

In *Holmes v. Charleston M. F. Ins. Co.*¹ a valuation was made in the application for insurance. The application was, probably, referred to in the policy, or otherwise made part of it. The valuation was held binding upon the insured, and he only received three-fourths of the value of his buildings as insured and valued. He was non-suited in an action asking for more.²

§ 153. *Stipulation that insurance may be reduced.*

The insurer may by a condition stipulate for power to reduce the insurance, and this condition is not to be treated as not written.³

§ 154. *Particular stipulations of policies.*

In any country the insurer may limit the force of a valuation by inserting in the policy a clause like the French one,—that the insured shall be bound to justify the value of anything lost, unless a statute like in Wisconsin (*anti*) prohibit.

Some policies, particularly open ones, provide that the loss shall be estimated according to "the true and actual value" of the property at the time of the loss happening. Some say "cash value;" this is what the French policies stipulate. The insurers by such policies stipulate to pay only to the extent of the market value (*valeur vénale*) of the subjects insured.

§ 155. *The true and actual value.*

What is the true and actual value of a thing insured, in other words its "*valeur vénale*"? The French writers are clear upon this. (Emerigon, vol. 1, ch. ix, and Boudousquie, Nos. 132 and 133; also Alauzet.) It is the price that it would sell for, or what a thing of like kind would sell for, in the same place, at the same time, under like circumstances. The cost of a house, or the invoice, or cost, prices of goods, may far exceed their *valeur vénale*. The contract of insurance, says Boudousquie, is not a proceeding to *conserver* the objects insured, but only a contract of indemnity. In the case of a house burned it would be unjust to say to the in-

surer, "re-establish the house as it was before the fire." The real loss once paid, the obligations of the insurer are extinct. Suppose it to be a perfectly old and tottering house, the insurer ought not to be made pay more than say a next-door neighbour whose operations might make it fall and be lost as a house.¹

§ 156. *Where the value has depreciated since the date of the insurance.*

The value of everything varies from time to time. If the subject insured has, before the date of the fire, undergone a depreciation, no matter from what cause, the insured cannot ask indemnity according to the value at the date of the policy. If he could do this, he might be interested in burning his property. Doubts may be stated where goods are depreciated by the effect of changes and chances in commerce, but are likely to regain the higher values that they once had. It may be said that if they had not been burnt they would have regained these values. There is nothing in this, for the insurer's contract was only to guarantee against the loss resulting from the fire. This loss is that of the goods reduced to the degree of depreciation in which they were when destroyed by the fire. The insurer is not *garant* for the difference which results from the fire happening at one time rather than at another.

It was held in *McCuaig v. Quaker City Insurance Co.*² that depression in the value of steamers generally, from circumstances which may be only temporary, and which may have no reference to the original cost, etc., cannot be taken into account.³

Shaw (note to Ellis) says: "An interesting inquiry is suggested by the remarks of Jones, Ch. J., in *Laurent v. Chatham Fire Insurance Co.*, 1 Hall, 41, in regard to the measure of

¹ *Dodd v. Holmes*, 3 Nev. & M.

² 18 U. C. Q. B. Rep. 131.

³ In *Wolfe v. Howard Insurance Co.*, 3 Selden (N. Y.), where the insurance was on goods in public stores or bonded warehouse—"loss in case of fire to be estimated according to the true and actual cash value of the property at the time of the fire;" the measure of damages was held to be such value though the duties had not been paid. Note to [254] Sedgwick, Damages. What is meant by this? Surely goods in bond have less value than goods out, duty paid.

¹ 10 Metcalfe.

² The company, by statute, was authorized to insure only to three-quarters of the value of any property.

³ *Journal du Palais*, 861; A. D. 1871.