

vacancy of occupation to be announced to the insurance company it might be so; but in the absence of condition such as that, could it be said the risk was aggravated? Perhaps so, but this would be for the jury, I suppose.

§ 172. *Loss by fire happening by invasion, &c.*

"No loss or damage by fire happening by any invasion, foreign enemy or any military or usurped power whatsoever will be made good by this company."

Such is a condition contained in many English policies; others add "civil commotion" to the excepted cases, and others "riot and tumult." The *historique* of these exceptions, and the meanings of these words can be gathered from the remarks of the judges in *Drinkwater v. Lond. Ass.*¹ and in *Langdale v. Mason*², to which so much space is given up in the early works on insurance.

The United States policies generally state this condition thus: "This company will not be liable for any loss or damage by fire happening by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power." Are these words synonymous?

In 40 Connecticut Rep. is *Boon v. Aetna Ins. Co.*, where the U. S. Circuit Court held defendants liable though the fire was caused by the U. S. military orders.³

If, in an action on a policy which frees the insurer from loss arising from riot, civil commotion, etc., the declaration sets forth the policy, and negatives that the loss arose from civil commotion, but be silent about riot, it is bad on general demurrer, for riot and civil commotion are not synonymous.⁴

In New York it has been held that the words "usurped power" mean an usurpation of the power of Government, and not a mere excess of jurisdiction by a lawful magistrate.⁵

Where the loss happens by war or invasion, the insurance company goes free,

¹ 2 Wils.

² 2 Park.

³ See Albany Law Journal, Nov. 1875, p. 338.

⁴ *Coudlin v. Home D. M. F. I. Co.*, 2 U. C. Rep.

⁵ 21 Wend. 367. Military power or usurped power in policy conditions means the same thing. Military and usurped power means rebellion conducted by authority. January, 1880, Virginia. *Portsmouth Ins. Co. v. Reynolds*, p. 499, Alb. L. J., of 1880, vol. 1.

though the fire be caused by simple imprudence of the enemy established in a town or place. Clauses stipulating against losses by war or invasion are to read more largely than one that reads only of war. J. du Pal. of 1872, p. 198, C. de Cassn.

When there is a stipulation against war, war must be the cause direct and immediate of the loss. *Ib.*

§ 173. *Damage by Lightning.*

It is a condition in many American policies that "the company (insuring) will not be liable for damage to property by lightning aside from fire."

Of course, under such a condition the insurers could not be held liable for loss from the rending of the house without burning.¹

Some companies say that they "will make good losses sustained by lightning." Some English policies read: "This company will make good losses on property burnt by lightning;" others read thus: "Losses by lightning will be made good."

Upon all these I would remark that under a policy against fire containing no exception of fire by lightning, loss from this last would have to be paid for. Under a fire policy not mentioning lightning, injuries caused by lightning without any combustion, I should say, would not be losses within the policy. Lightning may shiver masonry and scatter timbers without burning anything.

What of the clause, "losses by lightning will be made good?" Is this to be limited to losses from combustion, or would it cover loss from mere shivering of masonry, scattering of timbers and so forth? But for the body of some policies having that clause mentioning only losses by fire as to be made good by the insurers, the question would be easy to answer.

In France the clause is sometimes made very clear for the case of ruin or loss from lightning, though unaccompanied by combustion. 2 Alauzet, p. 354. Pardessus, vol. 2, p. 602, Dr. Comm., holds that, under ordinary policies, in the case of a thunderbolt injuring a house, the insurer is liable as if fire had done it. *Sed query?* At p. 51, Agnel says, lightning without combustion, yet insurance company to pay. Cour de Cassation.

¹ *Babcock v. Montgomery M. I. Co.*, 6 Barb. R.