possible to convince me that the figures should be changed; have you any change in your figures?" and the two of them said, "No"; and, naturally my award was prepared because I have got to prepare my award, I couldn't wait until the last meeting; I saw their inventories, and seen what they were claiming; I I seen what Mr. Weinstock was claiming; I seen what Mr. Silverman was claiming; I had my figures prepared.

Q. Which did you deal with first? A. I suggested to take up the stock and fixtures, because it was the bigger item; and Mr. Silverman wanted to take up the household.

Q. You mean the household furniture? A. Yes.

BY THE VICE-CHANCELLOR:

Q. Were you appointed as umpire for the household furniture, also, under the same agreement?

Mr. Vanderbilt: A separate agreement; they are both in evidence.

BY MR. VANDERBILT:

Q. All right; what did you do—who won, you or Silverman?

Mr. Klausner: I object to that.

Mr. Vanderbilt: I will withdraw it.

A. We took up the household furniture.

Q. What did you do about the household furniture? A. Well, we started—

The Vice-Chancellor: Why should we lose time on that; because that, I understand, was disposed of.

Mr. Vanderbilt: Of course this is corroboration of what we say took place there.

The Vice-Chancellor: Go ahead.

Q. All right? A. I called them off every item of my figures.

BY THE VICE-CHANCELLOR:

Q. You are speaking of the household furniture now? A. On the household furniture. Weinstock's figures was a certain amount; Mr. Silverman's was

a certain amount; and my figures did not correspond with the two of them, it was a go-between; and Mr. Weinstock was objecting to certain figures which I made; and Mr. Silverman protested with Mr. Weinstock, why he interferred with my award.

Q. What did you agree on? A. On $625.

Q. Whose figures were they? A. It was my figures.

Q. Then did you sign this paper which has been marked Exhibit D-4? A. Yes, sir.

Q. Down on the bottom, at the back side of it? A. That is my signature.

Q. You did not sign it anywhere else? A. No, sir.

Q. Had you seen this paper before you signed it? A. No.

Q. Then after you signed this paper D-4, what did you do? A. Then I told them to take up my figures on the stock and fixtures; and Mr. Silverman says, "Well, gentlemen, I am very sorry," he says, "my family are coming in today, and I have got to meet them; now," he says, "go in and give me the lump sum of the amount," and I certainly handed over my award which I had prepared.

Q. Then what happened? A. He refused to sign it.

BY THE VICE-CHANCELLOR:

Q. What did he say? A. He said, "Two signatures is enough."

BY MR. VANDERBILT:

Q. Then what happened? A. Well, naturally, he went away.

BY THE VICE-CHANCELLOR:

Q. Well, did he agree with you on your item? A. Oh, if he didn't sign it he didn't agree.

Q. Well, did he express disagreement at that time; or he must have something? A. The only remark was, "Two signatures are enough."

Q. And you mean to say that he did not tell you that he was dissatisfied? A. He hasn't made any remarks whatsoever.

BY MR. VANDERBILT:

Q. You mean, on this occasion? A. On this occasion, yes.

Q. Well, did you sign this paper, D-5, then—is that your signature at the bottom of it? A. That is what it is—my signature.

Q. Had you seen this paper before then? A. Never.

Q. Well, what happened next? A. On the following day, or the day after, I received a letter from Mr. Silverman; and it said the way I expressed in my letter of the award that I would give him detailed figures on the loss; he would ask me to be kind enough to mail him a copy of my detail figures which I did.

Q. You mailed them to Silverman? A. Yes, sir.

Q. I show you a paper, and ask you if this is a copy of the paper which you mailed to Mr. Silverman? A. That was a copy of it.

(The paper is offered in evidence by Mr. Vanderbilt, admitted without objection, and marked Exhibit D-8.)

Mr. Klausner: Might I ask that those figures be omitted from it—I notice there are some pencil writings on there.

Q. What are those pencil figures on there? A. That is what I allowed on the items, my figures—the allowance on each and every item.

BY THE VICE-CHANCELLOR:

Q. Is that your handwriting? A. That is my handwriting; yes, sir.

BY MR. VANDERBILT:

Q. What did you do after that—anything, with respect to this fire loss? A. That is about all.

CROSS EXAMINATION BY MR. KLAUSNER:

Q. Mr. Ginsberg, the three of you—Mr. Weinstock, Mr. Silverman and you—were together on only two occasions—is that right? A. Two occasions is right—that is, three occasions.

Q. Now, is it two or three? A. And the award.

Q. How many times were the three of you together? A. There was two occasions.

Q. On two occasions? A. Yes.

Q. Twice? A. Yes.

Q. The first time was the day you went to Washington Street and Railroad Avenue? A. Yes.

Q. And the other time is the date that you say you made the alleged award, that the three of you were together at the same time—that is true? A. The first day—

Q. (Interrupting) You were together on the day that you, Weinstock and Silverman went to Washington Street and Railroad Avenue? A. Right.

Q. That was on one occasion? A. One occasion.

Q. The second time was at the time at your office, when you signed this alleged award, when the three of you were together at one time? A. Not the three; but on a different occasion—

BY THE VICE-CHANCELLOR:

Q. You are asked "the three of you"?

BY MR. KLAUSNER:

Q. You were together only on those two occasions—the three of you? A. Right, right.

Q. Now, this Exhibit D-8, you say you mailed a copy of that to Mr. Silverman—an exact copy? A. An exact copy, in typewriting.

Q. An exact copy in typewriting? A. Yes.

Q. This is a copy in typewriting, is it not? A. Exactly; that is my original schedule when I made up the award.

Q. How is it you hadn't typewritten this whole thing? A. I can typewrite the award, and I had my figures, and then I went over the figures and wrote it accordingly.

Q. Was this made up before you made out the award? A. This one?

Q. Yes. A. Positively, before I made the award.

BY THE VICE-CHANCELLOR:

Q. Who did that typewriting? A. I did it myself.

Q. Personally? A. Yes, sir.

Q. You did all that typewriting yourself? A. Yes, sir.

Q. And carried that paper to your own office—you had it in your own office when they came there? A. This?

Q. Yes. A. Yes.

Q. When did you put that writing on there? A. Before I made the award—for myself.

Q. Why didn't you put it on in typewriting, instead of the way you have it there? A. Well, your Honor, when I went first I made up a copy, and I went to work and figured up all the amounts, the real amounts, which I didn't know what the loss was yet. Now, you see this "Front Cellar," you see (indicating).

Q. Yes. A. Well, according to their inventory it amounts to $10,132.96.

Q. Well, all of those typewritten figures to the right, where you have just been pointing, are figures taken from the inventory? A. From the inventory.

Q. They are not figures of your own? A. No, sir.

BY MR. KLAUSNER:

Q. And these are your figures (indicating the lead-pencil figures)? A. Those are my figures.

Q. Did you do this before the date of the award? A. Absolutely.

Q. Is that right? A. Because this is my award.

Q. What is your award? A. Why, this is my figures, what I gave in the award; this is the figure of the amount of the award (indicating).

Q. $3200? A. What do you mean, $3200?

Q. Here (indicating on the paper). A. Wait a minute, wait a minute; there they are exactly (indicating); this is the value; this is my figure on the award.

Q. When you are saying "this" and "this", try to get something on the record. A. Now I will call out each and every item.

Q. I don't care how you do it. A. Now, there is "Front Cellar" (indicating on the paper), where I found, over there, stock $312, and I make the value $312, and the loss I gave—$312. "In the rear of the Cellar," $525.86 value there, and I allowed 65% damage on it, which amounts to $341.80 (indicating on the paper).

BY MR. KLAUSNER:

Q. Just explain to us these typewritten figures, and these lead-pencil figures?

The Vice-Chancellor: Explain it from this paper.

A. Well, this is taking the figures from the inventory, how much it amounts to; I added up the account—

BY THE VICE-CHANCELLOR:

Q. You still have not answered that question I asked you before, as to whether or not this was your sum total here, "$3200? A. This is my allowance on this figure.

Q. So your $3200 is your allowance on their figure of twelve thousand, etc? A. Exactly.

BY MR. KLAUSNER:

Q. Why didn't you put that in typewriting? A. Because that was done after I made this up.

Q. That was put down afterwards? A. Yes; because that was put down after I added it up.

Q. On a piece of paper? A. Right here (indicating), and I have it down here.

Q. Then you typewrote the figures that were added up? A. Yes.

Q. I suppose you did that with lead-pencil? A. Which one?

Q. When you added this up (indicating? A. Yes.

Q. You did that with lead-pencil, and then you typewrote this (indicating)? A. Yes. Then I went over it to see that the figures were correct; and I made up the figures like that (indicating).

Q. Now, $3200, you say (in lead pencil) you allowed on this amount (indicating)? A. On this figure, yes.

Q. Now, how did you arrive at the balance of your award? A. Let me explain: Now, he claims, on the front cellar, $10,132.86; now, the front cellar—

Q. Now, wait just a minute; answer my question. A. I can't answer the question unless you let me explain.

The Vice-Chancellor: You have asked him to explain, and he is trying to explain.

Mr. Klausner: All right.

A. Now, the cellar is a very deep cellar; in the front cellar there are one or two stoves where he admitted he manufactured some candy there, in that cellar, in that room. Now, the size of that room I couldn't say exactly—fifteen or fourteen feet by sixteen or seventeen in size, or maybe a foot more or a foot less. There was some fixtures there—an ice-box on

the side of the cellar—and, according to the inventory, if you will stop and read those items and see what kind of a stock it was, it was impossible, even —there was not room enough to put ten dollars worth of special items there; nobody in the world could get it into a room like that in the cellar—of candy—it would fill it; that would be impossible. Now, I gave him the benefit of the doubt, possibly, of some material there, that you could see on the schedule, like nuts, 250 lbs. of nuts; I didn't know that there was 250 lbs. of nuts there; I took it for granted there was 250 of the mixed nuts. "2 barrels of sugar"—only a half a barrel I seen there. Now, it stands to reason if a half a barrel of sugar can be seen, where is the ten thousand dollars worth of merchandise; it was impossible to be in that room; I don't care if a man has any knowledge, or not, of it; that is why I used judgment in this matter. When I came over there I marked the cellar just the way he told me. Now, you can see the rest of the items, just as they mark it, without me; for instance "on top of the candy case, second row," I went over that second row; "bottom row of the case, center case"—that means show-cases. "Front case, on top of case"—I don't know where this is—

The Vice-Chancellor: I don't know whether you think this Court has a right to consider the manner by which they arrived at their conclusion.

Mr. Klausner: I don't want to go into that.

The Witness: You asked me to explain—I am here to explain.

Mr. Vanderbilt (To the witness): When the Court speaks, you keep quiet.

The Vice-Chancellor: I am trying to see if we are not leading astray from where we should go.

Mr. Klausner: He has a figure of $3200, your Honor; I am trying to see where the other figures are in addition to that $32000 to make up the award, or how he got the figures.

The Vice-Chancellor: Go ahead and examine him, and the witness will try to confine himself to answering the questions as well as he can.

The Witness: Exactly, your Honor, but he won't let me; I will explain very simply, if you let me.

The Vice-Chancellor (To Mr. Klausner): Put your question.

Q. You have the figure of $3200—without telling us in detail each item, what does that $3200 represent, stock or fixtures? A. Stock.

Q. Does that represent all the stock that you allowed? A. All the stock.

Q. Does that figure represent all the stock that you allowed? A. Yes, sir.

Q. You are sure of that? A. Sure of it.

Q. So that, in your award the total amount of stock that you allowed was $3200? A. Right.

Q. Now, in the award that you signed it said—"Stock, $3853.80"—was this not $3200 (indicating)? A. Now, wait a minute, wait a minute now, for goodness sake; now you are trying to mix me up; why don't you look at the figures in the body; are you trying to mix me up?

Q. Answer that question? A. It is $3800; why don't you figure these figures (indicating)?

Q. I am asking you about the $3200? A. It is all identified right here; it is right simple.

Q. Do you want to change that now? A. I am not changing it; you are asking me on these figures.

The Vice-Chancellor: That don't mean anything to me, and it don't mean anything on the record. (To the witness.) Now, try and contain yourself for a few minutes and listen to the question.

Q. I asked you before, Mr. Ginsberg, whether or not that figure "$3200" was your figure on all the stock, and your answer was "Yes." A. On this stock; not on the missing stock.

Q. Then you want to limit it now to merely the identified stock? A. Unidentified stock—not identified—unidentified stock.

Q. That is all I want to know? A. Yes, sir.

Q. When you mailed a copy of these figures, did you send a letter with it? A. No, sir.

Q. You did not send a letter to Mr. Silverman? A. No.

Q. You merely sent a copy of the figures without a letter? A. With a little note—"This is the detailed figures."

Q. You have no copy of any letter? A. There was no letter sent.

Q. So you did not send a letter when you sent the copy of the figures? A. No; he knows what it is.

Q. Is it not unusual for you to mail a copy of an inventory through the mail without a letter? A. This was marked on the top "This is the figures in detail."

Q. But you did not send any letter with this? A. No, sir.

Q. Now, Mr. Ginsberg, let me ask you—you say that you typewrote this all the same time? A. Not all at the same time; this was made a copy for myself, originally; I said I fully believe the other copies was like it—

Q. (Interrupting): Just a minute, Mr. Ginsberg—you told us before that this is a copy of the figures, a copy of the inventory? A. A copy of the inventory, of course; that is right.

Q. And these are your own figures? A. These are my own figures (referring to Exhibit D-8).

Q. And that you had these typewritten figures before you when you figured out the lead pencil figures? A. Yes, that is right.

Q. The lead-pencil figures? A. Yes, sir.

Q. So that all the typewritten figures on there were all on here before the lead-pencil? A. Yes, sir.

Q. You are sure of that? A. Most positive.

Q. Of the whole paper? A. Of this paper.

Q. Now, can you tell us how you would explain this—this figure "$3200" is the unidentified stuff, in typewriting—in typewriting you have the "$3200."? A. Now, wait a minute; when I put it down I put this right down in typewriting, after that (indicating on the paper).

Q. Oh, I see—first you put this (indicating) in typewriting? A. Yes.

Q. Then you put this (indicating) in lead-pencil? A. Yes.

Q. And then you put that (indicating) in typewriting? A. Yes, yes, yes; there is nothing wrong about it.

Q. So that you had this (indicating) in typewriting? A. Yes.

Q. Then you put this (indicating) in lead-pencil? A. Yes.

Q. And then you put these figures (indicating) in typewriting? A. Yes, yes, yes.

Q. Well, then, you told us before that all this (indicating) was in typewriting before you worked on it in lead-pencil? A. For goodness sake—I said I had these pencil marks there (indicating); I put these figures in (indicating).

BY THE VICE-CHANCELLOR:

Q. Well, why didn't you use the lead-pencil? A. Well, you see, your Honor, this is the total figures.

Q. Where are the total figures? A. Here (indicating). This is the way I put it in, because I seen the stuff right then and there.

BY MR. KLAUSNER:

Q. Formerly you told us everything was on there in typewriting before you put the lead-pencil in? A. No, I didn't understand what you meant by "all." You asked me about these figures (indicating); I told you those figures were on. You did not ask me about these figures (indicating), you asked me about these figures (indicating).

The Vice-Chancellor: If you have to review this case, this won't mean much on the record. I recall the question you asked, and I recall that he said "Yes", and then, afterwards, after you repeated it a few times, you then called his attention to and asked him to explain that there; then he looked at this other paper (I think he called it the agreement, or something), and he said something about "thirty-eight hundred dollars"; then he said, "You are trying to mix me up."

Q. So let us understand, in your own words now, how you say that this paper was prepared—give us the exact order in which this paper was prepared, with reference to the figures and with reference to the typewriting—referring to Exhibit D,8? A. These were sent out to Silverman—

Q. (Interrupting) I am speaking with reference to Exhibit D-8, the paper that you said— A. (Interrupting) Don't excite me, please; talk slow.

BY THE VICE-CHANCELLOR:

Q. He has asked you slowly; he is asking you the way in which you made out that paper A. These figures (indicating) concerning the rear cellar was made in typewriting, right away, because the merchandise was right there and I could see it right away, without any trouble of examining.

Q. Will you refer to that inventory and show me where that is marked as identified on there, and show me how it calculates that sum of money—you are referring now to Exhibit D-5? A. Yes.

Q. Now, I notice that the word "identified" is written in pencil opposite some items? A. Yes.

Q. Are those the items you now say were identified, and, as the result of which you were able to make this calculation as to the identified stock in the cellar? A. Yes, sir—in the rear cellar.

Q. Now, show me those items, and show that they calculate that sum, if they will?

The Vice-Chancellor: By the way, I do not think I ought to be obliged to go into this matter.

Mr. Klausner: I am only doing it to attack the credibility of this witness, your Honor.

Q. Now, put on the record, if you will, for me and for everybody else, just what items you have marked on the inventory there as identified? A. Now "Identified Stock, 250 lbs. Brazil nuts, $120—

Q. That is the typewritten statement? A. That is the schedule.

Q. And you have written "120" in pencil mark opposite that? A. Yes.

Q. So you are allowing that, full value? A. That is the amount added up; it is simply added up; these figures in the front cellar is allowed as a total loss.

Q. That is, $120? A. Yes. There is "150 lbs. of mixed nuts, $75.00" (indicating); there is another one—"2 barrels"— I marked "½ a barrel of sugar, $42.00." That is all I can see here in the front cellar, identified.

Q. Now, as I calculate it, that makes of the total? A. $300 is the total, I have there.

Q. I see you have. A. I have got more yet; hold on a minute—let me see (after examining the paper) I can't see any more on this here.

BY MR. KLAUSNER:

Q. You are now looking at Exhibit D-3. A. Yes.

Q. From which you prepared your figures? A. Yes.

Q. And what is on there is in your handwriting? A. My handwriting.

Q. And it is in the same condition as you had it? A. Yes, sir.

Q. And when you gave it to your attorney in the Federal Court? A. Yes.

Q. And it was always in your possession? A. It was in my possession.

BY THE VICE-CHANCELLOR:

Q. Can you explain, then, how it is that while the amount of identified property, as just detailed by you, is only $237, you came to put $312 on this paper, D-8. A. Oh, now, wait a minute, wait a minute—$237 your Honor figured it out, ain't it?

Q. Yes. A. And $237 deducted from this amount (indicating) amounts to $7538.73.

Q. Deducted from what amount? A. From this space (indicating).

Q. How does that help us any? A. Well, your Honor, there it is; that is the way I came up to the unidentified. Now, we will find some more further on, possibly.

Q. How can that affect it any, no matter what your deduction is, if you only pointed out three items aggregating $237? A. Well, there is my figures; there it is (indicating); the whole thing is unidentified. I have down here $237, I deducted it from this (indicating)—this amount is supposed to be unidentified.

Q. If you did that, Mr. Ginsberg, tell me why it was you were just examining these figures on this D-5, that you had in your hand, and going through those items the way you did and reading them off to me on the record—why did you do that if you find occasion now to do something else? A. I don't understand.

Q. You are after saying now that if you deducted some figure from another it will give you that number (indicating)? A. No, it will give you the result of the identified stock.

Q. Of $3838.33? How can that help you any in telling us why you wrote $312 on this Exhibit D-8? A. Well, I am going to look through and see what it is, right away.

Q. You did look before, and told me first it was that, and then said, "No, it was not" and then you go looking through it. That is all.

BY MR. KLAUSNER:

Q. Well, Mr. Ginsberg, let us go on: When you made this paper how many copies did you make of it? A. That was made a single copy.

Q. A single copy? A. Yes.

Q. You are sure of it? A. I am most positive; and after I made a copy for Mr. Silverman.

Q. How many copies did you make? A. I think two or three copies were made; I gave one to Mr. Weinstock and one to Silverman.

Q. And the other copies were made on a different day than this single copy? A. Well, I cannot exactly tell you when it was made—oh, this was made before (referring to the paper before the witness).

Q. You made this as the single copy? A. Yes.

Mr. Klausner: I now call upon Mr. Vanderbilt to produce the copy that he gave to Mr. Weinstock.

(The same was produced in response to the call, and handed to cross examining counsel.)

Q. I ask you to look at this Exhibit D-8, and ask you whether that is an original typewritten copy, or a carbon sheet? A. That looks like an original; it doesn't look like a copy.

Q. I ask you to look at the paper Mr. Vanderbilt has just given me and say whether that is an original copy? A. That is an original, too.

Q. Would you say that both of those are originals —I am directing your attention to the Exhibit D-8 and the one Mr. Vanderbilt gave me—would you

say that they are both originals? A. I would say they are.

Q. You would say they are? A. Yes.

BY THE VICE-CHANCELLOR:

Q. Is not the first paper, D-8, clearly a carbon copy, when you compare it with the other? A. Yes —when you compare it with this, your Honor.

BY MR. KLAUSNER:

Q. It is clearly a carbon copy, is it not? A. Yes.

Q. So the copy which you say was the "single copy" is a carbon copy? A. Possibly; I wouldn't say that.

The Vice-Chancellor: He is not sure. It looks clearly to me to be a carbon.

Mr. Klausner: I offer it for identification—the paper that Mr. Vanderbilt gave me as the copy which was given to Mr. Weinstock. I offer it in evidence.

(Admitted, without objection, and marked Exhibit C-14.)

Q. Now you say that Exhibit C-14 was the paper you gave to Mr. Weinstock? A. Yes.

BY THE VICE-CHANCELLOR:

Q. I observe there are no pencil marks on that one? A. No, because that is the way I gave it; that (referring to the pencil-marks) was only done for my own convenience; that is the way I made them out before, you see.

BY MR. KLAUSNER:

Q. And Exhibit D-8 was the paper from which you were working? A. Pardon me—don't mix me up. No matter what you say, whether that is an original or not an original, you have on this (indicating) the same figures you have in this (indicating, but not denoting to the stenographer the particular exhibits referred to).

BY THE VICE-CHANCELLOR:

Q. You mean, in typewriting? A. In typewriting. These figures (referring to the pencil-marks) were made for my own personal reason.

BY MR. KLAUSNER:

Q. When you say "these figures" you are talking of the pencil markings? A. Of the pencil markings, yes—for instance, I say I will have on one item so much, and on another item so much.

BY THE VICE-CHANCELLOR:

Q. You say the pencil marks you put on there for your own information? A. For my own information.

BY MR. KLAUSNER:

Q. In determining these figures set forth on Exhibits D-8 and D-14, which you determined from your pencil-markings— A. Yes.

Q. In order to fully understand either one of those papers, as to how you arrived at the $3200, you would have to have the figures in lead-pencil,

wouldn't you? A. Now, let me explain; if you ask me a question, if I cannot answer "Yes" or "No", the way you are asking me, I must explain it. I can't answer "Yes" or "No", the way you are asking me that question, because it has got to be explained, the way I came to my conclusion on each and every item.

Q. Exactly—and the $3200 is the total of the figures in lead-pencil? A. Unidentified.

BY THE VICE-CHANCELLOR:

Q. If you were to take this paper here, C-14, you could not tell, from looking at that paper, could you, just how your $3200 was made up? A. Right, your Honor.

BY MR. KLAUSNER:

Q. You could not? A. No, sir.

The Vice-Chancellor: That is what counsel is trying to direct your attention to.

Q. And that is the paper you say that you gave to Weinstock and Silverman? A. Yes.

Q. Now, let us go back to the original occasion when you came together with Silverman? A. Yes.

Q. And with Weinstock? A. Yes, sir.

Q. When did you say that date was—the first time that you saw Silverman and Weinstock? A. I have no record; I couldn't tell you exactly; maybe it was on the 12th, maybe on the 11th, maybe on the 13th.

Q. Of April, 1926? A. 1926, right.

Q. And the first intimation that you had that you were Umpire was that you say Silverman called you up—is that right? A. Yes, sir.

Q. And have you been an Umpire on previous occasion? A. Not exactly, that I recollect.

BY THE VICE-CHANCELLOR:

Q. Is this the first time you have been an Umpire in these insurance matters, that you can recall? A. Maybe I was, once in a while.

BY MR. KLAUSNER:

Q. You have been an Adjuster for several years? A. Yes, sir.

Q. Have you ever been an Appraiser under one of these appraisal agreements? A. Yes, also.

Q. And you have been an appraiser often? A. Not often—maybe two or three times.

Q. In how many years? A. Oh, about 25 years.

Q. When was the last time that you were appraiser? A. I don't recollect the time now—maybe two years ago.

Q. Now, when you say that you were called by Silverman, in response to that telephone call you came to his office? A. On the following day.

Q. On the following day? A. Yes.

Q. And Weinstock also was there? A. He came afterward.

Q. Came afterward? What did Weinstock say to you on that day? A. On that day?

Q. Did he give you any paper? A. He gave me the inventory when he went home.

Q. After you went home? A. When we were there—he gave me his figures of his damages and value.

Q. So the first time you got Weinstock's figures was after you left Washington Street and after you left Railroad Avenue? A. Right.

Q. On your way home? A. Yes.

BY THE VICE-CHANCELLOR:

Q. Why should they give you their figures then—they had not disagreed yet, had they? A. When they called me up as the Umpire—the only time I was supposed to be called in is when there is a disagreement; they have no right to call me in if they agree; now, when they called me at the premises that means that they have disagreed.

Q. Oh, that was your idea? A. But when Mr. Silverman called me up and notified me that I was selected as the Umpire, he told me that they had disagreed and asked me if it was possible for us to make an appointment on the following day and go over the premises.

BY MR. KLAUSNER:

Q. So that you say that Silverman, on the telephone, told you that they had disagreed? A. Yes, sir.

Q. A day before you went there? A. Yes, sir.

Q. And that was either (on the day you went) the 11th, 12th or 13th? A. Somewhere around the 11th.

Q. And when you came to Silverman's office did he give you any papers—Silverman? A. No, sir.

Q. Did Silverman give you any papers at all that day? A. Well, while we were at Washington Street.

Q. While you were at Washington Street Silverman gave you some papers? A. The inventory, yes.

Q. The inventory? A. Yes.

Q. What did you do with that inventory? A. I gave it back, because it did not correspond.

Q. Did you, on that day, go over any differences between the parties? A. That day they didn't have any differences yet.

Q. So, on that day you did not have their differences? A. Not on that day, no.

Q. Not on that day? A. No.

Q. So that on April 12th, 11th or 13th, when you went to Washington Street, you did not have either one of their differences? A. No, no; no differences.

Q. You did not? A. No,—not the first day, no.

Q. Well, when did you get their differences? A. When we left the premises; when I went there on the first day I asked them for their figures, and Weinstock handed me his inventory with his figures on it, which I added up myself.

BY THE VICE-CHANCELLOR:

Q. (Handing the witness a paper): This paper I am handing you now is Silverman's claim—D-3? A. Yes.

BY MR. KLAUSNER:

Q. Which of these is Weinstock's paper that he gave you? A. (Selecting one of the papers) This is the one.

BY THE VICE-CHANCELLOR:

Q. Now, do I understand you to say that this D-5, that Silverman handed to you, was Silverman's figures or value, or was it a copy of the inventory as made up by the insured? A. When I got the paper I called this as one inventory; I said, "Where are your figures you promised to give me?" He said, "Why, there it is."

Q. Are not the figures in that paper the same as in the paper that Weinstock gave you? A. They must be the same figures; this is a copy.

BY MR. KLAUSNER:

Q. So that when Silverman gave you his papers, what did you say to him? A. I said, "Where is your claim on it?" So he says, "Why, there is my claim."

Q. When was that? A. On the following day.

Q. You say that Silverman came to you personally with these figures? A. I was in his office on the following day, with the fixture man, and he went over together at Washington Street, again, and Railroad Avenue again, and there he gave me this inventory.

Q. So that you say that Exhibit D-3, without the lead-pencil or any marking, was given to you the day after you were at Washington Street? A. On the second day.

Q. On the second day after? A. No, that would be the following day; I was once there, and on the second day I came over again, and he gave me this.

Q. You say he gave them to you in his office? A. At Washington Street, I told you—when we came back on Railroad Avenue then he gave me the inventory.

Q. Are you speaking of the time Weinstock was in? A. No, I am speaking of the second day I was there, when I was there to see him and the fixture man.

Q. And Weinstock, you say, gave this paper when? A. On the first day that we met.

Q. On the first day? A. Yes, the first day we were at the premises.

Q. In typewriting? A. As it is.

Q. With these lead-pencil marks on it? A. Exactly.

Q. With the lead-pencil marks on it? A. Yes, that is his figures.

Q. On that day—that is, on the day that the three of you were together— A. The three who?

Q. That you, Silverman and Weinstock were together? A. Yes.

Q. —they did not submit any differences to you? A. I am telling you, I asked them for differences, and Mr. Weinstock had given me his figures.

Q. But did you go over, item by item, each figure, and see which ones they agreed on, and which ones they did not agree on?

Mr. Vanderbilt: I object to that, as immaterial. There is no requirements, under our cases, that that be dnoe.

The Vice-Chancellor: That seems to be so, Mr. Klausner; of course he is only to pass upon matters that they disagree concerning; he is not supposed to go over every item, but only to consider those items upon which they disagree.

Q. Now, did you go over with them, item by item, the figures upon which they disagreed?

Mr. Vanderbilt: I object to that, for the same reason.

The Vice-Chancellor: Well, I will sustain the objection; he is not obliged to go over it with them; he is to perform his duties independent of them.

Q. Did they give you an item by item statement of the figures that they disagreed on.

Mr. Vanderbilt: I object to that, because there is no requirement to do that. When they bring the umpire in he becomes the umpire as soon as they, in fact, disagree.

The Vice-Chancellor: Yes, I will sustain the objection; he is to have them report to him and say "We disagree; we cannot agree on the figures; we therefore ask you to come in and fix the award, fix the figures."

Mr. Klausner: Well, it seems to me to be their duty, under the cases, to attempt to agree; on those figures upon which they agree they are not supposed to submit them, but, on the figures on which they do disagree they are supposed to submit the figures. I do not say that these men must submit to the Umpire their figures upon which they disagree, but they must submit to him the items upon which they disagree.

The Vice-Chancellor: I think that is right; there is no objection to that, is there—they must make known to him the items they have disagreed upon?

Mr. Vanderbilt: They did—but there were only two items.

The Vice-Chancellor: That was the argument we had the other day, and I think we had better have that out now and settle that. You took the view, the other day, that the word "items", as contained in these policies and these papers here, had reference only to two distinct things —one, for instance, stock, and the other fixtures; now, it appears from this man's testimony, and the other testimony, that, with respect to the household furniture that they talked about, they went over the articles that

were appraised, and the value of it was given item by item, specifically; now, why should they have done it in that case if they were not to consider that they were to do it in this case? My view is that they must go over each of these particular items which go to make up the total loss, because, if they are not obliged to do that, it would be difficulty to see where the Umpire is to come in. (After argument by counsel) I am going to overrule that objection of yours, Mr. Vanderbilt, in trying to expedite this matter. I may be wrong, but, if I am, I am misreading some of these cases; so I might as well give you a chance to review it.

Q. So that, on April 12th, the day when the three of you got together, neither Mr. Weinstock, nor Mr. Silverman, gave to you the specific items upon which they disagreed? A. They were not supposed to.

Q. Did they, or did they not? A. I received one paper, from Mr. Weinstock.

The Vice-Chancellor (To the witness): Mr. Vanderbilt and I were just having a colloquy as to whether or not they were supposed to—so don't you decide something I am unable to decide here.

The Witness: Mr. Weinstock gave me his figures on that day.

Q. You say he was not supposed to? A. He gave it to me—the man's figures; they have got to give them to me, and, if he didn't give it to me—

Q. (Interrupting) You say he was not supposed to? A. No.

Q. And they did not give them to you on April 28th, either, did they? A. You asked me in the morning, when they came in—

The Vice-Chancellor: Why don't you answer the question. Read the question.

Q. I ask you now, on April 28th, the day on which you and Silverman and Weinstock were in your office, did Mr. Weinstock and Mr. Silverman give to you—both of them—a list of the specific items upon which they disagreed? A. Not on that day.

Q. Did they, on any day between the first time you saw them and the last time you saw them—both of them—give to you the specific items upon which they disagreed? A. Yes, sir.

Q. When? A. Mr. Weinstock gave me his on the first day when I was there with the three of them.

BY THE VICE-CHANCELLOR:

Q. Now, refer to the paper you say he gave you? A. (Referring to a paper now before the witness) This is the paper Mr. Weinstock gave me on the first day that we met, where it is marked with the items.

Q. This is Exhibit D-6, now? A. Yes; and every items was marked, those we could see were supposed to be damaged, and every item was there; only those which he claimed could not have been burned he marked no figure, no allowance on them.

Q. You said before that you were called up on the 'phone and were told that you were selected as the Umpire, that you concluded then that you were expected to go in and make the award—were you? A. I had to go and act.

Q. As Umpire? A. As Umpire; exactly.

Q. And that was on the very day they called you up and told you you were selected as Umpire? A. Exactly. I was supposed to act then, after that.

Q. Well, you say you were "supposed to"? A. Well, I was to act when I was selected.

Q. So, your idea was that when you were told you were selected as Umpire, that you were to go and immediately act as Umpire? A. I was told by Mr. Silverman to come the following day, that they had disagreed.

Q. Well, what did Weinstock say, if anything? A. I did not speak to Weinstock; it was from his office he called me up.

Q. So you took Silverman's word for it that he and Weinstock had disagreed, and you were to meet them and act as Umpire? A. I was to meet them the following day.

Q. You were to meet them the following day? A. Exactly.

Q. You did not ask Weinstock whether he and Silverman had disagreed? A. I said to them, on the premises, on Washington Street, I said, "Gentlemen, I presume you have disagreed, and you call me in here.

Q. You did not tell me that before. A. Because you did not put the question, your Honor.

Q. So, instead of saying "I understand you disagreed" you told them "I presume you disagreed"? A. Exactly, when they called me there.

Q. When you said, "I presume you disagreed," what did Weinstock say, if anything? A. "We disagreed".

Q. Is that all he said—"We disagreed"? A. Yes, sir.

Q. Now, on the 28th, when you got together, did you say to these two men, at the table—"Gentlemen, will you try to see if you can get together again before I make my award; I have my award made, but I would like to have you give it further consideration"? I did not say this, but I simply told them, "Gentlemen, I have examined your figures; I have made up my award; now, if you can possibly meet any differences between yourselves", and the same answer was "We have disagreed, give us your award."

Q. Did you hear Silverman's testimony that when they met that day he immediately objected to your acting as Umpire? A. I heard him say it, but it is not so.

Q. Did you hear him say that when Mr. Weinstock was alleged to have said, "Now, it is up to you, Mr. Umpire, to settle this," Silverman says, "Hold on; I object to that," or words to this effect, "because we have not disagreed, and it is up to us to try to agree first"; and then spoke to you and said "You are not supposed to come in here until we have disagreed"—was there any such conversation as that? A. No, sir; if there was not a disagreement they shouldn't have come to my office at all; why should they come to my office at all—for what purpose?

By Mr. Klausner:

Q. Who made the appointment to meet on April 28th? A. The appointment was made for the 27th.

Q. Who made that appointment? A. Mr. Silverman asked me to make a meeting for the award, and I called a meeting for the 27th, and notified Mr. Weinstock to the same effect.

Q. Why wasn't it held on the 27th? A. Because Mr. Weinstock wrote a letter that he could not possibly on that day meet me, and postponed it to the 28th.

Q. Then it was Weinstock's suggestion that you meet on the 28th? A. I think so, yes.

Q. Now, on the day of April 12th—I think it was Weinstock who testified that it was the 12th— A. I don't remember.

Q. —that you and Silverman and Weinstock went to Washington Street, on the first occasion, when you said, "I presume that you have disagreed"—at that time they did not give you any specific items upon which they disagreed? A. No, not at this minute, no.

Q. And then you went ahead and figured up the whole loss? A. I made my notations.

Q. Your own notations? A. Exactly.

Q. On the whole loss? A. Well, not on that day.

Q. Well, did you start making up your notations on the whole loss? A. Exactly.

Q. So that you were going to make an award, in your opinion, on whole loss? A. Why, certainly on the whole loss, because they claimed a whole loss. Now, there is the schedule, where the man claims on the whole thing—now, pardon me, don't mix me up—it is proper, there is nothing wrong; it is usually done and it is legally done.

Q. What is "usually done and legally done"? A. In adjusting losses, etc.

Q. What? A. The way I did. Now, Mr. Silverman gave me an inventory; you can easily see for yourself—you are trying to mix me up, otherwise—he gave me an inventory where he makes a claim of the total amount; he is not making a specific claim on each and every item, because he couldn't do it; if

he wanted to make a claim on each and every item he couldn't do it in a million years.

BY THE VICE-CHANCELLOR:

Q. Why couldn't he? A. For instance, there is a desk; the desk was not burned—damaged by water; a glass broken, or something like that in a show case—a glass is broken—and there is a claim, for instance, for those show-cases, of eight or nine hundred dollars of merchandise; now, where is the merchandise? I am the Umpire; I went to the place and examined the show-cases; the show cases is in perfect condition, and I seen not a box of candy; I say, "Where is the candy?" "Somebody broke in the store." Well, possibly. Now, the question is, for the goods as far as my own judgment is concerned, I have got to use judgment. Where is the merchandise from these show-cases—a thousand or eight hundred dollars of merchandise? If it was burned the show cases would be burned; if the show-cases are intact, where is the merchandise? Possibly some of the merchandise, to a certain extent, has been used; and, in cases of that kind, as a rule, the Board of Health would condemn the merchandise—

Q. Are you speaking of the actual condition there? A. Over there, yes, sir.

Q. Did you make an award of any sum of money for a case such as you suggest? A. I gave the man the benefit of the doubt, and allowed him a certain amount on each—for instances, the show-cases.

Q. How could you exercise any judgment as to the stock which you say was represented by them to be in a case which you did not find in the case? A. Well, my judgment was as to how much goods were possibly contained there.

Q. You mean you guessed that—you distinguish between judgment and guess, do you? A. No guess —I used judgment.

Q. What was your judgment—what was it based on? A. My judgment was that so much merchandise was there, and I allowed it.

Q. If they told you, as you say that they told you, that there was a thousand dollars worth of merchandise there, and you did not find any at all, now tell me how you came to it, as a matter of conclusion, as to how much to allow? A. I am speaking about this one case I am telling you about.

Q. Exactly—the show-cases. A. Now, the merchandise is displayed, spread out—

Q. How do you know it was? A. That is what he told me display cases.

Q. I understood you to say that there was one instance there where the inventory showed approximately a thousand dollars worth of stock in a show-case? A. In the cellar.

Q. You have been speaking about a show-case? A. Yes, sir—three show-cases.

Q. Now, you say when you got there the show-cases were not broken, and they were not damaged, and you could not see any stock in the show-cases? A. Right.

Q. You then asked where were the goods, and they told you that somebody broke in and stole them? A. Right.

Q. Now, you found no goods in the show cases? A. Right.

Q. Now, how could you reason how much money should be allowed for them—for the supposititious goods that were supposed to be in the show-cases? A. I used my judgment.

Q. Well, did you rely upon the truthfulness of the representation contained in the inventory? A. I didn't believe the inventory, no.

Q. You did not believe it? A. No.

Q. Well, if you did not believe the inventory, how could you allow them for anything that was in the showcases? A. I used judgment; he may have had some goods over there, and maybe it was stolen.

Q. The fact is, you made a guess at it? A. Well, you may call it a "guess," but it is a judgment.

Q. If you say it is a judgment, I want to know what it is based on? A. For instance, I figured so much in a show case of that size—how much candy could be put in there; I figured—let us see—100 boxes, or 200 boxes, and allowed them accordingly.

Q. Did you allow them for all the goods they could crowd in the show-cases? A. According to my judgment, I did.

Q. How much goods, in quantity, all told, did you figure they could put into these show-cases? Of course they said it was a thousand dollars. A. I know it; they said it was ten thousand in the back room in the cellar.

Q. Well, keep to the one thousand. A. All right, your Honor. A thousand dollars was one, where he claims six hundred—about eight hundred dollars—I allowed him $250.

Q. Now, tell me how you arrived at it? A. I figured that there was a certain amount of candy, possibly, and that is what I allowed. There is nobody can go to work and say exactly there was so much there, because you could not see a box of candy over there. The show-cases wasn't burned, and I simply gave the men the benefit of the doubt, and I allowed them a certain amount of money.

BY MR. KLAUSNER:

Q. Looking at one of the pictures, Exhibit C-10, which shows some of these show-cases—do you notice that there are some damaged goods in those show-cases—can you see them? A. Well, when I seen the show-cases they were in Railroad Avenue—the show-cases were at that time; these fixtures were removed to Railroad Avenue.

BY THE VICE-CHANCELLOR:

Q. Do you mean the show-cases were not at 620 Washington Street on the day you were there? A. No.

BY MR. KLAUSNER:

Q. They had already been moved? A. On Railroad Avenue, yes.

Q. They had already been moved? A. I suppose so, if I saw them over there.

Q. So that you don't know what was in the show-cases at the time of the fire? A. I didn't say I do know, surely not; I simply used common-sense; I gave the men the benefit of the doubt, that is all.

Q. Where did you see Mr. Melton at the time you asked him where were the goods? A. He was right next to us, in the place.

Q. In 620 Washington Street? A. Yes.

Q. But you say the show-cases were not there then? A. Well, your Honor, here is the idea—when I came up to the show-cases—

Q. (Interrupting) I understood you to be saying right along here, that when you got to the place you saw by the inventory that there was supposed to be a thousand dollars' worth of stock in a show-

case, and when you got there you said, "Where are the goods?" and Mr. Melton said, "Why, some boys must have come in and broke through it and taken them?" A. That was when I was in Railroad Avenue I saw the show-cases, your Honor.

BY MR. KLAUSNER:

Q. So that when you originally came there on the first occasion, to Washington Street and Railroad Avenue, and you started going over the inventory, you started going over each item of the inventory, to give your own opinion as to each item in the inventory? A. Right.

Q. That is, with reference to the whole loss claimed? A. With reference to the whole loss claimed.

Q. And not with reference to any item on which they disagreed? A. Because there was nothing agreed—for goodness sake—there was nothing agreed, according to the inventory.

Q. According to the inventory? A. When they presented to me their claims. For goodness sake, don't mix me up.

Q. I will withdraw the question. Just a minute, Mr. Ginsberg. On April 12th, when Weinstock, Silverman and you came together, you say that you told them, "I presume you have disagreed?" A. Right.

Q. Before either Weinstock said anything to you on that day, or before Silverman said anything to you on that day, about a disagreement? A. That is right.

BY THE VICE-CHANCELLOR:

Q. That is hardly so, if what you said before is so; you said he told you over the 'phone that you

were selected and they had disagreed. A. Yes, but he was talking about then, on Washington Street.

The Vice-Chancellor: All right.

By Mr. Klausner:

Q. Then, prior to that time, you had not received any telephone communication from Weinstock, or spoken to Weinstock personally, in which he said to you that he had disagreed? A. Not before, no.

Q. Not before then? A. No, sir.

Q. And you proceeded on that day— A. On what day?

Q. On April 12th, when the three of you were together in Washington Street, and subsequently in Railroad Avenue— A. Yes.

Q. —you proceeded to give your opinion and award upon the whole loss? A. Now, Counsellor, when I came there I didn't have to give the award at the minute I came there, naturally, and I knew it would take me some time to give an award like that; and when Mr. Silverman told me they disagreed and they wanted an appointment for tomorrow, when I came tomorrow at Silverman's office, Mr. Silverman could have told me that "we haven't disagreed yet."

Mr. Klausner: I ask that that be stricken out.

The Vice-Chancellor: There is so much else in that I will leave that in.

Q. So that you told us before that, on April 12th, when the three of you were together in Washington Street, you got the inventory and proceeded—not that particular day—but you started to make the

award and give your opinion about each item? A. Not the award; I made notations, as to the award.

Q. But it was your intention to take each particular item in the whole loss? A. Right.

Q. On that particular day; and you felt on that day that it would take you quite a long time to give the opinion? A. Right.

Q. About how long? A. Well, it took a couple of days for myself—that is, I was there twice—the fixture man was there once; then I received what the items of the fixture man was. His name is marked on the side of it.

Q. How long did it take you to give your opinion, going over each item? A. Well, it was possibly maybe about the 15th or 16th days of April when I was through with my figures.

Q. You were through with your figures on the 16th of April? A. Yes.

Q. How many days would you say it would take you—four days? A. What?

Q. To make up your figures? A. Well, I think that it would take a day or two after the 16th.

By the Vice-Chancellor:

Q. What about the fixture man—did you have to have the figures of the fixture man? A. On that day I had the figures of the fixture man.

Q. On what day did he give you his fixtures? A. Well, when he was there; he was there two days, and he was there by himself; and it was maybe about the 16th.

Q. Well, did you adopt, in your report, or in your calculation, the figures that were given to you by the fixture man as to the fixtures? A. Exactly.

Q. Did you take his figures just as they were and adopt them in your estimate? A. Exactly.

Q. Didn't you undertake to exercise any independent judgment of your own? A. As to those which I knew for myself, yes.

Q. Well, did you know anything at all about fixtures? A. Yes.

Q. Did you exercise any independent judgment of the value of the fixtures, or did you adopt the fixture-man's statement entirely? A. The showcases, the bars—like the bar fixtures—they were to be measured, and maybe the plates—he done that.

Q. Well, why didn't you do it, if you knew you could estimate that? A. Because I didn't have as much knowledge of those items.

Q. Well, you said you had some knowledge? A. Yes, but not positive knowledge.

Q. Well, none of us are perfect? A. Exactly; but naturally, I wouldn't do it; why should I; I wanted to be just.

By Mr. Klausner:

Q. Can you tell us, by looking at Exhibit D-7—that is what the fixture-man gave you, you say? A. Yes.

Q. Well, will you tell us what the fixture-man's opinion was as to the loss—the total amount that the fixture-man told you was the loss, in his opinion? A. His fixture loss was $4773.25.

Q. That was the fixture-man's loss? A. That was his items, which he figured on.

Q. You mean on the items on which he figured? A. Yes, because I figured it on some fixtures myself.

Q. Oh, which he did not figure? A. No.

Q. And you took all his figures, and added your amount? A. And added my figures to it.

Q. So, the amount that the fixture-man gave to you, you took in bulk—his opinion? A. Exactly; I took his figure.

Q. Now, Mr. Ginsberg, when do you say that you finally made up your mind as to what the award should be? A. Maybe the 17th—16th or 17th; I have no record exactly on dates.

Q. The 16th or 17th? A. Or 18th, possibly.

Q. Or 18th? A. Yes.

Q. So you would say it took you about six days to make up your opinion as to the award? A. Right.

Q. And, in your opinion, that is a reasonable time which it would be necessary for a man to have in order to make an opinion as to the loss in this matter? A. Well, you mean to figure up the loss? A. Yes.

Q. About six days? A. Well, I figure it so on that; I don't know whether it was six or seven days.

Q. Now, did you take into consideration the bills in this matter? A. No.

Q. Not at all? A. Not at all.

Q. And in making up your opinion as to the amount of loss you did not consider, at all, the bills? A. Nothing at all.

Q. You merely took the inventory? A. Absolutely.

By the Vice-Chancellor:

Q. That is not altogether so—you took the inventory, and also took the figures submitted to you by the fixture-man? A. Oh, yes, that is all right; I admit that. But he was talking about the inventory.

BY MR. KLAUSNER:

Q. Now, after you were called in on April 12th, as umpire, Mr. Weinstock and Mr. Silverman had nothing further to do with the loss, did they? A. What do you mean they had nothing to do?

Q. When you were called in as umpire to settle the amount of the loss, Weinstock and Silverman were through then, weren't they? A. Well, they could have settled the loss without me a week or two afterwards.

Q. Weinstock and Silverman could have settled this, even after you were called in as umpire? A. Why, certainly.

Defendants rest.

The Vice-Chancellor (to Mr. Klausner): Have you anything else?

Mr. Klausner: At this time, if your Honor wants me to go into the questions which I originally intended to, about laches and estoppel, and several other things we spoke about, I will do so; but I do not think there is any proof as to any one of those defenses. I can go into all of them.

The Vice-Chancellor: I do not care what you go into; I am not going to intimate to you what my idea on that is; I do not mind telling you that I have a pretty strong view of that aspect of the case, but I am not going to be "fished out."

Mr. Klausner: No, I do not intend to "fish you out, but, if your Honor remembers, at the

opening of our case you suggested that I had better not anticipate any such thing.

The Vice-Chancellor: Oh, yes, that is right, because you were anticipating something that might or might not develop. Now, I do not know whether you think it is necessary for you to go into them, or not; that is for you to determine.

COMPLAINANTS' REBUTTAL EVIDENCE.

SAMUEL W. SILVERMAN recalled.

DIRECT EXAMINATION BY MR. KLAUSNER:

Q. Mr. Silverman, Mr. Ginsberg has stated that when he was to your office on April the 12th, the day that you and he and Weinstock went to Washington Street on the first occasion when the three of you came together, that you said to him, "We can make some money in this matter," and he said, "I am not of that 'we' "—did you ever make any such statement, or did he say anything like that to you? A. I don't know what "we" refers to, but I had no occasion to make any such statement.

Q. Did you ever make such statement? A. Never did make such a statement.

Q. Or any words to that effect? A. I never did.

Q. Now, April 10th was the date when the Appraisal Agreement was signed—is not that so? A. Yes, sir.

Q. When an Appraisal Agreement is signed is it the custom to immediately notify the Umpire that he has been made the Umpire in the matter, even

though you eventually do not call him in? A. Always do, as a rule.

Q. And on the day that you notified Mr. Ginsberg—did you notify Mr. Ginsberg that he was made Umpire? A. No, sir; I called up his office and spoke to Mr. Sonnenfeld, to find out who Mr. Ginsberg was, and he was not in, and I left word with Mr. Sonnenfeld that he was appointed Umpire, and that he should appear in my office the following day, that Mr. Weinstock would be there to go over the loss, to make a survey of the loss.

Q. Well, who made the appointment for him to come to your office? A. I did—from Mr. Weinstock's office.

Q. From Mr. Weinstock's office? A. Yes.

Q. When was that made? A. On the same morning we selected him as Umpire—on the morning of April 10th.

Q. So you did not speak to Mr. Ginsberg? A. No, sir, never spoke to him until I met him in my office.

Q. Or on the telephone? A. No, sir; never did.

Q. When did Weinstock and Ginsberg come to your office—the following day after April 10th, or two days after? A. No, two days after—April 12th.

Q. Two days after April 12th? A. Two days after April 10th, which was on April 12th.

Q. Well, I thought you told us a few minutes ago that you told Sonnenfeld that he should come the following day? A. No, it was two days later—April 12th.

Q. April 12th? A. Yes, sir.

Q. And when they came over to your office, did you tell Mr. Ginsberg that you and Weinstock had disagreed? A. Why no; we never disagreed.

Q. When you were at Washington Street, or at Railroad Avenue, on April 12th, did you say to Mr.

Ginsberg that you had disagreed with Mr. Weinstock? A. Never did.

Q. Did Weinstock, in your presence, ever tell Mr. Ginsberg, either on April 10th, by telephone, or on April 12th when you were together, that you had disagreed—did Weinstock say that to him? A. Weinstock never said that.

Q. Did you call Mr. Ginsberg and make an appointment for April 27th or 28th? A. No, sir; Weinstock made the appointment with me for that day.

Q. Did you ask Mr. Ginsberg to make the award? A. No, sir; I never did.

Q. Did Mr. Ginsberg ever mail you a copy of the figures upon which he claimed to have made the award—that is, mail you a copy of Exhibit C-14? Did you ever receive that from Ginsberg? A. Never saw that before, until now.

Q. Mr. Ginsberg said that he mailed you such a copy, without a letter, a day or two after April 28th—did you ever receive such a paper? A. He never did; I never received it.

Q. About how long did it take you to make up your opinion as to the amount of loss in this matter? A. Close to a week.

Q. Did you meet Weinstock in Weinstock's office the day after April 10th and go over the figures, and go over to Washington Street, and disagree? A. No, sir; never did.

Q. Did you go with Weinstock to Washington Street or Railroad Avenue before you went with Mr. Ginsberg? A. Never did.

Q. Was the first time you went with Mr. Weinstock to the loss the same time that you went with Ginsberg? A. Yes, sir.

Q. Mr. Weinstock says that on April 10th you signed this Appraisal Agreement, and on April 11th

you came to his office—or, rather, that on the same day you signed the Appraisal Agreement you went to the loss at Washington Street—is that the fact? A. No, sir; an hour after the agreement was signed I left for Washington, D. C.

Q. Did you go with Weinstock, either on April 10th, the day the Appraisal Agreement was signed, or on April 11th, to the loss—with Weinstock alone? A. No, sir.

Q. Did you say to Ginsberg, on April 28th, "Give me the award in a lump sum"? A. No, sir.

Q. Or words to that effect? A. No, sir.

Q. After April 10th, when the Appraisal Agreement was signed, and after April 12th, did you submit various bills to Mr. Weinstock? A. I did.

Q. For what purpose? A. To ascertain the loss, and come to an understanding on the settlement.

Q. In your opinion, is it necessary to have some of these bills in order to give a true opinion as to the loss? A. It is always necessary to have the bills to pass your judgment on the honesty of the inventory as submitted by the various insured.

Q. Is that true in this case, too? A. In every case.

Q. And in this case? A. Yes, sir.

Q. Can you tell us, of your own knowledge, whether all the personal property that were moved from the store at Washington Street, where the loss took place, were brought to Railroad Avenue, and whether anything remained at Washington Street outside of debris? A. Only what I have been informed by Melton.

Q. You don't know of your own knowledge? A. Not of my own knowledge; no, sir.

Q. At the time that the three of you were together at Washington Street, on April 12th, was

Weinstock making notations on his inventory? A. We just counted a few items, and we found a difference in the account, in two or three items, that was all; we only stayed there about twenty minutes or half an hour, at the most; we pust made a general survey over the loss.

Q. Did you ever ask five thousand dollars for the stock, or did you ask more for the stock? A. The loss I have asked was about $10,000, I believe.

BY THE VICE-CHANCELLOR:

Q. Did you go over the items with Mr. Weinstock, and, in any cases, did you agree upon the value of certain items? A. No; Mr. Weinstock and I just went over, on the stock, what bills we had, and he wanted me to produce more bills to show where my loss was $10,000; he said all he would give us was a few thousand dollars on the stock; he never spoke about the fixtures.

BY MR. KLAUSNER:

Q. Did you ever go over, with Weinstock, item by item? A. On the stock, only.

Q. On the stock only? A. Yes.

Q. And did you agree on any of the particular items? A. No, we couldn't agree because he wanted me to substantiate my figures as to how I arrived around ten thousand dollars by producing bills, and I produced bills, and there was four or five immediately with Mr. Weinstock; and then he took the bills, and he said, "Well, we will go by the monthly schedule and see how much goods he purchased in the past eight months, and divide that by 8, and see how we arrive at it."

Q. And you submitted bills? A. I did.

Q. And after you submitted the bills did you go over the figures, item by item? A. No, sir. The last time I submitted bills I believe was on April 20th, and then Mr. Weinstock wanted more bills, and finally I called Mr. Weinstock and insisted upon having a show-down; so he said, "We will make it April 27th; we will have quiet in Mr. Ginsberg's office; and if we cannot agree then we will call in Mr. Ginsberg."

Q. An he suggested that you go to Ginsberg's office and go over the item-by-item figures? A. That is the idea.

Q. And when you came in there did you go over the figures, item by item? A. I didn't have an opportunity; I was ruled out.

CROSS EXAMINATION BY MR. VANDERBILT:

Q. Mr. Silverman, why did you ask Ginsberg to go to the scene of the loss with you on April 11th or 12th? A. Just to make a general survey.

Q. Why should he make a general survey if you had no differences? A. That was suggested by Mr. Weinstock; we always do that, as a rule.

Q. But you were an experienced appraiser, and you knew that umpires are never called in until there have been differences between the two appraisers? A. I settled hundreds of losses with Mr. Weinstock, and we always had the umpire around with us, although we never used him.

Q. Well, was that because, when you got together you knew you were going to disagree from the beginning? A. No, I thought we were not going to disagree from the beginning; I thought we were going to agree, as we always do.

Q. Well then, why waste a day's time of the umpire on April 11th, or 12th? A. Why, Mr. Weinstock—

Q. (Interrupting) Why did you call for him? You knew your client was going to pay half the umpire's bills for this service, didn't you? A. Not necessarily.

Q. Doesn't the policy so provide? A. It does.

Q. Then, why did you put your client to the expense of the umpires time, per day, on April 11th or 12th, if there had been no disagreement between Weinstock and yourself? A. To enlighten you, Counsellor—on many occasions we mall the umpire in, and Mr. Weinstock says, "I will agree,—and just to make it look good to the Company we will have the umpire side in with us, and put his signature on"; that has been done in ninety per cent. of the fire appraisal losses.

Q. And what is the object of that? A. Well, to give the umpire a chance to make a fee.

Q. I see—in other words, to make it seem as if there had been a disagreement, so he could come in and get a fee out of it? A. I presume that is so.

Q. And was that the reason it was done this time? A. I imagine so. As matter of fact, we never figured that we were going to disagree; I was surprised myself that Mr. Weinstock and I disagreed.

Q. Then why did you call the impire in?

The Vice-Chancellor: Well, as I understand it, they do not call the umpire in; as I gather from this insurance policy, it is the duty of the appraisers to appoint an umpire, but that umpire does not act unless there is an actual

disagreement; but the umpire is appointed in the beginning, is he not?

Mr. Vanderbilt: Yes; he was appointed on the 10th and I wanted to know why they went to the place on April 12th, if they had not disagreed.

The Vice-Chancellor: Well, one of the exhibits here says that the two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers shall then estimate and appraise the loss, stating separately sound value and damage for each item, and failing to agree, they shall submit their differences to the umpire. So it seems the umpire remains in the background until they each disagree; then he is called on.

Mr. Vanderbilt: Now, the umpire was called on April 11th or 12th to go over to Jersey City, and I asked him why, and he has answered that by saying "to make a general survey"; he says that is customary in his practice.

Q. But there is nothing in the policy that provides for the umpire making a general survey, is there? A. No, sir.

Q. And there is nothing in the agreement that calls for that? A. No, but you will find, in every appraisal agreement, that that is the custom.

Q. Of course that has not been my experience. A. It has been mine, in quite a few thousand cases.

Q. Well, I have only had a dozen or two. A. You have had a good deal more than a dozen.

Q. But you still insist that you called in the umpire without your having a disagreement between Weinstock and you? A. Exactly.

Q. And the reason for your doing that was to see that the umpire was taken care of—is that it? A. To the best of my knowledge, I believe that may have been it.

Q. Well, that was the only reason? A. Just to make a general survey.

Q. And to see that the umpire was taken care of? Right? A. I presume so.

Q. Well, you know so, don't you? A. Evidently it is.

Q. And once again you called in the Umpire, and that was on April 27th? A. No, that meeting was suggested by Mr. Weinstock, so we could have quiet and peace in getting together on the loss.

Q. You mean you went to the Umpire's office, but you didn't want the Umpire there that day? A. We didn't expect to have the Umpire there; we expected to get together by ourselves and settle the loss; this loss was never expected to go to the Umpire—never was.

Q. But you planned, on April 27th, to go on April 28th (when Weinstock was busy on the 27th) to Ginsberg's office, is that right? A. We went there for the simple reason to have a quiet place to hold our meeting, to go over the loss.

Q. Did you plan to meet Ginsberg? A. We didn't figure on meeting, but if he was there it was just as well; it was in his office.

Q. And you knew Ginsberg was going to be there? A. Not exactly.

Q. Now, what kind of an office does Mr. Ginsberg have there? A. Oh, a 2 by 4—one of these little offices, with a double partition in it.

Samuel W. Silverman—Recalled—Cross.

Q. What kind of an office has Weinstock? A. He has an office with a dozen offices in and about a million people running out and in.

Q. At any rate, you don't have to be in a 2 by 4 when you go to Weinstock's office? A. You cannot talk business in Weinstock's office.

Q. What is your office like? A. My office is a very busy office where you cannot sit and talk.

Q. So that the only offices you and Weinstock could use were Ginsberg's offices?

Mr. Klausner: I object.

A. Well, he suggested that we go to his office.

Q. Do you agreed to it because Weinstock suggested it? A. Yes.

Q. Were you surprised, when you got there, to see Ginsberg? A. No, I was not surprised; it was his office.

Q. You expected to see him there? A. Well, it was his office; I figured he might be there.

Q. Were you surprised when he did not get out, when you two men came in, and let you have the office to yourselves? A. No, I was not.

Q. Were you surprised when he began to join in your deliberations? A. He did not join in the deliberations, he kept his mouth shut.

Q. He did not say anything? A. He didn't say nothing; he just sat down there, and Mr. Weinstock and I argued together; and when Mr. Weinstock refused to produce the papers he said,—"I call the Umpire in," and then the Umpire pulls out his award; and I said,—"Well, wait a minute." "Sign the paper," is all Weinstock said; and we argues there fifteen minutes. After that I said, "This is robbery, it is not fair."—

Samuel W. Silverman—Recalled—Cross.

Q. Wait a minute; not so fast; you did sign one of these papers? A. That was for the household furniture loss.

Q. But you did sign it? A. Yes.

Q. And with these two robbers present? A. Yes.

The Vice-Chancellor: That was an entirely different matter, as I understand it.

Mr. Vanderbilt: He agreed to it just five minutes before.

The Vice-Chancellor: Yes, but he did not say he was a robber with respect to the household furniture.

Q. You saw that Exhibit D-4, before, didn't you? A. I certainly did.

Q. It was not the figure you asked—what was your idea? A. $685, and it was $625; it was not much difference.

Q. What percentage of difference was there on that loss—about 20%, wasn't it? A. Oh, no, I would say less than 10%.

Q. Well, would you say, with respect to the household furniture, that you did not call the Umpire in? A. We called the Umpire in.

Q. And asked him to act? A. Yes.

Q. And he did, didn't he? A. Yes.

Q. Now, had you and Weinstock previously had a disagreement with respect to the household furniture? A. We did.

Q. When? A. Right there and then.

Q. Right then and there? A. Yes.

Q. And then you came on to the stock and fixtures, and right then and there you had a difference, hadn't you? A. After we straightened one item out, one thing, then we came on the second

thing, and Mr. Weinstock did not have any paper there for the second loss, the stock and fixture loss.

Q. Did you have itemized figures? A. I certainly had.

Q. Where are they? A. This copy here, Mr. Ginsberg says that he had all the time; he only received this copy on the 28th of April with this other paper marked Exhibit 12; I am referring now to Exhibit D-3.

Q. And will you show me, Mr. Silverman, where your detail fixture figures are? A. My detail fixtures figures are on a copy which I have, which is not here.

Q. Will you produce that, please? A. Well, I will produce the amendment, which shows the detail.

Q. You don't say this Exhibit G-12 shows any detail as to fixture figures, do you? A. It shows it on a few items.

Q. I am not asking you about a "few items" I ask you item by item on the fixtures—have you got any detail figures? A. I have not got the other inventory here; it was produced at the Federal Court; I don't know where it is now; we looked for it the last time we were here.

Q. Have you got them? A. I had it at the Federal hearing in Trenton, but I don't know where it is now; it was lying there.

Q. Well, you say you produced your detail figures, and Weinstock did not produce his? A. Yes, sir; and the Umpire did not produce his.

Q. Well, you were not up to the Umpire producing any yet, were you? A. No.

Q. And so you and Weinstock disagreed as to the stock that day? A. No—Mr. Weinstock says, "My figures is $4000; I will let the Umpire decide."

Q. What did you say your figure on the stock was? A. My figure on the stock that day was $10,235.32.

Q. You disagreed on the stock, didn't you?

The Vice-Chancellor: He does not say so.

Mr. Vanderbilt: Well, I am asking him.

Mr. Klausner: He has said a number of times what the conversation was, and has stated what they disagreed on, and what they did not.

The Vice-Chancellor: I do not mind your bringing out what happened, but I do not think you ought to put that characterization on it, that they "disagreed," because, as I understand, one man offered $4000 and the other $10,000, and I presume the thing to do was to try and get together, and try to find out who was wrong, if either.

Q. Did you and Weinstock agree or disagree, that day, as to stock? A. Mr. Weinstock said his figures was $4000 on the complete loss; the Umpire pulls out his figures; I said, "Wait a minute," I says, "Mr. Weinstock and I have not agreed or disagreed yet; let Mr. Weinstock get his figures, and let us go over them; maybe I am wrong; if I am wrong I will give in to them; let us go over each item and see where the difference is;" and Mr. Weinstock refused to listen to me, and the Umpire comes out with the paper, and he says, "Here, put your signature on it."

Q. Did you and Weinstock agree that day as to the stock loss?

Mr. Klausner: I object to that; Mr. Silverman has testified not once, but ten times exactly as to what happened, and the conversa-

tion; and Mr. Vanderbilt is trying to characterize it; Mr. Vanderbilt has asked him what happened there, and he has told him ten times; now, whether or not they agreed or disagreed on that day I think is a matter for the Court to decide; each one has told his side of the story.

The Vice-Chancellor: I think you ought to bring out, Mr. Vanderbilt, just what was said, and what happened there. I will sustain the objection in that respect; but I do not think it is fair to ask this question of the witness; that will enable him to state his conclusion as to the result.

Q. Well, by any expression, used by Weinstock or yourself, was there anything said or done by you that would indicate that you two men had agreed on stock—either on sound value or loss? A. We didn't disagree and we didn't agree; we didn't have any opportunity to do either.

Q. Well, you had met Mr. Weinstock over at the loss since the day you were there on April 11th or 12th with Ginsberg, hadn't you? A. At the loss?

Q. Yes. A. Never; I only met him once.

Q. You had communicated with him in the meantime? A. I had met Mr. Weinstock at his office a few times since April 12th.

Q. And you told him, this day when you met there on the 28th, that your figure on the stock was about $10,000—is that right? A. $10,235.32.

Q. And he told you his figure on the stock was what? A. He did not give me any figures.

Q. Well, did he give you no figure at all? A. Absolutely no figures; he had no papers, no inventory, nothing to substantiate any figures at all;

he just merely said the figure "$4000 on the whole loss; let the Umpire decide"—that was his conversation.

Q. Did you, as an experienced adjuster, a man who has been through hundreds of cases, think at that moment that you and he were in agreement as to the stock loss? A. I could not understand the man, at all.

Q. Did you think you had agreed? A. Well, how could we agree, or how could we disagree, when the man shows me nothing? I was there with my figures; I was willing to be shown.

Q. Did you ever see, in your hundreds of cases, any instance in which an award was made, with various items, as in this case—several hundred of them—that specified the sound value and the loss on each of those several hundred items? A. Every loss I have ever had, and every loss that Mr. Weinstock has had, each items, each article, is put down with the sound value and the damage—every item.

Q. And when the Umpire is called in he gives his separate sound value and damage on each item? A. On each item that we disagree on.

Q. Well, if that is so they did not leave an awful lot of room on this award blank. A. On the back of the award blank there is a recapitulation of the inventory. It will show on the back of the inventory.

Q. And you gave a lump sum in the figures that you submitted to Mr. Ginsberg that day, didn't you? A. The inventory, I say, showed each item.

Q. Right here (indicating) in typewriting, on this very loss, on the last page of Exhibit D-3, figures made by S. W. Silverman, Appraiser are lumped, are they not? A. Right; but those figures, Mr. Vanderbilt, are lumped on the back page, but

on each page it shows what the items were; and then, beside, I prepared another report to show what it was.

Q. Well, this other report you are referring to (Exhibit C-12) does not show any itemization of these various hundreds of items, does it? A. No, but I show just how I arrived at my figures—I specify various items.

Q. Turn to your last page, which deals with the fixtures, on that schedule D-3, and show me where your itemized figures are there? A. I said it was on my inventory which I had, and which I had in Trenton and which I could not find among our papers—or which we could not find last week.

Q. Was that marked as an exhibit at Trenton? A. I don't know.

Q. You say you spent a week preparing your figures on this proposition? A. I did.

Q. You are a very busy man, aren't you? A. I am.

Q. You put in a solid week on this? A. What I mean by a "week" is I put in seven or eight hours at the loss, and I spent many a night going over it, and I also received bills and estimates from other people and compared their figures with my figures.

Q. You worked nights on this? A. I did.

Q. And you took advantage of the information which was given to you by other people on it, and got their advice? A. I got their views.

Q. And whom did you consult about it? A. Well, on the question of labor and carpentry, in the inventory there was an item of $1600 and some odd dollars.

Q. Now, there is a lot of stuff, Mr. Silverman, in the stock, that was burned out of sight, wasn't there? A. Among the stock, yes, sir.

Q. A lot of it? A. Quite a few.

Q. Well, the amount of stock in sight, on your own figures, is how much? A. Well, I cannot say what the figures are here, but in the stock I have taken into consideration that a majority of the goods was—there was about $6000 worth of goods in sight.

Q. Actual goods in sight, after the fire? A. Actual goods in sight, after the fire—say $6000.

Q. Then you claim there was $4000 worth of goods out of sight—is that right? A. Well, I have taken it this way—I can explain—

Q. (Interrupting) Well, ten is six and four, is it not?

Mr. Klausner: His testimony was that the loss was Ten Thousand Dollars.

The Witness: On the stock.

Mr. Klausner: Yes.

Q. What was the value of the goods out of sight? A. Well, I can explain just how I figured it.

Q. Tell me what you figured was the value of the goods out of sight? A. That I cannot tell you, offhand.

Q. Well, what was the loss on the goods out of sight, because that would produce the same figure.

The Vice-Chancellor: (To the witness) You are looking for some paper that might enlighten you—what paper is it?

The Witness: I have it right here; I have got the sound value of all the stock, and that figure was $11,230.32.

Q. Can you say what was the value of the stock in sight? A. The value in sight was $6000.

Q. So the value, as you fixed it, of the goods out of sight was approximately $5000, is that right? A. Yes; it was more than $5000, because the assured's inventory shows $13,217.99.

Q. But you did not find that much? A. Well, I have deducted 15% for over-value, and then that brought the sound value down to $11,235.32.

Q. All right—the value of the goods out of sight, the stock out of sight, according to the assured, was about $7,000? A. Was about $7,000.

Q. And, according to your figures, $5,000, or thereabouts? A. It would be about $4,000.

Q. All right, $4,000—now, how in the world could Weinstock and you go over those $4,000 worth of goods and then settle the value of them, item by item, when there was not a single thing by which you could value them by? A. Oh, yes, I beg your pardon, I had the bills.

Q. You know the purpose of bills is to show the gross amount of goods purchased, but that it is never used to show what specific articles were in the fire and which have been burned out of sight, don't you? A. You know different—you know you go by the bills in making up the loss.

Q. You go by them in order to get the total amount of goods purchased? A. Absolutely; it is settled by the bills always, Mr. Vanderbilt.

Q. That is the explanation you want to give? A. Yes.

Q. That you and Weinstock could not agree, by reference to these bills, to what was the actual value of these different goods burned out of sight? A. Yes, sir.

Q. Now, tell us how in the world you would know how much of these particular goods mentioned in the bills had been sold between the time they were

purchased and the fire? A. You take the bills, and you go by the raw material; you find out how much was the raw materials, and then you use your judgment as to how much candy the raw material will produce.

Q. Yes, but how much did you know of those goods shown by the bill had been sold? A. Well, that is to be estimated between ourselves by using good judgment.

Q. Guesswork? A. Guesswork, as you would call it.

Q. So you and Weinstock could not figure these things out item by item, you had to lump them and then guess? A. Oh, no, we figured them out item by item.

Q. Or guessed at them, item by item? A. Well, "guessed at them, item by item"—either way.

Q. And were those bills bills which were purchased for this store of Melton Bros. alone, or did the bills cover this store and their other stores as well? A. No, when Mr. Melton has produced bills which had covered other stores we had taken them out immediately; we only took the bills of goods delivered at this store only, not any other store.

Q. How did you know whether or not these goods which were shown on the bills were received at this store and used there, or whether they were re-distributed from this store to their other stores? A. That is a hard thing to tell, but we took it for granted that they were used there.

(Both Sides Close.)

Opinion.

FALLON, *V. C.* (Orally, after hearing counsel): The variance of the testimony between the witnesses Silverman, Weinstock and Ginsberg in this case clearly indicates to me the applicability of the principle of law enunciated by Chancellor Walker in the case of Riehl v. Riehl, in 137 Atl. Rep., wherein he says that the judge or the tryer of fact is not obliged to believe the testimony of one or more witnesses, but the judge, as such tryer of facts, is to determine the crebility of the witnesses.

It is perhaps unfortunate for all of the parties in this case that the question of whether or not these Appraisers disagreed was not stipulated in writing. The significance of a writing being prepared and signed by Appraisers in a case of this kind, wherein they are said to disagree, is quite manifest in this case, because if there was such a paper-writing it would be dispositive of a very great extent of a good many matters which are committed to me now for my consideration and determination. It is ordinarily—or occasionally, anyhow, if not ordinarily—a difficult matter for a judge, as a tryer of facts, to determine satisfactorily where the truth lies when depending upon the ascertainment of the truth from the mouths of witnesses who disagree materially in their testimony. In this case it appears that, by reason of some disagreement between the Insurance Companies and the party who was insured as to the amount which should be paid to cover an alleged loss sustained by reason of a fire, the parties appointed appraisers within the purview of one of the provisions of the insurance policies. The clause in question which authorizes such appointment appears to be that which is from printed lines 86 to and including line 91 in the Policy numbered 10364 of The Newark Fire Insurance Company, which I now have before me. A similar clause is contained in the other policies. That clause says that "in the event of disagreement as to the amount of loss, the same shall, as above provided"—that means, the provision relating to the appointment of appraisers—"be ascertained by two competent and disinterested appraisers, the insured and this Company each selecting one, and the two so chosen shall select a competent and disinterested umpire. The appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the Umpire, and the award in writing of any two shall determine the amount of such loss. The parties thereto shall pay the appraisers respectively selected by them, and shall meet equally the expense of the appraisal and umpire." Now apparently under the authority of that provision of the contract, the parties entered into an agreement, under date of April 6, 1926, wherein they undertook to provide a method for the ascertainment of the amount of loss that was said to be occasioned by the fire which was alleged to have occurred on the 15th of December, 1925, resulting in damage or loss to the insured; and in that agreement the parties designate S. Walter Silverman as the Appraiser for Melton Bros., Inc., and Davis Weinstock as the Appraiser for the Insurance Companies; and these Appraisers were authorized by that agreement to ascertain, pursuant to the terms and conditions of the policies of insurance issued by the companies named in the agreement, the sound, actual cash value of the property of Melton Bros., Inc., on the 15th of December, 1925, which, as is said by the agreement, is more particularly described in the policies, "as well as the actual direct loss and damage caused

thereto by a fire which occurred on that day and/or, if this agreement contemplates personal property" (which, in this case, it does) "in such case damage if any caused by removal from premises endangered by fire; that the said two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree, shall submit their differences only to the umpire. An award, in writing, so itemized, of any two, when filed with the insurance companies above designated shall determine the amount of sound value and of loss or damage. Such loss or damage shall be ascertained according to the actual cash value of said property at the time of the occurrence of said fire, with proper deductions for depreciation however caused, and shall in no event exceed what it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowances for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, but such appraisement does not in any respect waive any of the provisions or conditions of said policy or policies of insurance, or any forfeiture thereof, or the proof of such loss and damage required by the policy or policies of insurance thereon." This agreement appears to have been signed on April 6th, 1926. On the back of this so-called agreement, which is marked Exhibit D-5 for identification (and I presume has a like marking in evidence) is the appointment of a third person, one Bernard Ginsberg, by the two appraisers, to act as umpire. That certificate of appointment bears date April 10th, 1926; and to that is appended a declaration of the nature of an oath, bearing date April 10th, 1926, indicating that the two appraisers made oath that they were not interested, either directly or indirectly, as partners, creditors or otherwise, or related to either of the parties to the foregoing agreement, and that "we will act with strict impartiality in making an appraisement agreeably to the foregoing appointment, according to the best of our knowledge, skill and judgment." That was sworn to on the 10th of April before some Commissioner of Deeds thereon named. But it appears that there is a space on that form not only for the appraisers to sign, duly making oath, but also for the umpire so to do; but the umpire, for some reason undisclosed, does not appear to have taken that oath, and, clearly, has not signed, together with the appraisers, the declaration. Now, then, on that same paper is an award, bearing date April 28, 1926, which says, "We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY, that we have truly and conscientiously performed the duties assigned us, agreeably to the foregoing stipulations, and have appraised and determined the actual cash value of each item of said property on the 15th day of December, 1925, and the actual direct loss and damage thereto by the fire on that day, to be as follows"—then it says "(see itemized schedule attached hereto) to wit:

Total Actual Net Cash Value:

Stock	$4,037.86
Fixtures and Improvements...	12,152.20
Total	$16,190.06

Total Actual Direct Loss and Damage Stock	$3,853.00
Fixtures and Improvements...	6,087.15
Total	$9,940.95."

That is signed by "D. Weinstock, Appraiser," and "B. Ginsberg, Umpire."

The complainant here charges that that award is improper and that it is based upon prejudice, bias and mistake, particularly of the Umpire. It will be observed that there is a variance between the language of the agreement and the language of the condition of the policy calling for the appointment of appraisers. In this agreement it is specifically mentioned that the appraisers "shall state separately sound value and damage to each item." The words "each item" are not stated in the provision of the policy. But in both papers—that is, in the policy and in the appraisal agreement, it is specifically provided that until the appraisers disagree upon the valuation and determination of the amount of loss, the Umpire is not to act. The clause in the policy in that respect says, "That the appraisers shall estimate and appraise the loss, stating separately sound value and damage, and failing to agree shall submit their differences to the umpire." The agreement says that "the two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree shall submit their differences only to the umpire." Now, apparently, from the language of that agreement, it was never intended that the umpire should have any jurisdiction to determine anything excepting the matters that the appraisers disagreed upon, because the word "only" is stated, apparently, as it seems to me, in that agreement to indicate more emphatically than it might seem to be indicated in the provisions of the policy that the umpire is to be limited in his authority in the matter, and that limitation is based specifically upon the disagreement of the appraisers in the performance of their duties.

Now, as I indicated before, this seems to be peculiarly a case in which the Court is obliged to determine, as between these several parties, where the truth lies, in so far as the Court can determine. There certainly is a manifest variance in the testimony of these three parties named. Silverman says that he does not recall just who it was that suggested the name of Ginsberg as umpire. Weinstock says that Silverman is the one that suggested the name of Ginsberg as umpire. Silverman says that when the name of Ginsberg as umpire was mentioned he then called up a person who occupied an office with Ginsberg, and whom Mr. Silverman was acquainted with—Sonnenfeld, I think he said the name was—his purpose being to inquire of Sonnenfeld as to whether he, Sonnenfeld, could recommend to Silverman the impartiality of Ginsberg as an umpire. Well, between them, anyhow, they did agree on Ginsberg as the umpire. That appears to have been on the 10th of April, 1926. The proofs do not disclose that these appraisers undertook to get together to agree upon values, or to do anything in connection with the duty devolving upon them under their appointment, from the date of their appointment on April 6th, 1926, up to this date of April 10th, 1926. It appears that on the day following this appointment of April 10th, 1926, Gins-

berg, Silverman and Weinstock went to the premises of the insured, Melton Bros., Inc., 620 Washington Street, Hoboken, and made a survey of the property. Silverman says that was the purpose of that visitation; he says that was the purpose of having the umpire accompany him and his co-appraiser on that occasion. It appears to me, from the testimony of Ginsberg, that he, Ginsberg, assumed, on the 10th of April, 1926, that he was to act as umpire, and that he was of the opinion that the two appraisers had actually disagreed upon the determination of the values and their duties that they were to perform under the appraisal agreement. He, in fact, says that Silverman told him that he and his colleague disagreed, but it does not appear as though Ginsberg undertook to ascertain from Weinstock whether or not there was such a disagreement, excepting that it appears in the Ginsberg testimony that when they went to 620 Washington Street he said to the two appraisers, "I presume you gentlemen have disagreed?" Now, what led him to that presumption, other than what Mr. Silverman is alleged to have stated to him, I do not appreciate; and if the statement that he makes, that Mr. Silverman told him that he and Weinstock had disagreed and they were therefore calling upon him to serve, were true, it appears to me as though Ginsberg would have asked Weinstock that which he claims Silverman stated to him, and that is, if they had disagreed. However, from part of Ginsberg's testimony I gather the impression (and I think I put a very pertinent question to him at the time) that he assumed the right to act as umpire because of what Silverman had stated to him.

Now, it does not appear to me, in this case, that up to that time, April 10th, 1926, these two appraisers had done anything at all with respect to undertaking to perform the duty devolving upon them. My impression of the law relating to matters of this kind is that these two men must have made a conscientious and honest effort to perform the duties devolving upon them under their agreement—they should have undertaken to have seriously and honestly come together, met, and endeavored to reconcile their differences, if any they had, with a view of performing the duties that they owed to their respective principals. But in this case, as I say, there is no proof before me to indicate that they did any such thing. Now, I do not feel that that umpire, under the facts as presented here, was warranted in assuming, on the 10th day of April, 1926, that these two men had disagreed; but it does seem to me, however, that, notwithstanding that I believe that he was unwarranted in his assumption that he had a right to serve, that he went to 620 Washington Street with the avowed purpose of making such an investigation as to the valuation of the property and of the amount of the value of the loss sustained, that he would undertake, separate and apart from these two men, to make a determination.

Now, one of the things that leads me to believe, too, that Weinstock's testimony cannot be taken very seriously by me, is the manner in which he testified here in court. His testimony was certainly very, very, unsatisfactory; it was hesitating, it was inconclusive, it was indefinite. He clearly indicated throughout that he was forgetful, that he could not recall particularly matters that his attention was directed to, and, in a number of instances, by somewhat leading question; but, with all that, he was uncertain in his testimony as to his participa-

tion in the matter; and I gather from his manner of testifying, and what he said, that his uncertainty and his loss of recollection of the matter was occasioned by reason of the fact that he is a busy man in his calling, and he had numerous matters which he was engaged in, subsequent to the performance of the duty in this case, and that his mind was not clear as to what actually transpired in this particular instance, or what duties he performed. He had no memorandum before him with which to definitely determine that which his attention was being directed to with a view of ascertaining the facts of the situation as to what he had done. I was not at all impressed with Weinstock's testimony—not that I believe that he tried in any way to give false testimony, but merely because he very patently, as it seemed to me, did not recall, and did not remember a great many of the incidents that his attention was being directed to, and some of the matters that ought to have been material for him to have some recollection upon, either by reference to documentary matters he had in his office, or such as he might have produced in court, or by refreshing his recollection by the papers submitted to him in court; but notwithstanding the submission of papers to him in court, he was not clear as to matters that I think he ought to have been able to be clear about, in order to give any particular credence to his testimony as against what was manifestly the very positive testimony of Silverman. Now, Silverman's testimony was not only outspoken and explicit, but was very positive in many respects, and it was not controverted, in a good many material instances, by either Weinstock, as I recall it, or by Ginsberg. I gather a very favorable impression from the testimony of Silverman as to what

transpired in several of these interviews between himself and Weinstock, on the one hand, and himself and Ginsberg, the umpire, on the other hand. One of the things that impressed me as to the credibility of Silverman's testimony was the fact that he said he endeavored to get together with Weinstock with a view of coming to a determination as to the fixation of the values that they ought to have endeavored to have arrived at. He said he had had difficulty in inducing Weinstock to get together with him. Weinstock undertook to assure the Court, by his testimony, that away back around the 12th of April he and Silverman disagreed; but there is a very pertinent piece of testimony in this case, indicated by this letter of April 20th, 1926, which indicates clearly to me that Weinstock was mistaken in that respect, because that letter, as I recall it, specifically refers to an endeavor on the part of himself and Silverman to get together on some values, because, in that letter, it refers to some further bills that were then under consideration by Weinstock. Weinstock, previous to that letter being shown to him, testified that he had all the bills before him, and had made his determination, in a great measure, from some of those bills. When confronted with that letter he was obliged to amend or modify his testimony, and he then said he thought perhaps that letter had reference to additional bills that he had asked Mr. Silverman to submit; but that letter, however, indicated to me (and I think his testimony in response to a question that I may have put to him—anyhow, it is in the evidence) that he and Silverman were then giving some consideration to this matter, and that was away up to the 20th of April—he indicated by his testimony that their consideration (that is, the consideration of himself

and Silverman) of that matter was not then foreclosed, it was not ended, that it was then open between him and Silverman; and yet, with all of that, it appeared by the testimony of Ginsberg and he, Ginsberg, had undertaken, on the 12th of April, 1926, to go in and make his determination of the matter, in entire disregard of what these two appraisers were doing. Now, clearly, within the purview of this appraisal agreement, and within the purview of the insurance policy, the umpire had no duty to perform, or the right to assume any performance of duty until these two appraisers reported to him that they disagreed in the matter, either *in toto* or in part.

Counsel for the insurance company has adverted, during the hearing of the cause, and in his argument, to the theory or suggestion propounded by him, and advocated by him, that the appraisers were not required to consider, in the estimation of their valuation, the various items which were detailed specifically in the so-called inventory which has been referred to here, and which was annexed to the proof of loss. As I gather from counsel's argument in that respect, the limitation of their determination was as to some two items mentioned on the back of the proof of loss, I think it is—one relating to stock and one relating to fixtures, and that those items were to be considered in bulk, of course after the appraisers giving some consideration to the value of them; but Mr. Silverman's testimony is to the effect that his practice, and the custom, so far as he knows it to be, in matters of this kind (and he says he has handled hundreds of them) is that each item should be considered. Now, I take it for granted that that seems to be the practice in cases of this kind, because it appears to me that Weinstock

himself followed that same procedure; he took item by item of the inventory that was submitted to him and he set opposite those items a particular value; and it appears also that the Umpire did likewise—each of the parties, that is, Weinstock and the Umpire, calculated, at the bottom of each heading that they have there, the detail value of the various items that went under that heading and made a lump sum total of it. So it seems to me that the requirement of the Appraisers (and of the Umpire, if he was called upon to act) within the purview of the agreement and the condition of the policy, was to consider all of these various items that were contained in the inventory that was submitted by Melton Bros., Inc. with their proof of loss.

Now, Silverman says that, aside from this incident of April 28th, when they met on the 28th of April, 1926 (which was by an appointment made through the instrumentality of Weinstock for that day, because the appointment had been originally for the day previous, and at the request of Weinstock, was continued over until the 28th) that he, Silverman, had his figures with him, and that he suggested to Weinstock, "Come, let us get together; let me see your figures; here are mine," and that Weinstock then told him that he did not have any figures with him, but he said, "My lump sum total" (if I remember the figures off-hand) "for the stock is $4,000. Now, Silverman's lump sum for the stock (as I recall the figures now—I have not got the papers just immediately before me) was approximately $10,000—there was quite a variance between them—and, so far as the evidence discloses here, there was no effort made by these two parties to reconcile their differences.

Now, then, on the question of the fixtures, it appears, too, that one of the parties—perhaps it was Silverman—did not have his figures with him on the fixture items when he and Weinstock got together on that day, but Weinstock did have his items before him on the fixtures; but it does not appear in this case that these two men honestly and assiduously undertook to perform the duties devolving upon them, of endeavoring to agree on the valuations of property and loss, which they, by their employment, were expected to perform. As I said before, it seems to me that, under the law, they owed the duty to their respective principals so to do. Now, in utter disregard of the performance of their duties in this respect, it appears from the testimony of Silverman (which was stated with a very strong degree of positiveness) that Weinstock, when he stated that he did not have his figures before him, said,—"Well, my lump sum is so much"—mentioning the lump sum; and he said "Let us submit it to the Umpire, and let him determine it;" and Silverman said, "Hold on; you are too quick; you are a little previous; we have not disagreed; we haven't actually agreed; we haven't tried to agree; let us try to agree;" and then he turned to the Umpire and said, "You are out of this; until we disagree you have no right to come into this picture;" and he then said, very much to his surprise, the Umpire pulled out of his pocket what the Umpire claims to be his determination of the matters in difference between the insured and the insurance company and laid it on the table and said, "Gentlemen, here is my determination; sign it." It was submitted to Silverman, and Silverman said, "Oh, no; I won't sign that; I am not a party to it; you are a little previous" this is substantially, as

I recall it, what he said. The other man, Weinstock, said, "We agreed that the Umpire should determine this matter. I will sign it;" so these two men, Weinstock and Ginsberg, signed it.

Now, of course there appears in this testimony a statement by Silverman to the effect that on the 28th, when he got together with Weinstock and Ginsberg, that he undertook to oppose the continuance of the performance of duties by Ginsberg, claiming that he did not think Ginsberg was an unbiased umpire. He says that he told Ginsberg, in the presence of Weinstock there, that he ascertained, after the day that he agreed to his apopintment, htat he, Ginsberg, was in cahoots, to some extent, with Weinstock—that they were friendly in some relation or other, and had business dealings together, and he did not think, in view of that, that he could be an unbiased umpire and perform his duties fairly between all the parties; and, notwithstanding that, Ginsberg persisted in his right to perform his duties. Now, I do not consider that even though Silverman protested in the manner in which he said he protested, that that, in itself, should invalidate the agreement in so far as the appointment of Ginsberg was concerned as umpire, or that it would deprive Ginsberg of his right to participate in the determination of the loss, if it should have been that the two Appraisers had disagreed; because I think that either Silverman, or the party whom he was representing, should have gone further in following up their protestation against Ginsberg, and should have formally, in some more formal manner, repudiated his right to serve, and then endeavor to have somebody substituted in his place. But no such action was taken by Melton Bros., Inc.

or their representative, and Weinstock and Ginsberg acted.

Now, I do not believe, in this case, that the activities of Ginsberg were warranted; I do not believe, in this case, that Ginsberg was called upon to exercise the authority conferred upon him by the agreement to act as umpire, because it does not appear to me that he was called upon to exercise this authority; the proof of Silverman is to the contrary; the statement of Weinstock affirms it, but, coupling the statement of Weinstock and the denial of Silverman with the assumption of authority as manifested by Ginsberg himself and as testified to by him, I am of the opinion that Ginsberg was too previous in this matter, and that he undertook to assume authority that was not conferred upon him. Now, I believe, in this case, the testimony of Silverman as to what transpired at that hearing on the 28th; and another reason why I believe it is because it appears by a piece of evidence in this case—that is, the letter bearing date April 30th, 1926, written by Silverman to Weinstock—that he therein reaffirms that which he claims to have stated to Weinstock on the 28th, and there is nothing, as far as I can recall it, to disprove that, although Weinstock does appear, in some letter which he wrote to Silverman in reply to that, to express surprise at the sentiments contained in that letter of April 30th as written by Silverman.

I was not very favorably impressed with the testimony of Ginsberg in this case, at all, because, in the first place, he appeared to be too anxious to say a whole lot of things that he was not called upon to say, and was injecting into the case a lot of remarks which were not entirely in response to questions that were asked of him; and he seemed to

be unduly exercised at some of the questions that were being put to him, and he manifested that somebody was trying to put him in a hole, and I did not realize, from any questions put to him by Mr. Klausner that he was in any wise trying to put Ginsberg into a hole; they were very plain questions—questions put very moderately to him, and in language that was fairly understandable; and yet Ginsberg appears to me to have contradicted himself in a number of respects, and then, when his attention was called to these contradictions, he would undertake to explain some of them away, but he did not explain them to my satisfaction, particularly in regard to the papers Exhibit D-8 and Exhibit C-14. Now, Ginsberg would have us believe that this Exhibit D-8 was a paper prepared by him prior to this meeting of April 28th, and that he had prepared it himself in typewriting; it is marked "Unidentified" with ink—and if he prepared it himself and it was all prepared at the one time, I do not know why he would have written the word "Unidentified" in typewriting instead of writing it in ink; and if prepared all at one time, I cannot understand that he would have had these numerals that are indicated on it in pencil marks rather than typewriting; and if he prepared it at the time he says he prepared it, I cannot understand why this Exhibit C-14 is not identical with Exhibit D-8. D-8 has the word "Unidentified" written on it once, and C-14 has the word "Unidentified" written on it twice, and there are no pencil marks on C-14 at all; and, taking it all in all, I am impressed with the idea that that paper was not made up at all in the manner in which the witness said it was made up. I have no means, however, from the testimony adduced in the case, or knowing when it was

made, and there is no date appearing upon it in any way, and so I am taking it for what it may be worth in my consideration of this matter; but, inasmuch as it refers to details as to the manner in which the umpire performed his duties, it does not seem to me that I am called upon to go into the technique as to how these details were arrived at, or as to how the conclusion was reached. I understand the law of this State to be that the Court is not concerned with the technicalities or the whys and wherefores of the means whereby the Umpire and Appraisers arrive at their conclusions, and, if their work is honestly performed and free from the taint of bias, mistake, prejudice or illegality in any particular respect, the Court ought to give due cognizance to the result of their work.

As to the question of laches and estoppel that has been urged, it appears to me that I will have to determine that proposition adversely to the counsel for the Insurance Companies, for the reason that it does not appear to me that the neglect—that is, the period of time during which the complainants neglected to make known their objection to the award of the Umpire—can in any wise prejudice the rights of the Insurance Companies; and I say that because it appears by the testimony here that on or about April 11th or 12th, when the Appraisers and the Umpire were at 620 Washington Street some of the goods that were claimed for were not then in evidence, and the appraisers themselves and the umpire had to guess, and did guess, in fact, as it appears from the testimony, on what allowance should be made to Melton Bros., Inc. for the loss claimed in that respect.

It further appears that the fixtures were removed over to Railroad Avenue, Jersey City. Those fixtures were certainly observed there by the Appraisers and the Umpire, and the loss and damage estimated by them quite clearly. If, for any reason, the Insurance Companies thought that it was advisable for future purposes to make any further investigation, or have anybody else see those goods—that is, the fixtures, particularly—it seems to me they were there, and they could have done that in order to have further proofs, if, perchance, this award was objected to. It does not seem to me that the Companies could have stood unreasonably by and taken it for granted that Melton Bros. were going to be satisfied with the award that was being made. In the case of *Massie* v. *Asbestos Brake Co.,* 95 N. J. Eq. 298 (at p. 311), the Court of Errors says:

> "Laches involves something more than mere delay, mere lapse of time. There must be delay for a length of time which, unexplained, and unexcused, is unreasonable under the circumstances, and which has been prejudicial to the defendant."

It appears in the case under consideration here, through correspondence and otherwise, that there has been a number of hearings in the office of the counsel for the Insurance Companies, in which the Melton Bros., Inc. representatives were being examined; and there also appears to be correspondence passing between counsel and the parties which would explain the cause of the delay, perhaps, and the intention on the part of Melton Bros., Inc. and their attorney.

In the case of *Tynan* v. *Warren,* 53 N. J. Eq., page 321, the Court of Chancery holds that

> "Mere delay in bringing suit will not deprive a party of his remedy unless such neglect has so prejudiced the other party by loss of testimony or means of proof, or changed relations, that it would be unjust to now permit him to exercise his right."

I do not find anywhere in this case anything to prejudice the Insurance Companies in any way any more than they were prejudiced in the beginning. It appears that considerable of the property was in existence when the Appraisers or the Umpire undertook to appraise the loss; and, of course, the Insurance Companies, if they were called upon to make any further determination hereafter, would be in no further predicament than they were theretofore. So, for that reason I am going to declare that neither the doctrine of laches or of estoppel apply in this case as against the complainant.

Now, there was some talk by counsel, and some talk during the case to indicate that counsel for the complainant seemed to think that the two appraisers and the umpire should be together at all times during their deliberations. There is some case (which I do not recall now, off-hand) that indicates that the umpire ought to bring the appraisers before him and try to find out wherein they differ. But, in *American Central Ins. Co.* v. *Landau,* 62 N. J. Eq., at page 100, the Court says:

> "There is no authority for the position that both appraisers must attend before the umpire after the disagreement,"

and if the appraisers actually disagreed and had made known the disagreement to the Umpire, it

would appear to me as though the Umpire then was justified if not warranted in performing his duty as Umpire, separate and apart from the activities of the two appraisers; and while he might possibly, and within the purview of the authority conferred upon him, have sought information from the appraisers with a view of enabling him to come to his determination, my view of the law is that he was not obliged to do so.

Then, too, there was some testimony in this case about the Umpire calling to his aid experts with respect to the value of the fixtures. In the case of *Dennis* v. *Standard Fire Ins. Co.,* 90 N. J. Eq., at p. 424, the Court says that it approved the action of the umpire in calling in outside experts and adopting as his own judgment their estimates of the damages as to disputed items. Now, while there might be some question as to the soundness of that view, I feel that I am bound by it, and notwithstanding that I may feel, personally, that the Umpire should have undertaken to exercise his independent judgment, notwithstanding that he called to his aid the fixture expert so-called, and notwithstanding that it appears from a part of his testimony that he adopted the figures of the fixture expert as his own, the law seems to uphold the Umpire in determining the matter in the way in which he determined it; so I am going to hold that the Umpire acted within his rights in taking into consideration, and into deliberation with him, the expert on fixtures whom he called to his aid.

Now as to whether or not the Umpire exceeded his authority in undertaking to perform the duty that he thought devolved upon him as umpire, and performed that in the manner in which he did in this case, it appears that where the umpire exceeds his

authority the effect of his act is the same, whether it was done consciously or by mistake—in each case his award is void, as pointed out in this case of Dennis v. Standard Fire Ins. Co. *supra,* at p. 422, citing *Royse's Admr.* v. *McCall* in 5 Bush, 695. In that Dennis case, too, the Court says:

> "The position taken by the complainants is, and they contend, that as the umpire was to act 'in matters of difference only,' his position was to coincide with one or the other of the appraisers or to somehow warp his judgment between the high and low figures that marked their difference." The Court says, "The posi tion is not sound. The manner in which the um pire was to make his appraisal is not thus cir cumscribed or restricted by the submission agreement. Its limitation goes to his jurisdiction and not to the method of its exercise. Harmony between the appraisers excludes his participation in the appraisal. When they have 'matters of difference' he automatically becomes qualified to sit in judgment. He is called an umpire, but, strictly speaking, he is not. An umpire makes his award independent of that of the arbitrators. Here the umpire is required to act with the appraisers in matters of difference. He is a third appraiser. The three are to collaborate, each using and contributing his own good judgment. If they disagree there is a mistrial; if the three are of one mind, or if any two of them are in accord as to sound value and loss, the award is a finality. Manifestly it would be an abuse of authority had the umpire arbitrarily confined himself within the limits of the appraisers' estimates.

In the same case, at page 420, the Court says:

> "Neither the agreement to arbitrate nor the law made it his duty to adopt the findings of one or the other of the appraisers as to the amount of the loss and damage to items of property about which they differed, or to assess the amount thereof at some sum not to exceed the highest estimate placed upon any particular item by either, as seems to be the contention of the appellants. On the contrary, we think the duty of the umpire under the terms of the arbitration agreement, or as imposed upon him by law, was to ascertain and determine, in the exercise of his own best judgment, the actual amount of the loss and damage to any item of property about which the appraisers had disagreed, independent of the findings of the appraisers or either of them."

In *Broadway Ins. Co.* v. *Doying,* 55 N. J. L., at page 572, the Court of Errors and Appeals says, speaking of the umpire:

> "He was empowered to act only in case of disagreement, *i.e.* in case the appraisers had considered the matters submitted to them and had formed and expressed to each other different opinions concerning them."

Now, that latter language fortifies me in my heretofore made known idea of the duty devolving upon these appraisers, that the duty devolved upon these appraisers to endeavor to agree, and that they should have met and should have submitted one to the other their opinions, and the items wherein they differed, with a view of honestly endeavoring to re-

concile their differences. But it is manifest to me in this case, from what I adduce from the testimony that Weinstock seems to have taken some arbitrary stand that he would not confer with Silverman; and Silverman, by his testimony, indicated to me (and I believe his testimony in that respect) that he endeavored strongly to have Weinstock collaborate with him and so reconcile their differences; but Weinstock, apparently seemed to have known what the umpire was doing, because, when he called upon the umpire to come in and settle the matters between them, the umpire then pulled this already prepared paper from his pocket and submitted it to Mr. Weinstock for his signature, and it was signed.

In this *Caledonian Ins. Co.* v. *Dutch Reformed Church* case, the Court points out that which I have adverted to heretofore, that the Court should not go into the technicality of the appraisal in an attempt to review the opinion of men who were appointed to perform that duty, and, in this case, were proved to be capable of coming to a proper decision. It is true, in this case, that Mr. Ginsberg said he never acted as umpire excepting in this one particular instance—he says he has an indefinite recollection of acting once before, but he does not recall when, but he has not had any experience heretofore in acting as an umpire. Well, perhaps that accounts for the fact that he assumed a little too much authority in this case, because, when Silverman called him up on the 'phone he believed that they disagreed, and that that mean that he should go ahead and perform this duty. Now, of course, counsel for the Insurance Companies, in his summation of the matter, called attention to the meeting of these parties at the office of Ginsberg, and argued that apparently the purpose of these people meeting at the office of Ginsberg

was indicative of what was claimed to be the fact, that Ginsberg had had it made known to him by the appraisers, that they could not agree, and therefore he was called upon to act; but there was some testimony of Mr. Silverman to the effect that at that meeting Mr. Ginsberg said, "Well, now, gentlemen, won't you try and see if you can come together a little closer; before I finally am called in to determine this matter I would like to see if you gentlemen cannot see that you can get a little closer together." Now, Silverman indicated his willingness, apparently, to try to get together, because, at that time, he said, "Why, we haven't disagreed; we haven't agreed; Weinstock doesn't appear to want to get together with me; and until we do get together and disagree you have no right to be heard in the matter;" and then this already prepared paper was taken from Ginsberg's pocket and produced.

Now, taking it all in all, I again advert to that which I said before, that the whole matter, it seems to me, simmers down to the question of who is going to be believed in this case. If there had been a writing by these appraisers indicating their disagreement, and an instruction, therefore, automatically to the umpire, the Court would not be in any quandary, neither would counsel or the parties; but, unfortunately for themselves, the matter was not thus formulated, and the Court is obliged to consider the testimony of the respective parties and try to determine where the truth lies. This case was continued over from a previous day to to-day for conclusion, and it has taken up a great deal of the court's time—it has taken up four hours or more now—and at recess I had the stenographer refer back to some of the testimony given at the previous occasion, principally that of Silverman, with a view of re-

freshing my recollection of what had been testified to by Silverman at that time. I had made some memorandum notes of matters on the last day when the testimony was given, and I was impressed with the nature of Silverman's testimony then given to indicate that the truth very much lies in what he was saying as against the testimony of Weinstock; and after having the stenographer read a portion of the Silverman testimony to me today I was further impressed with the opinion that I had theretofore formed, and now again here advert to, that I believe the testimony of Silverman as to what transpired on the 28th; and I think, too, as I said before, my opinion in that respect is fortified by the letter written by Silverman to Weinstock of the 30th; and it is also fortified by the testimony which was brought out from Weinstock as to the letter of April 20th, 1926, referring to bills which were then under consideration, indicating, to my mind, that up to that time there had not been any real disagreement between Weinstock and Silverman which would call forth the activities of the Umpire; and yet it appears that the Umpire was acting, and had been acting prior to April 20th, and had formulated his opinion, because he said he went to work at it I think it was on the 12th of April, and that it took him about a week, which would bring it to about the 18th or 19th, at the least, and seemingly to the 20th; and yet, on the 20th, Silverman and Weinstock were not in disagreement.

It appears to me that Ginsberg misunderstood the purport and the extent of the authority that was to be conferred upon him, and he did not fully and properly appreciate when his activity as Umpire was to become operative, but that he assumed that his activities began on the 10th of April, when he

was agreed upon by the two Appraisers as the Umpire, and he took it upon himself to perform his functions as Umpire from that time on. I think, in this case, that the evidence indicates quite clearly to me, and to any reasonable person, that the Umpire was premature; that he undoubtedly assumed that he had authority to perform prior to a time when the duty would devolve upon him under the Appraisal Agreement. I am going to hold, in this case, that the Umpire, because of his undue activity, and because of the fact that he was not warranted in undertaking to act as he did, assumed unwarrantable authority to act as Umpire, and that the award that he claims to have effectuated through the instrumentality of himself and Weinstock in the signature of the agreement of award which has been referred to, cannot be countenanced in law and must be set aside as void. Now, is there anything you want to call my attention to?

Mr. Klausner: I don't know whether it is necessary to refer to it, but your Honor has stated "April 10th" two or three times, when your Honor meant "April 12th."

The Vice-Chancellor: No; on April 10th was the date when they signed the agreement appointing the Umpire.

Mr. Klausner: And April 12th was the date upon which Ginsberg and Weinstock and Silverman went to the loss for the first time.

The Vice-Chancellor: I think I said "April 11th or 12th" but the particular date, it seems to me, is not very significant in that respect; it was either one of those two dates, as I remember.

Mr. Vanderbilt: Does your Honor order the matter back to the Appraisers and Umpire?

The Vice-Chancellor: Well, I am just wondering, Mr. Vanderbilt, whether that would be proper in

this case. From the testimony, as it was presented here, it seems to me that these three parties are so strongly at loggerheads now that you would never effectuate a result. If you think there would be any utility in my doing so, I think I had better do that, rather than have the results of the labor of these men go for naught, because they are better capable and abler to determine this matter than any others.

Mr. Vanderbilt: It would seem so to me. The parties, by their own contract, which is that of the standard fire insurance policy of this state, adopted by the Legislature, have agreed upon the mode of ascertaining the loss, and have, in this case embodied it in the Appraisal Agreement. Now, your Honor has found that there is no fraud on the part of any of these men, but that the Umpire's jurisdiction had not yet arisen—

The Vice-Chancellor: That is the view I take of it.

Mr. Vanderbilt: That being so, it would seem to me that, under the cases not only in this state, but in other states, the procedure would be to send the matter back to the appraisers and the umpire, with this opinion, or an extract from it, as to how they should proceed conformably to it.

The Vice-Chancellor: That ought to be the procedure but I will hear counsel.

Mr. Klausner: I think it would be both unjust and inequitable to have a man like Ginsberg as umpire in this case.

The Vice-Chancellor: Well, you have not proved anything against Ginsberg to show that he was in any wise dishonest.

Mr. Klausner: Well, the testimony of this man on the witness-stand as to these various figures, etc., shows that this man is clearly telling an untruth, and I think it would be unjust and inequitable to have Ginsberg as the umpire.

Opinion.

The Vice-Chancellor: I was just wondering if, in view of what has come out and my determination of the matter, we could consider that Weinstock and Ginsberg could be fair and reasonable with Silverman in trying to come to an honest determination; and if they could not be, then wouldn't it result in a disagreement between Weinstock and Silverman, and then would not Weinstock and Ginsberg be again put in the position of being able to make an award which might be objectionable to the other people, and which they may then make as the result of their feeling engendered by this hearing, if such feeling has been engendered?

Mr. Vanderbilt: Your Honor has decided that there is no fraud in this case.

The Vice-Chancellor: No, I really have no reason to decide that there was any fraud.

Mr. Vanderbilt: Well, as I said, we have these other cases on a similar situation, and, inasmuch as your Honor has said there was no fraud, it seems to me, in such a case, the policy provision should prevail, and it should be referred back to them for their opinion in accordance with your Honor's instruction.

The Vice-Chancellor: Mr. Klausner, your client entered into this agreement with the companies for the appointment of the umpire—now, unless you can prove some fraud, or some bias, prejudice or something else that might be akin to it, against the umpire, how can you expect to recede from your agreement?

Mr. Klausner: Well, if your Honor please, taking this case, and using common sense—considering the attitude of Ginsberg on the stand—taking the whole case made—if Mr. Ginsberg is human, how could he be impartial in this matter?

The Vice-Chancellor: Well, inasmuch as I cannot find any fraud in the case as against Ginsberg, whom you have selected as umpire, and inasmuch as the only determination that I am making is that he prematurely acted in the matter before the other men had an opportunity really to agree or disagree, how can I possibly take the matter away from the umpire, or, at least, from the agreement that you people have made? What is your idea of what I can do?

Mr. Klausner: I believe that, under the circumstances of this case, your Honor can consider the whole thing.

The Vice-Chancellor: I could not discharge him as the umpire, because I do not find him to be fraudulent.

Mr. Klausner: But all of our time will be wasted—

The Vice-Chancellor: Tell me, within the purview of the law, what you think I can do now?

Mr. Klausner: I think your Honor has to deal out equity and good conscience in this court, and this court can honestly say that, under the circumstances of this case—Ginsberg going ahead and doing these things with Weinstock there under these circumstances—that it might be a question as to whether or not he, in addition to acting prematurely, was not fraudulent in acting, under all the circumstances of the case. And then, coming to court to set aside the award, wouldn't it be idle for us to go in now with Ginsberg doing these things? What chance in the world would we have with Ginsberg as umpire, when we showed him to be a liar?

The Vice-Chancellor: Is it not a situation that you yourself have made? You have made an agreement whereby Ginsberg is appointed umpire; now the Court cannot substitute or make a new agreement for the parties, and the Court cannot substitute its judgment for the judgment of the parties; and you know, so far as fraud is concerned, the principle of law as enunciated is that fraud must not be presumed, that it must be proved. Now, you have not proved any fraud against Ginsberg, as I can find, and, inasmuch as you have not proved any fraud against him, how can I possibly make a new contract for the parties? (After further argument by counsel.) All I can suggest to you is that you gentlemen had better point out to me, if you will, some authority which will enable me to do what you, Mr. Vanderbilt, ask me to do; and, in your case, Mr. Klausner, point out to me wherein I can make any new agreement other than that which you yourself have made. As it appears to me now, it ought to go back to the appraisers and the umpire—now, whether or not that is going to effect equitable results is something which may be unfortunate from your point of view; but the thing I am strongly considering at the present time is what right I have to substitute my judgment as the judgment of this court for the judgment of the two parties in interest who have agreed upon the umpire.

Mr. Klausner: But, under the circumstances, your Honor, where Ginsberg comes in and makes the award under these circumstances, has he not proved sufficiently—

The Vice-Chancellor (interrupting): No, I am only holding, as far as Ginsberg is concerned, that he acted prematurely and did not give the two men an opportunity to agree or disagree.

Opinion.

Mr. Klausner: Now, having pointed that out, wouldn't it be inequitable, under the circumstances, to go ahead with this umpire, after we have antagonized Ginsberg to the utmost extent, and shown that he has been a liar, absolutely a liar?

The Vice-Chancellor: You try and show me some way in which I can grant you the relief for which you are asking. I am not unmindful of the predicament in which you think you are—and in which you may, in fact, be—because what you have said here against Ginsberg and the other man might prejudice them to such an extent that you may not get a fair and equitable judgment that you ought to get. However, on the other hand, I cannot prejudge what these men are going to do.

Mr. Klausner: Your Honor has the right, in this case, where the award is set aside, to make such judgment.

The Vice-Chancellor: Well, if you can show me that, show it to me. I think both of you had better submit little memorandums to me; it won't take you long, I guess. You may have it in your minds, but just send me a little memorandum.

(Case held for submission of memorandums.)

Exhibit C-1.

No. 76600 Stock Company

PHILADELPHIA FIRE AND MARINE INSURANCE COMPANY
Philadelphia, Pennsylvania

Cash Capital (Seal) $1,000,000.00

Amount $2500.00 Rate 1.04 Premium $26.00

In Consideration of the Stipulations herein named and of Twenty-six and 00/100 Dollars Premium, Does Insure George Melton and Peter Melton, doing business as Melton Bros., Inc. for the term of one year from the 20th day of May, 1925, at noon, to the 20th day of May, 1926, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding Twenty-five Hundred Dollars, to the following described property while located and contained as described herein, and not elsewhere, to-wit:

MERCHANDISE IN MERCANTILE RISK (PROTECTED)

$ 750.00 On merchandise consisting principally of that usual to the confectionery business, including stock manufactured, unmanufactured and in process of manufacture, including full and empty packages, boxes, samples and supplies, the property of the insured, or held in trust or in commission, or sold but not delivered or removed.

$1750.00 On store furniture and fixtures, including counters, shelving, racks, scales, show cases, cash registers, and all such imple-

ments and utensils used in the insured's business.

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All while contained in the brick building, occupied as stores and dwellings situated #620 Washington St., Hoboken, N. J., 80% co-insurance clause attached, applying to each item separately.

Privilege granted to use steam, coal stoves, hot air furnaces or grates for heating; to use kerosene oil or public or municipal gas for light, heating or cooking purposes; to remain unoccupied; and to use not exceeding one quart of gasoline, naphtha or benzine for domestic purposes in each housekeeping apartment.

Other insurance permitted without notice until required.

Mechanics' Privilege.—Permission for mechanics to be employed for ordinary alterations and repairs in the within-described premises, but this shall not be held to include the constructing or reconstructing of the building or buildings, or additions, or the enlargement of the premises.

Privilege to use electric current for light, heat or power.

Wireless Apparatus—Radio Permit for Receiving Apparatus.—In consideration of compliance by the assured with the following warranties, permission is hereby given for the installation and use of radio apparatus, it being understood and agreed that this company shall not be liable for any electrical injury or disturbance thereto, whether from artificial

or natural causes, unless fire ensues, and then for the loss by fire only.

Warranties:

1.—That no radio transmitting apparatus shall be installed.

2.—That each lead-in wire from outside antennae shall be equipped with an approved lightning arrester.

Dynamo Clause.—If dynamos, exciters, lamps, motors, switches or other electrical appliances or devices are covered under this policy, this company shall not be liable for any electrical injury or disturbance, whether from artificial or natural causes, unless fire ensues, and then for loss by fire only.

Lightning Clause—New Jersey Standard.—This policy shall cover any direct loss or damage caused by Lightning (meaning thereby the commonly accepted use of the term "Lightning," and in no case to include loss or damage by cyclone, tornado, or wind storm), not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. Provided, however, if there shall be any other insurance on said property this company shall be liable only pro rata with such other insurance for any direct loss by Lightning, whether such other insurance be against direct loss by Lightning or not.

Attached to and made a part of Policy No. 76600 of the Philadelphia Fire & Marine Insurance Company, issued at its Jersey City, N. J. Agency.

MICHEL & MOORE COMPANY,
Agent.
By FRANK F. FLETCHER,
Mgr. Ins. Dept.

Permit No. 1.

WIRELESS APPARATUS.

Radio Permit for Receiving Apparatus.

Filed with the Commissioner of Banking and Insurance at Trenton, N. J., under Chapter No. 85, Laws of 1913, State of New Jersey.

In consideration of compliance by the assured with the following warranties, permission is hereby given for the installation and use of radio apparatus, it being understood and agreed that this Company shall not be liable for any electrical injury or disturbance thereto, whether artificial or natural causes, unless fire ensues, and then for the loss by fire only.

Warranties:

1.—That no radio transmitting apparatus shall be installed.

2.—That each lead-in wire from outside antennae shall be equipped with an approved lightning arrester.

Attached to and forming a part of Policy No. 76600 of the Phila. Fire & Marine Insurance Company.

Dated, May 20th, 1925.

MICHEL & MOORE COMPANY,
Agent.

By FRANK F. FLETCHER,
Mgr. Ins. Dept.

In consideration of the reduced rate of premium at which this policy is written, the Standard Eighty per cent. clause of the State of New Jersey is attached to and made part of this policy.

If this policy be divided into two or more items, the conditions of said clause shall apply to each item separately.

NEW JERSEY STANDARD.

PERCENTAGE CO-INSURANCE CLAUSE.

If at the time of fire the whole amount of insurance on the property covered by this policy shall be less than Eighty per cent. of the actual cash value thereof, this company shall in case of loss or damage be liable for only such portion of such loss or damage as the amount insured by this policy shall bear to the said Eighty per cent. of the actual cash value of such property.

Attached to and forming part of Policy No. 76600 of the Philadelphia Fire and Marine Insurance Company.

Dated, May 20th, 1925.

MICHEL & MOORE COMPANY,
Agent.

By FRANK F. FLETCHER,
Mgr. Ins. Dept.
Agency at Jersey City, N. J.

This Policy is made and accepted subject to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may

be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid until countersigned by the duly authorized Agent of the Company at Jersey City, N. J.

BENJAMIN RUSH,
President.

JOHN KREMER,
Secretary.

Countersigned at Jersey City, N. J., this 20th day of May, 1925.

MICHEL & MOORE COMPANY,
Agent.

By FRANK F. FLETCHER,
Mgr. Ins. Dept.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace

the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do, but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased

by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

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

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new location; but this company shall not, in any case of removal, whether

to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal

from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

Exhibits C-1, C-2 and C-3.

These exhibits are the policies issued by the three defendants, from which policies only the following pertinent provisions are printed:

"This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy."

"In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties

thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire."

"This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required."

"No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire."

Exhibit C-4.

APPRAISAL AGREEMENT.

IT IS HEREBY stipulated and agreed by and between Melton Brothers, Inc. of the first part, and Netherlands Insurance Co., American Equitable Insurance Co., North Insurance Co., of London & Newark Fire Insurance Co., National Reserve of Dubuque, Iowa-Glove & Rutgers Ins. Co., Philadelphia Fire & Marine Ins. Co., Springfield Fire & Marine Ins. Co., Pennsylvania Ins. Co., each acting for itself and not as agent for the other, and each as party of the second part, that S. Walter Silverman, 260 Riverside Drive, N. Y. C., designated by the parties of the first part, and Mr. Davis Weinstock, 302 B'way, New York City, designated by the parties of the second part, shall ascertain, pursuant to the terms and conditions of the policies of insurance issued by said companies to the party of the first part, the sound actual cash value of the property of said party of the first part, on the 15th day of December, 1925, which is more particularly described in the policies as per form attached as well as the actual direct loss and damage caused thereto by a fire which occurred on that day and/or, if this agreement contemplates personal property, in such case damage if any caused by removal from premises endangered by fire; that the said two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree, shall submit their differences only, to the umpire. An award, in writing, so itemized, of any two when filed with the insurance companies above designated shall determine the amount of sound value and of

loss or damage. Such loss or damage shall be ascertained according to the actual cash value of said property at the time of the occurrence of said fire, with proper deductions for depreciation however caused, and shall in no event exceed what it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowances for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, but such appraisement does not in any respect waive any of the provisions or conditions of said policy or policies of insurance, or any forfeiture thereof, or the proof of such loss and damage required by the policy or policies of insurance thereon.

Each appraiser shall be paid by the party selecting him and the expense of appraisal and umpire shall be paid by the parties equally.

New York, April 6, 1926.

MELTON BROTHERS, INC.,
ANTHONY MELTON,
President.
By S. WALTON.

Witness as to Anthony Melton:
Harry Silverman.

Netherlands Insurance Co.
American Equitable Insurance Co.
Northern Insurance of London.
Newark Fire Insurance Co.
National Reserve of Dubuque, Iowa.
Globe & Rutgers Insurance Co.
Philadelphia Fire & Marine Ins. Co.
Springfield Fire & Marine Ins. Co.
Pennsylvania Ins. Co.

APPOINTMENT OF A THIRD PERSON.

We, the undersigned, do hereby appoint Bernard Ginsberg, 16 Nassau St., N. Y., as umpire, as provided for in the within Agreement.

April 10th, 1926.

S. WALTER SILVERMAN,
D. WEINSTOCK, } Appraisers.

DECLARATION.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

We, the undersigned, do solemnly swear that we are not interested, either directly or indirectly, as partners, creditors, or otherwise, or related to either of the parties to the foregoing agreement; that we will act with strict impartiality in making an appraisement agreeably to the foregoing appointment, according to the best of our knowledge, skill and judgment.

WITNESS our hands, this 10th day of April A. D., 1926.

S. WALTER SILVERMAN,
D. WEINSTOCK, } Appraisers.

....., Umpire.

Sworn to before me by said Samuel W. Silverman and D. Weinstock, and subscribed by them in my presence, this 10th day of April A. D., 1926.

JACOB P. LEVINSON,
Commissioner of Deeds,
New York City.

Exhibit C-5.

Davis Weinstock,
302 Broadway.

Cable: Wisto, N. Y.
Telephone Worth 2448.

New York, April 20, 1926.

S. Walter Silverman, Esq.,
15 Exchange Place,
Jersey City, N. J.

RE:—Appraisal of Melton Bros., Hoboken, N. J.

Dear Sir:

At our conference this morning when we went through the bills which you submitted to me in the above captioned matter regarding the claim on the stock they amounted to $12900.00 running for the period of the year 1925. Upon further examination it proved that three months prior to the fire the purchases were less than the previous months. According to this ratio the purchases would average out at the highest $1000.00 per month. I will admit that a lot of these purchases were raw material and labor should be added but the cost of manufacturing will not amount to very much.

Ordinarily stock is changed about six times a year but the turnover on candy and eatables is at least twelve times per year. Therefore, I cannot see how you came to make a claim for $11000.00 on the stock. When you left you stated that you would produce additional bills and I am waiting for same.

Very truly yours,

D. WEINSTOCK.

DW:PF

April 21, 192 .

Davis Weinstock,
302 Broadway,
New York City.

Re—Appraisal of Melton Bros., Hoboken,
New Jersey.

Dear Sir:

Replying to your letter of April 20, 1926, regarding the above matter, beg to state that I will call at your office on Thursday morning at 9 A. M. for the express purpose to find out why you disagree regarding the above matter, so the appraisal can come to a close.

Very truly yours,

S. Walter Silverman.

SWS:MW

Davis Wetinstock,
302 Broadway.

Cable: Wisto, N. Y.
Telephone Worth 2448.

New York, April 23, 1926.

S. W. Silverman, Esq.,
15 Exchange Place,
Jersey City, N. J.

Re—Appraisal—Melton Bros.

Dear Sir:

I was subpoenaed today to appear in court as a witness next Tuesday, April 27. And, as I am not certain when I will get through and do not want to disappoint you I will, therefore, ask you to change the appointment from Tuesday to Wednesday, April 28, 2 P. M. at the office of the umpire.

Very truly yours,

D. Weinstock,
P. F.

DW:PF

Apr. 24, 1926.

Mr. David Weinstock,
302 Broadway,
New York, N. Y.

Melton Bros. vs. Ins. Co.

Dear Sir:

In reply to your letter regarding the change of time in the above entitled cause, I beg to state, that my folks expect to arrive from Miami, Fla., on Wednesday, at 2:30 P. M., and I prefer that you make the appointment at 12:30 P. M. sharp, at the Empire's office, on Wednesday afternoon, at which time I will be there.

Yours very truly,

S. WALTER SILVERMAN.

SS:SCS.

B. Ginsburg
Licensed Adjuster of Fire Losses
for Assured,
116 Nassau Street,
New York.

April 28, 1926.

To services rendered as Umpire on loss by fire at 620 Washington St., Hoboken, N. J.

My Fee is	$600.00		
Expert Fee	150.00		
Total	$750.00	Your Proportion	$375.00

To Melton Bros.,
620 Washington St.,
Hoboken, N. J.

B. Ginsburg
Licensed Adjuster of Fire Losses
for Assured,
116 Nassau Street,
New York.

April 28, 1926.

Messrs S. W. Silverman &
D. Weinstock.

Re—Appraisal of Melton Bros., 620 Washington St.,
Hoboken, N. J.

Gentlemen:

I have carefully considered the differences submitted to me by you two gentlemen in the above matter. I have also engaged the assistance of a practical fixture man to enlighten me on the various items on which I am in doubt.

Besides the time that I was at the premises of the fire with you two gentlemen I went there myself again coming to the following conclusion:

	Value	Loss
Stock	$4037.86	$3853.80
Fixtures	12152.20	6087.15
	$16190.06	$9940.95

The above figures were complied after considering the value and loss on each and every identified item individually.

If any of you gentlemen would like to have a copy of same I will gladly furnish you with same.

Yours very truly,

B. Ginsburg.

April 30, 1926.

B. Ginsberg,
116 Nassau Street,
New York City.

Re—Appraisal of Melton Bros., 520 Washington St.,
Hoboken, New Jersey.

Dear Sir:

Without prejudice to the parties whom I represent, as appraiser, and in replying to your prepared statement and letter of April 28th, 1926, wherein you state "if any of you Gentlemen would like to have a copy of my figures, I will be glad to furnish it."

I now make a request to have an itemized copy of your figures, as stated in your letter, and trusting to receive same by return mail, I am

Very truly yours,

S. W. Silverman.

SWS:MW

April 30, 1926.

Mr. Davis Weinstock,
302 Broadway,
New York City.

My dear Mr. Weinstock:

I regret exceedingly to inform you that I am more than surprised of the attitude of Mr. B. Ginsberg, the Umpire awarding the loss.

I refuse to concur in the said award as I stated my reasons to you at Mr. Ginsberg's office that I objected to Mr. Ginsberg as an umpire on that particular date on account of the information I received that he is not a disinterested party and furthermore, the award was given contrary to law, in my opinion, because you and I have failed to disagree, as I have presented my figures in full and no attempt was made by you to present your figures to me so that we can argue in detail, item by item, and then if we disagree, it was up to the umpire, but in this particular case when you and I were speaking about the stock the umpire cheerfully agreed to present his award and upon presenting his award you immediately drew up the award upon the appraisal papers and signed with the umpire without giving me a fair opportunity to present the facts on behalf of my clients whom I have represented as their appraiser.

Therefore, I am presenting all the facts in affidavit form with all information in my possession to the Attorney for Melton Brothers, to do as he sees fit in the matter.

Very truly yours,

S. W. SILVERMAN.

SWS:MW

DAVIS WEINSTOCK,
302 Broadway.

Cable: Wisto, N. Y.
Telephone Worth 2448.

May 1st, 1926.

Mr. S. W. Silverman,
15 Exchange Place,
Jersey City, N. J.

RE—Appraisal of Melton Bros.

My dear Mr. Silverman:

I was exceedingly surprised at the statements in your letter dated April 30, 1926, which shows a decided confusion in your mind as to the facts in the case. The records of the several proceedings in this matter show that your assertions are not facts.

At five or six meetings in this matter we went over same in absolute detail the schedules submitted by you and me and at no time were we able to arrive at any understanding as to the amount of value and damage. Consequently our differences were so great that there was no other alternative but to call in the umpire in his official capacity for his decision.

Very truly yours,

D. WEINSTOCK.

DW;PF

May 11, 1926.

E. D. B. Walton & Son,
110 William Street,
New York City.

Gentlemen:

We have been advised that you represent the insurance companies which insured Melton Bros., Inc. at 620 Washington Street, Hoboken, N. J.

They have placed in our hands for whatever action may be necessary their claim against the insurance companies for damages resulting from the fire which occurred on December 15, 1925. We are writing this letter to ascertain whether or not an amicable settlement of this matter can be made.

Will you kindly let us hear from you by return mail, and oblige

Very truly yours,

KINKEAD & KLAUSNER.

DMK/VN

May 18, 1926.

E. D. B. Walton & Son,
110 William Street,
New York City.

Gentlemen:

We are a little surprised that we have not heard from you in answer to our letter of the 11th inst. with reference to the claim of Melton Bros., Inc. against the insurance companies which insured them at 620 Washington Street, Hoboken, N. J.

Before instituting any legal proceedings, which will mean a great deal of expense to all the parties concerned, we desire to attempt to amicably settle this matter, if possible. If we do not hear from you before May 25, 1926, we shall take it that you do not care to have this matter adjusted. In any event, we will appreciate a reply.

Very truly yours,

KINKEAD & KLAUSNER.

DMK/VN

May 24, 1926.

New York Board of Fire Underwriters,
85 John Street,
New York City.

Attention Mr. Clough.

Gentlemen:

We have been advised that you represent the insurance companies which insured Melton Bros., Inc. at 620 Washington Street, Hoboken, N. J.

They have placed in our hands for whatever action may be necessary their claim against the insurance companies for damages resulting from the fire which occurred on December 15, 1925.

We are writing this letter to ascertain whether or not an amicable settlement of this matter can be made. Will you kindly let us hear from you on or before June 4, 1926, and oblige

Very truly yours,

KINKEAD & KLAUSNER.

DMK/VN

May 24, 1926.

The Globe & Rutgers Fire Insurance Co.,
111 William Street.
New York City.

Gentlemen: Re-Your Policy #3539412.

Melton Bros., Inc. of 620 Washington Street, Hoboken, N. J., have placed in our hands for whatever action may be necessary, their claim against your company which insured them, for damages resulting from the fire which occurred on December 15, 1925.

We are writing this letter to ascertain whether or not an amicable settlement of this matter can be made. Will you kindly let us hear from you on or before June 4, 1926, and oblige

Very truly yours,

KINKEAD & KLAUSNER.

DMK/VN

Same letter sent to:

Michel & Moore—12 Journal Square, J. C.—Phila. Fire & Marine Ins. Co.
Fred F. Schmidt 1 Newark St., Hoboken—Newark Fire Ins. Co.
A. K. Boughner & Co. 38 Clinton St., Newark—The Netherlands Ins. Co
A. K. Boughner & Co. 38 Clinton St., Newark—National Reserve Ins. Co.
Fred F. Schmidt 1 Newark St, Hoboken—Springfield Fire & Marine Ins. Co.
American Equitable Ass. Co. 68 William St., N. Y. C.
Penn. Fire Ins. Co. 76 William St. N. Y. C.
The Northern Ass. Co., 55 John St., N. Y. C.

PHILADELPHIA FIRE & MARINE
INSURANCE COMPANY
Philadelphia.

W. C. Hall
Special Agent
744 Highland Avenue,
Phone Humboldt 3063. Newark, N. J.

May 25, '26.

Messrs. Kinkead and Klausner,
586 Newark Ave.,
Jersey City, N. J.

Gentlemen:

Your letter of the 24th. inst. to our agents, Michel & Moore, regarding our policy No. 76600, Melton Bros. has been referred to me for attention and beg to advise you that the Loss Committee of the New York Board is handling this matter.

Very truly yours,

W. C. HALL.

THE NEW YORK BOARD OF FIRE UNDERWRITERS
COMMITTEE ON LOSSES AND ADJUSTMENTS
123 William Street
New York, N. Y.

Allen E. Clough
Secretary
Information Bureau
Loss Index.

K63805 May 28, 1926.

Messrs. Kinkead and Klausner,
586 Newark Ave.,
Jersey City, N. J.

Gentlemen:

Melton Brothers, Inc.
d/b as Meltons Confectionery,
620 Washington St., Hoboken, N. J.

Fire—Dec. 15, 1925.

We have, for acknowledgment, your letter of May 24th.

We have also received for attention a number of similar communications which you have addressed to the insurance companies.

In reply, please be advised that we have retained Mr. Arthur T. Vanderbilt, of Newark, to advise us.

Our suggestion is that you communicate with him.

Yours very truly,

A. E. CLOUGH,
Secretary.

June 1, 1926.

Arthur T. Vanderbilt, Esq.,
790 Broad Street,
Newark, N. J.

Dear Sir:

We have been advised by Mr. Clough, Secretary of New York Board of Fire Underwriters that you represent the various insurance companies which insured Melton Bros., Inc., of 620 Washington Street, Hoboken, N. J. We represent Melton Bros., Inc. in their claim for damages resulting from the fire which occurred on December 15, 1925.

We are writing to ascertain whether or not this matter can be amicably adjusted. This matter has been pending for quite some time, and our clients are therefore desirous of some definite action.

Will you kindly let us hear from you on or before June 8, 1925, and oblige

Very truly yours,

KINKEAD & KLAUSNER.

DMK/VN

NORTHERN ASSURANCE COMPANY, LTD.
of London

EASTERN AND SOUTHERN DEPARTMENT
135 William Street,
New York.

June 2, 1926.

Messrs. Kinkead and Klausner,
586 Newark Ave.,
Jersey City, N. J.

Gentlemen:

RE: Loss Policy #1185626-Melton Bros. Inc. d/b as Meltons Confectionery—620 Washington Street, Hoboken, N. J.—Agency Jersey City, N. J.—Fire Dec. 15, 1925.

We beg to acknowledge receipt of your letter of the 24th ultimo in reference to the above and beg to refer you to our Attorney Mr. Arthur T. Vanderbilt of Newark, N. J., for further information.

Very truly yours,

E. R. BOWHLEN,
General Adjuster.

ERB/JPH

ARTHUR T. VANDERBILT
Counsellor at Law
790 Broad Street
Newark, N. J.

Arthur T. Vanderbilt

Leslie L. Vanderbilt
Reynolds C. Massey
David Stoffer

June 3, 1926.

Messrs. Kinkead and Klausner,
586 Newark Ave.,
Jersey City, N. J.

Loss Committee—Melton Bros.

Gentlemen:

Your letter of June 1, 1926, addressed to Mr. Vanderbilt in the above matter, has been received. I find from the file that the matter has been referred to him by the Loss Committee and that he made an appointment to meet one of the adjusters yesterday, but was obliged to break it by reason of being engaged in a case in the Monmouth Circuit. He expects to meet the adjuster later in the week, possible Saturday morning. No doubt you will hear from him as soon as he has had an opportunity to confer with the adjuster.

Very truly yours,

EVELYN T. ADAM.

ARTHUR T. VANDERBILT
Counsellor at Law
790 Broad Street
Newark, N. J.

Arthur T. Vanderbilt

Leslie L. Vanderbilt
Reynolds C. Massey
David Stoffer

June 26, 1926.

Messrs. Kinkead and Klausner,
586 Newark Ave.,
Jersey City, N. J.
Refer to Mr. Klousner.

Gentlemen: Melton Brothers, Inc.

In the above matter, there are some items concerning which I desire to question the assured, and I have accordingly sent out a demand for examination under oath for Friday afternoon, July 2nd. I think it would be advisable for you to be present at that time, if you can conveniently do so.

With my best personal regards,

Very truly yours,

A. T. VANDERBILT.

(Also introduced as Exhibit D-1)

June 26, 1926.

Melton Brothers, Inc.,
320 Washington Street,
Hoboken, New Jersey.

Gentlemen:

On behalf of the Globe & Rutgers Fire Ins. Co., Philadelphia Fire & Marine Ins. Co., Springfield Fire & Marine Ins. Co., Newark Fire Ins. Co., Pennsylvania Fire Insurance Co., National Reserve Fire Ins. Co., Northern Ins. Co. of London, American Equitable Ins. Co. and Netherlands Fire-Life Insurance Company, you and your officers are hereby required to appear at my office, Room 1112, Kinney Building, 790 Broad Street, Newark, N. J. on Friday, July 2, 1926, at 2:30 o'clock in the afternoon, to submit to examination under oath before a Notary Public, in accordance with the terms of said policies respecting the alleged fire of December 15, 1925.

You and your officers are also required to produce at said hearing all your books of accounts, bills, vouchers, and correspondence relating to the property alleged to be involved in said fire, in accordance with the terms of said policies.

Very truly yours,

A. T. VANDERBILT,
Attorney for the above-named
insurance companies.

June 28, 1926.

Arthur T. Vanderbilt,
Counselor at Law,
790 Broad Street,
Newark, New Jersey.

Re-Melton Brothers.

Dear Friend Arthur,

I do not know if I will be disregarding any professional rules, but I am enclosing herewith a copy of a letter which I have given to Melton Brothers and this will clearly show you the status of his case.

I do not care to be discourteous to my friend Mr. Weinstock, but I do know that Melton Brothers have a wonderful claim.

I am sending you this letter strictly in confidence for your own use and you can see for yourself his side of the story.

I will be willing to act as an arbitrator and I know that I can help you in settling this loss providing you want me to do so within the next two or three days.

Regarding the furniture loss which has been settled, I will wait forty-eight hours to hear from you before I will proceed any further.

Very truly yours,

SWS:MW

S. W. SILVERMAN.

ARTHUR T. VANDERBILT
Counsellor at Law
790 Broad Street
Newark, N. J.

Arthur T. Vanderbilt

Leslie L. Vanderbilt
Reynolds C. Massey
David Stoffer

July 21, 1926.

Hon. Robert V. Kinkead,
586 Newark Avenue,
Jersey City, N. J.

Loss Committee—Melton Bros.

Dear Judge Kinkead:

Confirming our telephone conversation, I am writing the adjusters that the examination in the above matter has been continued to Wednesday, July 28th, at 2 P. M.

With best personal regards,

Very truly yours,

A. T. VANDERBILT.

Aug. 4, 1926.

A. T. Vanderbilt, Esq.,
Market & Broad Sts.,
Newark, N. J.

Re: Melton Bros.
Fire Loss.

Dear Sir:

Enclosed kindly find copy of bills in my possession. You will also find a memorandum of stock bills, showing purchase each month. Also dates of goods purchased by the above.

I am enclosing original estimate on fixtures received from Lynn's Store Fixture House, Haussling Mfg. Co., Excellent Store Co., bill from M. Felix & Co. of New York, which has been destroyed in the fire. Also a letter from the plumber, Joseph Cincelli. You will also find a copy of the inventory which I have used as appraiser for the assured.

Kindly return the same to me after they serve your purpose.

I am also sending for your consideration, a copy of the report filed by me with the insurance company; report filed by me with assured; copy of report filed by an adjuster, Mr. Sonnenfeld, who is association with the umpire. I also enclose a true copy of Bill of Sale. For your consideration, I beg to submit true facts pertaining to said loss:

This place was purchased by Melton Brothers for the sum of $22,000.00, September 29th, 1919, from Herman Wtttrock. In the early part of 1924 Mr. Wittrock, who now resides at East Orange, N. J., had been negotiating to buy the store, for the sum of $27,000.00, which offer had been rejected by Melton Bros., Inc. In September, 1925, Anthony Sang,

of 57th St., and 1st Ave., New York, offered $32,000.00 for the place, and said offer was rejected.

Mr. John E. Muller of 1 Exchange Pl., Jersey City, informed me, while I was appraiser, that he had examined the ice cream store, about two weeks before the fire, and that the stock and fixtures, in his opinion, roughly speaking, was worth easily, between 25,000 and $30,000. He told me, that it was one of the finest and best equipped ice cream parlors and candy manufacturing plants he ever visited in Hudson County.

I am giving you this information so you can judge for yourself the nature of the place.

It is impossible for Melton at present, to secure bills, but in case of necessity, he will endeavor to secure additional bills from time to time.

Yours very truly,

S. Walter Silverman.

SWS:SCS.
enc.

August 31, 1926.

Arthur Vanderbilt, Esq.,
790 Broad Street,
Newark, N. J.

Dear Arthur:

Please do not neglect to straighten out the Melton matter as speedily as possible.

I know you are very busy, but in view of the importance of this matter to me personally, I am sure you will stretch a point and not delay any longer than is absolutely necessary.

I dislike getting in touch with you so often on this matter, but if you could understand the pressure that is continuously placed on me, not only by our client, but by his seemingly numerous friends, you would understand my position better.

Trusting to hear from you without delay, I remain,

Very truly yours,

Robert V. Kinkead.

RVK/SB

ARTHUR T. VANDERBILT.
Counsellor at Law
790 Broad Street,
Newark, N. J.

Arthur T. Vanderbilt

Leslie L. Vanderbilt
Reynolds C. Massey
David Stoffer.

September 11, 1926.

Hon. Robert V. Kinkead
586 Newark Avenue
Jersey City, N. J.

Loss Committee—Melton Bros

My dear Judge:—

My brother has been forced to take a couple of weeks' vacation and I am trying to look after his affairs in his absence. I note that your letter of August 31, 1926, has not been answered. I personally do not know anything about the matter, but I thought I would write you, so that you would know that the matter would have his attention as soon as he comes back from his vacation. I find that he he has called the adjusters once or twice, but has not yet succeeded in arranging a conference with them.

With best personal regards, I am,

Very truly yours,

L. L. VANDERBILT.

September 29, 1926.

Arthur T. Vanderbilt, Esq.,
790 Broad Street,
Newark, N. J.

Dear Arthur:

I am going to ask you, as a special favor to me, to set a definite time as to when we can decide one way or the other what we are going to do in the Melton matter.

I do not think you appreciate the embarrassing position that I am placed in in this matter. The situation is getting more annoying all the time, while I have been hopeful that we could adjust the matter satisfactorily.

I will therefore be grateful if you will let me know definitely one way or the other what you have decided to do in this matter.

Very truly yours,

ROBERT V. KINKEAD.

RVK/SB

October 7, 1926.

Arthur Vanderbilt, Esq.,
790 Broad Street,
Newark, N. J.

My Dear Arthur:

Will you be kind enough to advise me at your convenience when we may have the Melton matter definitely settled, one way or the other?

In other words, I would like to know as quickly as possible if we can come to terms. If we can't and a settlement is impossible, no alternative remains but a law suit. But whether we sue or whether we settle I would appreciate it as a courtesy from you, if you would let us know where we are at in this matter, as quickly as possible.

Our clients have been pressing me and I have been stalling them with the statements that a settlement of the matter out of court is not beyond the bounds of possibility.

But the time has come when I have to do either one thing or the other, either settle it or start suit and as you know, the starting of a suit will involve the preparation of endless details. I do not want to cross this bridge unless there is no other way out.

So I am putting this on a personal basis with you and trust that you will make it your business to bring this matter to a head, so that the issue may be definitely settled one way or the other as speedily as possible.

Very truly yours,

ROBERT V. KINKEAD.

RVK/SB

November 10, 1926.

Arthur Vanderbilt, Esq.,
790 Broad Street,
Newark, N. J.

My dear Arthur:

I had expected to hear from you today in the Melton matter. You can appreciate that we can no longer delay in this matter.

Will you be good enough therefore to let me definitely hear from you on or before this Saturday, Nov. 13, 1926, and oblige

Very truly yours,

ROBERT V. KINKEAD.

RVK/VN

Exhibit C-6.

E.D.B.Walton E.D.B.Walton, Jr. S.T.Walton

E. D. B. Walton & Son
Adjusters
110 William Street

Telephone Beekman 2615

New York, Feb. 16, 1926

Melton Bros., Inc.,
321 Grove St.,
Jersey City, N. J.

Delivered

Dear Sirs:

You are hereby notified that undersigned insurance companies upon whom you allege a claim for loss and damage to the subject matter described in their several policies require that you furnish them with "verified plans and specifications of the machinery and fixtures destroyed or damaged.

Yours truly,

Newark Fire Insurance Co.,
Springfield Fire & Marine Ins. Co.,
Globe & Rutgers Fire Ins. Co.,
National Reserve Fire Ins. Co.,
American Equitable Assurance Co.,
Northern Insurance Co.,
The Pennsylvania Fire Ins. Co.,
The Pennsylvania Fire Ins. Co.,
by S. Walton

Exhibit C-7.

E.D.B.Walton E.D.B.Walton, Jr. S.T.Walton
E. D. B. Walton & Son
Adjusters
110 William Street
Telephone Beekman 2615

New York, Feb. 16, 1926

Melton Bros,, Inc.
321 Grove St.,
Jersey City, N. J.
Mr. Anthony Melton,Pres.,
Mr. Peter Melton, Vice Pres.,
Mr. George Melton, Treas.
Delivered

Gentlemen:

You are hereby notified and required to present yourselves at the office of E.D.B. Walton & Son, 110 William St., New York City, on Tuesday February 23, 1926 at 10 o'clock in the forenoon and submit to examinations under oath by Mr. S. T. Walton, as set forth and provided for by the conditions of the several policies issued to and held by you and under which you allege a claim.

You are further notified and required to produce at the time and place above stated "all books of account, bills, invoices and other vouchers, such as cancelled checks, check books and stubs or certified copies thereof if originals be lost" in any way pertaining to the business.

Yours truly,

Newark Fire Insurance Co.,
Springfield Fire & Marine Ins. Co.,
Globe & Rutgers Fire Ins. Co.,
National Reserve Fire Ins. Co.,
American Equitable Assurance Co.,
Northern Insurance Co.,
The Pennsylvania Fire Ins. Co.,
by S. Walton

Exhibit C-8.

E.D.B.Walton E.D.B.Walton, Jr. S.T.Walton

E. D. B. Walton & Son
Adjusters
110 William Street
Telephone Beekman 2615

New York, Feb. 16, 1926

Mr. Anthony Melton,
321 Grove St.,
Jersey City, N. J.

Delivered

Dear Sir:

You are hereby notified and required to present yourself at the office of E.D.B. Walton & Son, 110 William St., New York City, on Wednesday Feb. 24, 1926 at 10 o'clock in the forenoon and submit to examinations under oath by Mr. S. T. Walton as provided for by the terms and conditions of the policy issued to and held by you under which you allege a claim.

You are hereby further notified and required to produce at the same time "all books of account, bills, invoices and other vouchers, including cancelled cheks, check books and check stubs.

Yours truly,

Globe & Rutgers Fire Ins. Co.,
by S. Walton

Exhibit C-9.

E.D.B.Walton E.D.B.Walton, Jr. S.T.Walton

E. D. B. Walton & Son
Adjusters
110 William Street

Telephone Beekman 2615

New York, April 6, 1926

Messrs. Melton Bros.,
Mr. Anthony Melton, Pres.
620 Washington St.,
Hoboken, N. J.

Personal Delivery

Dear Sirs;

Under papers purporting to be proofs of loss under policies The Netherlands Insurance Co., the American Equitable Assurance, Northern Insurance Co. of London, National Reserve Insurance Co. of Dubuque Iowa, the Globe and Rutgers Insurance Co., the Philadelphia Fire & Marine Insurance Co. the Newark Fire Insurance Co., the Springfield Fire & Marine Insurance Co., and the Pennsylvania Insurance Co., alleging loss and damage to the subject matter described in said policies of $41,000.

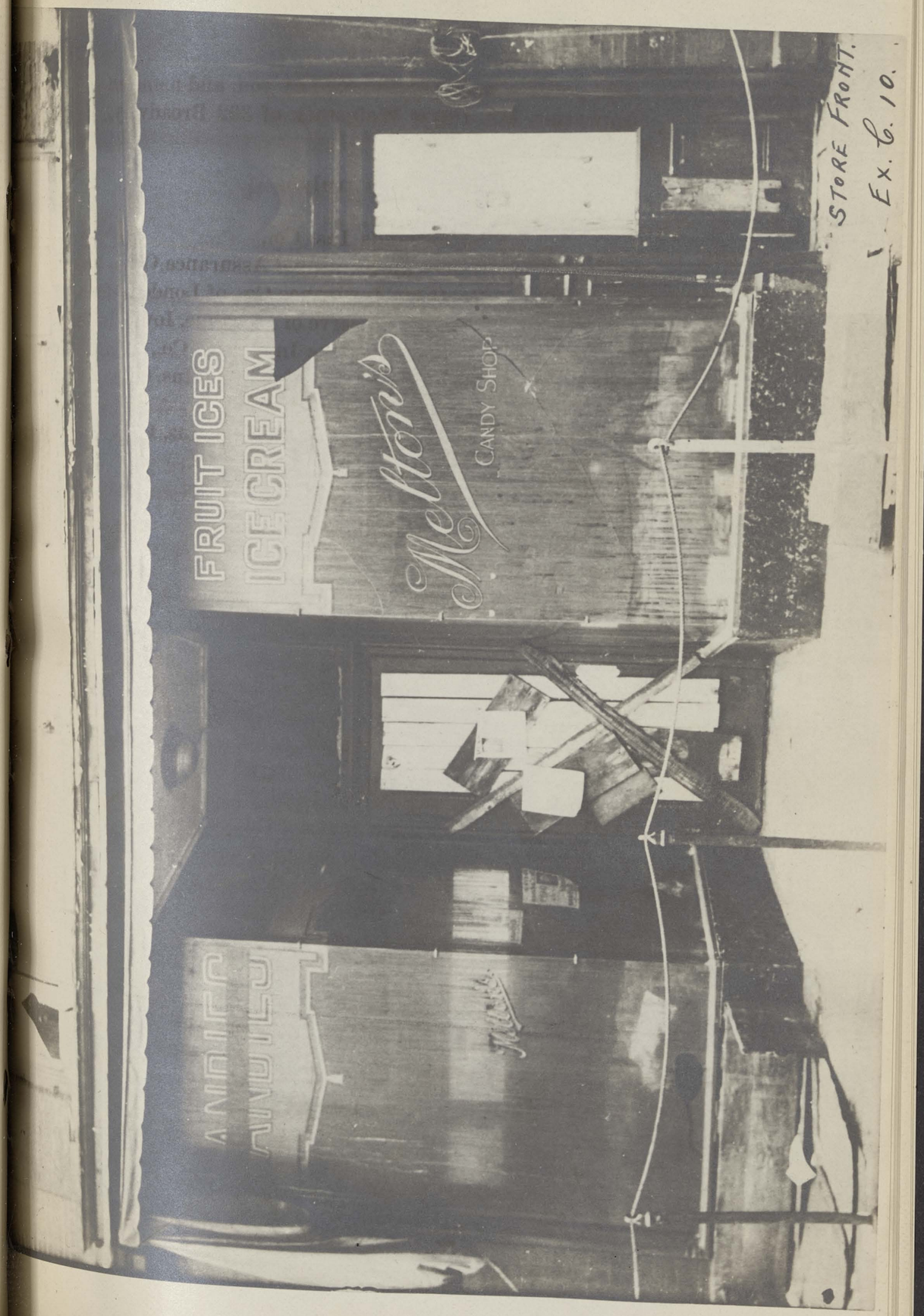
We hold from examination and information the true loss and sound value is very materially less than the sum you allege.

Having therefore differed these companies demand the actual Sound Value and loss caused by fire to Dec. 15, 1925 be determined by appraisers as provided for by the terms and conditions of the

said policies issued to and held by you, and name as appraiser, Mr. Davis Weinstock of 302 Broadway, N.Y.C.

Yours truly,

Netherlands Ins. Co.,
American Equitable Assurance Co.,
Northern Insurance Co., of London,
National Reserve of Dubuque, Iowa
Globe & Rutgers Insurance Co.,
Philadelphia Fire & Marine Ins. Co.
Newark Fire Insurance Co.,
Springfield Fire & Marine Ins. Co.,
Pennsylvania Insurance Co.,
by S. WALTON



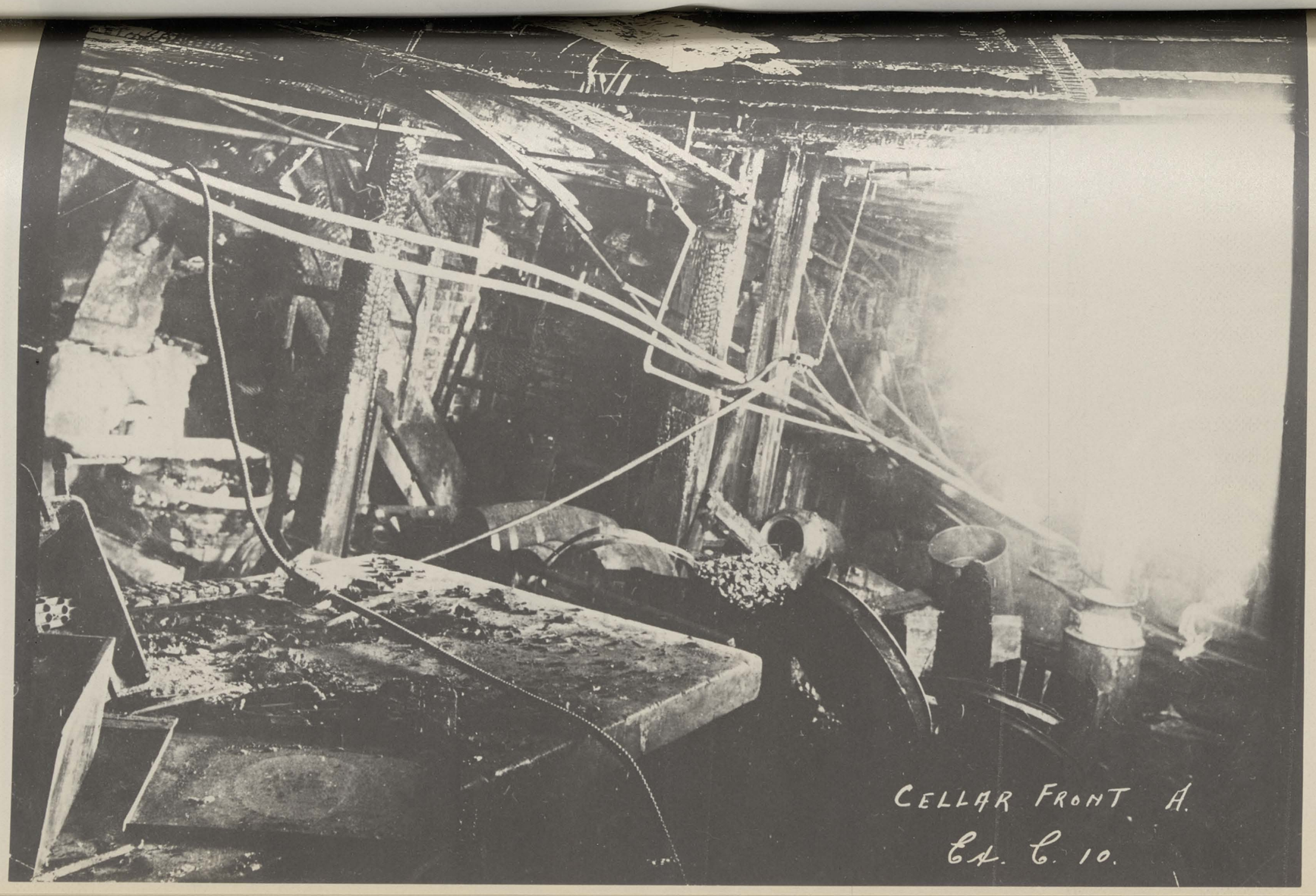


INTERIOR STORE
LOOKING TOWARD
REAR.

EX. C. 10.



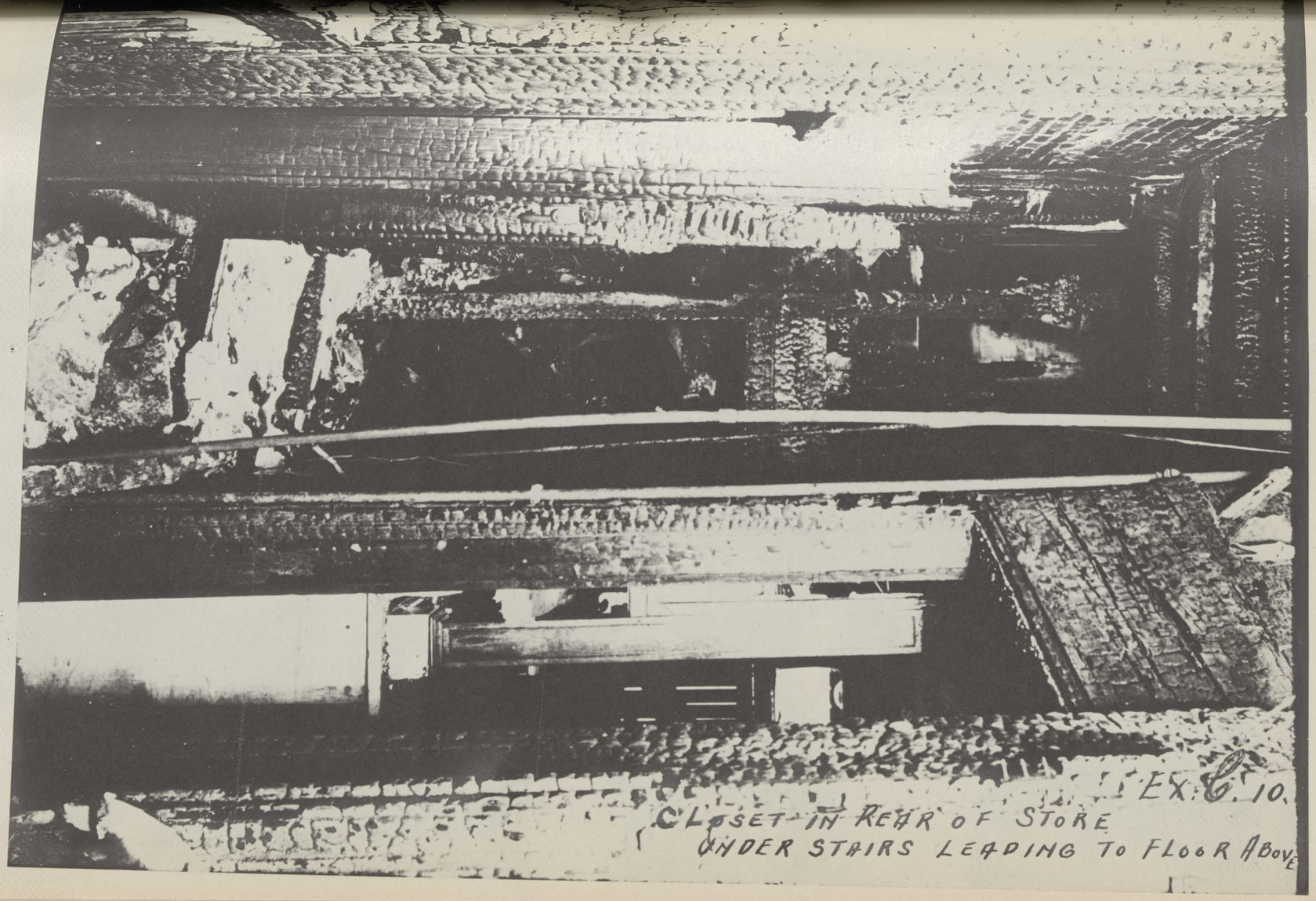
(3) Interior Store
Looking Toward Front
Ex. C. 10.


CELLAR FRONT A.
Ex. C. 10.



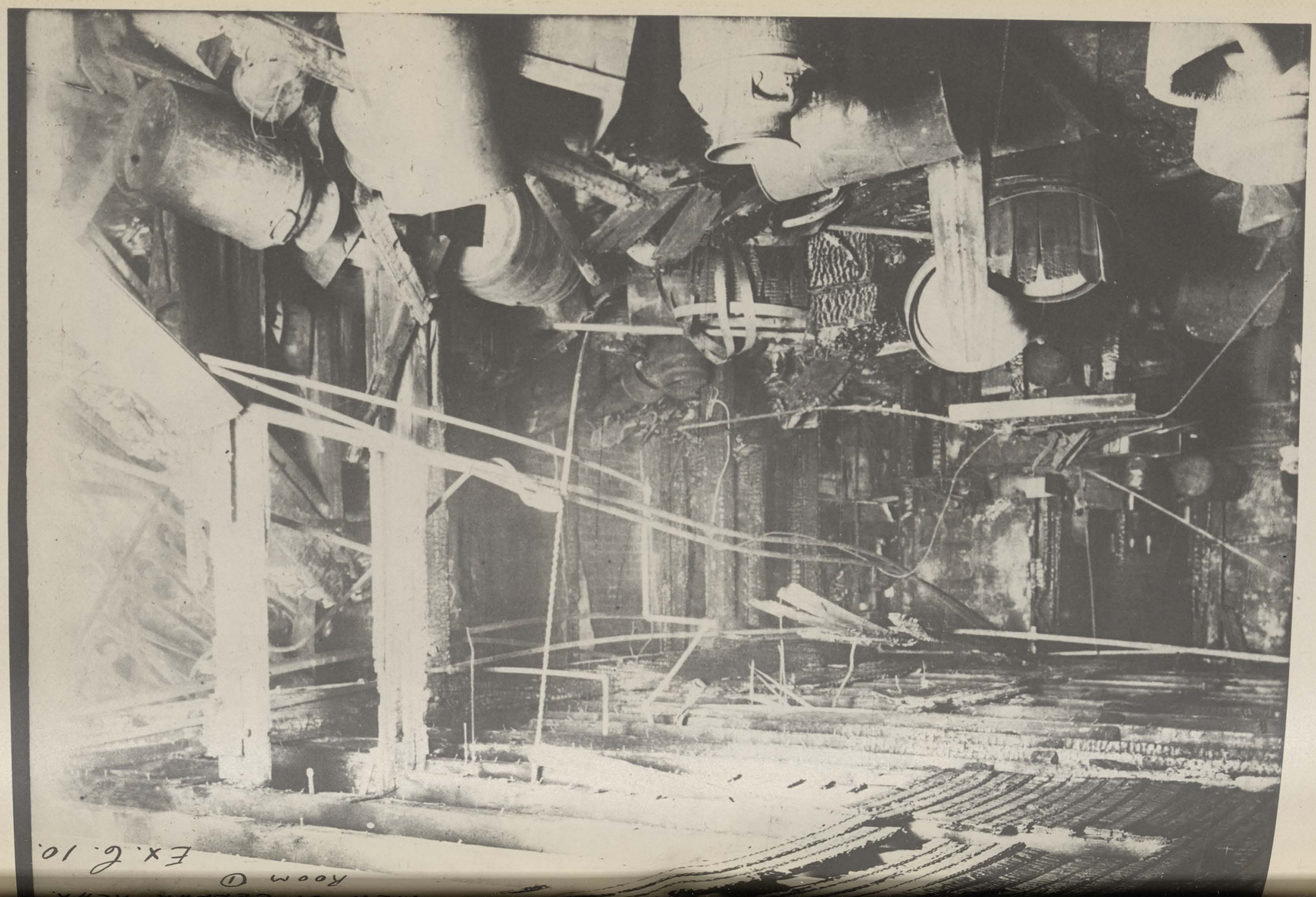
KITCHEN IN BACK OF STORE

Ex. C. 10.



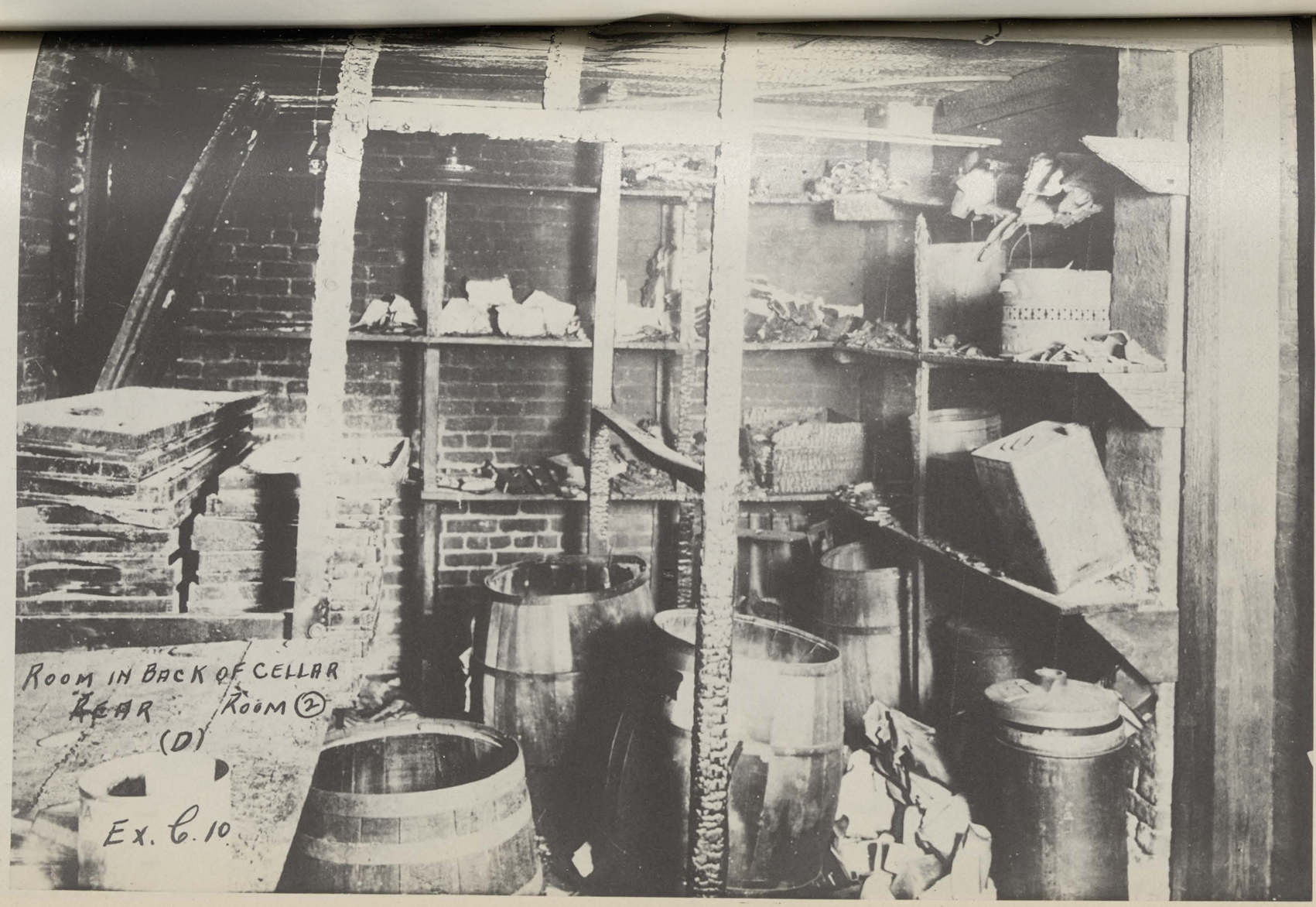
EX. C. 10.

CLOSET IN REAR OF STORE
UNDER STAIRS LEADING TO FLOOR ABOVE



Room ①

Ex. C. 10.


ROOM IN BACK OF CELLAR
REAR ROOM (2)
(D)
Ex. C. 10.




Back Cellar (Rear)
Room ⑦
Ex. E 10.


CELLAR FRONT (F.)
Ex. C. 10.

Exhibit C-10.

Exhibit C-11.

To the Newark Fire Insurance Company of Newark, N. J.

1. The above named Insurance Company, by its Policy of Insurance No. 10364 issued at its Hoboken, New Jersey Agency, for the term of One Year from the 13th day of November, 1925, to the 13 day of November, 1926, insured Melton Bros. Inc against loss or damage by fire, as therein expressed, to the amount of $5000. Dollars (Said policy was by renewal No. continued in force until the day of 19) The written portion of said Policy, and all provisions, agreements, conditions and transfers endosed thereon or added thereto, are as follows: $2000 On Stock of Confectionery } $3000 On store and office furniture &c } as per printed form attached to policy

All while contained in brick building No. 620 Washington St Hoboken, New Jersey.

2. A fire occurred on the 15th day of December, 1925, at or about the hour of 3 30 A. M., causing loss and damage to the property described in said Policy to the amount of $41,733.16 Dollars. The origin of said fire was as follows: Cause unknown to Assured.

[N. B.—If the origin of the fire is unknown, the best information obtainable, and the belief of the insured regarding it, must be stated.]

3. The sole owner in fee simple of the building covered by the said Policy, and of the ground on which said building stood

The sole owner of the personal property covered by the Policy Assured

The members of said firm or the officers of the Corporation were

Anthony Melton Pres
Peter Melton VicPres
Geo Melton Treas

4. The cash value of each item of proper covered by the said Policy and described and located as therein specified at the time of the fire, and the amount of direct loss and damage thereon caused by said fire, and for which claim is hereby made,were as follows:

	Cash Value	Whole Insurance	Whole Loss	Insurance by Newark Fire Ins. Co.	Claim Upon Newark Fire Ins. Co.
1st Item	13,217 99		13,217 99	2000	1656 32
2d "	29 334 17		28 515 17	3000	2405 08
3d "					
4th "					
5th "					
6th "					
	42 552 16	55 000	41,733 16	5000	4061 40

[N. B.—If the amount of loss be ascertained by appraisal, the award of the appraisers or a certified copy thereof must be attached hereto. In case of loss on personal property, a statement must be appended showing how the amount of loss is arrived at, and referring to the full inventory filed with one of the Companies named in Schedule A.]

A detailed inventory similar to Ex. D-3 (S.C. p. 368-80) giving assured's claim of sound value $42,552.16 and loss $41,733.16 was annexed to this exhibit.

5. No incumbrance existed on any portion of the premises or property, except as follows, in favor of the persons and in the amounts following:

6. All other insurance and agreements for insurance, verbal or written, whether valid or not, covering any part of said property at the time of the fire, amounting to $50 0000— Dollars, and the apportionment of the claim upon each Company, are shown in Schedule "A," annexed hereto, which contains true copies of all the descriptions and schedules in all the policies covering on the said property, together with the dates of expiration of the several policies.

7. There have been no changes in the title, use, occupation, location, possession or exposure of said property since the issuing of said Policy, except as follows:

No.

8. The building or buildings described in the Policy, and the several parts thereof, were occupied at the time of fire only by the persons hereinafter named and for the following purposes:

Basement, Grade & 1st Floor by Assured.
Mercantile Dwellings
2nd floor Mr. Reuter

and for no other purpose whatever.

9. The said fire did not originate by any act, design or procurement, on the part of the insured, or prohibited by said Policy; and nothing has been done before or since the fire by said insured, or by the party making this statement and proof, to violate any of the conditions of said Policy.

10. This statement and claim are subscribed and sworn to by the undersigned, pursuant to the provisions of said Policy, and the sum claimed from the Newark Fire Insurance Company as its share of said loss as above specified is $4061.40 Dollars.

It is hereby covenanted that the furnishing of this blank, or the making up of proofs by an adjuster or other representative of the Company, shall not be construed as a waiver of any of the rights of the Company.

Dated at Jersey City Fourth day of February, 1926.

ANTHONY MELTON
MELTON BROS. INC.
ANTHONY MELTON
President

Subscribed and sworn to
by
before me, a Notary Public
in and for the County of Hudson
State of New Jersey
this 4 day of February, 1926

S. J. FITZGERALD
Signature of Notary or Commissioner of Deeds.
(Notarial Seal)

ANTHONY MELTON
Signature of Assured.

SCHEDULE A

Apportionment of Claim

Name of Co,	Stock Ins.	Stock Claim	F. & H. Ins.	F. & H. Claim	Total Ins.	Total Claim
Globe & Rutgers NY	750.	681.12	1750.	1419.57	2500.	2040.69
Phil. F&M of Pa	750.	621.12	1750.	1419.57	2500.	2040.69
Spring. F&M of Mass	2000.	1656.32	3000.	2405.08	5000.	4061.40
Newark Fire Ins.	2000.	1656.32	3000.	2405.08	5000.	4061.40
Penn. Fire	1000.	828.17	4000.	3339.03	5000.	4167.20
	6500.	5383.15	13500.	10988.33	20,000.	16371.38
Nat'l Reserve of Ill.			15,000.		10,912.18	
Northern Ins. Co. Lon.			7,500.		5,456.10	
Amer. Equitable NY			7,500.		5,456.10	
Netherlands Ins. Co			5,000.		3,637.40	
			35,000.		25,461.78	

STATEMENT AND PROOF OF LOSS

No.....

The New York Board of Fire Underwriters Form
No. 123

Assured
Melton Bros. Inc

Policy No. 10,364
Hoboken, N. J. Agency

Amount of Policy, $5000
Amount of Claim, $4061.40
Amount Paid, $
Date of Fire, Dec 15 1925
Proofs Received,
Date of Payment,

.....
Adjuster

Newark Fire Insurance Co. of N. J.
(Stamped in red ink)

Rec'd Feb 19 1926

Not approved for any payment unless accompanied by report Committee on Losses and Adjustments. N. Y. B. F. U.

(Paster)

In case of Loss or Removal Notify
Harry Silverman
General Insurance & Adjusting
15 Exchange Pl. Jersey City, N. J.
Telephones, Mtg 9280-Mtg 8763

Exhibit C-12.

REPORT REGARDING STOCK.

Bills presented Total Amount for a period of months.	$14,189.96
Goods purchased by average monthly according to the above bills	4,585.73

EXAMINED stock investigated and saw at least $6000.00 worth of goods in sight. Taking in consideration of the store, its size, length of business they were there, etc. and monthly purchase of goods by the bills presented, I have taken for granted that the inventory as submitted by the assured is correct amounting to $13,217.99. I have deducted 15% for overvalue and made the sound value $11,235.32 and deducted 10% for depreciation from my sound value, thereby leaving a balance of $10,111.79 which is my honest opinion of the loss on the stock.

REPORT REGARDING FIXTURES.

I have investigated the fixtures very carefully. I have interviewed Mr. Joseph Cinelli and been informed that he has received between $1800. and $1900. for plumbing work and decided after seeing it was a total loss and that the assured is entitled to after deduction for depreciation and for use and the loss in my opinion is $1200.00

For Labor & Carpenter work the assured is entited to $1000.00

The Fountain etc., according to estimate of Houssling a reliable concern the assured is entitled to recover full amount 3085.00

Regarding utensils etc. according to bill of M. Felix & Co. the assured is entitled to $1643.35

In examining estimate of Excellent Store Fixture Co estimate of $10,480. on some items and after an interview with M. Lynn regarding his estimate the assured is entitled to $14,631.00

Total $21,559.35

In view of the long delay the company has taken to adjust this loss for a period over four months the assured was evicted from the premises and were compelled to remove all fixtures from the premises and therefore compelled the assured to sell the goods. I have personally tried to dispose of same to fixture dealers and they claim same had no value. The assured then disposed of same in my presence for $150.00

I have come to the conclusion that the assured was entitled to a claim on Fixtures for $19,413.75

As the appraiser for Melton Brothers my figures as submitted to the Company are as follows:

Stock	S. V.	$11,235.32
Fix.	S. V.	28,000.
Total	S. V.	$39,235.32
Claim		$10,235.32
Claim		19,413.75
Total Claim		$29,649.07

Copies of the Above have been submitted to the umpire and companies' appraiser.

Exhibit C-13

Report to the Assured Melton Brothers.

Gentlemen:

I hereby respectfully report my doings as your appraiser. Said report is as follows:

I have qualified as your appraiser with the Companies appraiser, Mr. Weinstock, on April 10, 1926, and we have both agreed upon Mr. Bernard Ginsberg, 116 Nassau Street, New York City, as Umpire.

A few days later Mr. Weinstock and the umpire and myself went to the loss for inspection. We have spent about one hour glancing at the loss and left.

I have again visited your loss and spent at least six to eight hours making a careful examination of same, but the Companies appraiser Mr. Weinstock has failed to make an examination and on April 20th, I again went to see the Companies appraiser for the purpose to agree and we spoke about the stock only and I produced bills. Mr. Weinstock adjourned the hearing without going into details of the loss.

On April 28, 1926 at 1.15 P. M., the Companies appraiser, Mr. Weinstock, and myself met at the umpire's office where we disagreed upon the furniture loss, as my figures were $648.00 and the Companies appraisers figures were $300.00 and the umpire decided the loss was $625.00. This settlement was done according to the rules of the policy and according to law, and therefore I concurred and signed the award.

Now regarding the fixtures and stock loss, I produced my figures to the companies appraiser and I have requested the Companies appraiser to produce his figures so that we can go over in detail, item by item. The Companies appraiser said his figures were four or five thousand dollars, but did not show any or produce any figures. As a matter of fact he did

not have any itemized figures and said it was up to the umpire to decide. I then made a protest of allowing the umpire to decide. First on the grounds that the Companies appraiser and myself did not compare figures. Secondly, the Companies appraiser according to the Rules did not produce his figures in writing. Thirdly, there cannot be any disagreement between the Companies appraiser and myself unless we disagree, item by item. Just then the umpire produced a typewritten letter with the award dated April 28, of which he had given me one copy and the Companies appraiser a copy. The Companies appraiser immediately set down and made the award on the appraisal paper and signed same and then handed same to the umpire who also signed and stated the matter was closed.

I again made a protest on the ground that the umpire was not a disinterested party. That the umpire without my knowledge has sent a man to examine the loss and also looked at the loss himself before seeing the Companies appraiser and myself had made any attempt to get together.

Secondly, I objected to the umpire handing in an award which had been made up a week or two ago, before the Companies appraiser and myself had talked over the loss. Third objection that the umpire, the Companies appraiser are personal friends, and have been such for the past twenty years, and they are affiliated with each other, and therefore is not qualified as a disinterested party.

Fourth, I object on the ground that the umpire has helped the assured and the assured adjuster in apportioning and making out the proof of loss against the Company and surely cannot be a disinterested party.

Fifth, my main objection was that the umpire had no right to decide the award in bulk as he has attempted and done, but the umpire had to go over

each item where the Companies appraiser and myself have disagreed, but the Companies appraiser refused to show any figures and therefore the umpires award is illegal in my opinion.

I am making this report and willing to give an affidavit to the facts contained herein.

My opinion of the loss for stock and fixtures is $29,649.07.

I have also interviewed various people regarding this loss and I received the opinion of Mr. S. B. Sonnenfeld, an expert adjuster who is also associated in the same office with the umpire who examined the loss shortly after the fire and at that time, if the loss had been settled, the assured would have saved a large amount of money for salvage, and at that time Mr. Sonnenfeld claimed the loss at $24,007.19, which I attach his figures with my figures for your consideration.

Yours truly,

S. W. SILVERMAN.

Exhibit C-13.- A

L. L. Croner	Aug. 21-25	20.07
Jos. H. Theiliny	Sept. 2- "	41.70
Singer	Nov.	109.40
Perry Candy Co.	Oct.	93.85
Jaburg Bros.	Apr.	34.83
Lamont & Corliss	July	144.00
Rialto Home	Dec. 8-25	476.19
Nutty Candy	Dec. 2-25	432.50
Tenzer	Oct. 21	8.55
Simon James		
10 Gl. vanely	Nov. 3/25	75.00
Highland Beverage	Apr. -/25	73.00
10 Gl. vanely		65.30
Majestic Candy	Nov. 3/25	115.
Samuel Bearl	Dec. 16/25	112.20
Adam Sommer	Oct. 25/25	159.83
Adam Sommer	Nov. 17/25	43.32
Wood & Selick	Aug. 29/25	114.55
" "	Oct. 19/25	170.92
" "	Oct. 3/25	7.25
" "	Oct. 10/25	7.25
Schall & Co.	Dec. 15/25	121.37
Samuel Beard & Co.	Dec. /25	33.75
Hyylers	Sept. 23/25	78.60
Schall & Co.	Aug. 18/25	34.36
Anderson & Patterson	Sept. 24/25	45.40
F. W. Huber	Dec. 1/25	21.78
Consumers F. Ex. Co.	Apr. /25	17.80
Schall & Co.	Oct. /25	40.59
Thomas S. Taranto	Oct. 21/25	254.65
Cumming's	Apr. /25	31.78
Ch. Schaffer	Aug.	115.
		4099.99
Claim by Ass.		12,217.99
Silverman deducts for over est. 50%		6,608.99
		6,609.00
Dep. 10%		660.90
		5,948.10

Exhibit C-14.

AWARD IN DETAILS
ON MELTON BROS, 620
WASHINGTON ST
HOBOKEN N. J.

Identified Stock in			Value	Loss
Cellar	Front	$312,00	$312,00	$312.00
	Rear	525.86	525.86-65%	341.80
Unidentified				
Front Cellar		$10,1,32.86		
Store Show Cases		6.67.60		
		91.00		
		69.96		
On Top of Show case		1,32.79		
On Fountain		1,69.58		
in & on Back of Fountain		85.63		
Back Room		8.57		
Kitchen		45.00		
in Wall Cases		9,61.00		
		1,32.79	3200.00	3200.00
		$12496.78	$4037.86	$3853.80

Fixtures On Articles Harrison Figured	Sound Value	Loss		
	$9,8,50.00	$4,7,73.25		
On Articles Ginsburg Allowed 1,9,52.20 Assured Claimed $1135.62 Which Could Not be Seen	3,50.00	3,50.00	12152.20	6087.15
			$16190.06	$9940.95

Exhibit D-3.

MELTON BROS., INC.
620 WASHINGTON STREET,
Hoboken, New Jersey.

Date of fire Dec. 15, 1925 — 3.30 A. M.

	CELLAR		STOCK		
	20 gal. chocolate syrup		1.00 a gal.	20.00	
	20 " Simple "		.70 a gal.	14.00	
10	10 " Hot Chocolate		1.50 a gal.	15.00	
	200 boxes straws		.40 a box	80.00	
	12 doz. soda glasses		12 oz.	21.00	
	12 doz. soda glasses		8 oz.	18.10	
	10 doz. soda glasses		6 oz. 1.45 a doz.	14.50	
	275 lbs. Gelatine		.50 a lb.	137.50	
	5 Cases Moxie			15.00	
	10 Cases Grape Juice		7.00 a case	70.00	
	120 qts. Heavy Cream		.80 a qt.	96.00	
	110 qts. Milk			11.00	
	40 qts. Condensed Milk		.40 a qt.	16.00	
	7 Cakes of Ice		1.05 a cake	7.35	
	30 lbs. pistachio nuts		1.05 a lb.	31.50	
	100 lbs. of Butter		.55 a lb.	55.00	
20	5 large chocolate cakes		1.00 ea.	5.00	
	60 lbs. Lard		.30 a lb.	18.00	
	1 Case Eggs			13.00	
	8 Chickens		1.50 ea.	12.00	
	30 lbs. Swiss Cheese		.50 a lb.	15.00	
	20 lbs. Italian Cheese		.60 a lb.	12.00	
	8 lbs. American Cheese		.30 a lb.	2.40	
	32 lbs. Rigani		.50 a lb.	16.00	
	20 lbs. Rosemarina leaves			10.00	
	10 lbs. Spices		.40 a lb.	4.00	
	2 Cases Ketchup		3.05 a case	5.10	
	12 Sets Chinese baskets		9.00 per set on dumbwaiter	108.00	
30	2 gal. Christo Kolo		18.00 gal. (Extract—cellar)	36.00	
	200 lbs. Caramels		.40 a lb.	80.00	
	250 bs. Brazilian nuts	identified	2.48 a lb.	√120.00	120.—
	150 lbs. Mixed nut rolls	identified	.50 a lb.	√ 75.00	75.—
	All kinds Extracts			400.00	
	350 5-lb. boxes candy		2.65 ea.	997.50	
	700 boxes 5-lb. chocolates		2.40 ea.	1680.00	
	50 gals. Vanilla flavor		12.00 a gal.	600.00	
	60 gals. Strawberry fruit		5.00 a gal. (in 2 bbls)	300.00	
	20 gals. Maple Flavor		12.00 gal.	240.00	
	1 gal. peppermint extract			60.00	
	2 bbls. sugar	½ Bbl.	identified	42.00 √	42.—
40					

	300 choc. cakes 10 lbs. ea.	.26 a lb. (milk)	780.00	
	180 " " " " "	.23 a lb. (dark)	414.00	
	100 lbs. shredded cocoanuts	.13 a lb.	13.00	
	4 cases walnuts	.55 a case	121.00	
	3 bags almonds 200 lbs. a bag	.56 a lb.	174.00	
	8 boxes Valencia Almonds	.67 a box	337.68	
	16 boxes Pecan nuts 10 lbs. a box	.90 a lb. 160 lbs.	114.00	
	100 lbs. Pignolia nuts	1.03 a lb.	103.00	
	80 lbs. Pistachio nuts	.55 a lb.	44.00	
	180 lbs. Filbert nuts	.40	72.00	
	165 lbs. salted nuts	.53	87.45	
	150 lbs. malted milk	.32	48.00	
	8 gallons root beer	2.40 a gal.	19.20	
10	50 lbs. coffee	.45 a lb.	22.50	
			$7775.73	
		identified	237.—	
			7538.73	
	80 lbs. French fruits glace	.65 a lb.	52.00	
	300 lbs. Manilla paper	.35 a lb.	105.00	
	400 lbs. dipping paper	.40 a lb.	160.00	
	300 lbs. sugar cream	.23 a lb.	69.00	
	7 gal. Marischino cherries	2.50 a gal.	17.50	
	30 lbs. Nugent cream	.35 a lb.	10.50	
	2 cans Gumber Gum (20 lbs)	.33 a lb.	13.20	
20	6 cases pineapple	5.00 a case	30.00	
	1000 Charlotte Russe boxes		10.00	
	17 boxes of starch & candy	2.04 a box	34.84	
	4 cases Canadian dry ginger ale		28.00	
	40 gals. Cocoa Cola	1.70 a gal.	68.00	
	10 Cherry smash	1.90 a gal.	19.00	
	65 5-lbs. candy boxes	2.40 a box	156.00	
	500 boxes 5-lb. candy	2.40 a box	1200.00	
	Wrapping paper		78.00	
	75 boxes cherries on shelves		37.50	
	200 boxes soda choc. 1 lb. in box	.40 a box	80.00	
	35 1-lb. box almonds	.60 a box	21.00	
	40 lbs. 1-lb. boxes bon bons	.30 a box	12.00	
30	300 1-lb. boxes Soda milk choc.	.60 a box	180.00	
	25 boxes milk chocolate crackers	.60 a box	15.00	
	10 boxes 1-lb. nougatine chocolates	.40 a lb.	4.00	
	10 1-lb. boxes peanut clusters	.30 a lb.	3.00	
	20 1-lb. boxes caramels	.40 a lb.	8.00	
	50 boxes 1-lb. Brazilian nuts	.70 a box	35.00	
			2446.00	
				40

IN THE SHOW CASE

45	2-lb. boxes Chocolates	1.45 a box	55.25	
100	boxes assorted choc. 1 lb. Perry's	.65 a box	65.00	
120	1-lb. box Perry's	1.05 a box	126.00	
75	Schrafts 1-lb. box	.63 a box	45.25	
20	1-lb. boxes Page & Shaw	.75 a box	15.00	
20	boxes Park & Tilford chocolates	.65 a box	13.00	V
12	5-lb. boxes Melton Candy	3.05 ea.	36.60	
15	2-lb. boxes " "	1.75 a box	36.20	
130	1-lb. box nuts & fruits (Melton)	1.05 a box	136.50	
50	1-lb. box Anderson & Peterson	1.05 a box	52.50	
655	1 lb. boxes Silk	4.25 a piece	25.50	
10 9	5-lb. Japanese baskets	4.50 ea.	39.50	
12	boxes 2-lb. cherries	1.85 a box	22.30	
			$667.60	

IN STOCK EMPTY BOXES

	Store			
1500	boxes empty milk choc. boxes	.04 ea.	60.00	
2000	" cherry boxes	.06½ ea.	130.00	
2000	" old fashioned creams	.04 ea.	80.00	
1000	" Caralem	.04 ea.	40.00	
2000	' Plain	.02½	50.00	
1000	" Peanut Brittle		24.00	
20 5	boxes dates		27.00	
600	boxes Glucose	.04 a lb.	24.00	
1	bl. Marshmallows		32.00	
30	lb. Cream Caramel	.40 a lb.	12.00	
20	gal. Maraschino cherries	2.50 a gal.	50.00	
	Fancy ribbons used for candy boxes		300.00	
60	lbs. Tinfoil	.60 a lb.	36.00	
100	lbs. Wax Paper	.35 a lb.	35.00	
50	bags Ice cream rock salt	1.20 ea.	60.00	
			$961.00	

TOP OF SHOW CASE

30	27 Fancy empty candy boxes	.18	4.86	
	38 empty cherry boxes	.07	2.66	
	10 Bunnies	.40	4.00	
	10 large fancy empty boxes	.30	3.00	
	5 assorted lacquered empty boxes	1.25	6.25	
Lot	1. 60 fancy empty boxes	.18	10.80	
	2. 50 plain empty boxes	.04	2.00	
	40 asst. Fancy boxes	.04	6.80	
	6 round empty boxes	.14	.84	
	21 cream empty boxes	.04½	.85	
	36 empty caramel boxes	.04	1.44	
	70 empty choc. boxes	.07	4.90	
	2 Rolls Fancy Wrapping Paper		5.00	

40

Lot 3.	75 empty boxes	.04½	3.38	
" 4.	40 assorted empty boxes	.04½	1.80	
" 5.	80 empty boxes	.04½	3.20	
" 6.	40 boxes of assorted choc. (1 lb)	.40	16.00	
" 7.	23 " " Milk choc. 1 lb. ea.	.55	12.65	
" 8.	18 1-lb. boxes Peanut Clusters	.30	5.40	
" 9.	2 lb. Milton Chocolates	.40	.80	
" 10.	6 boxes choc. cakes	.50	3.00	
" 11.	8 lb. Peanut Clusters	.30	2.40	
" 12.	17 boxes creams	.40	6.80	
	2 lb. coated almonds	.50	1.00	
	assorted candy bags		8.00	
	15 empty cherry boxes	.07	1.05	
	12 " boxes	.17	2.04	10
	26 " cream boxes	.04½	1.17	
	5 lbs. salted peanuts	.30	1.50	
	3 lbs. chocolate	.40	1.20	
	4 boxes jelly species	1.25	5.00	
	5 Fancy empty boxes	.20	1.00	
			$132.79	

ON TOP OF CANDY CASE

	15 boxes assorted choc. 70 lbs.	.70	28.00	V

IN CASE

	5 trays of Cocoanut 25 lbs.	.50	12.50	
	5 lb. of wafers	.40	2.00	20
	6 lb. Raspberry	.40	2.40	
	5 lb. Marrow Powell chocolates	.40	2.00	
	5 lb. lemon cream	.40	2.00	
	5 lb. maple cream	.40	2.00	
	4 lbs. chocolate caramels	.40	1.60	
	5 lbs. peppermint creams	.40	2.00	
	6 lbs. Italian creams	.40	2.40	
	6 lbs. orange creams	.40	2.40	
	8 lb. Brazilian nuts	.70	5.60	
	10 lb. chocolate peppermints	.40	4.00	

SHOW CASE

SECOND ROW

	8 lbs. chocolate chips	.40	3.20	
	8 " Peanut clusters	.30	2.40	V 30
	8 " Cocoanut cream rolls	.40	3.20	
	6 " Butter cream rolls	.50	3.00	
	8 " Raisin clusters	.30	2.40	
	7 " chocolate crackers	.50	3.50	
	5 " Maraschino chocolates	.60	3.00	
	2 " Creams	.40	.80	
	10 " Milk chocolate caramels	.40	4.00	
	3 " Peppermints	.40	1.20	
	8 " Marshmallows	.50	4.00	
	8 " Milk chocolates Filberts	.60	4.80	
	10 " Pecans	.80	8.00	
	4 " Brazilian nuts	.70	2.80	
	5 " Walnuts	.80	4.00	
			91.00	40

	10 choc. almonds	.60	6.00	
	BOTTOM ROW			
	10 lb. broken choc.	.28	2.80	
	10 lb. Brazilian nuts	.80	8.00	
	2 lb. Chicken corn	.28	.56	
	5 lb. Gum drops	.30	1.50	
	8 lb. Spiced gum drops	.30	2.40	
	8 lb. chocolate peppermints	.40	3.20	
	SHOW CASE 5 lb. gum drops	.30	1.50	
	8 lb. spiced strings	.30	2.40	
	4 lb. licorice gum drops	.30	1.20	
	8 lb. lafayette mixture	.35	2.80	
10	2 lb. Perfections	.30	.60	
	6 lb. Wafters	.25	1.50	
	5 lb. chocolate peppermints	.40	2.00	
	25 lb. French mixed	.20	5.00	
	CENTER CASE			
	assorted candies	2.50	2.50	
	FRONT CASE			
	3 lb. choc.	.50	1.50	
	1 " Schrafts	.85	.85	√
	5 lb. Wax paper	.30	1.50	
	ON TOP OF CASE			
	4 dozen sky rockets	1.00	4.00	
20	2 lbs. of chocolate	.40	.80	
	8 rolls of chrochet	.06	.48	
	UNDERNEATH CASE			
	Lot of pastry boxes		10.00	
	2 rolls of paper	3.50	7.00	
			$69.96	
	IN WINDOW			
	2 lb. peanut clusters	.34	.68	
	11 lb. boxes caramels	.44	4.84	
	20 " boxes creams	.44	8.80	
	2 " boxes assorted chocolates	.75	1.50	
30	6 " boxes " "	.80	4.80	
	1 " box of nuts & fruits		1.25	
	3 2-lb. boxes " " "	1.65	4.95	
	18 fancy empty boxes	.18	3.24	
	2 2-lb. assorted empty boxes	.36	.72	
	90 empty boxes	.04	3.60	
			34.38	
	ON SODA FOUNTAIN			
	27 lb. of asst. choc.	.75	20.25	
	1 gal. birchola syrup		1.25	
	1 " Cherry Smash		1.25	
	42 molasses Bars	.03½	1.47	
40	43 nougatine bars	.03½	1.51	
	1 lb. asst. choc.		.40	

	2 " salted Peanuts	.30	.60	
	30 lb. malted milk taffee	.23	6.90	
	½ lb. Peppermint	.30	.15	
	60 lb. Peanut Brittle	.15	9.00	
	4 lb. lemon drops	.30	1.20	
	2 lb. Butter Scotch	.30	.60	
	√100 gal. Ice cream	1.25	125.00	
			$169.58	
	IN SODA FOUNTAIN			
	11 bottles ginger-ale	.14	1.54	
	1 qt. whipped cream	.70	.70	
	3 " Vanilla syrup	.40	1.20	10
	4 " Chocolate "	.40	1.60	
	3 " Orange "	.40	1.20	
	3 " Hot Chocolate	.50	1.50	
	3 " Pineapple fruit	.50	1.50	
	2 " Strawberry	.50	1.00	
	20 " Seely Soda Water	.14	2.80	
	BACK OF SODA FOUNTAIN			
	18 Fancy empty boxes	.18	3.24	
			16.48	
	15 empty cherry boxes	.07	1.05	
	24 " " "	.04	.96	20
	9 bottles of Moxie	.20	1.80	
	5 Oranges	.05	.25	
	20 large bottles Canadian dry	.14	2.80	
	6 small " " "	.07	.42	
	2 bottles of color		1.25	
	4 bottles of Tomato Boullon	1.20	5.00	
	10 lb. cream thickening	.54	5.40	
	1 gal. cocoa cola syrup		1.60	
	1 gal. orange		1.75	
	2 qt. Vanilla	.40	.80	
	3 gal. cherry smash	1.90	5.70	
	½ gal. coffee flavor	10.00	5.00	
	2 qt. Vanilla	.40	.80	30
	1 gal. hot choc.		1.00	
	½ gal. strawberry	1.00	.50	
	½ " Caramel		1.25	
	1 " Cherry Smash		1.90	
	5 gal. green cherries	3.25	16.25	
	6 bottles grape juice	.33	1.98	
	4 bottles grape juice large	.65	2.60	
	2 lbs. Pecans	.30	.60	
	5 bottles ginger ale	.14	.70	
	1 lb. Pecans		.95	
	1 qt. cherries		.60	
	1 qt. fruit salad		.75	
	1 qt. butter scotch		.65	40

2	qt. fudge	.55	1.10	
2	qt. caramel	.55	1.10	
1	qt. Pineapple		.55	
5	empty boxes	.17	.85	
42	empty cherry boxes	.07	2.94	
125	empty ice cream boxes		.45	
1	case tea		6.00	
2	lb. coffee	.50	1.00	
3	lb. ice cream powder	.40	1.20	
1	lb. tea		.45	
			69.15	

IN BACK ROOM

20	lbs. Sugar	.07	1.40	
1000	napkins		2.75	
25	empty fancy boxes	.17	4.42	
			8.57	

KITCHEN

	Ice Box full of cooked food stuffs		20.00	
	Raw eatables		25.00	
			45.00	

STOCK IN CELLAR

√1	bbl 100 lb gold dust identified	.05½	5.50√	5.50
4	doz. Seelys soda		1.63	
1	can polish		1.65	
√40	qt. milk identified	.10	4.00√	4.—
√20	qt. heavy cream identified	.70	14.00√	14.—
√150	lb. Sugar identified	.07	10.50√	10.50
√5	boxes dates 350 lbs. identified	.89	28.00√	28.—
√300	lbs. glucose identified	.0½	13.50√	13.50
1	bbl marshmallow		27.00	
30	lb. cream mallow	.44	13.20	75.50
30	lb. caramel cream	.40	12.00	
100	lb. tub shredded cocoanut	.18	18.00	
6	gal. cherries	2.50	15.00	
50	lb. sugar cream	.23	11.50	
7	gal. dry cherries		15.00	
10	lb. mexican kisses	.23	2.30	
30	lb. nougatine cream	.35	10.50	
1	case ginger ale		1.80	
40	lb. almonds paste in 2 cans	.45	18.00	
			$223.13	
			75.50	
			147.63	

CELLAR

IN BACK ROOM

Side Wall

√11	bundles of boxes 60 ea. 660	.04½		29.70	
√120	boxes	.04½		4.60	
√2	Cans Gumbert gum 20 lb.	.33		6.60	
√31	Cans of pineapple	.75		23.25	

ON TABLE

√700	Charlotte Russe boxes	.01		7.00	
√100	empty candy boxes	.04½		4.50	
√180	ice cream boxes	.04		7.20	Loss
					10

UNDER TABLE

√2	cases chocolate 200 lbs.	.26		52.00	
√17	boxes of starch & candy	2.04		34.68	
√1	large case 300 lb. starch	.06		18.00	
√4	bundles of qt. ice cream boxes	6.25		25.00	
√30	bundles of bags—15000	1.25		18.75	
√100	lb of cocoa in 2 bbls.	.23		23.00	
√6	cans spinach	.27		1.62	
√30	lbs. kisses paper	.30		9.00	
√2	gal. root beer	2.40	65%	4.80	

3rd ROOM

√25	lb. caramel candy	.50		17.50	
√320	empty candy boxes	.04		12.80	
√80	empty cherry boxes	.07		5.60	20
√120	empty brittle boxes	.02½		3.00	
√52	containers	.03		1.56	
√4	gal. cherry smash	1.90		7.60	
√20	lb. starch	.06		1.20	

UNDER COUNTER

√35	lb. chocolate	.26		6.50	
√10	lb. ginger	.40		4.00	
√5000	paper napkins			13.00	
√15	lb. prunes	.25		3.75	
√450	empty boxes	.04½		20.25	
√10	lbs. cocoanut	.14		1.40	
√60	empty choc. boxes	.10		6.00	
√15	lb. wrapping paper	.10		1.50	30
√	Easter grass & baskets			10.00	
√2000	bags	1.65 M.		3.30	
√1	lot easter floss			10.00	
√2000	folding boxes	2.50 M.		5.00	
√2000	pint ice cream boxes	6.50		13.00	
√2000	qt. " " "	9.00		18.00	
√2000	½ pt." " "	5.50		11.00	
√100	empty candy boxes	.03		3.00	
√800	" " "	.04		32.00	
√100	sheets of wax paper	.10		10.00	
√260	empty caramel boxes	.04		10.40	
√60	" " "	.03		1.80	
√1	bbl. easter baskets			15.00	40
√20	boxes of straws	.45		9.00	
				$525.86	$341.80

6	silk flags	7.00			42.00	
2	small "	3.00		20.—	6.00	20.—
2	window show drapperies embroidered			15.—	50.00	15.—
	Books		not found		20.00	—
	Marble trays 6 doz	35.00	not found		210.00	
3	pair shoes				15.00	
3	lady's sweater				8.00	
1	mans coat		Not found could not be destroyed by fire		4.00	
2	men's suits				80.00	
1	pair ladies shoes				6.00	
4	" " aprons				8.00	
	Show stands 3 doz.	18.00			54.00 H	
3	doz. silver cups	18.00			54.00	
1	" " "			50.—	26.00	55
√2	Malted machines	15.00		20.—	30.00	10.—
√3	doz. candy jars			36.—	64.00	20.—
√1	typewriter machine (Royal) T storage			40.—	104.00	40.—
√4	doz. glass holders 2½ Doz.			36.—	72.00	36.—
√6	doz. Soda spoons		1.80		21.00	10.80
√6	fruit jars	2.50		6.—	15.00	6.—
√1	Aeroplane Fan T				75.00 H	
√1	large fudge meltor Storage			20.—	25.00	10.—
√1	small " " √			15.—	18.00	5
√36	Electric Blubs T	1.25 ea.		21.60	45.00	21.60
5	Window Shades	5.00		20	25.00	20.—
√1	installation of dumbwaiter ?				105.00 H	
√1	hang scale in cellar Storage			10.—	16.00	3.—
√1	large standing scale in cellar			20.—	27.00	5.—
√3	coffee Urns			90	145.00	45.—
4	pairs scissors	1.50 ea.	not found		6.00	—
	Stationery and stamps			30.—	85.00	30.—
	Hand made embroidery for wall			10	30.00	10.—
19	pieces silk cloth for show cases and windows		1.50	28.50	161.00	28.50
3	Globes with chandelier ?	13.00 ea.			104.00 H	
√1	Big sign outside of building ?				150.00 H	
√	Lettering on window				140.00 H	
√5	locks for the store				12.00 H	
	Assorted tools for carpentry ?			20.—	73.00	5.—
√4	Kettles (Cooking cans copper)			100	175.00	20.—
√4	Gas Radiators ?				240.00 H	
3	Plants	5.00 ea.		6.—	15.00	6.—
√1	Piano (Electric) second hand			300.—	450.00	100.—
6	small plants	10.00	Not found		60.00	
√400	sign strips paper	.10	in storage	40.—	40.00	10.—
√10	doz. stands rubber Storage			10.—	12.00	4.—
1	mirror in doorway & hallway				10.00 H	
2	Art Plants Archway	15.00	Not found		30.00	

KITCHEN WITH ALL EQUIPMENTS AS FOLLOWS:

√	Plumbing & Installation	√	1600.00 H	
√	Second hand oven	√	185.00 H	
√	Pastry shop equipment	√	850.00 H	
√1	Carbonated machine		135.00 H	
1	Ice Crusher		112.00 H	

1	stand for dippers			15.—	18.00	5.—
1	small show case curved glass 6 ft. ong √				47.50 H	
1	show case standing 9 ft. long √				70.00 H	
	Labor carpenter 2 rooms pantry & a kitchen √				1850.00 H	
				979.10		$535.90
√	Electric Motor for chocolate dipping				135.00 H	
√	Small table				13.00 H	
√1	Electric gas stove for manufacturing candy				129.00 H	
√1	marble black and gold use for dipping		not found		34.00	
√2	kettles for melting choc.	12.00		20.—	24.00	7.50
√4	double kettles all sizes (3 only)	6.00		15.—	24.00	5.—
√1	slab marble with table				94.00 H	
√1	ice cream machine				450.00 H	
	Electric Repairs and installation for the store √				100.00 H	
	All different candy machines, all si es found			115.—	221.00	25.—
√2	Ice Boxes				215.00 H	

IN STORE

√2	ceiling fans	65.00			195.00 H	
2	rugs ? Said they were rolled together	75.00	not found	....	150.00	....
√1	lemon squeezer			4.—	6.00	4.—
10	ice cream shavers	1.05		7.50	16.50	7.50
2	silvered candy stands	2.00	not found	....	14.00	....
1	doz. large sundae cups			9.—	18.00	9.—
3	qt. measures	1.00		3.—	3.00	3.—
16	holders	1.00	not found	....	16.00	....
1	ice cream whipper			1.—	1.50	1.—
1	doz. large holders (soda glass) ?			9.—	26.00	9.—
√1-1/3	doz. small soda glass holders	18.00	not found	....	24.00	....
√6	glass candy trays	.50		3.—	3.00	3.—
1	glass bowl			1.—	1.50	1.—
√1	doz. banana split cups			9.—	26.00	9.—
√36	hot choc. cups ½ doz. 15¢	.35		3.60	12.60	3.60
√15	doz. drinking glasses 10 doz.	1.25		10.—	18.75	10.—
50	saucers			5.—	10.00	5.—
2½	doz. Nonick glasses	1.65	not found	....	4.12	....
18	glass stands	2.00		18.—	36.00	9.—
2	nickel jars & covers	5.00	not found	....	10.00	....
1	Birchola machine			....	5.00 H	....
1	cherry smash machine		not found	....	55.00	....
14	Ice Cream measures	1.75	not found	....	24.50	....
9	Ice cream dippers	.90		4.50	8.10	4.50
1	gas burner		not found	....	1.00	....
16	holders	18.00	not found	....	22.50	....
1	doz. small holders			9.—	12.00	5.—
1	Ice cream hook		not found	....	.75	....
14	large fruit spoons	1.00	not found	....	14.00	....
3	spoon holders	1.00	not found	....	3.00	....
7	tea pots	.65	not found	....	4.55	....
6	baby spoons	.20	not found	....	1.20	....
3	doz. large glass stands	6.00		18.—	18.00	9.—

	√1 safe				75.00 H	
	1 desk on safe				7.00 H	
	54 candy trays		1.25	40.50	67.50	20.40
	15 napkin holders not found		1.25	....	18.75	....
	CELLAR					
	√Rear dumbwaiter				100.00 H	
	√14-ft. counter				55.00 H	
	√2-20 gal. tanks		12.00	20.—	24.00	6.—
	26 10-gal. ice cream cans ()	4.00	6.00	104.—	156.00	26.—
	1 cooking pot not found				16.00	....
	√3 large ice cream brick cans		9.00	18.—	27.00	6.—
	√30 covers for cans		1.00	30.—	30.00	10.—
10	√4 5-gal. ice cream cans		3.00	8.—	12.00	2.—
	1 arch on stair-way				40.00 H	
	4 Thermometers		4.00	8.—	16.00	8.—
	2ND ROOM					
	1 lemon crush machine			3.—	5.00	3.—
	1 large caramel tray			2.—	5.00	2.—
	1 electric globe			2.50	3.50	3.—
	8 candy trays		1.00	6.—	8.00	6.—
	1 walnut crusher			3.—	8.00	3.—
	12 Electric drop fixtures		4.00		48.00 H	
	2 drop fixtures		14.00		28.00 H	
	4 doz. red globes not found		9.00		36.00	
				509.60		225.50
20	1 large glass jar & cover			3.—	5.00	3.—
	12 reflectors		4.00	store windows	√48.00 H	5.—
	Orangeade Cooler			10.—	15.00	5.—
	1 large pan			3.—	5.00	3.—
	2 fancy globes		3.00	3.—	6.00	3.—
	4 brick forms not found		1.25	....	5.00	....
	5 mahogany panels		1.50	5.—	7.50	5.—
	√2 Ice cream freezers		20.00	30.—	40.00	10.—
	1 Ice cream whipper			9.—	9.00	3.—
	12 glass trays for pastry		7.00	36.—	84.00	36.—
	2 doz. sundae cups		24.00	12.—	48.00	12.—
	6 doz. Nonick glasses		1.75	6.—	10.50	6.—
	6 Punch bowls not found		5.50	....	33.00	....
30	5 glass stands		3.50	10.—	17.50	10.—
	6 doz. cocoa cola glasses		1.40	6.—	8.40	6.—
	9 doz. soda glasses		1.20	9.—	10.80	9.—
	Candy molds			20.—	20.00	10.—
	√1 copper Kettle			20.—	20.00	5.—
	1 cylinder not found			....	5.00	....
	1 Roaster not found			....	7.50	....
	1 Pot			1.—	1.50	1.—
	√2 Electric fans		35.00		70.00 H	
	√1 3-burner gas stove			5.—	10.00	5.—
	10 glass trays		.50	5.—	5.00	5.—
	3 candy trays not found		1.25	....	3.75	....
	1 large door spring not found			....	4.50	....
	4 glass jars		2.00	3.—	8.00	3.—
40	5 pie plates		.50	2.50	2.50	2.50

1 dish carrier		5.—	7.50		2.—
1 box of glasses		15.—	15.00		5.—
2 bbl. dishes	35.00	50.—	70.00		5.—
1 box glassware not found			15.00		....
2 doz. holders not found	16.00		32.00		....
4 cylinders not found	5.00		20.00		....
1 Brick ice cream can		10.—	12.00		3.—
Ice cream machine			350.00 H		
1 Lisk Pan not found		....	4.50		....
Large glass show case			150.00 H		
6 tables	20.00		120.00 H		
3 Screen doors	20.00		60.00 H		
35 nickel candy trays	1.25	85.—	106.25		15.—
6 window screens	3.00		18.00 H		
3 doz. candy pans not found	51.00		153.00		
Metal Molds—(Consisting of egg, rabbit, St. Claus, etc.		100.—	500.00		30.—
Ice House			450.00 H		
		$463.50			202.50

F. & F.

√32	feet Slanting Tennessee marble Confectionery case (31 F)	1280.00	H	storage
√36	feet Counter Tennessee base marble top (32 F)	1080.00	H	parts in storage
√8	feet Fountain double Faucets, 2 six ft. metal trays & drainings	1500.00	H	parts in storage
√36	feet Back Fountain cooler lined & marble top ?	1080.00		
√36	" Upper back fixtures & mirrors & wall cases & mirror back Mahogany frame work	1260.00	H	storage
2	Doors & mirrors, also one mirror on side	125.00	H	
34	Ft. Back candy fixture sliding doors on bottom	850.00	H	
34	Ft. " " " on top with frame & mirrors	1190.00	H	
18	Stools white enamel base, mahogany seat, nickel rim	180.00	H	
38	Ft. Rail	36.00	H	
√1	National Register From 1¢ bill to $1.00	125.00	H	
√1	" " " " " to $3.00	150.00	H	storage
1	Computing scale Toledo	125.00	H	
2	Screens Timed & mirrors & Arch of Mahogany frame with double face clock	650.00	H	
78	ft. Mirror panels 32′ high mahogany woodwork & bottom panels $20.	1560.00	H	
√15	Tables opal tops (18)	425.00	H	storage
√2	Window Enclosures, 1 mirror 30 x 72 in each window and in side windows with sash weights & mirrors & plate glass	525.00	H	
√60	Bentwood Chairs	360.00	H	storage
√2	Ice cream boxes 1/T (10 holes)	350.00	H	
√2	Ice cream boxes in cellar	490.00	H	
√16	ft. table (candy)	24.00	H	

RECAPITULATION

Stock	$13,217.99	Sound	Value
F. & F.	29,334.17	"	"
	$42,552.16		

FIGURES MADE BY S. W. SILVERMAN, Appraiser for the assured:

				Claim
Stock.	S. V.	$13,217.99	less 20% for over-value	$10,574.39
Fixtures.	S. V.	29,334.17	less 25% for salvage & over-value	22,000.63
			Total.....	$32,575.02

(On back in pencil—Silvermans Claim & Value.)

Exhibit D-4.

HOUSEHOLD FURNITURE AWARD.

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY, that we have truly and conscientiously performed the duties assigned us, agreebaly to the foregoing stipulations, and have appraised and determined the actual cash value of each item of said property on the 15 day of Dec., 1925, and the actual direct loss and damage thereto by the fire on that day, to be as follows (see itemized schedule attached hereto) to wit:

Total Actual Net Cash Value, Twelve Hundred Sixty-four Dollars, $1264.00.

Total Actual Direct Loss and Damage, Six Hundred Twenty-five 00/100, $625.00.

WITNESS our hands, this 28 day of April, 1926.

S. W. SILVERMAN,
D. WEINSTOCK, } Appraisers.

B. GINSBURG,
Umpire.

Exhibit D-5.

AWARD ON STOCK, FIXTURES AND IMPROVEMENTS.

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY, that we have truly and conscientiously performed the duties assigned us, agreeably to the foregoing stipulations, and have appraised and determined the actual cash value of each item of said property on the 15th day of December, 1925, and the actual direct loss and damage thereto by the fire on that day, to be as follows, (see itemized schedule attached hereto) to wit:

Total Actual Net Cash Value Stock $4037.86 fixtures and improvements $12152.20, total $16190.06.

Total Actual Direct Loss and Damage Stock $3853.80, fixtures and improvements $6087.15, total $9940.95.

WITNESS our hands, this 28th day of April, 1926.

.....
.....
D. WEINSTOCK, } Appraisers.

B. GINSBURG,
Umpire.

Exhibit D-6.

MELTON BROTHERS INC.
620 WASHINGTON ST.
Hoboken, N. J.

Fire—Dec. 15, 1925. 3.30 A. M.

STOCK		sound value		
20 gal. chocolate syrup	1.00 a gal.	20.00		
20 " simple "	.70 "	14.00		
10 " hot chocolate	1.50 "	15.00		
200 boxes straws	.40 box	60.00		
12 doz. soda glasses	12 oz.	21.00		
12 " " "	8 "	18.10		
10 " " "	6 " 1.45	14.50		
275 lbs. Gelatine	.50 a lb.	137.50		
5 Cases Moxie		15.00		
10 Cases Grape Juice	7.00 a case	70.00		
120 Qts. Heavy Cream	.80 a qt.	96.00		
110 " Milk		11.00		
40 " Condensed Milk	.40 a qt.	16.00		
7 Cakes of Ice	1.05	7.35		
30 lbs. pistachio nuts	1.05 a lb	31.50		
100 " butter	.55 a lb.	55.00		
5 large chocolate cakes	1.00 each	5.00		
60 lbs. lard	.30 a lb.	18.00		
1 Case Eggs		13.00		
8 Chickens	1.50 ea.	12.00		
30 lbs. Swiss Cheese	.50 lb.	15.00		
20 " Italian "	.60 "	12.00		
8 " American "	.30 "	2.40		
32 " Rigani	.50 "	16.00		
20 " Rosemarine leaves		10.00		
10 " Spices	.40 "	4.00		
2 Cases Ketchup	3.05 a case	6.10		
12 Sets Chinese Baskets on dumb-waiter	9.00 per set	108.00		
2 gal. Christo Kolo	18.00 a gal.	36.00		
200 lbs. Caramels	.40 a lb.	80.00		
250 " Brazilian nuts about 150 lbs.	.48 " "	120.00	60.00	60.00
150 " Mixed nut rolls " 75 "	.50 " "	75.00	37.50	37.50
all kinds extracts		400.00		
350 5-lb. boxes candy	2.85 each	997.50		
700 boxes 5 lb. chocolates	2.40 "	1680.00		
50 gal. Vanilla flavor	12.00 a gal.	600.00		
60 " Strawberry fruit in 2 bbls.	5.00 a gal.	300.00		
20 ' Maple flavor	12.00 a gal.	240.00		
1 Gal. peppermint extract		60.00		
2 Bbls. sugar		42.00	10.—	5.—
300 Chocolate cakes 10 lbs. ea.	.26 a lb. miik	780.00		
180 " " " "	.23 " dark	414.00		
100 lbs. Shredded cocoanuts	.13 "	13.00		

4	cases walnuts	.55	a case	121.00	
3	bags almonds 200 lb. a bag	.58	a lb.	174.00	
8	boxes Valencia almonds	.67	a box	337.68	
16	" Pecan nuts 10 lbs. a box	.90	a lb. 160 lbs.	114.00	
100	lbs. Pignolia nuts	1.05	a lb.	105.00	
80	" Pistachio nuts	.55	"	44.00	
165	" salted nuts	.53	"	87.45	
180	" filbert nuts	.40	"	72.00	
150	" malted milk	.32	"	48.00	
8	gals. Root Beer	2.40	gal.	19.20	
50	lbs. Coffee	.45	lb.	22.50	
				$107.50	$102.50
80	lbs. French Fruits glace	.66	a lb.	52.00	
300	" Manilla paper	.35	"	105.00	
400	" Dipping paper	.40	"	160.00	
300	" sugar cream	.23	"	69.00	
7	gls. Marischino cherries	2.50	gal.	17.50	
30	lb. Nugent cream	.35	lb.	10.50	
2	cans Gumber Gum 20 lbs.	.33	"	13.20	
6	cases Pineapple	5.00	case	30.00	
1000	Charlotte Russe boxes			10.00	
17	Boxes of starch and candy	2.04	box	34.84	
4	Cases Canadian dry ginger ale			28.00	
10	Cherry Cherry smash	1.90	gal.	19.00	
40	Gals. Coco Cola	1.70	"	68.00	
65	5 lb. Candy boxes	2.40	box	156.00	
500	boxes 5 lbs. candy	2.40	"	1200.00	
	Wrapping paper			78.00	
75	boxes cherries on shelves			37.50	
200	" soda chocolates 1 lb.	.40	box	80.00	
25	1 lb. box almonds	.60	"	21.00	
40	lbs. 1 lb. boxes bon bons	.30	"	12.00	
300	1 lb. boxes Soda Milk choc.	.60	"	180.00	
25	boxes milk chocolate crackers	.60	"	15.00	
10	" 1 lb. nougatine chocolates	.40	lb.	4.00	
10	1 lb. boxes peanut clusters	.30	"	3.00	
20	1 lb. " caramels	.40	"	8.00	
50	boxes 1 lb. Brazilian nuts	.70	box	35.00	
	In Show Case				
42	2 lb. boxes chocolates	1.45	a box	55.25	
100	" assorted choco. 1 lb.	.65	" Perrys	65.00	
120	1 lb. " Ferrys 1.05 a box	1.05	"	126.00	
75	Schrafts 1 lb. boxes	.63		45.25	
20	1 lb. Boxes Pag & Shaw boxes	.75		15.00	
20	boxes Park & Tilford chocolates	.65	"	13.00	
12	5 lb. boxes Melton candy	3.05	"	36.60	
15	2 " " " "	1.75	"	36.20	
130	1 " " Nuts & Fruits Melton	1.05		136.50	
50	1 " " Anderson & Peterson	1.05	"	52.50	
655	1 " " Silk	4.25	a pc.	255.50	
9	5 " Japanese baskets	4.50	ea.	39.50	
12	boxes 2 lb. cherries	1.85	a box	22.30	

In the Stock Empty Boxes

1500	boxes empty milk choc.	.04	ea.	60.00
2000	" cherry boxes	.06½	"	130.00
2000	" old fashioned creams	.04	"	80.00
1000	" caralem	.04	"	40.00
2000	" plain	.02½	"	50.00
1000	" peanut brittle			24.00
5	boxes dates			27.00
600	" Glucose	.04		24.00
1	bbl. marshmellows			32.00
30	lb. cream caramel	.04	a lb.	12.00
20	gal. Maraschino cherries	2.50	a gal.	50.00
	Fancy ribbons used for candy boxes			300.00
60	lbs. tin foil	.60	a lb.	36.00
100	" wax paper	.35		35.00
50	bags Ice Cream sock salt	1.20		60.00
27	Fancy empty candy boxes	.18		4.86
38	Empty cherry boxes	.07		2.66
10	Bunnies	.40		4.00
10	Large fancy empty boxes	.30		3.00
5	Assorted lacquered empty boxes	1.25		6.25
Lot 1	60 fancy empty boxes	.18		10.80
2	50 plain empty "	.04		2.00
	40 asst. Fancy "	.17		6.80
	6 round empty "	.14		.84
	21 cream " "	.04½		.85
	36 empty caramel boxes	.04		1.44
70	70 " chocolate boxes	.07		4.90
	2 rolls fancy wrapping paper	5.00		5.00
Lot 3	75 empty boxes	.04½		3.38
" 4	40 assorted empty boxes	.04½		1.80
" 5	60 empty boxes	.04		3.20
" 6	40 boxes of asst. choc. 1 lb.	.40		16.00
" 7	23 " milk choc. 1 lb.	.55		12.65
" 8	18 1-lb. boxes peanut cluster	.30		5.40
" 9	2 lb. Melton choc.	.40		.80
" 10	8 " Peanut clusters	.30		2.40
" 11	6 boxes of choc. cakes	.50		3.00
" 12	17 " creams	.40		6.80
	2 lb. coated almonds	.50		1.00
	Assorted candy bags	8.00		8.00
	15 empty cherry boxes	.07		1.05
	12 " "	.17		2.04
	26 " cream "	.04½		1.17
	5 salted peanuts	.30		1.50
	3 lbs. chocolate	.40		1.20
	4 boxes jelly spicies	1.25		5.00
	5 fancy empty boxes	.20		1.00

On Top of Candy Case

15	boxes assorted chocolates 70 lb.	.40		28.00

In Case			
5	trays of cocoanut 25 lb.	.50	12.50
5	lb. of wafers	.40	2.00
6	" Raspberry	.40	2.40
5	" Marrow Powell choc.	.40	2.00
5	" Lemon cream	.40	2.00
5	" Maple "	.40	2.00
4	" Choco. Caramels	.40	1.60
5	" Peppermint creams	.40	2.00
6	" Italian Creams	.40	2.40
6	" Orange creams	.40	2.40
8	" Brazilian nuts	.70	5.60
10	" Chocolate peppermints	.40	4.00
Second Row			
8	lbs. choc. chips	.40	3.20
8	" peanut clusters	.30	2.40
8	" cocoanut cream rolls	.40	3.20
6	" Butter cream rolls	.50	3.00
8	" Raisin cluster	.30	2.40
7	" Chocolate crackers	.50	3.50
5	" Maraschino choc.	.60	3.00
2	" Creams	.40	.80
10	" Milk Chocolate caramels	.40	4.00
3	" Peppermints	.40	1.20
8	" Marshmallow	.50	4.00
8	" Milk Choc. Filberts	.60	4.80
10	" Pecans	.80	8.00
4	" Brazilian nuts	.70	2.80
5	" Walnuts	.80	4.00
10	" Choc. almonds s	.60	6.00
Bottom Row			
10	lb. broken choc.	.28	2.80
10	" brazilian nuts	.80	8.00
2	" Chicken corn	.28	.56
5	" Gum drops	.30	1.50
8	" spiced gum drops	.30	2.40
8	" Choc. peppermint	.40	3.20
5	" Gum drops	.30	1.50
8	" spiced strings	.30	2.40
4	" licorice gum drops	.30	1.20
8	" lafayette mixture	.35	2.80
2	" Perfections	.30	.60
6	" wafers	.25	1.50
5	" choc. peppermints	.40	2.00
25	" mixed French	.30	5.00
Center Case			
	Assorted candies		2.50
Front Case			
3	lb. chocolates	.50	1.50
1	" schrafts	.85	.85
5	" wax paper	.30	1.50

On Top of Case			
4	doz. sky rockets	1.00	4.00
2	lb. choc.	.40	.80
8	rolls of crochet	.06	.48
Underneath Case			
	lot of pastry boxes		10.00
2	rolls of paper	3.50	7.00
In Window			
2	lb. peanut clusters	.34	.68
11	" boxes caramels	.44	4.84
20	" " creams	.44	8.80
2	" " asstd. choco.	.75	1.50
6	" " " "	.80	4.80
1	" " nuts & fruits	1.25	1.25
3	2 lb. Boxes nuts & fruits	1.65	4.95
18	fancy empty boxes	.18	3.24
2	2 lb. asst. empty boxes	.36	.72
90	empty boxes	.04	3.60
On Soda Fountain			
27	lb. of asst. choc.	.75	20.75
1	gal. of birchola syrup	1.25	1.25
1	" cherry smash	1.25	1.25
42	molasses bars	.03½	1.47
43	nougatine "	.03½	1.51
1	lb. asst. choc.	.40	.40
2	" salted peanuts	.30	.60
½	lb. peppermint	.30	.15
60	" peanut brittle	.15	9.00
30	" of malted milk taffee	.23	6.90
4	" lemon drops	.30	1.20
2	" butter scotch	.30	.60
100	gal. ice cream	1.25	125.00
In Soda Fountain			
11	bottles ginger ale	.14	1.54
1	qt. whipped cream	.70	.70
3	" vanilla syrup	.40	1.20
4	" chocolate	.40	1.60
3	" Orange	.40	1.20
3	" Hot chocolate	.50	1.50
2	" Pineapple fruit	.75	1.50
2	" Strawberry	.50	1.00
20	" Seely Soda Water	.14	2.80
On Back of Soda Fountain			
18	empty fancy boxes	.18	3.24
15	" cherry "	.07	1.05
24	" " "	.04	.96
9	bottles of Moxie	.20	1.80
5	oranges	.05	.25
20	large bottle canadian dry	.14	2.80
6	small " " "	.07	.42
2	" color	1.25	1.25

4	bottles Tomato Boullon		1.20	5.00
10	lb. cream thickening		.54	5.40
1	gal. cocoa cola syrup		1.60	1.60
2	qt. Vanilla		.40	.80
3	gal. cherry smash		1.90	5.70
½	" coffee flavor		10.00	10.00
2	qt. Vanilla		.40	.80
1	gal. hot choc.		1.00	1.00
5	" green cherries		3.25	16.25
½	" strawberry		1.00	.50
1	" caramel		1.25	1.25
1	" cherry smash		1.90	1.90
6	bottles grape juice		.33	1.98
4	" " " large		.65	2.60
2	lb. Pecans		.30	.60
5	bottles ginger ale		.16	.70
1	lb. pecans			.95
1	qt. cherries			.60
1	" fruit salad		.75	.75
1	" butter scotch			.65
2	" fudge		.55	1.10
2	" caramel		.55	1.10
1	" pineapple			.55
5	empty boxes		.17	.85
42	" cherry boxes		.07	2.94
126	" ice cream "		.45	.45
1	case tea			6.00
2	lb. coffee		.50	1.00
1	lb. tea			.45

In Back Room

20	lb. sugar		.07	1.40
1000	napkins		2.74	2.75
26	empty fancy boxes		.17	4.42

Kitchen			Value	Loss
	Ice Box full of cooked food		20.00	
	Raw eatables		25.00	

Stock in Cellar

1	bbl. 100 lb. gold dust	.05½	½ bbl.	5.50	2.50	1.25
4	doz. Seelys Soda			1.68		
1	can polish			1.65		
20	qts. heavy cream	.70		14.00	14.00	14.00
40	" milk	.10		4.00	4.—	4.—
150	lb. sugar	.07		10.50	6.—	3.—
5	boxes dates 350 lb.	.08		28.00	20.—	20.—
300	lb. glucose	.01½		13.50	10.—	10.—
1	bbl. marshmallow			27.00		
30	lbs. cream mallow	.44		13.20	$56.50	$52.25
30	" caramel cream	.40		12.00		
100	lb. tub shredded cocoanut	.18		18.00		
6	gal. cherries	2.50		15.00		

50	lb. sugar cream	.23	11.50	
7	gal. dry cherries		15.00	
10	lb. Mexican kisses	.23	2.30	
30	" Nougatine cream	.35	10.50	
1	case ginger ale		1.80	
40	lb. almonds paste in 2 cans	.45	18.00	

In Back Room

Side Wall

				S. V.	Loss
11	bundles of boxes 60 each 660	.04½	29.70	29.70	14.85
130	boxes	.04½	4.60	4.—	2.—
2	cans gumbert gum 20 lb.	.33	6.60	6.60	3.30
31	" of pineapple	.75	23.75	23.75	5.81

On Table

700	charlotte russe boxes	.01	7.00	7.—	3.50
100	empty candy boxes	.04½	4.50	4.—	2.—
180	ice cream boxes	.04	7.20	7.—	2.—

Under Table

2	cases chocolate 200 lb.	.26	2.00	25.—	12.50—
17	boxes of starch and candy	2.04	34.68	34.—	17.—
1	large case 300 lb. starch	.06	18.00	18.—	....
4	bundles of qt. ice cream boxes	6.25	25.00	20.—	10.—
30	" of bags 16000	1.25	18.75	15.—	7.50
100	lbs. of cocoa in 2 bbl.	.23	23.00	12.—	6.—
6	cans spinach	.37	1.62		
30	lbs. kisses paper	.30	9.00		
2	gal. root beer	2.40	4.80		

3rd Room

25	lb. caramel candy	.50	17.50		
330	empty candy boxes	.04	12.50		
80	" cherry "	.07	5.60		
120	" brittle "	.02½	3.00	24.—	12.—
52	containers	.03	1.56		
4	gal. cherry smash	1.90	7.60		
20	lbs. starch	.06	1.20		

Under Counter

35	lbs. choc.	.26	6.50	3.—	1.50
10	" ginger	.40	4.00	....	....
5000	paper napkins		13.00	10.—	5.—
15	lbs. prunes	.25	3.75	....	....
450	empty boxes	.04½	20.25	20.—	10.—
10	lb. cocoanut	.14	1.40	....	....
60	empty choc. boxes	.10	6.00	....	....
15	lb. wrapping paper	.10	1.50	1.—	1.—
	Easter grass & baskets		10.00	....	....
2000	bags	1.65 M	3.30	3.—OK	....
1	lot easter floss		10.00	10.—OK	....
2000	folding boxes	2.50	5.00	5.—	2.50
2000	pt. ice cream boxes	6.50	13.00	6.—	3.—
3000	qt. " " "	9.00	18.00	6.—	3.—

3000	½ pt. ice cream boxes	5.50	11.00	5.—	2.50
100	empty candy boxes	.03	3.00	3.—	3.—
800	" " "	.04	32.00	10.—	5.—
100	sheets of wax paper	.10	10.00	10.—	5.—
260	empty carmel boxes	.04	10.40	10.—	5.—
60	" " "	.03	1.80	....	....
1	easter baskets		15.00	5.—	2.50
20	boxes of straws	.45	9.00	9.—	3.—
				344.55	140.45

S. V.	Loss
107.50	102.50
56.50	52.50
344.55	140.45
508.55	$295.45

MELTON BROS. INC.
620 WASHINGTON ST.
Hoboken, New Jersey.

2	6 silk flags	7.00 ea.	42.00	10.00 T	10.00	
2	3 small "	3.00 "	6.00	2.00 T	2.—	
	2 window draperies embroidered	Small piece of velvet	50.00	10.— ½	5.—	
	books	ref	20.00	....	....	
	marble trays 6 doz.	35.00 a doz.	210.00	....	....	
	show stands 3 "	18.00 2 "	54.00			
	3 pr. shoes		15.00			
	3 lady's sweater		8.00			10
	1 man's coat		4.00			
	2 men's suits	127.	80.00			
	1 pr. lady's shoes		6.00			
	4 lady's aprons		6.00			
	2 men's hats		8.00			
	3 doz. silver cups 21 only	18.00 doz.	54.00	21.00 ½	10.50	
	1 " " " 7 "		26.00	10.50 "	5.25	
	2 malted machines	15.00 ea.	30.00	20.— "	10.—	
	3 doz. candy jars 16 OK. 4 broken		64.00	20.— ¼	5.—	
	1 typewriter machine royal very old		104.00	20.— T	20.—	
	4 doz. glass holders 25 only	18.00 doz.	72.00	25.— ½	12.50	
	6 " Soda spoons 3 Dz.		21.00	10.— ½	5.—	
	6 fruit jars	2.50 ea.	15.00	6.— T	6.—	
	1 Aeroplane Fan		75.00	35.—2/3	25.—	20
	1 Large Fudge Melter		25.00	10.—	5.—	
	1 small fudge "		18.00	10.—	5.—	
	36 electric bulbs	1.25 ea.	45.00	9.—	9.—	
	Labor for painting & repairing		750.00	....	....	
	6 pr. lace curtains on windows		45.00	9.—	9.—	
	5 window shades		25.00	5.—	5.—	
	1 installation of dumbwaiter repairing		105.00	10.—	10.—	
	1 hang scale in cellar		16.00	6.—	2.—	
	1 large standing scale in cellar		27.00	15.—	5.—	
	3 coffee urns		145.00	90.—	15.—	
	4 pairs scissors	1.50 ea.	6.00	....	....	
	Stationery and stamps		85.00	10.—	10.—	
	Hand made embroidery for wall		30.00	....	....	30
	19 pcs. silk cloth for show cases and windows		161.00	....	....	
	8 globes with chandelier	13.00 ea.	104.00	24.—	24.—	
	1 Big sign outside of building		150.00	50.—	24.—	
	Lettering on window		140.00	10.—	10.—	
	5 locks for the store		12.00	6.—	6.—	
	Assorted tools for carpentry		73.00	....	....	
	4 kettles cooking cans copper		175.00	80.—	....	
	4 gas radiators		240.00	120.00	....	
	3 plants	5.00	15.00	....	....	
	1 Piano electric second hand		450.00	100.—	50.—	
	6 small plants	10.00	60.00	....	10.—	
400	sign strips fuel	.10	40.00	10.—	....	
	1 mirror in doorway and hallway		10.00	5.—	5.—	
	10 doz. rubber stands		12.00	....	....	40
				$768.50	$295.75	

KITCHEN WITH ALL EQUIPMENTS AS FOLLOWS:

	2	Art plants archway	15.00	30.00	....	....
		Gas stove		135.00	60.—	10.—
		Silverware Spoons etc		210.00	30.—	30.—
		Cutlery		75.00	10.—	10.—
		Steam Table		105.00	50.—	10.—
		Ice Box		32.00	15.—	5.—
		Stock Table		18.00	10.—	2.—
		Pots and Pans		100.00	50.—	10.—
		Kitchen knives		45.00	10.—	3.—
		Dishes china		150.00	50.—	20.—
		Electric toasters		35.00	15.—	5.—
10		Waffle gridle		65.00	15.—	5.—
		Plumbing and installation		1600.00		
		Second hand oven		185.00	75.—	10.—
		Pastry shop equipment		850.00	....	....
	1	Carbonated machine		135.00	75.—	15.—
	1	ice crusher		112.00	75.—	10.—
	1	stand for dippers		18.00	....	....
	1	small show case curved glass 6 ft. long		47.50	30.—	10.—
	1	show case standing 9 ft. long		70.00	54.—	10.—
		Labor carpenter 2 rooms pastry and a kitchen		1850.00	....	....
		Electric motor for chocolate dipping		135.00	60.—	10.—
		small table		13.00	10.—	3.—
	1	electric gas stove for mfg. candy		129.00	....	
20	1	marble black and gold used for dipping		34.00	....	
	2	kettles for melting choc.		24.00	....	
	4	double kettles all sizes		24.00	....	
	1	slab marble with table		94.00	....	
	1	ice cream machine		450.00	....	
		electric repairs and installation for store		1100.00	....	
		all different candy machines, all sizes		221.00	....	
	2	ice boxes		215.00	60.—	20.—

IN STORE

	3	ceiling fans		65.00 ea.	195.00	30.—	20.—
	2	rugs not found could not burn		75.00 "	150.00	....	....
	1	lemon squeezer			6.00	3.—	1.—
	10	ice cream		1.65	16.50	5.—	5.—
30	2	silvered candy stands		2.00	4.00	....	....
	1	doz. large sundae cups	8 only	18.00	18.00	8.—	4.—
	3	qt. measures		1.00	3.00	2.—	1.—
	16	holders		1.00	16.00	....	
	1	ice cream whipper			1.50	....	
	1	doz. large holders soda glass		26.00	(26.00)		
	1-1/3	" small " " "		18.00	(24.00)		
	6	glass candy trays		.50	(3.00)		
	1	" bowl			1.50		
	1	doz. banana split cups	3 only		26.00	4.—	2.—
	36	hot chocolate cups	14 "	.35 ea.	12.60	1.50	1.50
	15	doz. drinking glasses		1.25 a doz.	18.75	5.—	5.—
	50	saucers	22 "	.20	10.00	4.—	4.—
	2½	doz. Nonick glasses		1.65	4.12	....	....
40	18	glass stands	11 "	2.00 ea.	36.00	11.—	11.—

	2	nickel jars and covers		5.00		10.00	....	
	1	Birchola machine				5.00	....	
	1	cherry smash machine				5.00	....	
	14	Ice cream measures		1.75		24.50	....	
	9	" " dippers	4 only	.90		8.10	3.—	3.—
	1	gas burner				1.00	....	
	16	holders		18.00 a doz.		22.50	....	
	1	doz. small holders	4 only	12.00		12.00	2.—	2.—
	1	ice cream hook		.75		.75	....	
	14	large fruit spoons				14.00	....	
	3	spoon holders		1.00 ea.		3.00	....	
	7	tea pots		.65		4.55	....	
	6	baby spoons		.20		1.20	....	
	3	doz. large glass stands	25 only	6.00		18.00	12.50	6.25
							$845.—	$258.75
	1	safe				75.00	50.—	5.—
	1	desk on safe				7.00	4.—	4.—
	54	dandy trays	18 only	1.25 ea.		67.50	18.—	9.—
	15	napkin holders		1.25		18.75	....	....

CELLAR

		Rear dumbwaiter	repair			100.00	40.—	40.—
		14 ft. counter				55.00	15.—	15.—
	2	20 gal. tanks		12.00 ea.		24.00	20.—	....
	26	10 " Ice cream cans			X	156.00	106.—	26.—
	1	cooking pot				16.00	....	....
	3	large ice cream brick cans		9.00		27.00	15.—	6.—
	30	covers for cans		1.00		30.00	30.—	5.—
	4	5 gal. ice cream cans		3.00		12.00	5.—	....
	1	Arch on stairway				40.00	10.—	10.—
	4	thermometers		4.00		16.00	15.—	5.—

2ND ROW

1	lemon crush machine			5.00	2.—	1.—	
1	large carmel tray			5.00	2.—	1.—	
1	electric globe			3.00	2.—	2.—	
8	candy trays		1.00	8.00	4.—	4.—	
12	elec. drop fixtures		4.00	48.00	12.—	12.—	
1	walnut crusher			8.00	....		
2	drop lamp fixtures		14.00	28.00	....		
4	doz. red globes		9.00	36.00	....		30
1	large glass jar & cover			5.00	....		
12	reflectors		4.00	48.00	12.—	6.—	
1	orangeade cooler			15.00	10.—	3.—	
2	fancy globes		3.00	6.00	....		
1	large pan			5.00	....		
4	brick forms		1.25	5.00	....		
5	mahogany panels		1.50	7.50	....		
2	Ice cream freezers		20.00	40.00	20.—	5.—	
1	" " whipper			9.00	8.—	1.—	
12	glass trays for pastry		7.00	84.00	24.—	24.—	
2	doz. sundae cups	8 only	24.00	48.00	8.—	8.—	
6	" monick glasses		1.75	10.50	....		
6	punch bowls		5.50	33.00	....		40

5	glass stands		3.50	17.50	7.50	7.50
6	doz. coco cola glasses	3 doz. only	1.40	8.40	3.—	3.—
9	" Soda glasses	3 " "	1.20	10.80	3.—	3.—
	Candy Molds			20.00	15.—	5.—
1	copper kettle			5.00	....	
1	cylinder			7.00	....	
1	rooster			1.50	....	
1	pot			1.50	....	
2	electric fans		35.00	70.00	20.—	10.—
1	3-burner gas stove			10.00	3.—	1.—
10	glass trays		.50	5.00	....	
3	candy "		1.25	3.75	....	
1	large door spring			4.50	2.—	
4	glass jars			8.00	....	
5	pie plates			2.50	....	
1	dish carrier			7.50	2.—	1.—
1	box of glasses			15.00	5.—	1.—
2	bbl. dishes		35.00	70.00	20.—	
1	box glassware			15.00	....	
2	doz. holders		16.00	32.00	....	
4	cylinders		5.00	20.00	....	
1	Brick Ice Cream can			12.00	10.—	2.—
1	" " " machine			350.00	150.—	25.—
1	lisk pan			4.50	....	
	large glass show case			150.00	40.—	30.—
6	tables		20.00	120.00	48.—	24.—
3	screen doors		20.00	60.00	9.—	9.—
6	window screens		3.00	18.00	6.—	6.—
85	nickel candy trays	15 only	1.25	106.25	15.—	15.—
3	doz. nickel candy pans		51.00	153.00	....	....
	Metal Molds consisting of egg, rabbit, St. Claus			500.00	50.—	50.—
1	Ice House				100.—	50.—
					$940.50	$434.50

			S. V.	Loss
32	Ft. Slanting Tennessee marble Confectioner candy cases	1280.00	400.—	50.—
36	" Counter " base marble top	1080.00	600.—	100.—
8	" Fountain double Faucets and 2 6ft. metal trays drain	1500.00	500.—	75.—
36	" Rack Soda Fountain cooler lined & marble top	1080.00		
36	" Upper back fixtures & Mirrors and wall cases & Mirror back, mahog. frame work	1260.00	800.—	300.—
2	Doors and mirror also 1 mirror on side	125.00	50.—	25.—
34	Ft. Back candy fixture sliding doors on bottom	850.00	850.—	425.—
34	" " " " on top with frame & mirrors	1190.00		
18	Stools white enamel base, mahogany seat, nickel rim	180.00	100.—	25.—
38	Ft. Rail	36.00	15.—	10.—
1	Nat. Register from 1¢ to $1.00	125.00	100.—	25.—
1	" " " 1¢ to $3.00	150.00	100.—	25.—
1	Computing scale Toledo	125.00	75.—	15.—
2	Screens trims and mirrors & Arch of Mahog. frame with double face clock	650.00	300.—	150.—
78	ft. mirror panels 32' high mahog. woodwork & bottom panels $20.00 per ft.	1560.00	300.—	150.—
15	tables opal tops (side wind. with sash weights & Mir)	425.00		
2	window enc. 1 mirror 30x72 in ea. window and side	525.00		
60	Bentwood chairs	360.00	150.—	50.—
2	Ice cream boxes 10 holes	350.00		
16	ft. table candy	24.00		
2	Ice cream boxes	490.00	100.—	50.—
			$4440.—	$1475.—

RECAPITULATION.

	S. Val
Stock	13 217.99
F. F.	29 334.17
	42 552.16

S. V.	Loss
$768.50	$295.75
845.00	258.75
940.50	434.50
4440.00	1475.00
$6994.00	$2464.00

(In pencil on back—Weinstocks Claim Value.)

Exhibit D-7.

ESTIMATED VALUE & LOSS ON FURNITURE & FIXTURES OF MELTON BROS. INC.
620 WASHINGTON STREET HOBOKEN, N. J.

	STORE			*Value*	*Loss*
	31′ Silent show cases & counter marble base			$620.00	
	One plate glass	12″x 44″	$4.00		
	Two " "	20″x 36″	10.00		
	One " " top	16″x138″	16.00		
	Two " " shelves	14″x138″	30.00		
	15′ marble base		45.00		
	Cleaning up		20.00		$125.00
10	Candy & Soda counter marble top & base marble colored glass panels in front			640.00	
	Repair & refinish		175.00		
	Replace missing marble		75.00		250.00
	8′ Soda fountain, metal trays & fountain fixtures			500.00	
	Repairing		60.00		
	Replace fruit jars		15.00		
	Repair & refinish nickel fixtures		40.00		115.00
	36′ Wall fixtures, lower part drawers, candy compartments & sliding doors, upper part frames, columns & mirrors			1260.00	
20	One mirror	38″x50″	21.00		
	One "	50″x50″	27.00		
	One "	16″x50″	9.00		
	One "	50″x84″	45.00		
	One "	50″x50″	27.00		
	One "	50″x84″	45.00		
	One "	52″x64″	36.00		
	One "	30″x50″	15.00		
	4 Plate sliding doors	26″x54″	36.00		
	Marble work		75.00		
	Repair woodwork & refinish		150.00		486.00
	2 Side doors & trim & mirrors			70.00	
	One new door & repair one door		40.00		
30	Two mirrors		14.00		54.00
	30′ Wall fixture, lower part cooler compartments, hinged doors, upper part frames, columns & mirrors			1050.00	
	30′ New cornish		30.00		
	Repair woodwork on columns & etc.		75.00		
	Refinish		90.00		
	Four mirrors	26″x44″	48.00		
	Two "	16″x50″	18.00		
	Two "	50″x84″	90.00		
	Two "	16″x38″	14.00		
	One "	38″x50″	21.00		
	Four plate sliding doors	26″x54″	36.00		
40	Eight lights DT in two wall fixtures	6″x32″	4.00		
	30′ Marble top		90.00		
	12 Plate shelves in two wall fixtures		25.00		541.00
				4140.—	1571.—

STORE			*Value*	*Loss*	
			4140.—	1571.—	
18—Counter stools			$126.00		
Repair & clean up				$25.00	
36′ Pipe rail, repair 6 new brackets			20.00	15.00	
1—Cash Register			125.00		
Repairing & adjusting				35.00	
1—Cash Register			150.00		
Repairing & adjusting				25.00	
1—Toledo scale			75.00		
Repairing & adjusting				20.00	
2—Panelled screens & grill work & 2 faced clock in arch			400.00		10
Repair & refinish 2 panel screens		75.00			
New grill work on top		125.00			
1—2 faced clock		30.00		230.00	
2 Show window enclosures			337.00		
2—Mirrors	30″x72″	45.00			
3—Plate shelves	6″x72″	9.00			
4— " "	6″x30″	6.00			
Nickel plated brackets		5.00			
Resilver 2 mirrors	14″x60″	3.00			
4—Lights florentine	20″x28″	6.00			
2— " DT	20″x28″	3.00			
2— " plate	14″x60″	12.00			20
2— " "	58″x60″	48.00			
Repair & refinish woodwork		75.00		212.00	
1—7′ & 1—8′ Cream freezers			255.00		
Repair one		25.00			
One total loss		127.50		152.50	
4—Ceiling fans			140.00	110.00	
1—Safe			50.00	10.00	
Desk over safe			15.00	15.00	
1—Aeroplane fan			35.00	35.00	
Display stands			36.00	36.00	30
Globes & Chandeliers			75.00	75.00	
1—Sign outside of building			75.00	15.00	
Lettering on windows			50.00	50.00	
5—Locks on doors			10.00	10.00	
4—Gas radiators			100.00	20.00	
1—Mirror in hallway			10.00	10.00	
SIDE KITCHEN					
1—Ice box			15.00	15.00	
2—Small tables			16.00	16.00	
1—Gas range			25.00	5.00	
			6280.—	2707.50	
					40

			Value	*Los.*
PARLOR				
			6280.—	2707.50
78'—Wall panel			$780.00	
Repair woodwork		40.00		
Refinish		120.00		
1—Mirror	32″x70″	24.00		
1— “	36″x44″	21.50		
1— “	18″x32″	6.00		
1— “	10″x32″	4.50		
1— “	32″x54″	18.00		
1— “	14″x34″	6.00		
1— “	60″x84″	52.50		
1— “	32″x74″	24.00		
1— “	32″x72″	24.00		
4—Plates painted pictures	40″x44″	80.00		
Resilver 1 mirror	32′x74″	4.00		
“ 2 “	14″x32″	2.00		
“ 1 “	32″x32″	2.00		
“ 2 “	32″x56″	6.25		434.75
18—Table marble tops			360.00	
Refinish 14 frames		14.00		
Repair 2 “		10.00		
2—New		20.00		
7—New marble tops	20″x36″	70.00		114.00
60—Bentwood chairs			180.00	
Repairing & refinishing		35.00		
Re-caning 22 chairs		22.00		57.00
12—Reflectors in show window			36.00	36.00
CELLAR				
2—Ice boxes very old			150.00	
Repairing				50.00
2—Tables			30.00	30.00
2—Marble tops			120.00	120.00
Plumbing & Installations			350.00	350.00
1—Oven			50.00	20.00
1—Carbonator machine			100.00	30.00
1—Ice crusher			75.00	25.00
Shelving			75.00	40.00
Partitions, Pantry & Kitchen			250.00	150.00
Electric motor			125.00	75.00
Small table			5.00	5.00
Electric stove for mnfg candy			125.00	25.00
1—Ice Cream machine			200.00	50.00

Electric wiring in store & cellar	150.00	150.00
Rear dumbwaiter	50.00	50.00
1—Counter	20.00	20.00
Arch on stairway	10.00	10.00
14—Drop cord fixtures	14.00	14.00
Large glass show case	50.00	50.00
2—Electric fans	40.00	40.00
6—Tables	60.00	30.00
3—Screen doors	9.00	9.00
6—Window screens	6.00	6.00
Ice House	150.00	75.00
	$9850.00	$4773.25
	979.10	535.90
	509.60	225.50
	463.50	202.50
	350.—	350.—
	$12152.20	$6087.15

Exhibit D-8.

AWARD IN DETAILS
ON MELTON BROS, 620
WASHINGTON ST
HOBOKEN N. J.

Identified
Stock in

			Value	Loss
Cellar	Front	$312,00	$312,00	$312.00
	Rear	525.86	525.86-65%	341.80

Unidentified

Front Cellar	(2000)—	$10,1,32.86			
Store Show Cases	(250)—	6.67.60			
		91.00			
		69.96			
On Top of Show case	(100)—	1,32.79			
On Fountain	(75)—	1,69.58			
in & on Back of Fountain	(50)—	85.63			
Back Room	(8.57)	8.57			
Kitchen	(45)—	45.00			
in Wall Cases	(600)—	9,61.00			
		1,32.79	3200.00	3200.00	
	3128.57				
	71.43				
	$3200.00	$12496.78	$4037.86	$3853.80	

NOTE!- all figures circled in ink are lead pencil markings on Exhibit.

Fixtures

On Articles Harrison Figured

Sound Value	Loss
$9,8,50.00	$4,7,73.25

On Articles Ginsburg Alowed

1,9,52.20	9,63.90			
Assured Claimed $1135.62 Which Could Not be Seen	3,50.00	3,50.00	12152.20	6087.15
			$16190.06	$9940.95

Conclusions.

IN CHANCERY OF NEW JERSEY.

Between
MELTON BROTHERS, Incorporated,
Complainants,

and

NEWARK FIRE INSURANCE CO.,
et als.,
Defendants.

} On Bill, etc.

For the Complainants, Messrs. KINKEAD & KLAUSNER;

For the Defendants, MR. A. T. VANDERBILT.

FALLON, V. C.:

At the conclusion of the hearing of the above entitled cause I decided that the award in question should be set aside for the reason that the umpire had prematurely assumed authority to act in the premises. Counsel for the defendants urges that, inasmuch as my decision does not find the umpire guilty of fraud, I should refer back to the appraisers and umpire the consideration of the amount of loss and damage which is the subject-matter of the controversy between the aforesaid parties. Counsel for complainants has urged that a new appraiser should be appointed by the insurance companies, and a new umpire appointed, either in accordance with the terms of the appraisal agreement, or by the court.

The insurance policy provides that the companies shall not be liable beyond the actual cash value of

the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate to be made by the insured and the company, or, if they differ, then by appraisers, as provided in said policy. The provision relating to disagreement between the parties is as follows: "In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expense of the appraisal and umpire."

The agreement for submission to the appraisers provides that the two appraisers shall first select a competent and disinterested person as umpire, and the said two appraisers together shall estimate and appraise the loss, stating separately sound value and damage *to each item*, and failing to agree, shall *submit their differences only* to the umpire; an award in writing, so itemized, of any two, when filed with the insurance companies, shall determine the amount of sound value and of loss or damage. The clause in the fire insurance policy provides that

the appraisers contemplated to be appointed thereunder shall submit their *differences* to the umpire. It will be observed that the word *only,* after the word *differences,* does not appear in the aforesaid clause of the insurance policy.

The agreement for submission to the appraisers Weinstock and Silverman was in substitution for the appraisement clause of the insurance policy, and, being somewhat different from it, in effect abrogated it. *Broadway Insurance Co.* v. *Doying, 54 N. J. L., 569, at p. 571.*

The proofs in the case indicate that neither Weinstock, the appraiser appointed by the insurance companies, nor Silverman, the appraiser appointed by the insured, performed the duties devolving upon them in the manner required of them. The umpire appears to have been imbued with the idea that he was warranted in determining the sound value of the property of the insured as well as the actual direct loss and damage caused thereto by fire, in disregard of the appraisers and their rights in the premises, and he assumed the right to perform that which he considered to be his duty in the premises, prior to having been advised that the appraisers were in disagreement as to the loss and/or damage suffered by the insured on the whole or part of the property insured, and prior to having been advised as to the differences (if any) of said appraisers. I was impressed, at the hearing of the cause, with the animus that appeared to me to exist as between Weinstock and Silverman (the appraisers), and Ginsberg (the umpire) and Silverman (one of the appraisers).

Ginsberg should not, in my judgment, be continued as umpire; and I am impressed with the advisability and propriety of the insurance company and

the insured selecting appraisers other than Weinstock and Silverman. If the matter should be referred back to the aforesaid appraisers and umpire, I am constrained to believe, from what I observed of their demeanor as they testified in court, and the testimony given by them, that neither the company nor the insured could reasonably expect to obtain from them such an unbiased judgment as should be expected of them. No person who has formed an opinion, or is not open-minded in respect to the subject-matter submitted to him for consideration and determination, should be permitted to serve either as appraiser or umpire. While I cannot adjudge, from the proofs in this case, that either of the appraisers or the umpire acted in a fraudulent manner, nevertheless, each of them, in my judgment, acted in an injudicious manner; they manifested little regard of the importance of the duty entrusted to them, and Weinstock and Ginsberg exhibited such an acrimonious disposition of hostility towards Silverman, the latter exhibiting a like feeling toward them, that a fair, unbiased determination may not now, in my judgment, be expected of any of them. The animus and acrimony to which I have adverted was particularly patent to me from their mannerism while testifying. As stated by me at the conclusion of the hearing, the umpire unwarrantably assumed the right to enter upon a consideration and determination of the subject-matter of the appraisal agreement before it was time for him to do so; his testimony, as well as the testimony of the two appraisers, evidences that neither of said parties assumed their responsibilities with that degree of seriousness which they, who were called upon to perform a quasi-judicial function, should have manifested. To properly perform

the duties devolving upon them, the appraisers and umpire should be free from the implication or innuendo of bias against either party to the controversy, *and against each other,* or of having formed an opinion in other than a judicious manner; they should be open-minded, substantially indifferent in thought and feeling toward the parties, and toward each other, and without bias.

The policy of insurance does not require that the appraisers shall concur in summoning the umpire to settle their differences, but, whenever, in fact, a disagreement arose between them, and such disagreement was made known to the umpire, the latter became qualified to act as to "differences only" between the appraisers, and, with either of the appraisers, might make a valid appraisement of the matter on which the appraisers were in disagreement. *Broadway Insurance Co.* v. *Doying, supra, at pp. 572, 573.*

The agreement for submission to the appraisers provides that the appraisers therein named shall select a competent and *disinterested* person to act as umpire. In my judgment, an umpire, to be *disinterested,* should be impartial and open-minded. It would be futile to expect Umpire Ginsberg (if the matter were referred back to him) to be impartial and open-minded, inasmuch as he has heretofore (as he says) made a full and fair investigation of the subject matter and formed his conclusions thereon. He could not reasonably be expected to apply himself anew to the matter which may be submitted to him to be acted upon *judiciously* and form a conclusion differing from that which he heretofore formed.

Appraiser Weinstock did not, *together* with Appraiser Silverman, estimate and appraise the loss, stating separately sound value and damage *to each*

item; nor did Appraiser Silverman, *together* with Appraiser Weinstock, make such estimate and appraisal. Both agreed on *some* items, but they had not concluded their endeavors with a view of agreement upon all matters to be considered by them, when umpire, as hereinbefore stated, took it upon himself to assume authority to estimate and appraise the loss on his own account; but even the umpire neglected to state separately sound value and damage *to each item.* The umpire relied considerably upon the work performed by Appraiser Weinstock, crude though it was. Where an umpire exceeds his authority, the effect of his act is the same whether it was done consciously or by mistake, as, in either case, his award is void. *Dennis* v. *Standard Fire Ins. Co., 90 N. J. Eq. 419, at p. 422 (Citing Royse's Adm'r* v. *McCall, 5 Bush, 695).* Manifestly, the words "differences only," as used in the agreement for submission to the appraisers, mean matters the appraisers were unable to agree upon, and until their disagreement is made known to the umpire, the latter is without authority to act. The umpire did not confine himself to the determination of "differences only" of the appraisers, and therefore his signature to the award is without vitality. *Collings Carriage Co.* v. *German American Ins. Co., 86 N. J. Eq., 53.*

While both appraisers were not required to attend with or before the umpire after such appraisers disagreed, if such were the fact, *(American Central Ins. Co.* v. *Landau, 62 N. J. Eq., 75, at p. 100),* nevertheless, the umpire should have definitely ascertained from the appraisers the matters as to which they were in disagreement. The appraisers severally, and the umpire, differed radically as to the principle upon which the loss should be ascer-

Conclusions.

tained. Counsel for the Insurance Company argued that the method followed by Appraiser Weinstock and Umpire Ginsberg was in accordance with the requirement of the policy and of the agreement for submission to the appraisers. It appears, however, that said appraiser and umpire did not state separately sound value and damage *to each item* of property constituting the loss, and consequently the amount of sound value and of loss or damage to each item was not ascertained by said appraiser and umpire "according to the actual cash value of the said property at the time of the occurrence of said fire with proper deductions for depreciation, however caused." The award signed by Appraiser Weinstock and Umpire Ginsberg states that they had appraised and determined the actual cash value "of each item of said property on the 15th day of December, 1925, and the actual direct loss and damage thereto by the fire on that day to be as follows: (See itemized schedule attached hereto) to wit:"; *but no itemized schedule was attached to the award,* nor was any itemized schedule prepared by said parties.

If the complainant and defendants do not coincide with my view that a new agreement for submission to appraisers should be entered into, in lieu of the one heretofore entered into between the parties, designating therein appraisers other than Weinstock and Silverman, which new appraisers, by the express terms of the agreement, will be required, before entering upon the performance of their duties, to "first select a competent and disinterested person who shall act as umpire," counsel for the respective parties may advise me thereof, and I will then advise such order as I may deem appropriate in the premises.

Dated, Hoboken, N. J., Dec. 1, 1927.

17 OCT.1.1928 18 OCT.1.1928

New Jersey Court of Errors and Appeals

Between
MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants-Respondents,
and
PHILADELPHIA FIRE & MARINE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

Between
MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants-Respondents,
and
GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

Between
MELTON BROS., INC., a corporation,
Complainant-Respondent,
and
NEWARK FIRE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

On Appeal from Court of Chancery.

APPELLANTS' BRIEF.

Statement of the Case.

Three separate suits in Chancery were begun by complainant, Melton Bros., Inc., which, for the

purpose of argument before this Court, have by stipulation of counsel been consolidated.

Defendants, prior to December 15, 1925, issued to complainant policies insuring complainant against loss or damage by fire to complainant's stock, and store furniture and fixtures contained in the building located at 620 Washington Street, Hoboken, New Jersey.

On December 15, 1925, complainant suffered a loss by fire, and pursuant to the provisions of the policies, (S. C. p. 314-315) complainant and defendants entered into an appraisal agreement (S. C. p. 316). By this agreement complainant designated S. Walter Silverman as its appraiser and defendants designated Davis Weinstock as their appraiser. The appraisal agreement referred to the appraisers the determination of the sound value and loss to the items of the insured property as particularly described in the policies, and authorized them to appoint an umpire to whom they were to submit their differences, but all questions of legal liability arising out of any of the provisions or conditions of the policies were specifically reserved. (S. C. p. 317, ll. 12-17)

On April 10, 1926, the appraisers agreed upon Bernard Ginsberg as umpire. (S. C. p. 318, ll. 1-10) Since the assured was under obligation to vacate the premises by May 1, the assured's appraiser was anxious to have the appraisal completed expeditiously. Mr. Weinstock testified that on the same day that the umpire was agreed upon, he and Mr. Silverman, the appraiser for the assured, made an examination of the loss, and that owing to the fact that the inventory made up by the assured and upon which Mr. Silverman relied designated a great number of articles which he could not identify, he and Mr. Silverman dis-

agreed as to the basis of appraisal. (S. C. p. 145, l. 25 to p. 148, l. 5)

The appraiser for the assured arranged to meet the appraiser for defendants at his office the next day for the purpose of producing bills showing assured's purchases over a period of time, as a means of arriving at the quantity of merchandise in the store at the time of the fire. The bills which were produced at this meeting showed purchases averaging only $1000. per month, and the appraiser for defendants could not, therefore, agree with the figure of $5948.10 which the appraiser for the assured claimed represented the value of the stock. The appraisers then agreed to call in the umpire. (S. C. p. 148, ll. 6-36)

The next day, April 12, 1926, the umpire accompanied the appraisers to the scene of the loss and also to a storage place to which some of the property involved in the fire had been moved. The appraisers and the umpire made a general survey of the property and checked the quantities indicated on the inventory.

Between April 12 and April 28, 1926, the two appraisers met a number of times independently of the umpire, but they failed to come to any agreement with respect to sound value and loss. They arranged to meet at the office of the umpire on April 28th. The household furniture loss which had been referred to the same appraisers was taken up first, the umpire resolved the disparity between the figures of the two appraisers, and an award was signed by all three on the basis of the umpire's estimate of sound value and loss. (Exhibit D-4, S. C. p. 381)

Thereafter, the loss on stock and store furniture and fixtures was taken up, and an award was signed by the defendants' appraiser and the umpire pursuant to the provision of the appraisal agree-

ment which made the award of any two binding. (Ex. D-5, p. 382) The appraiser for the assured testified that he refused to join in this award because he said the umpire was not impartial, and there had as yet been no disagreement between the appraisers.

The assured immediately learned of the award from Mr. Silverman and consulted its attorney. Shortly after the award of April 28, 1926, the assured sold the remains of the property damaged by the fire. Complainant thereafter made no demand for a new appraisal and took no steps to have the award set aside until January 28, 1927, nine months later, when the bills in these suits were filed.

The Vice-Chancellor at the conclusion of the hearing expressly found that the umpire had not been guilty of any fraud, but that he had merely acted prematurely because the appraisers had not disagreed item by item. Accordingly, counsel for defendants-appellants suggested that the matter be referred back to the appraisers, together with the court's opinion concerning their procedure, and the learned Vice-Chancellor agreed that in the absence of a finding of fraud or partiality the labor of these men who, in view of the dispersal of the goods, were better qualified to dispose of this matter than any others, should not go for nought. (S. C. p. 295, l. 37 to p. 296, l. 35).

Counsel for complainant-respondent urged that much ill-feeling had been stirred up between the appraisers and the umpire at the trial of these cases, and that the parties should, therefore, be directed by the court to enter into a new appraisal agreement appointing different appraisers and a new umpire.

The Court, on December 1, 1927, filed Conclusions (S. C. p. 402-408) directing the parties to enter into a new appraisal agreement, or the Court, in the alternative, would advise an appropriate decree. Defendants refused to enter into a new appraisal agreement because the lapse of over a year and a half since the original award and the dispersal of the property damaged by the fire rendered it impossible for new appraisers to make an intelligent appraisal. The lower Court thereupon entered a final decree holding the award of April 28, 1926 void, and enjoining defendants from setting up in the actions at law previously begun by the assured any defense based on the appraisal provisions of the policies, (S. C. pp. 42-43).

Specification of Grounds of Appeal.

Appellants rely on the following grounds of appeal:

1. The Court erred in finding that the allegations of laches and estoppel respectively urged by the defendant against the complainants were not substantiated by the defendant.

2. The Court below erred in finding that the appraisers did not perform the duties devolving upon them under the aforesaid award.

3. The Court below erred in finding that the umpire acted unwarrantably and prematurely under said appraisal agreement.

4. The Court below erred in finding that the appraiser Davis Weinstock and the umpire Bernard Ginsberg did not properly appraise sound value and loss to the property involved in the fire, and that they did not make a proper award under the aforesaid appraisal agreement and the appraisal clause in the policy.

5. The Court below erred in finding that said appraisers and umpire acted in an injudicious manner.

6. The Court erred in finding the award aforesaid void.

7. The Court below erred in finding that the agreement of April 6, 1926, abrogated the appraisal clause contained in said policy of insurance and in finding the aforesaid agreement of April 6, 1926, and the award made thereunder inoperative as against aforesaid complainants in such suit at law as now pending between complainants and defendant, based upon the policy of insurance aforesaid or any suit at law or in equity hereafter instituted by the complainants against the defendant upon said policy.

ARGUMENT.

POINT I.

Complainant-Respondent having failed to repudiate the award and demand a reappraisal within a reasonable time, and having sold the damaged property, so changed the status quo as to be estopped from attacking the validity of the award nine months after its rendition.

Mr. Silverman, the appraiser for the assured, testified that he explained to Mr. Anthony Melton, President of Melton Bros., Inc., the entire situation on April 29, 1926, the day after the award was made, (S. C. p. 115, ll. 10-13) and told him to take steps to have the award set aside (S. C. p. 114, ll. 20-25).

Anthony Melton testified that he consulted his attorneys a few days after the award and told his attorneys to bring suit to set aside the award, (S. C. p. 77, ll. 6-20; p. 78, l. 4 to p. 79, l. 10).

He testified also that shortly after the making of the award, he sold the remains of the fixtures and stock, (S. C. p. 71, ll. 15-20). He admitted that he never wrote the insurance companies that he refused to accept the award, (S. C. p. 77, ll. 20-22).

Complainant's attorneys on May 11th and May 18th, wrote to defendants' adjuster threatening legal action, (S. C. pp. 328-329) and several other letters passed between the parties and their representatives (S. C. pp. 330-349), but in none of these is there a word suggesting that the award was invalid or requesting a re-appraisal of the loss.

Complainant did nothing further to fulfill its

obligations under the appraisal provision of the policy (S. C. pp. 314-315), and it is only when defendants in the suits at law commenced by the assured filed answers setting up that the award adjudicated the amount of the loss, that complainant brought bills in Chancery to have the award declared illegal and void.

The policies involved in this case are in the standard form, and the pertinent provisions read as follows:

> "In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire."

> "This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, *including an award by appraisers when appraisal has been required.*"

> "No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire."

The obligations resting on an assured under these policy provisions have been the subject of repeated adjudications. The doctrine is well settled that if the assured wishes to attack an award made under an appraisal agreement, he must definitely repudiate it and request a second appraisal. He cannot rely on the first appraisal as a performance of the policy provisions if he intends to attack its validity.

In *Fisher* v. *Merchant's Ins. Co.,* 94 Maine 486; 50 Atl. 282, where determination by arbitration of the amount of loss had been expressly made a condition precedent to any right of action, the Court held it incumbent upon the insured to prove performance or a valid excuse for non-performance; and that if the insured claims that the award of the arbitrators is invalid because of their misconduct, it is his duty to seek a new determination of his loss in the manner provided by the contract, and failure so to do binds him to the award as made.

A leading case on this point is *Grady* v. *Home F. & M. Ins. Co.,* 27 R. I. 435; 63 Atl. 173; 4 L. R. A. (N. S.) 288, in which the court after a full review of the authorities adopted the following statement of the principle from *Fisher* v. *Merchants Ins. Co.,* 95 Me. 486, 50 Atl. 282:

> "A determination by arbitration of the amount of loss having been especially made by the parties a condition precedent to any right of action for recovery of damages for the loss it was held incumbent upon the plaintiff to prove performance or a valid ex-

cuse for nonperformance. An effort to perform is not a compliance with such a condition in a contract when no reason is shown why there should not have been full performance. If the award of the arbitrators was invalid as claimed by the plaintiff for the reasons set out in the amended declaration it was the duty of the plaintiff to seek a new determination of the amount of his loss in the manner provided by the contract. The action in such case is upon the policy but the damages recoverable are such as have been previously ascertained and determined by the arbitrators unless the plaintiff shows some sufficient reason why such a determination could not have been obtained. Consequently, there can be no action until performance of the condition or excuse shown for nonperformance; and it is not sufficient to show an award which the plaintiff repudiates and is not willing to be bound by."

In *Early* v. *Providence and Washington Ins. Co.* 31 R. I. 225, 76 Atl. 753, the Supreme Court of Rhode Island followed the doctrine of the Grady case and said also:

> "The fact that the first arbitrators failed because of misconduct on the part of any or all of the appraisers or because of appointment of incompetent and interested appraisers did not excuse the plaintiff from requesting a second appraisal" * * * "If it were the fact that both arbitrators acted unreasonably and had concluded that they could not agree, there being no bad faith on the part of defendant the plaintiffs had not fully performed their duty under the contract. It was their duty to continue further negotiations to secure an appraisal."

In *Riddell* v. *Rochester Ins. Co.,* 36 R. I. 241; 89 Atl. 833, the Court said:

> "In case the award is invalid and a new one has not been secured it is incumbent on the insured and not on the insurer to take further steps towards securing such a new award. This is usually based on the provision of the policy requiring the determination of the loss, in case of disagreement thereon, by appraisal and award and making this procedure a condition precedent to a right of action on the policy."

Although complainant was under a duty to make known to defendants that it rejected the award and desired a new appraisal, it elected to dispose of the damaged property, and wait nine months before attacking the award. At the commencement of these suits, and at the conclusion of the hearings , it was impossible to have a new appraisal made by other appraisers, and complainant objected to a resubmission to the old appraisers. Thus complainant by its own conduct in effect applied to the court to relieve it of its obligation under the policies to submit to a reappraisal.

Complainant was chargeable with laches in deferring for so long a time a suit which depended almost entirely on the recollection of the appraisers and the umpire of such details as the dates of their meetings, their conversations, the matters on which there was agreement and those on which they disagreed, who called the umpire and why, etc. It has been held in this jurisdiction that if, as a result of delay, the court cannot ascertain the truth as well as when the subject of investigation was recent, the suit is barred by laches.

Swinley v. *Force,* 78 N. J. Eq. 52.
Soper v. *Cisco,* 85 N. J. Eq. 165.

It is hardly necessary to cite authorities for the doctrine that a complainant is estopped, who, by affirmative acts (in this case the sale of the damaged property) and by a failure to bring suit promptly causes a change in the status quo so that relief cannot be granted complainant without injury to defendants. That defendants in this case are injured by the decree made cannot be doubted, for they were, under the policies and the authorities considered, entitled to a determination of the amount of loss by appraisal; and because complainant did not seek a new appraisal promptly, and such new appraisal is now impossible, the consequence is, if the decision of the lower court on the invalidity of the award is upheld, that defendants are deprived of a method of adjustment which the standard policy approved by our legislature guarantees them.

The learned Vice-Chancellor summed up his discussion of the contention that complainant was barred by laches and estopped, as follows: (S. C. p. 288, ll. 10-21)

> "I do not find anywhere in this case anything to prejudice the Insurance Companies in any way any more than they were prejudiced in the beginning. It appears that considerable of the property was in existence when the Appraisers or the Umpire undertook to appraise the loss; and, of course, the Insurance Companies, if they were called upon to make any further determination hereafter, would be in no further predicament than they were theretofore. So, for that reason I am going to declare that neither the doctrine of laches or of estoppel apply in this case as against the complainant."

The only reasonable explanation of this conclusion is that the Vice-Chancellor had in mind sending the case back to the same appraisers and umpire, who were familiar with the property involved in the fire. That this was in the Court's mind is apparent from the colloquy with counsel at the end of the oral opinion. But the subsequent determination of the Court that the matter should be submitted to new appraisers or defendants would be enjoined from setting up the award changed the entire aspect of this phase of the case.

As in *American Central Ins. Co.* v. *Landau,* 62 N. J. Eq. 73, complainant in this case gambled on a favorable result, and when it proved unfavorable, lodged an attack against the award. Nor was this move made until after complainant had so altered the situation as to deprive defendants of their rights under the appraisal provisions of the policies.

It is respectfully submitted, therefore, that the decrees should be reversed, and the bills ordered dismissed.

POINT II.

The lower court erred in holding that the appraisers were under obligation to consider the property involved in the fire item by item as set forth by the assured in its inventory, and in finding that the appraisers did not have any disagreement warranting the participation of the umpire in the making of the award.

The appraisal agreement, Exhibit C-4, (S. C. p. 316-17) provides that the appraisers

> "shall ascertain * * the sound actual cash value of the property of said party of the first part on the 15th day of December, 1925,

which is more particularly described in the policies as per form attached, as well as the actual direct loss and damage caused thereto by a fire which occurred on that day, and * * * that the said two appraisers shall first select a competent and disinterested person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to *each* item, and failing to agree, shall submit their differences only to the umpire."

Counsel for the assured contended throughout the hearing below that the words "sound value and damage to each item" meant that the appraisers had to consider separately the value of, and damage to, every distinct piece of property involved in the fire. In the absence of proof showing a contrary intention, the words "*each* item" should receive their ordinary grammatical meaning.

The policies upon which these suits are based, insure only two separate items: (1) merchandise (2) store furniture and fixtures.

Exhibit C-1 is the policy of defendant Philadelphia Fire & Marine Insurance Company. The coverage provisions read as follows: (S. C. p. 301, l. 28 to p. 302, l. 13)

"$750.00 On merchandise consisting principally of that usual to the confectionery business, including stock manufactured, unmanufactured and in process of manufacture, including full and empty packages, boxes, samples and supplies, the property of the insured, or held in trust or in commission, or sold but not delivered or removed.

$1750.00 On store furniture and fixtures, including counters, shelving, racks, scales, show cases, cash registers, and all such implements and utensils used in the insured's business. All while contained in the brick building, occupied as stores and dwellings situated #620 Washington St., Hoboken, N. J., 80% co-insurance clause attached, *applying to each item separately.*

Surely the italicized words "applying to each item separately" relating to the 80% co-insurance clause do not refer to the specifications under the general merchandise item of "empty packages, boxes, samples, and supplies" nor can it reasonably be said that co-insurance up to at least 80% of value must be carried separately and specifically on the "counters, shelving, racks, scales, show cases, cash registers, etc." rather than under the general heading of "furniture and fixtures." In view of the language employed, there is no room for construction. The defendant companies by their policies said in effect to the assured:

"We insure you for $750. on merchandise and $1750. on store furniture and fixtures, but by the co-insurance clause attached (S. C. p. 305, ll. 10-23), if, at the time of fire, the whole amount of insurance on the merchandise as one separate item and on the furniture and fixtures as another separate item, shall be less than 80% of the actual cash value of the property falling under these items, this company would be liable only for such portion of the loss or damage as the amount for which each item is separately insured by this policy bears to 80% of the actual cash value of the property coming under each item."

After the fire occurred, the parties entered into the appraisal agreement and again used the words "*each* item". This appraisal agreement was made purusant to, and must be read in the light of, the language of the policies. The appraisers are specifically referred in the appraisal agreement to the description of the property contained in the forms attached to the policies, (S. C. p. 316, ll. 19-27). Only two items are set forth in the coverage forms annexed to the policies, and the same meaning should be given to the words "*each* item" in the appraisal agreement as they have in the policies proper.

Unless this interpretation is adopted, what criterion would guide the appraisers in determining the items which they must separately consider? If the contention of complainant is sound the appraisers to be perfectly safe should consider separately the value of, and damage to every piece of candy, every glass, etc., involved in the fire. If the inventory as filed by the assured was to be the guide as to the items to be considered, the appraisal agreement should have referred the appraisers to this inventory and not to the items as described in the policies.

The next question is whether the appraisers and the umpire properly performed their duties under the terms of the submission. It is the contention of the appellants that there was a disagreement between the appraisers, that they joined in calling in the umpire, and that the award filed by the umpire and one of the appraisers was in all respects valid. An analysis of the testimony of each of the three persons involved in the appraisal amply sustains this contention, particularly if, as we believe, the lower court erred in holding that the appraisers should have disagreed separately on every item of property involved in the fire.

Every presumption comes to the support of an award in arbitration proceedings. The attacking party has the burden of establishing the invalidity of the award by clear proof, for an award will not be lightly set aside—McQuaid v. Home Ins. Co., 147 Minn. 254; 180 N. W. 97.

Davis Weinstock, the appraiser designated by the companies, testified that on the morning of April 10th, Mr. Silverman, the appraiser for the assured, came to his office to discuss the appointment of an umpire; that Mr. Silverman suggested Mr. Ginsburg; that Weinstock accepted Ginsburg on Silverman's assurance that neither Ginsberg nor his office associate Sonnenfeld had any interest in the case; and that Silverman wrote in Mr. Ginsberg's name as umpire on both the household furniture and store merchandise and fixtures appraisal agreements (S. C. p. 144, ll. 5-10).

On Silverman's insistence that rapid action was necessary because the assured had to vacate the premises soon, Weinstock accompanied Silverman to the scene of the loss the very same day, and looked over the stock fixtures and furniture. By the time he left night had fallen (S. C. p. 145, ll. 24-40). During the time he spent at the scene of the loss with Silverman, they both checked copies of assured's inventory and Weinstock pointed out that numerous items were missing, whereupon Silverman claimed that boys had walked into the place and taken them away. Silverman promised to call at Weinstock's office the next day with bills to substantiate his claim with respect to the amount of stock on hand at the time of the fire (S. C. p. 146, ll. 4-22).

The next morning, April 11th, Silverman did call at Weinstock's office. Weinstock had appraised the loss on the fixtures at $2464, and ad-

vised Silverman that the stock which they had been able to identify amounted to $295.45, (S. C. p. 147, ll. 9-40). Silverman claimed that the assured had at the time of the fire a stock worth $5948.10, (S. C. p. 148, ll. 3-20). Silverman produced bills of the assured showing purchases over a period of one year of about $11,100. Thereupon Weinstock said:

> "How do you claim $5948. worth of stock when his purchases average $1000. a month? And I said at that time, you know, candy, when it sets a week or ten days gets stale, and he is in the heart of Jersey City and every day he can get fresh goods."
>
> "Well," he says, "we will have to submit it to the umpire; we can't agree." (S. C. p. 148, l. 20-27)

Silverman stated that since they were so far apart at the start, they would have to submit the stock and the fixtures to the umpire, (S. C. p. 152, ll. 24-40).

Silverman phoned the umpire from Weinstock's office and made an appointment to go over the loss with the two appraisers the following day. The umpire during the course of this telephone conversation obtained authority from both appraisers to employ an expert on the fixtures should he find it necessary, the expenses to be borne equally, (S. C. p. 148, l. 40 to p. 149, l. 18).

The appraisers and the umpire examined the damaged property on April 12th, the umpire making independent notations (S. C. p. 150, ll. 15- 23; p. 154, ll. 4-17). Weinstock the same day gave the umpire his copy of the inventory with his estimate of sound value and loss (Ex. D-6, pp. 383-399), and Silverman promised to send his figures to the umpire, (S. C. p. 156, l. 15 to p. 157, l. 20).

Silverman met Weinstock at the latter's office several times between April 12 and April 20, in an

effort to convince him by means of bills that the assured had a large stock prior to the fire which for one reason or another could not be identified after the fire. In a letter dated April 20, 1926, Weinstock wrote Silverman about a meeting they had had that day "when you left you stated you would produce additional bills, and I am waiting for same" (Exhibit C-5, p. 319).

On April 21, Silverman wrote Weinstock as follows:

> "Replying to your letter of April 20, 1926, regarding the above matter, beg to state that I will call at your office on Thursday morning at 9 A. M. *for the express purpose to find out why you disagree regarding the above matter, so the appraisal can come to a close."*

After their meeting on April 22, they agreed to meet with the umpire at the latter's office on April 27th. This appointment was postponed to the 28th through correspondence between Weinstock and Silverman (S. C. pp. 321-322).

At this meeting on the 28th the umpire requested the appraisers to attempt to come closer together because they were too far apart (S. C. p. 159, l. 21-30) The umpire had in his possession prior to the commencement of this meeting Weinstock's detailed figures (Exhibit D-6, p. 383) and Silverman's detailed figures (Exhibit D-3, p. 368). The appraisers could not get together because both felt that their figures were fair. (S. C. p. 160, l. 39 to p. 161, l. 5).

The household furniture loss was taken up first. The appraisers gave their figures, there was a considerable disparity and the umpire found the loss to have been $625. This figure was very close to the amount claimed by the assured's appraiser and when Weinstock raised some questions he was rep-

rimanded by Silverman for criticizing the action of the umpire. (S. C. p. 161, l. 5-31) Both appraisers and the umpire signed this award. (Ex. D-4, p. 381)

With respect to the fixtures, Silverman stood by his estimate of $22,000.63 based upon the claim in the assured's inventory of $29,334.17, less 25% allowed by Silverman for salvage and over-value. (Ex. D-3, p. 380, l. 32) Weinstock in turn stood by the figures he had written on his copy of the inventory. With respect to the stock, Silverman claimed $10,574.39, based upon the assured's claim of $13,217.99, less 20% which Silverman allowed for over-value. (Exhibit D-3, p. 380, l. 31) Weinstock, on the other hand, allowed only $295.-45 as loss to stock on a sound value of $508.55 (Exhibit D-6, p. 390, l. 8-12)

The appraisers were so far apart on both items that the umpire was asked to produce his figures. (S. C. p. 166, l. 32 to 167, l. 8)

The award in detail as made up by the umpire (Exhibit C-14 p. 366) discloses a sound value and loss as follows:

	Sound Value	Loss
"Identified stock	$ 837.86	$ 653.80
"Unidentified stock	3200.00	3200.00
"Fixtures	12152.20	6087.15
TOTAL	$16190.06	$9940.95"

On the furniture and fixtures item the umpire adopted the estimate of value and loss (Exhibit D-7, p. 396) furnished by the expert whom he employed by the authority of both appraisers. The figures given above will be found in the recapitulation at the end of this expert's report (S. C. p. 399).

The principal bone of contention between the

appraisers on the stock item related to the amount of stock on hand at the time of the fire, which could not be identified after the fire. The umpire settled this difference by allowing $3200. for unidentified stock.

It is apparent from this summary of Weinstock's testimony that he and Silverman did differ on everything relating to this loss. Our examination of their respective copies of the inventory, on which they entered their figures in the extreme right hand column of each page, fails to disclose a single instance in which they agreed on the damage to any of the hundreds of sub-items under the main items of stock, and furniture and fixtures. (See Exhibit D-3, p. 368-380; Exhibit D-6, p. 383-395)

The testimony of Silverman largely corroborates Weinstock's account, but several important differences do appear. He denies that he made any examination at the scene of the loss with Weinstock prior to the occasion when the umpire was called in. This suggests the question of why the umpire was called in if no differences had as yet arisen between the appraisers. Silverman explains that the intention was to have the umpire make a "general survey". He testified that thereafter "I went to Mr. Weinstock's office, on numerous occasions, and tried to straighten it out with him". (S. C. p. 104, l. 25-27) He was at Weinstock's office on April 15, 17 and 20. (S. C. p. 105, l. 5-8) Reference has already been made to the letter written by Silverman on April 21st, that he would be at Weinstock's office the next day "for the express purpose of find out *why you disagree* regarding the above matter, so the appraisal can come to a close."

Silverman's account of the meeting of April 28th at the office of the umpire is that the house-

hold furniture loss was taken up first. He asked for about $700. and Weinstock gave his figure as about $400., and the umpire made it $625., whereupon he pronounced it as a "fair appraisal" and all three signed the award. (S. C. p. 107, l. 20 to p. 108, l. 10) He testified that *after* the household furniture award was signed, he expressed an objection to the continuance of Ginsberg as umpire on the ground that he was not impartial. (S. C. p. 108, l. 12-25) It is pertinent to ask why, if Silverman had acquired information that the umpire was not impartial, he should have reserved his objection until after the umpire had suggested a figure for the household furniture award, which Silverman himself admitted was fair. If the umpire was incompetent to act in the one appraisal, he was incompetent to act in the other. If, as Silverman contends, no differences had as yet arisen between himself and Weinstock, and the umpire had not as yet acquired jurisdiction to act, Silverman had a perfect right to withdraw from the appraisals, if he had information in his possession tending to impeach the disinterestedness of the umpire.

Silverman testified that Weinstock overruled his objection by saying, "Let us talk of losses", whereupon he said "Well, if you gentlemen feel that way, let us get together", (S. C. p. 108, ll. 24-28).

He gave both the appraiser and the umpire a report which he had prepared regarding stock and fixtures wherein he claimed for stock identified and unidentified a sound value of $11,235.32 and a loss of $10,235.32, and for furniture and fixtures a sound value of $28,000.00 and a loss of $19,413.-75, representing a total claim of $29,649.07, (Exhibit C-12, pp. 360-361). He admitted that the inventory he had submitted to the umpire claimed

a loss of $32,575.02 (p. 380), and insisted that both the inventory with the $32,000. figure and the report (Exhibit C-12) were submitted to the umpire on the same day, (S. C. p. 125, ll. 33-39) whereas the umpire testified that he had received Silverman's inventory figures a day or two after April 12, when the examination of the damaged property was made by the appraisers and the umpire. Why did Silverman give the umpire his figures unless the appraisers had disagreed and had decided to resort to the umpire?

He testified further that he produced the inventory containing his figures in detail, but that Weinstock said "I haven't got my figures with me, but I figure the loss at $4000," (S. C. p. 108, ll. 28-37). Silverman then said "I figure the loss about $29,000. or $30,000.; there is quite a big difference", (S. C. p. 109, ll. 3-5). He says further that he then requested that Weinstock sit down and go over each item of the invenory with him, to which he says Weinstock replied, "We don't have to have that in, let the umpire decide; we can't agree."

Silverman's testimony that he insisted that Weinstock go over every one of the hundreds of items in the inventory which, with the smallest type takes up 12 pages of the State of Case, (pp. 368-80) is interesting in view of the fact that at his request the appointment was advanced to 12:30 P. M., because Silverman expected his folks from Miami at 2:30 P. M (S. C. p. 322).

Moreover, the futility of the appraisers going over every item is apparent when it is considered that Weinstock had previously indicated that he would allow only for identified stock unless Silverman produced bills to prove that the assured had a larger quantity of merchandise than Weinstock believed. They had had numerous meetings for

this purpose, and Silverman had failed to prove more than $1000. of purchases per month. Silverman on the other hand had consistently claimed for all the unidentified stock set forth in the inventory, less 20% for over-value. This was an irreconcilable difference, and one that could not be resolved by going over every item of the unidentified stock, as Silverman well knew.

Silverman further testifies that he objected to the participation of the umpire in the matter because he and Weinstock had not as yet disagreed, (S. C. p. 109, ll. 10-22). The umpire then gave his figures, and the award (Exhibit D-5, p. 382) was executed by Weinstock and the umpire.

Ginsberg, the umpire, testified that about April 11, he was advised by Silverman that the latter and Weinstock had disagreed and made an appointment to meet the appraisers and examine the property involved in the fire, (S. C. p. 198, ll. 5-33). They spent about two hours at the store checking the inventory, (S. C. p. 200, ll. 28-40), and the umpire found so many things missing that he inquired of Mr. Melton, who told him that boys had broken into the place and taken some of the stock, (S. C. p. 201, ll. 10-30).

The umpire and appraisers then proceeded to the place to which the fixtures had been removed, and spent an hour and a half checking the furniture and fixtures item, (S. C. p. 204, ll. 12-23). At the umpire's request, Weinstock immediately gave him his figures (Exhibit D-6), and Silverman promised to send in his figures the next day. He did receive the inventory containing Silverman's figures (Exhibit D-3) the following day, (S. C. p. 204, ll. 10-30; p. 205, ll. 5-11; ll. 30-40. After receiving these lists from the appraisers, the umpire and the expert fixture man whom he had been authorized to employ, made a further examination of the loss, (S. C. p. 207, ll. 10-30). After receiving the fixture expert's report, the umpire made up his estimate of sound value and damage, (S. C. p. 208, ll. 28-36). Silverman called the umpire one day and requested that a meeting be called for the award, and April 27th was agreed upon, and this date was subsequently changed to April 28th at Weinstock's request, (S. C. p. 208, l. 37 to p. 209, l. 10). At this meeting when the umpire learned from the appraisers that they would not change the figures contained in the inventories they had submitted to him, they entered upon a consideration of the household furniture loss. Silverman criticized Weinstock for objecting to the umpire's figures and an award on the household furniture was executed, (Exhibit D-4, p. 381).

Then the stock and store furniture and fixtures loss was taken up, and Silverman asked that the lump sum figures on these items be given because he had to leave to meet his family, (S. C. p. 211, ll. 19-28). Silverman refused to sign the award on these items stating that two signatures were enough, (S. C. p. 211, ll. 28-35). Ginsberg denied that Silverman made any objection at this meeting to his acting as umpire, and denied also that Silverman challenged his jurisdiction to act on the ground that there had as yet been no disagreement (S. C. p. 239, ll. 15-18) saying, "If there was no disagreement they shouldn't have come to my office at all; why should they come to my office at all —for what purpose" (S. C. p. 239, ll. 1-30). Ginsberg testified further that on the inventory which Silverman gave him on April 13th, he claimed lump sums for the stock item and the furniture and fixture item, based upon sound value as claimed by the assured, less a certain percentage for salvage

and over-value, (Exhibit D-3, p. 380, ll. 30-34), and that it was impossible to make a specific claim on every piece of property alleged to have been involved in the fire because so much of the goods could not be identified, (S. C. p. 240, l. 34 to p. 241, l. 30). The appraisement of this loss depended largely on the exercise of judgment in view of all the circumstances to determine how much property was actually involved in the fire, (p. 241, ll. 8-30). It is in this respect that the umpire resolved a difference which had caused a deadlock between the appraisers and led to the calling of the meeting at the umpire's office, (S. C. p. 241, ll. 31-40).

Under the authorities, does the evidence in this case show a disagreement between the appraisers so as to warrant participation of the umpire in the making of the award?

In *Garrebrant* v. *Continental Insurance Company,* 75 N. J. Eq. 577, it was held that where one appraiser learned the opinion of the other as to the amount of loss, thought he would be unable to agree upon that amount, and conferred with the umpire with a view to agreement with him, this constituted a valid submission to the umpire. So in the case at bar, it had become apparent after the numerous meetings between the appraisers, that they could not agree as to the amount of the loss, and they properly resorted to the umpire.

Similarly, in *Aetna Fire Insurance Co.* v. *Davis,* 21 Ky. Law Rep. 1456; 55 S. W. 705, it was held that where one arbitrator stated his opinion of the damage and the other said "we will never agree", this constituted a sufficient disagreement to authorize the umpire to act in rendering an award. So in the case at bar, when Silverman and Weinstock were unable to agree as to the amount of

property involved in the fire, and certainly when at the meeting of April 28th, Silverman stated that his figure showed a loss of $29,000, and Weinstock stated that his estimate of the loss was $4,000, a sufficient disagreement was in fact expressed to warrant the participation of the umpire in the appraisal.

It has been held in this state that any substantial difference between the appraisers justifies the intervention of the umpire. In *Broadway Insurance Company* v. *Doving,* 55 N. J. L. 569, an appraisal agreement very much like the one involved in this case was entered into, under which the umpire was authorized to act only in case of disagreement between the appraisers and only on matters of difference. After the appraisers had examined the damaged goods, one offered to appraise the loss at 50% of the amount insured, and the other appraiser refused. It was held that since, in fact, a disagreement between the appraisers had arisen, the umpire became qualified to act, and an award executed by him and the other appraiser was valid.

In *Caledonian Insurance Company* v. *North Dutch Reformed Church,* 96 N. J. Eq. 342, the Court of Errors and Appeals held that it would not weigh the technicalities of the method of making the appraisal and arriving at the award, and in effect held that the only itemization of the loss which is necessary is that indicated by the policies involved. The Court said at page 345:

> "The insurance company cannot complain that its appraiser was not sufficiently consulted, if the award appears to be an award of the umpire upon questions which were in dispute between the appraisers, as appears in this case. *We can see no reason for the separation and the itemizing of the damage*

> *to the church and Sunday school, as the policy covered both, and was not apportioned as between the two.* An award made as this was made will not be set aside unless there is clear proof of injustice done to the complainant."

Similarly, in *American Central Insurance Company* v. *Landau,* 62 N. J. Eq. 73, Vice-Chancellor Pitney held that where a substantial disagreement occurred between appraisers at the outset, it was not necessary that they proceed to disagree on every piece of property involved in the fire. The conclusion on this point is expressed as follows:

> "The articles injured by fire were numerous, and situate in several different apartments. The two appraisers examined the greater part in number and value of the articles and disagreed as to the damage, and on grounds which would prevent their agreeing as to the damage to the remaining articles. Held, that in order to give jurisdiction to the umpire to take part in the appraisement it was not necessary that the appraisers should disagree as to the damages to each and every article injured."

Vice-Chancellor Pitney said at page 96:

> "It was not, in my judgment, necessary or even worth while at that time, after having disagreed so largely as to the damage done to the machinery in room No. 1, that they should, before calling in the umpire, proceed through the other rooms and look at the articles there, or so much of them as remained unconsumed. It was a mere waste of time to do so, and it was work that could properly be deferred until the umpire came in. If they had agreed upon some of the articles such agreement would not have saved the calling in of the umpire. Besides, there is no probability that they would have so agreed."

The applicability of the decision in the Landau case to the present controversy is apparent, for the appraisers in this case at the very outset disagreed so radically with respect to the goods alleged to have been burned out of sight or carried away, that they were justified in calling in the umpire. The inventories used by the appraisers for the purpose of recording their figures of sound value and loss (Exhibits D-3, D-6), show disagreement in every respect, and the mere fact that they were tendered to the umpire as representing the conclusions of each appraiser indicates that the latter, in fact, disagreed. The documentary evidence uniformly shows disagreement all along the line, and is more eloquent proof than Silverman's testimony. And it is this disagreement in fact and not Silverman's construction of the events which transpired, which determines whether the umpire had authority to act. A disagreement between the appraisers did exist prior to the meeting of April 28th, but, in any event, a disagreement certainly arose at this meeting. Nor is there any probability that if they had at this meeting again gone over their detailed figures they would have reached an agreement.

The learned Vice-Chancellor commented on the fact that no itemized schedule was attached to the award. (Conclusions, p. 408, l. 18-26) But it has been held that where an award is made under a standard fire policy, it need not set out in detail the facts made the basis of the award, and that it is sufficient that the award contain a statement of the gross allowance made on the general items covered by the policy.

McQuaid Market House Co. v. *Home Insurance Co.,* 147 Minn. 254; 180 N. W. 97;
Innis v. *Firemen's Fund Ins. Co.,* 218 Mich. 253; 187 N. W. 268;
Boutross v. *Palatine Ins. Co.,* 100 Kan. 574; 164 Pac. 1069.

It is respectfully submitted, therefore, that the decrees in these suits holding the award void should be reversed.

POINT III.

Assuming the umpire acted prematurely but without fraud, as the lower court found, it was error, under the circumstances, to refuse to recommit the matter to the same appraisers, to require defendants to enter into a new appraisal agreement with new appraisers, and to enjoin defendants from setting up the appraisal provisions of the policies in the actions at law.

Under Point I appellants have argued that the assurred was under obligation to indicate clearly that it rejected the award of April 28th, 1926, and prove that it requested a new appraisal, in order to comply with the provision of the policy making an appraisal of the amount of the loss whenever demanded a condition precedent to a right of action on the policies.

It is undisputed that Anthony Melton, the president of Melton Bros., Inc., learned all about the rendering of the award from the appraiser Silverman the day after it was executed. Nor is there any question that the assured consulted attorneys within a few days after April 28th, and shortly

thereafter disposed of the damaged property by sale.

The bills of complaint filed in these cases attacked the award on the ground that it was "illegally, improperly and fraudulently executed". And complainant prayed not that there be a new appraisal, but merely that the award be "rescinded, cancelled and discharged by the decree of this Court". (S. C. p. 9, ll. 30-35)

At the conclusion of the hearing, the learned Vice-Chancellor expressly found that the umpire was not guilty of fraud, but that he had merely acted before there was a disagreement between the appraisers on every item of the property involved in the fire, (S. C. p. 296, ll. 9-27). Counsel for appellants then suggested that the matter be sent back to the appraisers for determination in accordance with the Vice-Chancellor's opinion. (S. C. p. 297, ll. 20-28) Counsel for complainant-respondent contended that he had impeached the umpire's veracity, and that Ginsberg could not, therefore, be impartial in this matter. (S. C. p. 297, ll. 35-40)

The Vice-Chancellor replied to this contention as follows: (S. C. p. 298, l. 39 to p. 299, l. 30)

> "Is it not a situation that you yourself have made? You have made an agreement whereby Ginsberg is appointed umpire; now the Court cannot substitute or make a new agreement for the parties, and the Court cannot substitute its judgment for the judgment of the parties; and you know, so far as fraud is concerned, the principles of law as enunciated is that fraud must not be presumed, that it must be proved. Now, you have not proved any fraud against Ginsberg, as I can find, and, inasmuch as you have not proved any fraud against him, how can I possibly make a new contract for the par-

ties? (After further argument by counsel.) All I can suggest to you is that you gentlemen had better point out to me, if you will, some authority which will enable me to do what you, Mr. Vanderbilt, ask me to do; and, in your case, Mr. Klausner, point out to me wherein I can make any new agreement other than that which you yourself have made. As it appears to me now, it ought to go back to the appraisers and the umpire—now, whether or not that is going to effect equitable results is something which may be unfortunate from your point of view; but the thing I am strongly considering at the present time is what right I have to substitute my judgment as the judgment of this court for the judgment of the two parties in interest who have agreed upon the umpire."

Counsel for defendants submitted to the lower Court the following authorities holding that the proper procedure in the absence of proof of fraud, was to require the appraisers and umpire to proceed to a new award:

"I am convinced that complainant should be relieved from the operation of this award. But I see no justification for doing more than require the appraisers to again meet and consider the subject of sound value. They have considered and determined the amount of loss and damage. The mistake of Mr. Farley in failing to consider sound value has no bearing upon that independent part of the award already considered and determined. If they cannot agree upon sound value after they have considered that subject, the umpire should be called in to act with them, and the award then made on sound value will fully discharge their duties. This accords with the practice adopted in re Dare Valley Railway Co., L. R. 6 Eq. 429." (*Leaming, V. C. in Collings Carriage Company* v. *German American Insurance Company,* 86 N. J. Eq. 53, at 58)

"The award could be sent back to the arbitrators for correction, as was done in the last case cited (referring to Collings Carriage Company v. German American Insurance Company, supra), but as the loss on the circulars was total, and as their duty, consequently, would be merely perfunctory, the court can as well make the adjustment by increasing the amount." (*Backes, V. C. in Dennis* v. *Standard Fire Insurance Company,* 90 N. J. Eq. 419, at 424.)

"Neither would it be practical to refer the case to anyone else. The church is now restored in every particular, all evidences of damage by fire have been removed, and it would be idle for anyone other than the original appraisers to try now to ascertain what the damage was when all evidence of it has been eliminated." (*Church, V. C. in Caledonian Insurance Company* v. *North Dutch Reformed Church,* 95 N. J. Eq. 496, at 498.)

This is also the English practice:

"The Court has power to remit an award either wholly or in part to the arbitrators for their reconsideration. Then the award may be remitted when the arbitrators have exceeded their jurisdiction in dealing with matters outside the scope of the reference. (Hooper v. Balfour, 1890, 62 L. T. 46.)" (*Welford & Otterbarry Fire Insurance (2d Ed.) 1921.*)

The logic of these cases is apparent. Our courts have held that the standard fire insurance company policy is a legislative contract to be interpreted evenly and without the application of the maxim *verba chartarum fortius accipiuntur contra proferentem. Mick* v. *Corporation of Royal Exchange,* 87 N. J. L. 607 (1915, Errors and

Appeals). The doctrine has been re-affirmed in *Del Guidici* v. *Importers & Exporters Insurance Company,* 98 N. J. L. 435 (1922, Errors and Appeals). The latest expression of this fundamental doctrine is *Precipio* v. *Insurance Company of the State of Pennsylvania,* 5 N. J. A. R. 1065, at 1066 (1927, Errors and Appeals.) All of these cases are but the restatement of the same rule as laid down by Chief Justice Gummere in *Kupfersmith* v. *Delaware Insurance Company,* 84 N. J. L. 271, at 275 (1912, Errors and Appeals).

By the express terms of the contract, an appraisal and award is a condition precedent to a suit upon the policy. To comply with these terms of the contract, the parties have entered into an appraisal agreement and have designated, in the manner prescribed by the terms of the policy and in the manner prescribed by the appraisal agreement entered into pursuant thereto, the persons who shall make the appraisal and award. The Court having found error in the method pursued by them and in the exercise of jurisdiction prematurely by the umpire, it necessarily follows that the matter should have been re-submitted to them in order that the complainant might comply with the policy provisions by participation in an appraisal and obtaining an award.

Moreover, quite aside from the question of compliance with the terms of the policy and quite apart from the question of carrying out the intent of the parties as expressed in the appraisal agreement, these appraisers and the umpire, as was said in the North Dutch Reformed Church case, know more than any other persons possibly can know by reason of their previous investigations of the amount of sound value and damage. Obviously, as a matter of equity and common sense the matter should have been resubmitted to them.

But the Vice-Chancellor refused to re-submit the case to the appraisers designated by the parties, and the umpire selected by them on the ground that "an acrimonious disposition of hostility" had been manifested by them while testifying.

It is respectfully submitted that this is a novel ground for refusing to re-commit the matter to the appraisers selected by the parties themselves. All one need to do to prevent such a re-submission is to examine and cross-examine the witnesses in such manner as to bring out hostility. Although counsel for complainant did conduct a lengthy, minute and in some respects exasperating cross-examination of Weinstock and the umpire, he was unable to prove that any unfriendliness existed between them and Silverman as a result of this case. There is no more reason to presume that these appraisers and the umpire could not have proceeded properly with the matter under instructions from the court, than there is to presume prejudice or bias in a judge who is directed by an Appellate Court to re-try a case in accordance with the opinion of the upper court. Moreover, as was said by Vice-Chancellor Pitney in *American Central Insurance Company* v. *Landau,* 62 N. J. Eq. 73:

> "The appraiser chosen by each party is supposed and expected, in a restricted sense, to represent the party appointing him".

It was the umpire's impartiality which should alone have been considered. He had not been guilty of any fraud in connection with the award. Why then, should it be presumed that he could not deal fairly with such matters as the appraisers submitted to him after attempting to agree among themselves in accordance with the instructions of the Court?

The Vice-Chancellor, however, directed that the parties enter into a new appraisal agreement under which other appraisers and a new umpire were to be selected. The Court was not warranted in thus abrogating an agreement duly entered into between the parties. Furthermore, this requirement was unreasonable because the subject matter of the appraisal had been disposed of by the assured. Defendants' consent to the sale of the remains of the property involved in the fire had not been obtained by the assured. Defendants were not found by the Court to have been guilty of any acts vitiating the award. Why, then, should defendants be compelled to enter into an agreement to submit the appraisal of the loss to persons who could no longer visit the scene of the loss, examine the damaged property and make an intelligent and reasonable appraisal? In view of the laches of the assured in attacking the award, and in view of the dispersal of the subject matter of the appraisal, defendants were justified in refusing to enter into a new appraisal agreement as directed by the Court.

The Vice-Chancellor thereupon entered a decree permanently enjoining the defendants from setting up or relying upon the appraisal clause of the policies as a defense to any actions or suits. (S. C. p. 49, ll. 4-10) In other words, the appraisal provisions are stricken out of the contracts of insurance entered into between complainant and defendants, although complainant was itself responsible for the difficulty of obtaining a new award under these provisions.

In going beyond the question relating to the validity of the award, and the question of whether the matter should be re-submitted to the appraisers and umpire, the court exceeded its power. The

Court of Chancery did not have the authority to adjudge that complainant was, under the circumstances, entitled to have a new appraisal agreement entered into, nor to enjoin the defendants from raising this question in actions on the policies. Whether complainant had performed the conditions precedent to such actions at law, whether they were entitled to a new appraisement, or whether the conditions and provisions relating to the appraisal had been waived by defendants, were purely legal questions and the lower court had no power to enter a decree foreclosing defendants from raising them in the actions at law.

Vice-Chancellor Reed so held in *Stout* v. *Phoenix Assurance Co.,* 65 N. J. Eq. 566. In that case, both parties desired that the court determine the entire controversy, and one of the questions involved was whether defendants were entitled to a new appraisement. Although the Vice-Chancellor had heard testimony on the entire controversy, he concluded that he had no authority to deal with the question of a new appraisement and the other legal questions, stating at page 573:

> "But I am satisfied that I should confine my judgment to the validity of the award. A court of equity in this state can deal with legal questions only, so far as their decision is incidental or essential to the determination of some equitable question. Merely because a court of equity has acquired jurisdictions for one purpose, it is not empowered to retain the case for complete relief." *Brown* v. *Edsall,* 1 Stock. 256; *Lodor* v. *McGovern,* 3 Dick. Ch. Rep. 275, 279; *Red Jacket Tribe* v. *Hoff,* 6 Stew. Eq. 441.

CONCLUSION.

For the reasons advanced in the foregoing argument, it is respectfully urged that the decree of the Court of Chancery in these three suits should be reversed, with costs to defendants.

Respectfully submitted,

ARTHUR T. VANDERBILT,
Counsel for Defendants-Appellants.

16 OCT.T.1928
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New Jersey Court of Errors and Appeals

Between
MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants-Respondents,

and

PHILADELPHIA FIRE & MARINE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

Between
MELTON BROS., INC., a corporation, and GEORGE MELTON and PETER MELTON,
Complainants-Respondents,

and

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

Between
MELTON BROS., INC., a corporation,
Complainant-Respondent,

and

NEWARK FIRE INSURANCE COMPANY, a corporation,
Defendant-Appellant.

On Appeal from Court of Chancery.

RESPONDENTS' BRIEF.

Statement of the Case.

Prior to December 15, 1925, the complainant, Melton Bros., Inc., conducted a confectionery business at 620 Washington Street, Hoboken, N. J., and insured their stock, store furniture and fix-

tures in the said premises in nine different companies, including the three defendants, against loss by fire, etc. By mistake of two of the defendants, Philadelphia Fire and Marine Insurance Company, and the Globe & Rutgers Fire Insurance Company, the insurance policies of the said two defendants named George Melton and Peter Melton, doing business as Melton Bros., Inc., as the insured (S. C., p. 59, l. 29 to p. 60, l. 39; S. C., p. 301, ll. 15-16).

On December 15, 1925, a fire occurred in the above mentioned premises occupied by the complainant, Melton Bros., Inc. (S. C., p. 63, ll. 9-10). Each of the insurance policies of the defendants contained the standard fire insurance clauses of New Jersey, and provides that the companies shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation however caused, and shall, in no event, exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or if they differ, then by appraisers as provided in said policy (S. C., p. 306, l. 34 to p. 307, l. 4). The provision relating to disagreement between the parties is as follows:

> "In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire" (S. C., p. 312, ll. 13-26).

The parties disagreed as to the amount of loss, and notwithstanding the above provision, the complainant, Melton Bros., Inc., and the defendants entered into an appraisal agreement dated April 6, 1926, wherein they provided a method for the determination of the loss of the complainant, Melton Bros., Inc., occasioned by the fire which occurred on December 15, 1925; and in that agreement Melton Bros., Inc., designate S. Walter Silverman as their appraiser, and the insurance companies designate Davis Weinstock as their appraiser; and these appraisers were directed by that agreement to ascertain, pursuant to the terms and conditions of the policies of insurance issued by the companies named in the agreement, the sound actual cash value of the property of Melton Bros., Inc., on December 15, 1925, which is more particularly described in the said policies,

> "as well as the actual direct loss and damage caused thereto by a fire which occurred on that day, and/or, if this agreement contemplates personal property (which in this case it does) in such case damage if any caused by removal from premises endangered by fire; that the said two appraisers shall first select a *competent and disinterested* person who shall act as umpire, and the said two appraisers together shall then estimate and appraise the loss, *stating separately sound value and damage to each item,* and failing to agree, shall *submit their differences only, so itemized,* of any two and filed with the insurance companies above designated shall determine the amount of sound value and of loss or damage" (Ex. C-4, S. C., pp. 316-317, S. C., p. 63, ll. 18-34).

The two appraisers, before doing anything with reference to the matter, met on April 10, 1926, at the office of Mr. Weinstock, and upon the suggestion of Mr. Weinstock, appointed Bernard Ginsberg to act as umpire (S. C., p. 97, ll. 20-30; p. 98, ll. 21-24; p. 318, Ex. C-4). The two appraisers, Silverman and Weinstock, then agreed that they should have Mr. Ginsberg accompany them to the scene of the loss when they went there for the first time for the purpose of making a general survey of the loss (S. C., p. 98, l. 36 to p. 100, l. 3). Silverman then telephoned Mr. Ginsberg's office for that purpose (S. C., p. 252, ll. 3 to 36). Thereupon, on April 12, 1926, the three of them, Silverman, Weinstock and Ginsberg, met at the office of Silverman in Jersey City, at about a quarter past twelve, and from there went in Silverman's automobile to 620 Washington Street, Hoboken, the scene of the loss. This was the first time that any one of them surveyed the loss (S. C., p. 100, l. 21 to p. 101, l. 26). They stayed at 620 Washington Street, Hoboken, about half an hour, and then the three of them went to Railroad Avenue, Jersey City, where some of the goods had already been removed. At the latter place, they also stayed about half an hour, and then they went home (S. C., p. 103, ll. 10 to 39). On that day, they merely made a general survey and checked up a few of the items.

Silverman testified that after they made the general survey they went home and Weinstock and he decided to go over the place again themselves and check up the whole thing, and in case they had any disputes they would then call in the umpire; that he called Weinstock several times to do this, but Mr. Weinstock was always a busy man, with the result that he finally went over himself and checked up the complete loss and made an item by item appraisal (S. C., p. 103, l. 37 to p. 104, l. 14). Silverman and Weinstock never went over the items of the loss together (S. C., p. 105, ll. 20-21; p. 105, l. 40, to p. 106, l. 2). But on the three occasions that he called at Weinstock's office thereafter, Silverman submitted bills for the stock in which Weinstock seemed to be mostly interested. In addition to the loss involved in this case, Weinstock and Silverman were appraisers for the household furniture loss occasioned by the fire in question, and Ginsberg was the umpire with reference to that also, and when Silverman called at Weinstock's office, they discussed this furniture loss mostly (S. C., p. 105, ll. 20-37). Finally, the third time that Silverman visited Weinstock's office, Weinstock suggested that they should meet at Ginsberg's office on April 27th, on account of the noise in Weinstock's office. But this appointment, at the request of Weinstock, was continued over until April 28th (S. C., p. 106, ll. 11-40). Thereupon, on April 28th Silverman and Weinstock met at Ginsberg's office. They had an item by item statement of the household furniture loss and decided to take up that matter first. They did so, and settled the loss and signed the award with reference to the household furniture loss (S. C., p. 107, Ex. D-4, p. 381).

Silverman testified that he then asked Weinstock to go over the stock and fixture loss involved in this case, took out his figures containing an item by item statement, and asked Weinstock for his figures, and that Weinstock then said "I haven't got my figures with me, but I figure the loss at $4,000.00." Silverman then requested that they should go over each item, but Weinstock refused to do that, and immediately insisted that the umpire decide. Silverman, however, insisted that they hadn't made any attempt to agree on any figure and said to Weinstock,

"If you will produce your figures or go over my figures, and if we cannot agree, we will let the umpire decide." But Weinstock turned to the umpire and said it was up to him (S. C., p. 108, l. 27 to p. 109, l. 19). Ginsberg immediately pulled out of his pocket a paper and said, "Gentlemen, there is the award," and handed to them a determination of the amount of the loss, together with a bill for his fees (S. C., p. 109, l. 19; p. 110, l. 28, Ex. C-5, pp. 323-324). Silverman objected, and argued about the unfairness of the umpire being called in when they hadn't agreed or disagreed (S. C., p. 110, ll. 17 to 40; p. 139, ll. 10-27). Thereupon, Weinstock and Ginsberg signed the alleged award (S. C., p. 382, Ex. D-5). The award did not have any itemized schedule of the loss attached to it, although it was so stated therein (S. C., p. 382, l. 12).

It appears that Weinstock and Silverman never undertook to agree upon the values of the loss sustained by the complainant, and never appraised the loss stating separately sound value and damage to each item. Silverman testified that the appraisers never submitted any differences to Mr. Ginsberg (S. C., p. 110, ll. 35-36; S. C., p. 108, l. 38, to p. 109, l. 22). Ginsberg also admitted that the appraisers did not submit any differences to him on April 12, 1926, nor on April 28th, which were the only two occasions when the three of them were together (S. C., p. 232, ll. 1-11; p. 237, ll. 10-22). But Ginsberg nevertheless proceeded to act as the umpire and render the above mentioned award. The following day, Silverman notified the insured of the alleged award and his objections thereto, and to see a lawyer to have the award set aside, or start an action against the insurance companies (S. C., p. 114, ll. 20-34).

On April 30th, which was two days later, Silverman wrote to Mr. Weinstock setting forth his objections to the award (Ex. C-5, p. 326). Complainant immediately conferred with his lawyers, the solicitors of the complainant in this action, and directed them to proceed (S. C., p. 65, ll. 38-40). The solicitors of the complainant thereupon wrote to Walton & Son, the representatives of the insurance companies, advising them that the matter was placed in the hands of the said solicitors for action and inquiring if an amicable settlement could be made (S. C., p. 328). Not hearing from them, the solicitors again wrote on May 18th, 1926 (S. C., p. 329). Finally, the solicitors wrote to all of the insurance companies directly (S. C., p. 331). The matter was finally placed in the hands of the solicitor of the defendants, and solicitors of the complainant thereupon wrote on June 1, 1926, to him with reference thereto (S. C., p. 334). The matter was then delayed for a considerable length of time by reason of the solicitor for the defendants holding out hopes of an amicable adjustment. The officers of the complainant corporation, Silverman, and the solicitors of the complainant visited the office of the solicitor of the defendants in July and August, 1926 (S. C., p. 66, ll. 1-40). The solicitors of the complainant telephoned the solicitor of the defendants on numerous occasions thereafter (S. C., p. 67, ll. 20-34). The solicitors of the complainant wrote to the solicitor of the defendants a number of times, the last letter being on November 10, 1926 (S. C., pp. 343-347).

On June 28, 1926, Silverman wrote to the solicitor of the defendants enclosing a statement of the reasons for the objection to the award (S. C., p. 116, ll. 30-41; p. 339; pp. 362-364). Finally, no amicable adjustment being made, suit on the various insurance policies was instituted in the New Jersey Supreme Court, in order to come within the one year limitation for the institution of an

action upon the policy, as provided therein. All but three of the actions were removed from the State Court. In these three actions against the present defendants, answers were filed, setting up the above mentioned alleged award. Three separate actions in the Court of Chancery were then begun by the complainant, in order to have the said award set aside, and to enjoin the setting up of the alleged award as a defense in the law actions; and also reformation of two of the policies as to the name of the assured was sought in two actions in the Court of Chancery. All three actions were tried together by consent of counsel. During the trial, the defendants consented to the reformation sought (S. C., p. 59, l. 30 to p. 60, l. 39). At the conclusion of the hearing, the Court found that the award must be set aside, as void, for the reason that the umpire had prematurely assumed authority to act in the premises. Counsel for defendants contended that the matter be referred back to the appraisers. Counsel for the complainant urged that a new appraisal be had with different appraisers and a different umpire on account of the fact that the appraiser of the insurance companies, Weinstock, and the umpire, Ginsberg, had perjured themselves during the trial; that their incompetency was also displayed, and that they could no longer be impartial in the matter, and the Court agreed that from the testimony it appeared that the three parties were so strongly at loggerheads that they would never effectuate a result.

The complainant requested permission to amend the bill of complaint to include a prayer for relief for a new appraisal agreement similar to the original one, and that new appraisers and new umpire be appointed, and in the event that a proper award be not made, pursuant to such a new appraisal agreement, that the alleged award be

inoperative against the complainant, and that the defendants be enjoined from setting up as a defense the prayers and agreement, and/or alleged award, or the appraisal clause contained in the policy of insurance. The Court granted such an order amending the bill of complaint (S. C., p. 35). The Court then filed conclusions, in which it found that the appraisers and the umpire acted in an injudicious manner; that they manifested little regard of the importance of the duty entrusted to them, and that they exhibited such an acrimonious disposition of hostility towards each other that a fair unbiased determination could not be expected of them; that the umpire was not impartial and open-minded, and that the appraisers and the umpire were not without bias against either party to the controversy and against each other. And the Court directed the parties to enter into a new appraisal agreement, as above set forth, or in the alternative, would advise an appropriate decree (S. C., pp. 402-408). Although the complainants were ready and desirous of complying with the Court's direction, the defendants refused to enter into such a new appraisal agreement.

The learned Vice-Chancellor thereupon entered a final decree setting aside the award, and enjoining the defendants from setting up as a defense to any action upon the policies the appraisal agreement of April 6, 1926, and/or the award aforesaid, or the appraisal clause contained in the insurance policies (S. C., pp. 42-43).

For the purpose of this appeal, these three separate actions have also been consolidated by consent of counsel.

ARGUMENT.

POINT I.

The award should be set aside—

(a) because the appraisers did not together estimate and appraise the loss stating separately sound value and damage to each item;

(b) because the umpire proceeded to act before the appraisers disagreed as to the loss, and before the appraisers submitted their differences only to the umpire;

(c) because the award was not itemized; and

(d) because the umpire was not a competent and disinterested person.

The clause in each insurance policy with reference to the appraisal loss is as follows:

> "In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company, each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire" (S. C., p. 312, ll. 13-26).

The appraisal agreement (Ex. C-4, S. C., pp. 316-317) provides that the appraisers

> "shall ascertain, pursuant to the terms and conditions of the policies of insurance issued by said companies to the party of the first part, the sound actual cash value of the property of said party of the first part from the 15th day of December, 1925, which is more particularly described in the policies as per form attached, as well as the actual direct loss and damage caused thereto by a fire which occurred on that day, and/or, if this agreement contemplates personal property, in such case damage if any caused by removal from premises endangered by fire; that the said two appraisers shall first select a *competent and disinterested* person who shall act as umpire, and the said two appraisers *together* shall then estimate and appraise the loss, *stating separately sound value and damage to each item,* and failing to agree, shall *submit their differences only, to the umpire.* An award, in writing, *so itemized,* of any two when filed with the insurance companies above designated shall determine the amount of sound value and of loss or damage."

It will be observed that in the appraisal agreement,

(1) the words *"to each item"* after the word *"damage"* does not appear in the appraisal clause of the policy;

(2) that the word *"only"* after the word *"differences"* does not appear in the appraisal clause of the policy; and

(3) that the words *"so itemized"* after the word *"writing"* does not appear in the appraisal clause of the policy.

Since the appraisal agreement was substituted for the appraisal clause of the policy and was somewhat different from it, the agreement in effect abrogated it. *Broadway Insurance Co.* vs. *Doying,* 55 N. J. L. 569, at p. 571.

The learned Vice-Chancellor in his opinion found that the requirement of the appraisers (and of the umpire, if he was called upon to act) within

the purview of the agreement and the condition of the policy, was to consider all of the various items of property that were contained in the inventory that was submitted by the complainant, Melton Bros., Inc., with their proof of loss (S. C., p. 281, ll. 11-17). Counsel for the insurers, however, contend that the limitation of their determination was only as to two of the items in bulk, the merchandise in bulk, and the store furniture and fixtures in bulk, and further contend that the appraisers did not have to consider separately the value of and damage to every distinct piece of property involved in the fire.

An examination of the testimony and proofs clearly supports the court's view. It will be observed that the words *"each item"* are found in the printed part of the standard fire insurance clauses of each policy (S. C., p. 311, l. 21) and in the printed part of the appraisal agreement (S. C., p. 316, l. 36). These standard fire insurance clauses are a part of every insurance policy issued in New Jersey, and are intended to cover every kind of loss by fire, so that if only merchandise were involved in this fire, the words "the cash value of each item thereof and the amount of loss thereon" set forth in the clause above mentioned (S. C., p. 311, ll. 20-21) would necessarily refer to every distinct piece of merchandise involved in the fire. Likewise, in the appraisal agreement, the provisions thereof were intended to cover every situation involving a loss by fire, for in the printed part of the agreement, it distinctly says (Ex. C-4, S. C., p. 316, l. 28): "if this agreement contemplates personal property" showing that the agreement was a general form, and therefore the words "each item" also used in the printed part of the agreement was intended for every kind of a situation involving a loss by fire, and, if, for example, only merchandise were involved in a

loss, "each item" would necessarily mean every distinct piece of merchandise involved in the fire.

It will be further observed that the words "an award, in writing, so itemized" (S. C., p. 316, l. 38) are also a printed part of the appraised agreement. Counsel for the insurers, however, set forth part of the typewritten part of the insurance policy with reference to the coverage provisions, particularly the words "80% co-insurance attached applying to each item separately." We admit that these words, "each item" which are in typewriting in the insurance policy (S. C., p. 302, ll. 13-14) refer as they contend with reference to the co-insurance clause to the item of merchandise in bulk and the item of store furniture and fixtures in bulk; but it does not therefore follow that the word "item" is so used in the rest of the policy, particularly the printed part thereof, nor in the appraisal agreement. As was pointed out above, the words "each item" are distinctly not so used, but are used to cover every conceivable situation involving a loss by fire, and therefore mean every distinct piece of property. We respectfully urge that the words "each item" should receive their ordinary grammatical meaning, and if they do, they must necessarily mean every distinct piece of property involved in the fire in order to apply to every loss by fire.

It is well settled in this state that the standard fire insurance company policy is a legislative contract to be interpreted evenly. This has been stated by Chancellor Walker in the case of *Del Guidici* vs. *Importers & Exporters Insurance Co.*, 98 N. J. L. 435 (1922 C. E. A.), at p. 437:

> "The State of New Jersey has enacted that fire insurance policies shall conform in all particulars as to contract provisions, agreements and conditions with a certain standard, and that no other or different provision, agreement, condition or clause shall

in any manner be made a part of such policy. See the act of April 3, 1902, concerning Insurance, 2 Comp. Stat., p. 2862, Sec. 77."

This is but a restatement of the same rule laid down by the Court of Errors and Appeals in 1912 in the case of *Kupfersmith* vs. *Delaware Insurance Co.,* 84 N. J. L., p. 271, where Chief Justice Gummere, at p. 275 also says:

> "The law will not make a better contract for parties than they themselves have seen fit to enter into, or alter it for the benefit of one party and to the detriment of the other."

In the instant case, the parties in the appraisal agreement, as shown above, clearly used the words "each item" and the word "itemized" in the sense that it would be applied in any loss by fire, and it was therefore the intention of the parties that all of the various items in the inventory were to be considered by the appraisers, and if necessary, by the umpire. In fact, this was the view taken by the appraisers and the umpire in the instant case.

The Court in its opinion (S. C., p. 280, l. 34, to p. 281, l. 11) pointed this out, and said:

> "Silverman's testimony is to the effect that his practice and the custom, so far as he knows it to be, in matters of this kind (and he says he has handled hundreds of them) is that each item should be considered (S. C., p. 265, ll. 14-26). Now, I take it for granted that that seems to be the practice in cases of this kind, because it appears to me that Weinstock himself followed that same procedure; he took item by item of the inventory that was submitted to him and he set opposite those items a particular value (Ex. D-6, S. C., p. 383); and it appears also that the umpire did likewise * * * each of the parties, that is, Weinstock and the umpire, calculated, at the bottom of each heading that they have

> there, the detail value of the various items that went under that heading and made a lump sum total of it."

Throughout their testimony, Silverman and Weinstock, the appraisers, and Ginsberg, the umpire, used the word "item" with that meaning (S. C., p. 108, l. 30; p. 109, l. 5; p. 146, ll. 18-22; p. 149, ll. 37-40; p. 151, l. 30; p. 152, ll. 18-21; p. 164, l. 38; p. 193, ll. 3-18; p. 200, ll. 30-38; p. 201, ll. 12-14; p. 210, l. 32; p. 213, ll. 9-10) and even counsel for the insurers, during the hearing, used the word "item" in that sense (S. C., p. 265, ll. 16-20). The courts have similarly construed the word "item".

In the case of *Insurance Co.* vs. *Romers,* 8 Ohio Cir. D. 633, the Court held that:

> "The provision that competent and disinterested persons shall 'estimate and appraise the loss, stating separately sound value and damage,' means that the appraisers are to state separately the sound value and damage to each and every article injured by the fire, not the sound value and the damage to the stock and goods insured."

The case of *Security Printing Co.* vs. *Westchester Fire Ins. Co. of New York,* 204 Mo. Ap. 390, 221 S. W. 430, holds that:

> "Where the contract of appraisement of loss required estimation by items and in detail, the value and damage to the property destroyed or damaged as specified in the policy, which enumerated several kinds of property, an appraisement merely stating the total value of the property in the basement and the total damage to such property, does not conform to the agreement, though the inventory of property furnished by insured was checked off by appraisers, and the amount of loss fixed thereby is not binding on insured."

To the same effect is *Security Printing Co.* vs. *Hartford Fire Ins. Co.* (Mo. Ap.), 245 S. W. 1089.

As to the proofs in the case, the learned Vice-Chancellor said in his opinion (S. C., p. 270, ll. 1-12):

> "The variance of the testimony between the witnesses, Silverman, Weinstock and Ginsberg in this case clearly indicates to me the applicability of the principle of law enunciated by Chancellor Walker in the case of Riehl *vs.* Riehl, in 137 Atl. Rep., wherein he says that the judge or the tryer of fact is not obliged to believe the testimony of one or more witnesses, but the judge, as such tryer of facts, is to determine the credibility of the witnesses."

The Court further stated in its opinion that it believed the testimony of Silverman, but did not believe the testimony of Weinstock and Ginsberg. As to Silverman's testimony, the Court said (S. C., p. 278, l. 34 to p. 279, l. 3):

> "Now, Silverman's testimony was not only outspoken and explicit, but was very positive in many respects, and it was not controverted, in a good many material instances, by either Weinstock, as I recall it, or by Ginsberg. I gather a very favorable impression from the testimony of Silverman as to what transpired in several of these interviews between himself and Weinstock, on the one hand, and himself and Ginsberg, the umpire, on the other hand."

As to Weinstock's testimony, the Court said (S. C., p. 277, l. 29 to p. 278, l. 33):

> "Now, one of the things that leads me to believe, too, that Weinstock's testimony cannot be taken very seriously by me, is the manner in which he testified here in court. His testimony was certainly very, very unsatisfactory; it was hesitating, it was inconclusive, it was indefinite * * * But, notwithstanding, the submission of papers to him in court, he was not clear as to matters that I think he ought to have been able to be clear about, in order to give any particular credence to his testimony as against what was manifestly the very positive testimony of Silverman."

The Court then proceeded to show some of the discrepancies in Weinstock's testimony (S. C., p. 279, l. 13 to p. 280, l. 3).

As to Ginsberg's testimony, the Court said (S. C., p. 284, l. 34, to p. 285, l. 17):

> "I was not very favorably impressed with the testimony of Ginsberg in this case, at all, because, in the first place, he appeared to be too anxious to say a whole lot of things that he was not called upon to say, and was injecting into the case a lot of remarks which were not entirely in response to questions that were asked of him; and he seemed to be unduly exercised at some of the questions that were being put to him, and he manifested that somebody was trying to put him in a hole, and I did not realize, from any questions put to him by Mr. Klausner that he was in any wise trying to put Ginsberg in a hole; they were very plain questions—questions put very moderately to him, and in language that was fairly understandable; and yet Ginsberg appears to me to have contradicted himself in a number of respects, and then, when his attention was called to these contradictions, he would undertake to explain some of them away, but he did not explain them to my satisfaction, particularly in regard to the papers Exhibit D-8 and Exhibit C-14."

The Court then proceeded in its opinion to point out some of the discrepancies in Ginsberg's testimony (S. C., p. 285, l. 17 to l. 39).

We respectfully submit that the findings of the learned Vice-Chancellor in the instant case should be upheld, for as has been stated in the case of *Cavanna, et al.* vs. *Brooks,* 97 N. J. Eq. 329, by Judge Clark, in speaking for the Court of Errors and Appeals (1925):

> "This Court will give great weight to the findings of a Vice-Chancellor who has had an opportunity to see the witnesses."

In *Cartan* vs. *Phelps,* 91 N. J. Eq. 312, the Court of Errors and Appeals (1919), Justice Trenchard says at p. 314:

> "On an appeal from a decree from the Court of Chancery, great weight is given to a finding upon a question of fact, because the Vice-Chancellor who hears the case in the court below and sees the witnesses, and hears them testify, has better opportunities to judge their credibility than the reviewing court."

The appellants, nevertheless, in their brief, used the testimony of Weinstock and Ginsberg largely to set forth the state of case, and also to advance their argument under the various points in the brief, and when they state an important matter to be a fact in the case, it is often merely the testimony of either Weinstock or Ginsberg.

The question at issue is whether or not the appraisers and the umpire performed the duties devolving upon them under and by virtue of the appraisal agreement in the manner therein and thereby required of them.

The appraisal agreement provided that "the said two appraisers together shall then estimate and appraise the loss, stating separately sound value and damage to each item, and failing to agree, shall submit their differences only to the umpire."

Silverman testified that he made an item by item statement and appraised the entire loss (S. C., p. 104, ll. 3-14) and that it was a week before he completed it, having spent a lot of time (S. C., p. 266, ll. 20-30).

It was clearly shown that Weinstock never made an appraisal of the loss, as required by the appraisal agreement. Weinstock admitted this in answer to a question of the Vice-Chancellor (S. C., p. 181, ll. 30-40):

> "By the Vice-Chancellor:
>
> "Q. Then you did not estimate the loss on the candy or stock in trade, did you? A. Well, I thought that, with this billing, goods should not be included——
>
> Q. (Interrupting) But you did not estimate it in a formal way, as an appraiser or adjuster? A. No, but I could see, in a general way, that a store like this should have about a thousand dollars worth of stuff, but that I didn't figure, it was just a general opinion; it might have been more or less."

Silverman and Weinstock never appraised the loss together, and never went over the loss item by item (S. C., p. 105, l. 39, to p. 106, l. 2). Silverman and Weinstock went to the scene of the loss only once on April 12, 1926 (S. C., p. 104, ll. 28-30) at which time, Ginsberg went along with them. This was on the first occasion when the three of them went to make a general survey of the loss. After that, Silverman did not go to the loss with Weinstock and Ginsberg, or with either of them (S. C., p. 104, ll. 28-37). Although Silverman, after that, had his item by item statement, and went to see Weinstock several times, they never went over the loss item by item (S. C., p. 105, l. 20).

Prior to April 28, 1926, the only part of the loss in question discussed by Silverman and Weinstock

was that on the stock. They never discussed the fixture loss (S. C., p. 106, ll. 3-10). Silverman testified that they never agreed or disagreed, and that, nevertheless, the appraiser and the umpire made the award on April 28th (S. C., p. 108, l. 38, to p. 109, l. 40). Weinstock tried to assure the Court by his testimony that they disagreed on April 11th, the day following his first meeting with Silverman and thereupon called in the umpire, Ginsberg (S. C., p. 170, ll. 1-32), and he further stated in one part of his testimony that he did nothing further with reference to the loss until the award was made on April 28th (S. C., p. 170, l. 34, to p. 171, l. 12). But, when, however, he was confronted with his letter to Silverman of April 20, 1926 (S. C., p. 319), he was obliged to change his testimony. He then said he thought perhaps that letter had reference to additional bills that he had asked Mr. Silverman to submit. An examination of that letter, however, shows that he and Silverman were then giving some consideration to this matter, and that on April 20th, their consideration was not then yet ended. Ginsberg, however, says that when he was called to the scene of the loss on April 12th, that Silverman told him that they had disagreed, but it does not appear that Ginsberg undertook to ascertain from Weinstock whether or not there was such a disagreement, for when he went to 620 Washington Street, Hoboken, he said to the two appraisers: "I presume you gentlemen have disagreed" (S. C., p. 238, ll. 23-33). Ginsberg, however, admitted in another part of his testimony that on that day, April 12th, when they all went to the scene of the loss, and when he met Weinstock and Silverman for the first time, the appraisers did not have any differences, as yet, and that they did not submit any differences to him. Weinstock and Silverman and Ginsberg were together only on two occasions,

on April 12th, the date when they viewed the loss, at 620 Washington Street, and on April 28th, the date when the award was made at the office of Ginsberg, and Ginsberg also admitted that on April 28th, when Silverman and Weinstock were in his office, they did not submit to him a list of the items upon which they disagreed (S. C., p. 237, ll. 10-14). They, of course, did not submit their differences to him on any other day, but Ginsberg tried to testify that Weinstock gave him a list of items on April 12th, the first day when the three of them were together (S. C., p. 237, l. 20). This, of course, was impossible, because Weinstock testified that the first time that he had a definite figure on the stock was on April 20th or April 28th (S. C., p. 196, ll. 27-34). All three testified that, in order to appraise the stock, it was necessary to have the bills and Silverman was still submititng bills on April 20th, as shown by the letter of April 20th, from Weinstock to Silverman (Ex. C-5). Ginsberg, however, assumed to act as umpire, on April 12, 1926, although, under the facts in the case, he was not warranted in doing so. He testified that when he was informed that he was selected as umpire, he was supposed to immediately act as such (S. C., p. 238, ll. 2-4). Ginsberg also testified that he obtained an estimate from the fixture man, and that he completed his appraisal of the entire loss on April 18th (S. C., p. 249, ll. 4-14).

But even Ginsberg did not make a true appraisal, and he also never made an item by item appraisal of the loss. This is proved by the fact that the very paper which he claims was used by him in preparing the appraisal and the award (Ex. D-8) was shown not to have been prepared in the manner in which he said it was. Ginsberg testified that Exhibit D-8 was a paper prepared

by him prior to the meeting of April 28th. He stated that when he prepared Exhibit D-8, he typewrote that one paper only, and that he did it prior to April 28th, and subsequently, after the award, he prepared copies of it, one of which he gave to Weinstock and the other he sent to Silverman. But an examination in open court showed that Exhibit D-8 was clearly a carbon copy (S. C., p. 226, l. 9 to p. 227, l. 30). The copy which he gave to Weinstock was offered in evidence as Exhibit C-14. An examination of the testimony of Ginsberg as to how he arrived at the figures on Exhibit D-8 clearly shows that he was telling an untruth as to the same, and the Court so stated in its opinion (S. C., p. 285, ll. 18-38). Ginsberg would have us believe that he first typewrote the figures on Exhibit D-8 as to the unidentified stock totalling the sum of $12,496.78, then in pencil set down the figures as to what he appraised the loss on each item, totalling the sum of $3,200.00, and then in typewriting set down the figures $3,200.00 as the loss, and finally arrived at his figures for the award to be $9,940.45 (S. C., p. 223, l. 1 to p. 226, l. 4, to p. 228, l. 1; p. 229, l. 26).

Since this matter about which Ginsberg told untruths is so material, we respectfully submit that the maxim "*falsus in uno falsus in omnibus*" applies to all of his testimony, and the same is true of the testimony of Weinstock, who was shown to have told untruths about material matters, as above set forth.

Furthermore, when the award was made, only Silverman had his figures with him. Silverman and Weinstock had come to the office of Ginsberg to have a little quiet to go over the loss, but after the household furniture loss was settled, and Silverman requested Weinstock to go over the stock and fixture loss involved in this case, Weinstock said, "I haven't got my figures with me, but I

figure the loss at $4,000.00." He had no item by item statement, and Silverman asked him how he could figure the loss at $4,000.00 if he didn't have his figures, and furthermore, Silverman figured the loss over $29,000.00. Silverman, nevertheless, requested that they sit down and go over each item, but Weinstock said, "We don't have to have that, let the umpire decide; we can't agree." Silverman thereupon said, "Wait a minute, I take an exception; you see we haven't made any attempt to agree on any figure; if you will produce your figures, or go over my figures, and if we cannot agree, then we will let the umpire decide, although I object to the umpire because I don't believe he will give a fair decision because he is very friendly towards you." Weinstock then said, "It don't make any difference; Mr. Umpire, it is up to you." Thereupon Ginsberg pulled out of this pocket the determination as to the amount of the award and handed a copy to Weinstein and Silverman, together with a copy of the bill (S. C., p. 108, l. 28, to p. 109, l. 34, Ex. C-5, pp. 323-324). Ginsberg did not go over the figures with Silverman and Weinstock item by item and had everything prepared.

We respectfully submit that under the authorities, the facts in this case clearly show that the appraisers and the umpire did not properly perform the duties devolving upon them, and that the umpire proceeded to act before the appraisers agreed or disagreed, and before they submitted any differences to him.

As was stated by the learned Vice-Chancellor, the law is that where the umpire exceeds his authority, the effect of his act is the same, whether it was done consciously or by mistake, as in either case his award is void. *Dennis* vs. *Standard Fire Insurance Co.*, 90 N. J. Eq., 419, at p. 422, citing *Royse's Administratrix* vs. *McCall*, 5 B. 695. This case further holds that where a fire loss was sub-

mitted to appraisers who appointed an umpire to decide upon damages, only items upon which the appraisers disagreed should be submitted to the umpire.

In *Broadway Ins. Co.* vs. *Doying,* 55 N. J. L., at p. 572, the Court of Errors and Appeals says, speaking of the umpire:

> "He was empowered to act only in case of disagreement, that is, in case the appraisers had considered the matters submitted to them, and had formed and expressed to each other different opinions concerning them."

The learned Vice-Chancellor, in speaking of these cases, says (S. C., p. 291, l. 33 to p. 292, l. 17):

> "Now, that latter language fortifies me in my heretofore made known idea of the duty devolving upon these appraisers, that the duty devolved upon these appraisers to endeavor to agree, and that they should have met and should have submitted one to the other their opinions, and the items wherein they differed, with a view of honestly endeavoring to reconcile their differences. But it is manifest to me in this case, from what I adduce from the testimony that Weinstock seems to have taken some arbitrary stand that he would not confer with Silverman; and Silverman, by his testimony, indicated to me (and I believe his testimony in that respect) that he endeavored strongly to have Weinstock collaborate with him and so reconcile their differences; but Weinstock, apparently seemed to have known what the umpire was doing, because, when he called upon the umpire to come in and settle the matters between them, the umpire then pulled this already prepared paper from his pocket and submitted it to Mr. Weinstock for his signature, and it was signed."

In the case of *Collings Carriage Company* vs. *German American Insurance Company, et al.,* 86 N. J. Eq., p. 53, the Court held:

> "Where, pursuant to terms of contracts of insurance, it was agreed that each party should appoint an appraiser, and that the two appraisers so appointed should appoint an umpire, to whom they would submit their differences, and that an award in writing of any two should determine the amount of loss, the signature of the umpire is without vitality unless and until the two appraisers have failed to agree.
>
> "Where, pursuant to the terms of insurance contracts, two appraisers and an umpire were chosen and made an award as to the sound value of the property, which one of the appraisers signed without giving his consideration to or exercising his judgment on the subject, because he was told that the appraisal of the sound value of the property was a mere matter of form, the award was invalid, since if, through fraud, accident or mistake, an award does not embody the real judgment of the parties who return it, because there has been no consideration or attempt at consideration, it is not their award nor a compliance with the requirements of the agreement of submission."

It is the duty of the appraisers to consult, and if they do not agree, to call in the umpire, it being improper for one or two to consider evidence not submitted to the other or others. (*J. E. Davis Manufacturing Co.* vs. *Firemen's Fund Ins. Co.,* 210 Fed. 653.)

The case of *New York Mutual Savings & Loan Association* vs. *Manchester Fire Assur. Co.,* 94 App. Div. 104, 87 N. Y. Supp. 1075, is also directly in point. In that case, the fire policy provided that on disagreement as to the amount of

the loss, it should be ascertained by two appraisers, one selected by the insured, and one by the insurers, who should first select an umpire, to whom, on failing to agree, they should submit their differences; the written award of any two to determine the loss. The Court held that an award made by the umpire and one appraiser on estimates of the latter, which the umpire had merely shown to the other appraiser, but without any conference of the appraisers at which estimates were submitted, was void. An action may be maintained to set aside an award by insurance appraisers, and if successful in that regard, then for a recovery on the policy of the actual loss sustained. At page 1076, the Court says:

> "While the policy of the courts is to give full effect to this wholesome provision for the ascertainment of damages accruing upon an insurance policy, they have been strenuous in condemning any practice which in appearance savors of unfairness, even though no actual bad faith is shown."

It has also been held that where the umpire has been appointed and there has been a disagreement, an award reached by the umpire and one of the appraisers, without conference with the other appraiser, is invalid. Such conduct results practically in depriving one of the parties of any representation in the appraisal proceedings, which become, therefore, of no effect as to him. *Strome* vs. *London Assurance Corp.,* 20 App. Div. 571, 47 N. Y. Supp. 481, affirmed 162 N. Y. 627, 57 N. E. 1125.

Furthermore, the appraisal agreement provides that the award must be in writing and be itemized, stating separately sound value and damage to each item (Ex. C-4, S. C., p. 316, ll. 30-40). The

award signed by the appraiser, Weinstock, and umpire, Ginsberg (Ex. D-5, S. C., p. 382) states that they had appraised and determined "the actual cash value of each item of said property on the 15th day of December, 1925, and the actual direct loss and damage thereto by the fire on that day to be as follows: (see itemized schedule attached hereto) to wit:"; but, as pointed out by the Court in its conclusions (S. C., p. 408, ll. 24-26), *no itemized schedule was attached to the award,* nor was any itemized schedule prepared by said parties. The award gives the cash value of the stock and the cash value of the fixtures and improvements separately, and also the loss and damage of the same, but does not itemize the various articles of which the stock, fixtures and improvements consist, although it says "see itemized schedule attached hereto".

We also desire to call attention to the fact that the award (Ex. D-5) together with the appointment of the umpire (Ex. C-4, S. C., p. 318) is on the back of the paper containing the appraisal agreement (Ex. C-4). This would also show in what sense the words "each item" were used in the appraisal agreement, for in the award (Ex. D-5) the words "each item" and "itemized schedule" do surely lead to the construction that "item" means every distinct piece of property involved in the fire.

The question of the competency and the disinterestedness of the umpire will be discussed under the next point.

POINT II.

The appraiser designated by the insurers and the umpire should be removed because they are incompetent and not free from bias, prejudice or partiality, and since the insurers are unwilling to enter into a new appraisal agreement with new appraisers and a new umpire, they are barred from setting up the appraisal agreement, and/or award, and/or appraisal provisions of the policies in the actions at law.

Counsel for the insurers in his brief states that the bills of complaint filed in these cases merely attacked the award, and did not pray for a new appraisal. In the bill of complaint, para. 15 says, "the complainant, Melton Bros., Inc., has been and still is ready, willing and able at all times that a proper award be made, pursuant to the terms and conditions of the aforesaid policy and appraisal agreement, but the defendant has refused and continues to refuse to have a just and proper award made" (S. C., p. 7, ll. 20-30).

We respectfully maintain that in the complaint, in addition to the prayer to have the award set aside, there is the general prayer for relief "that the complainant have such other and further relief as may seem fair to this Honorable Court and be agreeable to equity and good conscience." It is well settled that a prayer for general relief is sufficient to support any decree warranted by the allegations of the bill, and that, under the general prayer, any relief may be granted to which the complainant proves himself entitled upon the facts stated in the bill. *Junior Order Building and Loan Association* vs. *Sharpe,* 63 N. J. Eq., p. 500.

It is also a well settled rule that a court of equity which has obtained jurisdiction of a controversy on any ground, or for any purpose, will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject matter, particularly with respect to the enforcement of its own decree, unless deprived of the right to do so by statute (21 C. J., 134, Sec. 117 and numerous cases cited in the notes thereto). By virtue of this rule, a court of equity, when its jurisdiction has been invoked for any equitable purpose, will proceed to determine any other equities existing between the parties, connected with the main subject of the suit, and grant all relief necessary to an entire adjustment of such subject, provided it is authorized by the pleadings (21 C. J. 137, Sec. 118) *Ransom* vs. *Geer,* 30 N. J. Eq., p. 249; *Melick* vs. *Cross,* 62 N. J. Eq., p. 545.

Under Point I it has been clearly shown that the award should be set aside. Therefore, in order to do equity and administer complete relief, the Court should remove both the appraiser of the insurance company and particularly the umpire.

Under Point I, it was manifest and the Court found in its opinion that the two appraisers did not together estimate and appraise the loss, stating separately sound value and damage to each item, and that before they agreed or failed to agree, the umpire proceeded to appraise the loss, and together with the appraiser, appointed by the insurance company, rendered the alleged award, although the umpire was to have only the differences of the appraisers submitted to him, after they failed to agree. Furthermore, Weinstock, the appraiser appointed by the insurance company, never did completely estimate and appraise the loss stating separately sound value and damage to each item before he signed the alleged award, and in his testimony, Weinstock, on numerous occasions, contradicted himself and told untruths. For example, he stated that Silverman and he disagreed on April 11th, as to the value of

the loss, and that he did nothing further until Ginsberg decided the case on April 28th (S. C., p. 170, l. 28 to p. 171, l. 12). Subsequently, however, he testified that it was necessary to have bills in this particular case, in order to properly prepare an appraisal of the loss, and then admitted that he did not have the bills on April 11th, but obtained them on April 20th (S. C., p. 175, ll. 1-30). Furthermore, as has been previously stated, he never estimated the loss in a formal way as an appraiser or adjuster (S. C., p. 181, ll. 30-40). He could not explain on what he based his judgment as to the appraisal of the loss.

As to the umpire, Bernard Ginsberg, the evidence was overwhelming that he never appraised the loss, stating separately sound value and damage to each item before he signed the alleged award, for as has been shown, the very paper (Ex. D-8) which he stated contained his itemized appraisal was shown to be a fraud, and he lied about its preparation. Throughout Ginsberg's testimony, he contradicted himself a number of times, and without any doubt, told untruths as to the case at issue. The following excerpt of the testimony is one of the instances (S. C., p. 244, l. 12 to p. 245, l. 8):

"By the Vice-Chancellor:

Q. Do you mean the show-cases were not at 620 Washington Street on the day you were there? A. No.

By Mr. Klausner:

Q. They had already been moved? A. On Railroad Avenue, yes.

Q. They had already been moved? A. I suppose so, if I saw them over there.

Q. So that you don't know what was in the show-cases at the time of the fire? A. I didn't say I do know, surely not; I simply used common-sense; I gave the men the benefit of the doubt, that is all.

Q. Where did you see Mr. Melton at the time you asked him where were the goods? A. He was right next to us, in the place.

Q. In 620 Washington Street? A. Yes.

Q. But you say the show-cases were not there then? A. Well, your Honor, here is the idea—when I came up to the show-cases—

Q. (Interrupting) I understood you to be saying right along here, that when you got to the place you saw by the inventory that there was supposed to be a thousand dollars' worth of stock in a show-case, and when you got there you said, "Where are the goods?" and Mr. Melton said, "Why, some boys must have come in and broke through it and taken them?" A. That was when I was in Railroad Avenue I saw the show-cases, your Honor."

As has been shown under Point I, the alleged award (Ex. D-5) stated that an itemized schedule was attached to the award, whereas in fact, no such itemized schedule was so attached, and neither the appraiser of the insurance company, nor particularly the umpire, ever prepared such an itemized schedule, and they, nevertheless, both signed the alleged award. We respectfully submit that, in doing this, they acted in collusion and committed a fraud. If a new award were to be made with the same appraisers and umpire, this whole action would be in vain, and all of it would be idle and hollow talk, for we respectfully submit that the appraiser of the insurance companies and the umpire would, no doubt, disregard any further consideration with reference to the loss and again render an award similar to the present alleged award. Surely, this Court, which is a court of *equity,* would not permit an umpire, who has violated his oath and told so many untruths to the Court, to act again in determining the amount of the loss to which the insured is justly entitled.

The learned Vice-Chancellor clearly sets forth

in his conclusions the reasons why the appraisers and the umpire should be removed, and says S. C., p. 404, l. 37, to p. 406, l. 37):

> "Ginsberg should not, in my judgment, be continued as umpire; and I am impressed with the advisability and propriety of the insurance company and the insured selecting appraisers other than Weinstock and Silverman. If the matter should be referred back to the aforesaid appraisers and umpire, I am constrained to believe, from what I observed of their demeanor as they testified in court, and the testimony given by them, that neither the company nor the insured could reasonably expect to obtain from them such an unbiased judgment as should be expected of them. No person who has formed an opinion, or is not open-minded in respect to the subject-matter submitted to him for consideration and determination, should be permitted to serve either as appraiser or umpire. While I cannot adjudge, from the proofs in this case, that either of the appraisers or the umpire acted in a fraudulent manner, nevertheless, each of them, in my judgment, acted in an injudicious manner; they manifested little regard of the importance of the duty entrusted to them, and Weinstock and Ginsberg exhibited such an acrimonious disposition of hostility towards Silverman, the latter exhibiting a like feeling towards them, that a fair, unbiased determination may not now, in my judgment, be expected of any of them. The animus and acrimony to which I have adverted was particularly patent to me from their mannerism while testifying. As stated by me at the conclusion of the hearing, the umpire unwarrantably assumed the right to enter upon a consideration and determination of the subject-matter of the appraisal agreement before it was time for him to do so; his testimony, as well as the testimony of the two appraisers, evidences that neither of said parties assumed their responsibilities with that degree of seriousness which they, who were called upon to perform a quasi-judicial function, should have manifested. To properly perform the duties devolving upon them, the appraisers and umpire should be free from the implication or innuendo of bias against either party to the controversy, *and against each other,* or of having formed an opinion in other than a judicious manner; they should be open-minded, substantially indifferent in thought and feeling toward the parties, and toward each other, and without bias.

* * * * * *

The agreement for submission to the appraisers provides that the appraisers therein named shall select a competent and *disinterested* person to act as umpire. In my judgment, an umpire, to be *disinterested,* should be impartial and open-minded. It would be futile to expect Umpire Ginsberg (if the matter were referred back to him) to be impartial and open-minded, inasmuch as he has heretofore (as he says) made a full and fair investigation of the subject matter and formed his conclusions thereon. He could not reasonably be expected to apply himself anew to the matter which may be submitted to him to be acted upon *judiciously* and form a conclusion differing from that which he heretofore formed."

The above rules laid down by the learned Vice-Chancellor are well settled.

In *Produce Refrigerating Co.* vs. *Norwich Union F. Ins. Soc.,* 91 Minn. 210, 97 N. W. 875, 98 N. W. 100, the Court stated:

> "It is the general rule that a person is disqualified to act as arbitrator who has any secret interest in the result or decision of the controversy, or if there exists any relationship or family connection between the arbitrator and a party to the submission, or if he had formed an opinion or is otherwise prejudiced in respect to the subject-matter. The board of arbitrators is a quasi court, gov-

erned by rules applicable to common-law arbitration, and should constitute a body of disinterested men, whose business it is to proceed in a judicial and impartial manner to ascertain the facts in controversy, without regard to the manner in which the duty has been devolved upon them. . . . Arbitrators not avowedly selected as partisans are, indeed, bound, as in the execution of a joint trust, to look impartially at the true merits of the matter submitted to their judgment. . . . An arbitration is a judicial proceeding and the arbitrators, being alike the agents of both parties, and not of one party alone, are bound to exercise a high degree of judicial impartiality, without the slightest regard to the manner in which the duty has been devolved upon them.''

And in *New York Mutual Savings & Loan Association* vs. *Manchester F. Assur. Co.,* 94 App. Div 104 87 N. Y. Supp. 1075, it was held that whenever one assumes to act in a judicial capacity, whether as judge, referee, arbitrator, or umpire, he must be free from the suggestion of bias against either party to the controversy.

The term ''disinterested'' contemplates that the arbitrators shall be disinterested not only in the narrow sense of being without relationship and pecuniary interest, but also in the broad sense of being competent, impartial, fair, and open-minded, substantially indifferent in thought and feeling toward the parties, and without bias or partisanship either way. *Young* vs. *Aetna Ins. Co.,* 101 Me. 294, 64 Atl. 584; *Brock* vs. *Dwelling House Ins. Co.,* 102 Mich. 583, 26 L. R. A. 623, 47 Am. St. Rep. 562, 61 N. W. 67; *Bradshaw* vs. *Agricultural Ins. Co.,* 137 N. Y. 137, 32 N. E. 1055.

Bradbury vs. *Pennsylvania Ins. Co.* (Me.), 106 A. 862, Supreme Judicial Court of Maine (1919) Spear, J., on p. 864, says:

> ''It is evident that this evidence (which would prove the disqualification of an arbitrator) cannot be limited to what may take place in the selection of arbitrators. Evidence of the conduct of referees from the time they are proposed until they have completed their award, including what they say and do, which tends to prove any one of the disqualifications, is sufficient to prove violent partisanship, incompetency or that they are not free from bias, prejudice, sympathy and partisanship as judges and jurors are presumed to be.''

See also 26 C. J., p. 419, Sec. 549.

In the cases cited by counsel for the appellants to the effect that the proper procedure in the absence of proof of fraud was to require the same appraisers and umpire to proceed to a new award, there is no evidence in any one of them that the appraisers or umpire were incompetent, not disinterested, biased or partial.

In the case of *Dennis* vs. *Standard Fire Ins. Co.,* 90 N. J. Eq., 419, cited by counsel for the appellants, the Court at p. 421 says:

> ''There is not a jot of evidence of unbecoming conduct upon the part of either of the appraisers or the umpire to excite the slightest suspicion that any of them approached their task with ulterior motives, and the impression made on my mind by the testimony is that the three gave careful consideration to the conflicting claims of the parties, and conscientiously, reached their verdicts.''

In the instant case, there is abundant evidence of unbecoming conduct upon the part of the appraiser of the insurance companies, and the umpire, as stated above.

In the case of *Caledonian Ins. Co.* vs. *Dutch Reformed Church,* 95 N. J. Eq., 496, cited by counsel for the appellants, the Court at p. 497 says:

> ''The complainants contend that the umpire appointed by the Court of Common Pleas

is incompetent, but offered no evidence whatever to substantiate this. Moreover, his competency was abundantly proved at the hearing."

In the case of *Collings Carriage Co.* vs. *German American Ins. Co.,* 86 N. J. Eq., 53, one of the appraisers withdrew from his consideration the subject of sound value, because the other appraiser said that it was a mere matter of form and of no importance. The Court said this was a false statement and apparently made in good faith, and said this could easily be corrected, and there was no evidence in that case as to the fact that the appraisers and umpire were either incompetent or not disinterested.

Counsel for the insurers further contends that the present appraisers and umpire know more than other persons can know by reason of their previous investigations of the amount of sound value and damage, and that therefore they should be retained.

We respectfully submit that even if this were so, it should be immaterial under the circumstances of this case, for this Court, being a Court of Equity and good conscience, is primarily interested as to whether or not the said appraiser and umpire are competent and disinterested and proper individuals to act in such capacities.

The fundamental question at issue is, would the appraiser of the insurance companies and the umpire be free from bias, prejudice and partisanship as to the insured, as well as to the insurance companies, and are they competent? The answer must certainly be in the negative.

In the case of *Stout* vs. *Phoenix Assurance Co. of London,* 65 N. J. Eq., 566, cited by counsel for the appellants, Vice-Chancellor Reed set aside the award, and although both parties wanted him to fix liability and assess damages, he said that that

was a matter for the law court. But that is not the question at issue in the instant case. And as to the question whether an appraisal can be made with the goods not in sight, the Court in that case said, that, even though the articles may not be viewed, an appraisal can be made for the information may be obtained in a variety of ways, for example, by the description of the property contained in the proofs of loss.

The appellants in their brief state at page 31 that at the conclusion of the hearing, after the learned Vice-Chancellor found that the award should be set aside, counsel for the appellants contended that the matter should be sent back to the same appraisers and umpire, whereas, counsel for the respondents urged that they be removed and that thereupon the Vice-Chancellor replied in a manner favorable to the appellants; but at that time, during that same discussion, the Vice-Chancellor also stated an opinion favorable to the respondents to the effect that he was doubtful whether Weinstock and Ginsberg could be fair and reasonable with Silverman in trying to come to an honest determination (S. C., p. 297, ll. 1-15). Thus, the learned Vice-Chancellor, at that time, showed that he was considering both sides of the question, and did not desire to decide it at that time, and therefore requested that both submit memorandums to him (S. C., p. 300, ll. 24-27). Counsel for the defendants thereupon submitted a memorandum, part of which is set forth in his brief at page 32. Counsel for the complainants likewise submitted a memorandum containing most of the argument set forth above under this point, and not only urged the removal of the appraisers and the umpire, but also again requested a new appraisal with new appraisers and a new umpire.

The Court in its conclusions found that the appraisers and the umpire should be removed, and

held that a new appraisal agreement, similar to the original one, with new appraisers and a new umpire, should be entered into, and if the complainant and the defendants did not desire to do that, it would then advise an appropriate order. The complainant, of course, immediately notified the Court of its willingness to enter into such a new agreement, but the defendants continued to refuse to do so (S. C., p. 41, l. 23, to p. 42, l. 10).

The appellants contend that an appraisal and an award is a condition precedent to a suit upon the policy, but in the instant case, the insurers, themselves, are preventing such an appraisal and award by refusing to appoint another appraiser or another umpire, and they therefore waive the performance of this condition. The insurers surely cannot take advantage of their own wrong, and since they refuse to enter into a new appraisal with new appraisers and a new umpire, the insured therefore may now proceed with their action upon the policies, and the insurers should be barred from setting up as a defense the appraisal agreement, and/or award, and/or the appraisal provisions of the policies to any actions upon the policies. It is well settled that the insured is released from compliance to submit to arbitration by any conduct of the insurance companies which has the effect of preventing an appraisal from being had, or an award from being made; under such circumstances, an action may be at once commenced under the policy. 26 C. J., p. 428, Sec. 570.

Furthermore, as will be shown under Point III of this brief, it was not even necessary to enter into a new appraisal before the insured could proceed upon the policies; and the insurers should not be allowed to set up any defenses based upon the appraisal agreement, and/or award, and/or appraisal provisions of the policy, after the first award is set aside.

POINT III.

The defenses of laches and estoppel have not been substantiated by the defendants.

On April 29, 1926, the day after the award was made, Silverman notified the insured of the alleged award and his objections thereto, and told them to see a lawyer to have the award set aside. (S. C. p. 114, ll. 20-34.)

On April 30th, two days after the award, Silverman wrote to Mr. Weinstock, setting forth his objections to the award (Ex. C-5, S. C. p. 326). The insured immediately conferred with their lawyers, the solicitors of the complainant in this action, and directed them to proceed (S. C. p. 65, ll. 38-40). The solicitors of the complainant thereupon wrote to Walton & Son, the representatives of the insurance companies, advising them that the matter was placed in the hands of the said solicitors for action, and inquiring if an amicable settlement could be made (S. C. p. 328). Not hearing from them, the solicitors again wrote on May 18th (S. C. p. 329). Finally, the solicitors wrote to all of the insurance companies directly to the same effect (S. C. p. 331). The matter was finally placed in the hands of the counsel of the defendants, and the solicitors of the complainant thereupon wrote on June 1st, 1926, to him with reference thereto, inquiring whether an amicable settlement can be made, and stating that the insured were desirous of some definite action (S. C. p. 334). The matter was then delayed for a considerable length of time by reason of counsel of the defendants holding out hopes of an amicable adjustment. The officers of the complainant corporation, Silverman and the solicitors of the complainant visited the office of counsel of the defend-

ants in July and August, 1926 (S. C. p. 66, ll. 1-40). The solicitors of the complainant telephoned to the counsel of the defendants on numerous occasions thereafter (S. C. p. 67, ll. 20-34). On June 28th, Silverman wrote to the counsel of the defendants enclosing a statement of the reasons for the objection to the award (S. C. p. 116, ll. 30-41, p. 339, pp. 362-364). The solicitors of the complainant wrote to the counsel of the defendants a number of times, the last letter being on November 10, 1926 (S. C. p. 343-347), and finally, no amicable adjustment being made, suit on the various insurance policies was instituted in the New Jersey Supreme Court, in order to come within the one year limitation for the institution of an action upon the policy, as provided therein. All but three of the actions were removed from the state court. In these three actions against the present defendants, answers were filed, setting up the above mentioned alleged award. Thereupon, the present three actions in the Court of Chancery were begun by the complainant, in order to have the award set aside and to enjoin the setting up of the alleged award as a defense in the law actions, and also the reformation of two of the policies as to the name of the assured, was sought in two of the present actions in the Court of Chancery.

On April 28, 1926, the award in the instant case was signed by Weinstock, the appraiser designated by the insured, and Ginsberg, the umpire, but Silverman refused and did not sign the award (Ex. D-5). On the same day, shortly prior thereto, the household furniture award was signed by all three of them, Silverman, Weinstock and Ginsberg. The fact that the award was not signed by Silverman, that Silverman immediately wrote to Weinstock, and counsel for the insured immediately wrote to Walton & Son, the representatives

of the insurers, and then to the various insurance companies, and then to counsel for the insured, clearly show that the complainant objected to the award within a reasonable time. In addition thereto, counsel for the defendants, on June 28th, received from Silverman a lengthy report setting forth all the objections to the award (S. C. p. 116, ll. 30-41; p. 339; p. 362-364). Counsel for the defendants is therefore mistaken when he says that in none of these is there a word suggesting that the award is invalid. With reference to the complainant requesting a reappraisement of the loss, it is clear that they were always willing to have such a reappraisal from the fact that all the letters indicate their desire to have an amicable settlement, and finally, requesting it of the court. But although the insurers were immediately notified of the claim of the insured, and the objection to the award, the insurers, at no time, directly inquired of the insured if they desired a reappraisal. The delay of the insured in attacking the validity of the award by court proceedings was due to the insurers holding out hopes of an amicable adjustment, and surely, the defendants cannot be permitted to take advantage of such a delay under those circumstances.

The defendants contend that the complainant failed to repudiate the award and demand a reappraisal within a reasonable time, and sold the damaged property, and therefore, changed the *status quo* as to be estopped from attacking the validity of the award nine months after its rendition. But when the complainant attempted to prove, at the hearing, how soon after the award it objected to the award, the testimony of the complainant with reference thereto was excluded on account of the objection of counsel for the defendants (S. C., p. 63, l. 37 to p. 65, l. 22). Likewise, when the complainant attempted to show where

the damaged property, which was sold, was removed, the testimony with reference thereto was excluded on account of the objection of counsel of the defendants (S. C., p. 71, l. 14 to p. 72, l. 40). Furthermore, the sale of the damaged property did not, in any way, change the situation. On April 12, 1926, when the appraisers and the umpire visited the scene of the loss, some of the goods had already been removed from 620 Washington Street, Hoboken, to Railroad Avenue, Jersey City. Silverman, Weinstock and Ginsberg all testified that they went to Railroad Avenue to view some of the fixtures on that day. All of the damaged goods, which remained after the fire, were removed in April before the award (S. C., p. 17, ll. 27-40), on account of the fact that the landlord forced the complainant to do so (S. C., p. 80, ll. 8-20). The damaged fixtures, which had been removed, could be viewed at Railroad Avenue long after the actions in the Court of Chancery to set aside the award were begun (S. C., p. 118, ll. 14-28). But, aside from the above, the learned Vice-Chancellor clearly sets forth in his opinion the reasons why the defenses of laches and estoppel should be denied (S. C., p. 286, l. 20 to p. 288, l. 22):

> "As to the question of laches and estoppel that has been urged, it appears to me that I will have to determine that proposition adversely to the counsel for the Insurance Companies, for the reason that it does not appear to me that the neglect—that is, the period of time during which the complainants neglected to make known their objection to the award of the Umpire—can in any wise prejudice the rights of the Insurance Companies; and I say that because it appears by the testimony here that on or about April 11th or 12th, when the Appraisers and the Umpire were at 620 Washington Street some of the goods that were claimed for were not then in evidence,

and the appraisers themselves and the umpire had to guess, and did guess, in fact, as it appears from the testimony, on what allowance should be made to Melton Bros., Inc. for the loss claimed in that respect.

"It further appears that the fixtures were removed over to Railroad Avenue, Jersey City. Those fixtures were certainly observed there by the Appraisers and the Umpire, and the loss and damage estimated by them quite clearly. If, for any reason, the Insurance Companies thought that it was advisable for future purposes to make any further investigation, or have anybody else see those goods—that is, the fixtures, particularly—it seems to me they were there, and they could have done that in order to have further proofs, if, perchance, this award was objected to. It does not seem to me that the Companies could have stood unreasonably by and taken it for granted that Melton Bros. were going to be satisfied with the award that was being made. In the case of Massie *v.* Asbestos Brake Co., 95 N. J. Eq., 298 (at p. 311), the Court of Errors says:

> 'Laches involves something more than mere delay, mere lapse of time. There must be delay for a length of time which, unexplained, and unexcused, is unreasonable under the circumstances, and which has been prejudicial to the defendant.'

"It appears in the case under consideration here, through correspondence and otherwise, that there has been a number of hearings in the office of the counsel for the Insurance Companies, in which the Melton Bros. Inc. representatives were being examined; and there also appears to be correspondence passing between counsel and the parties which would explain the cause of the delay, perhaps, and the intention on the part of Melton Bros., Inc. and their attorney.

"In the case of Tynan *v.* Warren, 53 N. J. Eq., page 321, the Court of Chancery holds that

> 'Mere delay in bringing suit will not deprive a party of his remedy unless such neglect has so prejudiced the other party by loss of testimony or means of proof, or changed relations, that it would be unjust to now permit him to exercise his right.'

"I do not find anywhere in this case anything to prejudice the Insurance Companies in any way, any more than they were prejudiced in the beginning. It appears that considerable of the property was in existence when the Appraisers or the Umpire undertook to appraise the loss; and, of course, the Insurance Companies, if they were called upon to make any further determination hereafter, would be in no further predicament than they were theretofore. So, for that reason, I am going to declare that neither the doctrine of laches or of estoppel apply in this case as against the complainant."

Counsel for the appellants contends that when the Vice-Chancellor stated the last part of the above, he had in mind sending the case back to the same appraisers and umpire by reason of the colloquy with counsel at the end of the oral opinion. But an examination of that colloquy will show that this is not so, for the Vice-Chancellor stated at that time that he was uncertain whether to send the case back to the same appraisers and umpire, or to remove them, and he therefore requested the counsel to submit memorandums as to each point of view. The above statements of the learned Vice-Chancellor in his oral opinion were still applicable after the filing of his conclusions.

Counsel for the appellants argues that as in *American Central Insurance Company* vs. *Landau,* 62 N. J. Eq., 73, complainant in this case

gambled on a favorable result, and when it proved unfavorable, lodged an attack against the award. But that case is not at all in point, for there the appraisers disagreed as to the damages, after which one appraiser refused to proceed with the appraisal and resigned, and later the award was made by the other appraiser and umpire. In the instant case, however, Silverman wanted to proceed with the appraisal, but Weinstock, the other appraiser, and Ginsberg, the umpire, gave an award before the appraisers even attempted to complete the appraisal. In the instant case, the insured did not gamble at all on a favorable result before objecting to the award, as was done in the Landau case.

To support the defense of estoppel, counsel for the appellants argues that the doctrine is well settled that if the assured wishes to attack an award made under an appraisal agreement, he must definitely repudiate it and request a second appraisal, and further says he cannot rely on the first appraisal, as a performance of the policy provisions, if he intends to attack its validity. Counsel for the appellants then cites one case decided in Maine and three cases decided in Rhode Island. The great weight of authority is contrary to the said doctrine, urged by appellants.

In *Western Assur. Co.* vs. *Decker,* 39 C. C. A. 383, 98 Fed. 381, the Court held:

> "The terms of the policy are satisfied when the insured, acting in good faith, appoints an appraiser. If the appraisal falls through, by disagreement of the appraisers, without any fault of the insured, he has discharged his covenant and satisfied the requirements of the policy, and may then resort to the courts to have his damages assessed."

In *Pretzfelder* vs. *Merchants Ins. Co.,* 116 N. C. 491; 21 S. E. 302; 123 N. C. 164; 44 L. R. A. 424; 31 S. E. 474, the Court held:

> "The proper rule is * * * that where the arbitrators or majority of them fail to agree upon an award, the plaintiff (unless he is shown to have acted in bad faith in selecting his arbitrators) is not compelled to submit to another arbitration and another delay, but may forthwith bring his action in the courts."

To the same effect are *Niagara Fire Ins. Co.* vs. *Bishop,* 154 Ill. 9; 45 Am. St. Rep. 105; 39 N. E. 1102; *Conn. Fire Ins. Co.* vs. *Cohen,* 97 Md. 294; 55 Atl. 675; 99 Am. St. Rep. 445. *Cooley's Brief on Insurance,* 2nd Ed. 1923, vol. 7, p. 6164, gives a long list of cases to the same effect.

The reason for the rule is clearly argued in *Powers Drygoods Co.* vs. *Imperial Fire Ins. Co.,* 48 Minn. 384; 51 N. W. 123:

> "If the contract is to receive a reasonable construction, it cannot be that the assured is bound to enter and re-enter into fruitless arbitrations indefinitely. If bound to enter into the second, he is into the third, and so on. Where is a line to be drawn? No line can logically be drawn anywhere if the assured is bound to enter the second arbitration. The reasonable rule is that by one submission in good faith, the assured has done all his covenant requires, and may then resort to the courts."

The insured, nevertheless, requested and was willing to have a second appraisal, although they were under no duty to do so, but the insurers refused to have a new appraisal with new appraisers and a new umpire, and they should therefore be estopped and barred from setting up as a defense the appraisal agreement, award or appraisal provisions of the policy.

Conclusion.

For the reasons advanced in the foregoing argument, it is respectfully contended that the decree of the Court of Chancery, in these three actions, should be affirmed, with costs to complainants.

Respectfully submitted,

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