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DAMAGE BY REMOVAL.

IN FIRE INSURANCE.

Our attention has been called to the very interesting case of McLaren v. The Commercial Union Assurance Co., appearing on page 64 Ontario Reports (Queen's Bench Division) for 1884, the particulars of which are as follows: The plaintiff effected an insurance in the defendant company (May 10, 1884), for the sum of \$1,000, covering stock-in-trade in the Town of Port Arthur. Among other clauses of the policy was the following: (Statutory conditions, schedule to chapter 162 R. S. O.) 5. "Where the property insured is only partially damaged, no abandonment of the same will be allowed unless by consent of the company or its agent; and *in case of the removal of property to escape conflagration, the company will rateably contribute to the loss and expense attending such act of salvage.*" We italicise the latter portion as important, and for future reference.

The stock-in-trade at the time of insuring was valued at \$6,000; but increased during the next sixty days, so that at the time of the fire, June 21, of same year, it was \$14,500.

A fire occurred on the last-mentioned date in an adjoining building, by which plaintiffs' building was several times set on fire, thus endangering his goods to such an extent that he deemed himself justified in removing them to a place of safety, which he did. His own building, however, was not burned, nor was any of his goods, but he claimed for breakage, injury, etc., consequent upon removal, the sum of \$1,450. The Company, admitting the propriety of the removal, also admitted its liability for damages upon the goods to the extent provided by the terms of the policy, and offer-

ed to contribute *rateably* with the insured upon the damaged property, which, under the common acceptance among underwriters of the term "rateable," would have been in the following proportion, viz.: As \$14,500 value is to \$1,000 insurance, so will be \$1,450 loss to \$100. The insured would not accept this sum, and carried the matter into Court, where, as the Court said, the only matter for consideration was, whether the plaintiff was entitled to recover from the defendant the full amount of the policy, or whether the defendants were discharged by a *rateable* payment, as provided in such cases, by the terms of the policy itself.

The Court then proceeds to argue somewhat after the following loose style; which, as it is lawful to discuss and criticise the decisions of any court of law,—if not justice in all cases—so long as no imputations of dishonesty are charged upon its judges—we offer the following criticisms upon the various dicta, as we proceed:

The Court says (page 65): "The first question, and one that the answer to which seems to me really decisive of the case, is whether the damage thus caused is within the policy" (no one denies this). "The great weight of authority is that in such case the fire is looked upon as the proximate cause of the damage, and that the policy covers it, unless excluded by its terms." A truism up to the exception "unless excluded by its (the policy's), terms. But the terms of the policy, while recognising its liability under such circumstances, *did exclude*, to a certain extent, all such claims, by agreeing to become liable only in a *rateable proportion* with the insured for any such loss. What a *rateable* proportion is, as understood by insurers, has already been explained in the example hereinbefore given, and in this light it has ever been held proper and legal.

The Court proceeds: In *May on Insurance*, 2nd American Ed. p. 612, s. 404, it is said: "Damages resulting from *bona fide* efforts to save the property from fire, as by water and breakage by removal, and by loss or theft consequent upon exposure occasioned by the fire, are within the loss covered by a policy against damage by fire."

So in *Phillips on Insurance*, 5th Am. Ed. p. 634-635, sec. 1098a: "The underwriters are liable for damage to the subject and expense directly incidental or consequent to the fire; as damage to the insured goods by water thrown on to extinguish the fire, and the expense of removing the injured property from the fire." Both of these quotations