

where only goods are insured, the question might be different, as to their value, from what would be the question of the value of the fallen house.

If companies wish to avoid such losses, let them stipulate against them as against losses from hurricanes, etc.

A church takes fire; its steeple, burning, falls on a house and damages it. This house is insured; the owner of it must recover against his insurer.

So of a factory, the chimney of which might so fall.¹

A brick building is insured; it falls; all is ruin. Immediately a fire takes place in the ruins. The insurance company is freed.²

A collision of steamers took place, followed by a fire almost immediately. The insurance company was held liable.³ So fire may be the result of a flood.

In the case of *Commercial Union Ass. Co. v. The Canada Iron Mining & Manufacturing Co.*,⁴ the policy contained a condition against loss by fire, by earthquakes, or by *burning of forests*. During the existence of any of the contingencies aforesaid, the policy to be suspended. The forests in the neighborhood were burning at the time of the loss; so the company was freed. The original Court held that it had not been proved that the buildings insured were destroyed by forest fire, so it condemned the insurance company. The Queen's Bench reversed, and dismissed the plaintiff's action.

‡181. *Damage caused by mismanagement of furnaces, etc.*

The insurers sometimes stipulate not to be answerable for loss or damage on stock of any kind, occasioned by misapplication of fire heat in manufactories, or for loss or damage by natural heating of hay, corn, or goods of other kinds.

Damage (from mismanagement of regula-

¹ *Johnston v. West of Scotland Ins. Co.*, Bell's Illustrations, Vol. 1.

² *Nave et al. v. Home Mut. Ins. Co.* Missouri, 1866. Bennett, p. 88.

³ *German Ins. Co. v. Sherlock.* Ohio, A.D. 1874. Bennett, p. 564.

⁴ 18 L. C. Jurist, Queen's Bench, Montreal, A.D., 1873.

tors or furnaces) by heat alone, without *ignition*, even where there is no express provision, is not covered by the ordinary policy against loss or damage by fire; *a fortiori*, where the above stipulation is introduced, and the *misapplication of fire heat* occasions ignition, the insurers will not be liable.¹

But a policy would have to be very special to work to prevent an insured recovering loss caused to his goods by mere fire heat, if these goods were damaged, in his house, from a fire burning down his neighbour's, adjoining his. It is going too far to say, as some do, that the loss must not be by mere heat, without ignition. There are cases in which no ignition may be on the insured premises, yet damage may be done to goods in them by fire heat, for which the insurer, under the usual policy, would be liable.

If a house opposite mine be burning, and mine be singed, and threatened, the insurers must pay the damage by heat. And if water be thrown into my house then and there, to prevent fire seizing it, the company is to pay.

Art. 2581 of the Civil Code of Lower Canada says that the insurer is not liable for losses caused merely by excessive heat in a furnace stove, or other usual means of communicating warmth, when there is no actual burning or ignition of the thing insured.

‡182. *Goods held in trust or on commission.*

"Goods held in trust or on commission must be assured as such, otherwise this policy will not cover such property; and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein. Goods on storage must be separately and specifically insured."²

Goods were insured by R., which he had taken in pawn; he insured them as his. They were lost by fire, and it was held that the insured could not recover for them, not having declared as the condition required.³

¹ *Austin v. Drev.* 6 Taunt.

² See *ante*, who may insure? In *Waters v. The Monarch L. & F. I. Co.*, it was decided that, held in trust means in any way in trust, directly or indirectly.

³ *Rafel v. Nashville M. & F. Ins. Co.*, La. Annual Rep. of 1852.