their grain that might from time to time be stored there, up to a limit of $200,000. The value of the plaintiffs' grain, including the cargo of the "Kewatin," was $228,098.45. Had notice been given to the plaintiffs, they would have increased the amount of their insurance to the full value of their grain, and so would not have sustained loss.

There is very little in dispute between the parties upon questions of fact. . . .

The defendants state their position to be this. The only damages the plaintiffs seek to recover are those arising from alleged short insurance, and the defendants say that the plaintiffs at the time of the fire already were fully protected by insurance, and they should have collected from the insurers up to the full amount of the loss.

The policy in favour of the plaintiffs was one issued by Lloyds, and it was in the main a marine policy, covering grain afloat, shipments to be valued at amount of invoice until otherwise declared, and then at the amount declared. The policy contained the clause, "To pay average irrespective of percentages." The word "average" is, no doubt, used as meaning loss or damage. It is a word used in marine insurance; and, so used, the clause means that, even if the charge upon the property insured was only a small percentage, the insurers would pay the loss. The word is not used in connection with fire losses on land. See Chalmers and Owen on Marine Insurance, 2nd ed., pp. 92, 146, 164.

The policy provided very carefully in reference to loss by "perils of the sea," and then contains the following:—

"We further certify that this policy covers, with London Lloyds underwriters and or companies the fire risk on grain in any Canadian elevator excepting it being understood and agreed that the underwriters hereunder shall not be liable for more than $200,000 at any one time in any one elevator.

"It is understood and agreed that any losses arising on translake or river risks shall be settled according to the rules and usages of the Lake Underwriters Association, but any loss which may arise or occur in any elevator shall be settled in conformity with the rules and usages of companies . . . comprising the Canadian Fire Underwriters Association."

The loss in question arose by fire in an elevator not excepted, and the risk attached.

The plaintiffs settled with the insurance companies, and accepted the adjustment as if it was a loss that happened at sea