KING'S BENCH DIVISION.

Jan. 18-22, 1934.

VERSICHERUNGS UND TRANSPORT A/G. DAUGAVA v. HENDERSON; SAME v. CAMPBELL.

Before Mr. Justice ROCHE.

Fire insurance — Reinsurance — Loss — Payment by plaintiffs under insurance policy covering certain buildings in Riga—Claims by plaintiffs under reinsurance policies issued by defendants H and C (Lloyd's underwriters)—Reinsurance effected through K & M, insurance brokers of Danzig—Defence: misrepresentation and concealment as to contents of buildings—Defendants informed that buildings would be used for the storage, if any, of non-combustible goods—Buildings in fact used for storage of flax—Duty to disclose—Relationship between parties—Held, that K & M were agents of H but not of C to effect insurance; that the evidence showed that K & M were informed by the plaintiffs that the insured buildings would be used for the storage of flax and that there was both concealment and reckless misrepresentation of that fact by K & M; and that therefore H was liable (as K & M were his agents) and C was not liable (as K & M in his case were the agents of the reassured)—Liability of H—Rate of exchange fixed as at date when claim should have been met, viz., at the date when the plaintiffs had negotiated a settlement with the original assured—Claim by plaintiffs for expenses incurred in negotiating settlement refused.

In these two cases the Versicherungs und Transport Aktien Ges. Daugava, of Riga, sued Mr. Arthur Henry Henderson and Mr. William Charles Campbell, both underwriting members of Lloyd's, in respect of a loss under a contract of reinsurance against the risk of damage by fire to buildings known as Weidendamm No. 27/31, in Riga. Both defendants denied liability.

Mr. S. L. Porter, K.C., and Mr. H. G. Robertson (instructed by Messrs. Simmons & Simmons) appeared for the plaintiffs; Mr. W. N. Raeburn, K.C., and Mr. W. L. McNair (instructed by Messrs. William A. Crump & Son) represented both defendants.

Plaintiffs, in their statement of claim, said that they carried on the business of insurers, and by a policy dated Feb. 28, 1930, they insured the Gesellschaft de Russische Französischen Gummi Guttapercha und Telegraphen-werke in firma Prowodnik, in liquidation, against the risk of damage by fire to their building known as Weidendamm in the sum of lats 2,446,696 from Feb. 17, 1930, to Feb. 17, 1931. By a contract of reinsurance contained in the brokers' slip prepared by Messrs. Glanvill, Enthoven & Co., as brokers for the plaintiffs and signed on behalf of Mr. Henderson and other underwriters, it was agreed to reinsure plaintiffs against their risk on the policy in the sum of lats 489,340 in the proportions set out or referred to in the slip. On Apr. 11, 1930, the buildings were damaged by fire, and the plaintiffs under their policy paid the loss caused amounting to lats 659,292.43. The amount of the loss payable by the reinsurers under the slip was lats 113,828, or £7754 odd, and plaintiffs claimed payment by Mr. Henderson of the proportion of the sum of £7754 odd underwritten by him.

In regard to Mr. Campbell, the plaintiffs alleged that the reinsurance contained in the brokers' slip and signed on his and other underwriters' behalf was in the sum of lats 978,678, in the proportions set out or referred to in the slip. The amount of the loss payable by the reinsurers under the slip was lats 263,656, or £15,509 odd, and the plaintiffs claimed payment by Mr. Campbell of the proportion of the sum of £15,509 odd underwritten by him.

Mr. Henderson, in his defence, pleaded that by letters from Messrs. Kleinschmidt & Michelsen, plaintiffs' agents, plaintiffs represented that the buildings which were the subject-matter of the insurance constituted an empty factory and contained no combustible goods. It was alleged that in fact at the date of the fire the buildings, or part of them, were being used as a flax warehouse and contained large quantities of flax and other combustible goods. Alternatively, Mr. Henderson pleaded that at the time the contract of reinsurance was being negotiated the plaintiffs concealed from him certain material facts known to them and unknown to him, and by reason of that he elected to avoid the contract. It was also said that the utilisation of the buildings was changed by the original assured in that at the time of the fire the first three storeys of building No. 134 and the first two floors of

No. 135 were loaded to congestion with flax, and that such change of utilisation was made without the consent of the plaintiffs, and Mr. Henderson elected to avoid and was discharged from liability under the contract of insurance sued upon.

Mr. Campbell's defence was similar to Mr. Henderson's. Both defendants pleaded that during the negotiation of the contract of reinsurance the plaintiffs made certain material misrepresentations.

In their reply, plaintiffs said that Messrs. Kleinschmidt & Michelsen were not their agents but were the agents of Mr. Henderson and the other underwriters. They pleaded that they orally communicated to Messrs. Kleinschmidt & Michelsen the fact that certain storeys of the building were used as flax warehouses, and they did not admit that the utilisation of the building was changed by the original assured without their consent, or at all.

JUDGMENT.

Mr. Justice ROCHE, in giving judgment, said: These two actions, by arrangement between the parties and with my permission, were tried together, and the evidence was taken together in both actions. They raise common questions of fact and certain divergent and difficult issues. I think I can with the greatest convenience deal with the matter in the same way and in one judgment, and in that judgment distinguish the issues which have to be distinguished.

The first action is brought against Mr. Campbell, a representative of one group of Lloyd's underwriters. The second action is brought against Mr. Henderson, a representative of another group of Lloyd's underwriters. The actions are both brought by the same plaintiffs, a Latvian company with a long name, the gist of which is that it is the Daugava Insurance Company, and I shall hereafter speak of the plaintiff company as the Daugava Company.

The facts that are material may be stated in broad outline very shortly. In February, 1930, the Daugava Company covered against fire certain concrete buildings along or near the water front at Riga, which were the property of a Russian company called the Gesellschaft de Russische Französischen Gummi Guttapercha und Telegraphenwerke in firma Prowodnik, and I shall hereafter speak of that company as the Prowodnik Company. That company was in liquidation. The Daugava Company covered the buildings, not the contents but the buildings, against fire for a year. They were minded to reinsure some part of their risk. The transactions which are the subject-matter of these actions were such reinsurance contracts or what are said to be reinsurance contracts. The Daugava Company reinsured or tried to reinsure some £20,000 worth of their much larger risk with the group of Lloyd's underwriters represented by Mr. Henderson and some £40,000 of the same risk with the Lloyd's underwriters represented by Mr. Campbell. The method by which the matter was negotiated was this. There are certain insurance brokers in Danzig called Messrs. Kleinschmidt & Michelsen. Those gentlemen were correspondents of English brokers in London called Messrs. Glanvill, Enthoven & Co., and Messrs. Glanvill, Enthoven & Co. were in close touch with the group of Lloyd's underwriters represented by Mr. Henderson. Before the initiation of the business which is now in question, there was what may be described as a treaty in existence, whereby the Henderson group of Lloyd's underwriters authorised Messrs. Kleinschmidt & Michelsen, through Messrs. Glanvill, Enthoven & Co. to effect business on their behalf in the matter of reinsurance and fresh business, and the extent of Messrs. Kleinschmidt & Michelsen's authority was that they might give cover up to 14 days and that then, if their action was confirmed by the Lloyd's underwriters, there would be a cover extended in accordance with the contract which Messrs. Kleinschmidt & Michelsen had purported to enter into on the underwriters' behalf. The extent of the authority of Messrs. Kleinschmidt & Michelsen was up to £20,000 on a risk.

Now, in the month of February, 1930, the Daugava Company having covered these buildings belonging to the Prowodnik Company, Mr. Michelsen, a member of the firm of Messrs. Kleinschmidt & Michelsen, went from Danzig, which is some hundreds of miles from Riga, to Riga to get business, and among other people he called upon the Daugava Company. As the result of that interview he went away with instructions, dated Feb. 19, to be found in the correspondence, the gist of which is: "With reference to your personal interview with our manager, Mr. Selzer, we are entrusting with you the reinsurance of" so many lats "on the buildings of the Prowodnik Company in liquidation." It goes on to say: "The buildings are

built of concrete and have concrete roofs. There is no manufacture carried on in them."

Now, there is a dispute and a conflict of evidence as to what passed at the personal interview mentioned in that letter, and at another interview with another gentleman on behalf of the Daugava Company which was admittedly held. I will return in my findings to what passed at those interviews after completing my narrative of the outline of the facts. Messrs. Kleinschmidt & Michelsen issued a cover note for £20,000 of this risk, and Mr. Henderson's group subsequently confirmed it. For the balance of the desired cover amounting in all to £60,000, the brokers—that is, Messrs. Kleinschmidt & Michelsen and, in London, Messrs. Glanvill, Enthoven & Co., their correspondents—had to go to what is called the open market, to underwriters at Lloyd's who had no treaty and no connection with either Messrs. Glanvill, Enthoven & Co. or Messrs. Kleinschmidt & Michelsen, save, no doubt, that they from time to time did business put before them by Messrs. Glanvill, Enthoven & Co. The Campbell group of underwriters purported to cover the £40,000 in question. I say "purported to cover," because an issue has been raised in this action which would of itself, if made good, defeat the claim of the plaintiff company against Mr. Campbell and his group. That point is that the parties never were *ad idem*, that there never was a completed contract of insurance between the Daugava Company and the Campbell group. There was, in fact, no policy in either case, no policy because, while the parties were still in correspondence with regard to the form that the present transaction might assume, and more particularly as to what were to be the terms of future business which it was apprehended might be done by the Campbell group, at any rate, through Messrs. Kleinschmidt & Michelsen, the fire happened. The fire happened because, or its severity was due to the fact that, these were not buildings merely of a company which was in liquidation or of a company that was not using them, but they were full of flax—a most inflammable material—and there was a very disastrous fire; and the present claim, which is a large one, and the claims of course upon the Daugava Company, and upon other reinsurers than the present reinsurers, arose out of that transaction. The Daugava Company, I gather, settled the claims of the Prowodnik Company against them for a sum of about half a milliom lats, less than was claimed and, of course, less than a total loss. The present claims as against the Campbell group—that is, the first action—the open market underwriters, amount to some £15,000 of that total of half a million lats, and against the Henderson group to some £7000. The particular actions are, of course, for the proportions of these particular representative underwriters of those sums, but the claims that I am in reality considering are £15,000 against the Campbell group and £7000 odd against the Henderson group.

As I said, while the matter was the subject-matter of correspondence as to the form of the contract and the way future business should be done, this fire happened. That gives rise to a submission by Mr. Raeburn, on behalf of Mr. Campbell, the defendant in this action, that the Daugava Company and he were never *ad idem*. Well, that is a question all of which appears upon the slips and upon correspondence, and I do not propose to give judgment on that ground, because, taking the view I do of the facts, it appears to me that there is a much surer and safer ground upon which I ought to found my decision. This is a matter, whether a contract or not, which is always, where you get a complicated correspondence, one of difficulty and not infrequently a matter on which different minds may take different views. I therefore am going to decide this case on a ground of fact.

For that purpose I will assume—though I do not decide it, and I leave it quite open, if this case goes elsewhere, for this to be dealt with elsewhere—I will assume that Mr. Campbell and his group did enter into an underwriting contract with the Daugava Company, the plaintiffs. Nevertheless, in my judgment, the defendant is entitled to avoid this contract on grounds which he has pleaded and proved. There has been some discussion as to whether the ordinary doctrine, which is certainly clear enough in marine insurance cases, as to concealment, applies to a fire insurance contract. I will discuss that in a moment, after stating the facts.

The question which appears at the threshold of this case is this: Whose agents were Messrs. Kleinschmidt & Michelsen? Ordinarily speaking, a broker dealing with an underwriter of Lloyd's, who has got a system of employing agents, is the

agent of the assured, or of the reassured if it is a reinsurance contract. The form of employment is consistent with that view, which is an employment by the Daugava Company of Messrs. Kleinschmidt & Michelsen as their brokers to effect cover. The general position is so well known that it hardly requires authority, but Mr. Raeburn kindly referred me to two authorities, one in reference to marine business, the case of Empress Assurance Corporation, Ltd. v. C. T. Bowring & Company, Ltd., 11 Com. Cas. 107, and one a recent one relating to burglary insurance, the case of Rozanes v. Bowen, 31 Ll.L.Rep. 231, a decision of Mr. Justice R. A. Wright.

Now, as regards the Campbell group of underwriters, the open market underwriters, I have no doubt whatever that Messrs. Kleinschmidt & Michelsen occupied no position other than agents for the Daugava Company, and that accordingly, if Messrs. Kleinschmidt & Michelsen did not fulfil whatever the duty of disclosure or representation in law is, then the Daugava Company are answerable in the sense that they must have such rights as the action of Messrs. Kleinschmidt & Michelsen allows them to have. Mr. Porter saw the difficulty, no doubt, of suggesting that in any ordinary sense Messrs. Kleinschmidt & Michelsen were agents for underwriters in the open market who had no connection with them and who, at the time when Messrs. Kleinschmidt & Michelsen got their instructions, had probably never heard of them; and what he says is this, that Messrs. Kleinschmidt & Michelsen were agents for the other group and that the Campbell group merely took the risk, acting on what was said by persons whom they knew to be agents for brother underwriters, the Henderson group. Well, I do not accept that view of the position at all, and it seems to me quite unsupported by evidence. I hold that, as regards the Campbell group, Messrs. Kleinschmidt & Michelsen were agents for the assured or reinsurers, the Daugava Company, and not for the defendant.

The position with regard to the Henderson group is different. There, the defendant, by Mr. Raeburn, while not admitting that Messrs. Kleinschmidt & Michelsen were ordinarily or at all agents for the defendant Henderson and his group, has said that they would treat the matter, having regard to the cover that was issued and the impression that may thereby have been created in the assured, as if they were, in the sense that, if information was given to Messrs. Kleinschmidt & Michelsen which was sufficiently true and accurate with regard to the risk, then the underwriter would hold himself bound. That is a position which was—I will not say generous, but which was entirely proper, and probably, I think, it was a position that, for reasons which it is unnecessary to state, would represent what was the legal position as between these parties.

Then the broad question of fact arises: What was told by the Daugava Company to Mr. Michelsen, and what did Messrs. Kleinschmidt & Michelsen tell the underwriters? The second question is most simply answered, because it is all in the correspondence. The answer is that the underwriters were not told any of the material facts, and they were told that which was not the fact. They were not told that flax would be stored in these warehouses and they were told in answer to questions—because they raised the point—that there would be stocked in some of the buildings goods not being combustible, "and that in case where there should be stocked combustion goods"—or "combustible goods"—"or any goods not being favourable for the fire risk of the buildings the Daugava Company would prevent this intention or cancel the policy." Now, that was quite inaccurate, if not knowingly untrue. The buildings were used, at the time the Daugava Company insured, for the storage of flax in part, and the Daugava Company knew it. Flax is a combustible merchandise — highly inflammable — and therefore the underwriters were not merely uninformed; they were misinformed and misled. I am quite satisfied, both on the probabilities and on the evidence, which indeed is almost unquestioned and unquestionable, that the underwriters never would have written this risk if they had known the true facts, that from the beginning flax was stored on some of the floors, and that more and more flax was stored as time went on.

In those circumstances it follows from that finding that the underwriters, Campbell and his group, are not liable on the suit of the Daugava Company; but for the decision of the other action it is most material to determine what the Daugava Company told Messrs. Kleinschmidt & Michelsen.

Now, two gentlemen saw Mr. Michelsen, Mr. Selzer and Mr. Talberg. Mr. Selzer has left the employment of the plaintiff company, and I gather that their relations have not been altogether harmonious since. At all events, he was not called, but Mr. Talberg was called. In the first place, I accept his evidence that a very considerable amount of the conversation which took place about this matter was held between him and Mr. Michelsen, and that it was not the cursory conversation which Mr. Michelsen would have me believe. I regard Mr. Talberg as an accurate, careful and reliable witness. Mr. Michelsen may be a careful witness, but I regard him as not possessed of either of the other qualities. I accept Mr. Talberg's evidence wherever it differs from that of Mr. Michelsen, and wherever Mr. Michelsen is speaking of any matter with which Mr. Talberg was not conversant I am sorry to say that I can place no reliance on the evidence of Mr. Michelsen. I find that Mr. Talberg told Mr. Michelsen that flax was stored on some of the floors of this building. I find, without the slightest doubt, that he gave him a plan at the time, which contained in German the information that the buildings were empty, with the exception that the lower floors of two buildings were partly filled or stored with flax. That plan, which is document No. 7, I am satisfied came into Mr. Michelsen's possession at the time he was in Riga on Feb. 18 and 19. I am also satisfied and hold that Mr. Talberg is accurate in saying that he told Mr. Michelsen the contents of the letter which he had got to the same effect, the letter of Feb. 12, which contains the statement: "In the two five-storey concrete buildings flax is partially stored."

Now, Mr. Michelsen's evidence is that he got another plan, document No. 6, which is identical with the plan to which I have just referred, No. 7, and is, in my judgment, a tracing from it as regards the plan, and which omits altogether any statement as to the contents of the building and as to flax being there, and what his partner wrote—his partner appears to do the English correspondence, obviously upon his information, because he, Mr. Michelsen, was in Riga and the partner was not—I think I have already read, that it contained nothing combustible.

Now, in those circumstances there was both concealment of material facts and misrepresentation of facts by Messrs. Kleinschmidt & Michelsen to the underwriters. That misrepresentation and concealment affects the assured and is their misrepresentation and concealment, because they were their agents, in the case of the Campbell action. It is not misrepresentation or concealment in the circumstances under which Mr. Raeburn has agreed, on the authority of his clients, this action should be tried in Henderson's case.

It remains to notice an argument mentioned by Mr. Porter in reply, that in a matter of fire insurance concealment is not a defence, because there is no duty to say anything about the contents of a matter like this.

Mr. PORTER: My Lord, misrepresentation; your Lordship said concealment.

Mr Justice ROCHE: I beg your pardon—that concealment is a defence, but that this was not material concealment here, because, with regard to the insurance of a building, there is no more duty to say anything about the contents of a building than there is a duty to say anything about what cargo a ship is going to carry. Now, that matter really does not arise here, but I am not prepared to assent to that proposition or to assent to the view that, with regard to the insurance of a building, it is not material, because a building is *prima facie* an empty building unused for the purpose of manufacture as this was, to say, and that you are not bound to say if it is going to be used for the storage of goods or not, and whether it is going to be used or not as a storage for inflammable goods. But that is not necessary for my decision for this reason, that Mr. Porter has submitted that an innocent misrepresentation in regard to fire insurance is not a ground on which a fire insurance policy can be avoided, and that it differs in that respect from a marine insurance policy. Now, there is a discussion of that matter in Mr. Macgillivray's very useful and able book on insurance at pp. 278 and 280, and I think some little doubt is thrown upon the proposition as to whether mere misrepresentation which is entirely innocent, if I may use that word, is a ground for avoiding the policy. In my view, it is, and I think that the propositions which emanate from that high insurance authority, the late Mr. Arthur Cohen, to be found in Halsbury's Laws of England, Vol. 17, Sect. 1058, represent the law. But, be that as it may, I am unable to hold that these misrepresentations were entirely or at all innocent. Mr. Macgillivray makes it clear in a discussion of the

authorities that, at all events, careless misrepresentation is a ground for avoiding a policy. Why that should be if all material misrepresentation is not a ground for avoiding a fire insurance policy, I do not quite follow, but, assuming that that distinction were a good one, it seems to me that the conduct of Messrs. Kleinschmidt & Michelsen in this case is not innocent, that it is careless, nay, reckless, and that the right to avoid this policy, which the underwriters represented by Mr. Campbell have chosen to do, is on these facts unquestioned. Therefore I hold that the plaintiffs fail in the first action against Mr. Campbell, but succeed as against Mr. Henderson.

At an earlier part of the case there was a question as to what was the effect of a stipulation in the policies, or in the contracts of reinsurance rather, which were either effected or, at any rate, contemplated as between the Daugava Company and the Lloyd's underwriters, of a clause called the full reinsurance clause, particularly in respect of the right of the underwriters to have the same premium that the Daugava Company got from their assured. Now, that matter of the rate of premium is a matter which really gives rise to the question with which I have already dealt in the Campbell action, as to whether the parties were *ad idem*, and that is what the parties were discussing; but, apart from its bearing on that question, if that question ever falls to be determined, it seems to me that that question has no bearing on this action. The position as to the rate of premium was known comparatively early—that is to say, it was known that one per mille, which was 2s. per cent., which was the rate that the Daugava Company were offering to pay to the English underwriters and for which Messrs. Kleinschmidt & Michelsen for their part had agreed to accept cover, was not the gross rate which the Daugava Company were getting from their insured. Therefore, although there may be a contract or not that the Daugava Company shall pay the same rate of gross premium as they were receiving to the English underwriters, yet the fact that they had stipulated in another part of the contract for a lower rate was no ground for avoiding the contract; it was rather a case where they may be regarded, if there was a contract, in the Henderson case, as two conflicting and inharmonious clauses in the contract. Accordingly, that point is immaterial for a decision of the matter in Mr. Campbell's case, and it is also immaterial, in the view I have taken, in Mr. Henderson's case; and no more need be said about it.

The result is that I give judgment for the defendant Campbell in his action and I give judgment for the plaintiffs against the defendant Henderson in his action. I suppose the amounts are right?

Mr. RAEBURN stated that there might be some discussion about amounts and the rate of exchange.

Mr. Justice ROCHE said he would hear the matter again on Thursday.

Thursday, Jan. 25, 1934.

Mr. PORTER said that two questions remained to be settled. One concerned the calculation of the rate of exchange, and the other was in regard to costs and expenses incurred in litigation and making a settlement in Riga. In Counsel's contention, the date from which the calculation should be made was the date agreed by the settlement.

Mr. RAEBURN submitted that the date of the loss was the proper date to take for the calculation. The date of the loss fixed the date at which the rate of exchange should be taken.

Mr. Justice ROCHE said that the first question was as to what date should be taken to fix the rate of exchange as between Latvian currency and English currency. Plaintiffs contended that one ought to take the date as January, 1932, but the defendant submitted that one should take April, 1930, the date of the fire in question. The difference between the two dates was that the pound was a gold pound at the date of the fire, and if the earlier date were fixed fewer pounds would be necessary to satisfy plaintiffs in lats than if the second date were taken.

His LORDSHIP, proceeding, said: I have arrived at the conclusion that the second date, namely, January, 1932, ought to be taken. I say nothing about the general rights of assured under policies of insurance. It may well be, as some of the cases seem to show, that the right to indemnification, and therefore the cause of action, accrues as soon as there is a loss, that is to say, as soon as the subject-matter of the insurance perishes or is affected by the perils insured against. The question I have

to determine is what is the right of the plaintiff company under this particular policy which they have entered into with their assured, and what is the meaning of the reinsurance cover which they have secured from the defendant. In my opinion, since the obligation of the defendant—I am paraphrasing it—was to follow the settlements of the plaintiffs, the defendant never came under any liability at all until there was a settlement to follow, and there was no settlement to follow prior to on or about some date in January, 1932. Accordingly, I hold that the exchange must be calculated as to that time and in that month.

With regard to the second question, the question is this. The plaintiff company seeks to recover as part of its loss to which the defendant must contribute certain costs and expenses of their own in ascertaining and, as it alleges, in reducing the claim of the original assured, the Prowodnik Company. The case of the Scottish Metropolitan Assurance Company, Ltd. v. Groom, 19 Ll.L.Rep. 131; (C.A.) 20 Ll.L.Rep. 44, shows that generally speaking—of course, there may be exceptions in particular policies, but generally speaking—unless there is an express provision that as part of the loss to be recovered the expense of defending a claim in respect of the loss is to be included, he who has incurred the expense cannot recover against a reinsurer part of that expense. Mr Porter seeks to limit the application of that rule to a case where the action has been successfully defended, but if the principle of the cases is considered I think there is no ground whatever for so limiting it. The general principle is that, apart from agreement, the expenses of dealing with a loss are no part of the loss itself.

Nevertheless, it is said that by reason of another authority this expense which is in question, and which is a sum of about 60,000 lats—be it £2000, or whatever it may be, in English money—that amount is recoverable. It is said that it is recoverable on the principles laid down in another decision of the Court of Appeal, the case of the British Dominions General Insurance Company v. Duder, [1915] 2 K.B. 394. That case, I think, decides this, that where a plaintiff who has reinsured himself proves that there has been a loss in respect of the subject-matter of the insurance amounting to 100 per cent., nevertheless he cannot recover 100 per cent. unless it has cost him 100 per cent., and if he has managed to reduce the claim, as he reduced it in that case to some 66 per cent., he can only recover against his reinsurer 66 per cent.; but if, nevertheless, under such circumstances he seeks to reduce the claim from 100 per cent., which is the *prima facie* quantification of the loss, he may put into the other scale certain expenses which he must prove to have been properly incurred.

It is said that that principle applies here. But then, on the facts, I am not satisfied that the principle applies at all to this case, for this reason. I am satisfied that there was no express contract so as to bring the case within the case of Scottish Metropolitan Assurance Company v. Groom. I am not satisfied that the real loss was any more than the amount of the settled loss. It is quite true that the Daugava Company assessed it themselves at one time as 785,000 lats, but I am not satisfied that they correctly so assessed it, or that the real loss was any more than the half-million odd lats at which the settlement was made. Neither am I satisfied that these expenses, or any of them, were expenses which were really concerned or arose out of a reduction of the amount of the claim. They may have been, and I think to a large extent they probably were, expenses which were concerned and arose out of the contest of the Daugava Company with the Prowodnik Company—a contest as to which I can only say, and I do only say, this, that I am not satisfied one way or the other whether it was reasonable for the Daugava Company to contest that claim.

In these circumstances this claim to include these costs, or any part of the 60,000 lats, the proportion of which is claimed under this head, is in my view not a claim which is legitimate, and it is a claim which I hold the plaintiffs cannot maintain.

His Lordship added that the two questions having been determined, the figures could now be arrived at. They could be mentioned to the Associate, and, if there were any difficulty, there was liberty to apply.