

THE QUEEN'S BENCH  
WINNIPEG CENTRE

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ORIGINAL TRANSCRIPT

*W. R. R. R.*

TRANSCRIPTION SERVICES

**BETWEEN:**

**GATEWAY SOAP & CHEMICAL CO. LTD.,**

**Plaintiff,**

**- and -**

**J. WERIER & COMPANY LIMITED,**

**Defendant.**

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REASONS FOR DECISION delivered by The Honourable Mr. Justice Morse, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 18th day of November, 1997.

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**APPEARANCES:**

**MR. S. SCHACHTER,** for the Plaintiff.

**MR. M. FINLAYSON ,** for the Defendant.

1 EXCERPT FROM PROCEEDINGS NOVEMBER 18, 1997

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3 THE COURT (ORALLY): Well, as I have said, I had  
4 an opportunity of considering the evidence and the  
5 submissions of counsel and I am ready to give you my reasons  
6 for the conclusion which I have reached.

7 The plaintiff is the owner of a building called  
8 the Walter Woods Building, located on the west side of Main  
9 Street. It is Number 782 Main Street. Behind, that is to  
10 the west of and attached to this building, is a shed  
11 separated from the main building by a fire wall.

12 The defendant is the owner of a building called  
13 the Yellow Warehouse Building, which is located immediately  
14 to the south of the Walter Woods Building at 764 Main  
15 Street. The defendant also owned a free-standing shed  
16 located behind, that is west of, the Yellow Warehouse  
17 Building. The respective buildings owned by the plaintiff  
18 and the defendant were separated from each other by a  
19 distance of approximately 15 to 20 feet.

20 In the early morning hours of April 26th, 1994 a fire  
21 started in or on the outside of the defendant's shed. The  
22 exact time the fire started is unknown. It was discovered  
23 by police on patrol and the first alarm was recorded at 3:09

24 a.m. The fire was set by an unknown arsonist. The  
25 defendant's shed was destroyed by the fire. The plaintiff's  
26 building was damaged by the radiant heat of the fire,  
27 although the plaintiff's representative, Mr. Chochinov, said  
28 in evidence it appeared that so far as the roof of the  
29 plaintiff's shed was concerned, the fire started in that  
30 area from embers coming from the burning shed. At issue in  
31 this case and what I have to decide, is the liability of the  
32 defendant for the damages sustained by the fire. Quantum of  
33 damages is to be dealt with later if necessary.

34 The plaintiff alleges that the defendant was

1 negligent, that it had an -- in essence the basis of the  
2 allegation of negligence is that the defendant had an  
3 obligation to have a fire protection system of some sort --  
4 either sprinkler system, or a smoke alarm system, or both --  
5 or a burglar alarm system installed in its shed.

6 The fire itself was very intense. It took the  
7 fire fighters a good number of hours to extinguish it.

8 The defendant's shed was a one-story wood frame  
9 building with a sheet metal exterior siding. It was  
10 approximately 90 years old. It was unheated and was not  
11 insulated as, I should observe, was the plaintiff's shed.  
12 It had no burglar alarm system. The plaintiff's shed had no  
13 burglar alarm system either, although the plaintiff's main  
14 building through which access to the shed was obtained did  
15 have a burglar alarm system. The plaintiff's shed did,  
16 however, have a sprinkler alarm system, and, after the fire,  
17 the plaintiff's representative found that six sprinkler  
18 heads in the area of the fire had gone off.

19 The defendant's shed was used for storage and  
20 although there were some wood crates and some sawdust  
21 apparently inside, the principal items stored were not  
22 flammable. There were approximately three explosions in the  
23 defendant's shed during the course of the fire, but I could  
24 draw no inferences from this. The source or cause of these  
25 explosions is not known. The inventory of the contents of  
26 the defendant's shed does not disclose any explosive  
27 materials.

28 No one lived or worked either in the defendant's  
29 shed or the plaintiff's shed. No one was generally in the  
30 plaintiff's shed at night. No one was in the defendant's  
31 shed at night. Most of the contents of each shed consisted  
32 of items that people were not going to be interested in  
33 stealing. On examination for discovery the plaintiff's  
34 representative said that he wouldn't necessarily expect a

1 burglar system in a storage shed. It was not as critical,  
2 he said, presumably not as critical as in an occupied  
3 building.

4 In my view, the defendant was not negligent in  
5 failing to install a burglar alarm system its shed. The  
6 evidence of the defendant's caretaker is that in the six  
7 years he worked as caretaker in the main building, there had  
8 never been a break-in into the shed, and there is no  
9 evidence that the shed had ever been broken into before.  
10 The evidence of the defendant's caretaker is that the shed  
11 was locked with a padlock and that he had the only key.  
12 There is no evidence that the shed was unlocked before the  
13 fire. In any event, as there is no evidence that the  
14 arsonist actually broke into the defendant's shed, there is  
15 nothing to suggest that the burglar alarm system would ever  
16 had been sounded.

17 This leaves for the consideration the absence of  
18 some sort of a fire prevention system in the defendant's  
19 shed, that is, a smoke alarm or a sprinkler system. Here,  
20 again, considering the circumstances -- an unheated,  
21 uninsulated shed, used only for storage of principally  
22 unflammable items -- and in the absence of any evidence  
23 that there had ever been a fire in the shed before, it does  
24 not seem to me the defendant could be said to have been  
25 negligent in failing to install a fire prevention system in  
26 the shed. In any event, there is no evidence that if a fire  
27 prevention system had been installed the fire would probably  
28 have been extinguished before any damage was caused to the  
29 plaintiff's buildings. The fact that six sprinkler heads in  
30 the plaintiff's shed released does not prove this. Simply  
31 put there is just no evidence, and it is not up to me to  
32 speculate about it. There is no evidence that the defendant  
33 was in violation of any provision of any applicable fire  
34 code provisions in force at the time of the fire.

1           As counsel for the defendant has observed, there  
2 is an alarming absence in this case. There is no evidence  
3 of the origin of the fire or when it was started. There is  
4 no evidence of whether an accelerant was used. There is no  
5 evidence of what sorts of fire protection systems there are,  
6 their respective capacities, what would trigger their  
7 operation and how effective they would have been.

8           So, as I have indicated there is no evidence to  
9 what extent, if at all, a fire protection system -- and in  
10 this I include smoke alarms or indeed a burglar alarm system  
11 -- would have prevented or reduced the damage caused to the  
12 plaintiff's property. Nor is there any evidence of the cost  
13 of installing fire protection or burglar alarm systems.

14           With respect to this rather audacious claim by the  
15 plaintiff I have reached the conclusion on all the evidence  
16 that the plaintiff has failed to establish that the  
17 defendant was negligent and I dismiss the plaintiff's action  
18 with costs.

19           MR. FINLAYSON: My Lord, on a Class 2 basis?

20           THE COURT: I do not know. What is the amount?  
21 If the amount of the claim is in the Class 2 basis then --

22           MR. FINLAYSON: It is.

23           THE COURT: So be it.

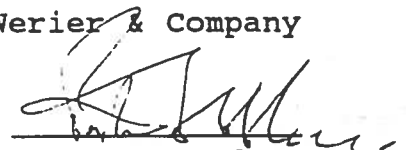
24           MR. FINLAYSON: Very good.

25                           (PROCEEDINGS CONCLUDED)

NOVEMBER 18, 1997

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These are my reasons for judgment in the case of  
Gateway Soap & Chemical Co. Ltd. versus J. Werier & Company  
Limited.



MORSE, J.