wards in a general conflagration? The insurer would be liable, *semble*.

Can a man insure, describing his house as bounded on one side by vacant land of his own, and afterwards build a cotton factory on that land, and say that he was not bound to say anything to insurance company unless bound to do so by express clause of his policy? Not *in foro conscientiæ*, and in France not, by law.

The use of a building, a shoe manufactory, for drawing a lottery does not vacate a policy insuring it; unless there be a connection between the fire and that use.[1]

Evidence as to an usage in New York that, upon risk increased, notice is to be given to the insurers; so that they may exercise the option of continuing, or annulling the policy, cannot be received to alter the legal effect of the policy.[2]

Under my system, usage would not be wanted to help the insurers, for where the risk is materially increased by the insured's acts, the insurers are discharged.

Increase, or not, of risk, or whether alterations increase the risk, is a question for the jury.[3]

§ 171. *Resemblances between Assurance and Suretyship.*

The surety runs risks and uncertain chances. The creditor wants to be assured against loss through the debtor's not paying or not being able to pay.

The difference is, insurance is a principal contract; suretyship an accessory.

The convention *del credere* makes a contract of insurance—Casaregis. Obligation of person assuming risk for *del credere* commission is a distinct separate obligation. (Contract of insurance.)

Gratuity is of the *nature* of suretyship, but not of its essence. No. 15, Troplong, *cautionnement*.

If the creditor pay the surety to guarantee him against insolvency of debtor, it is "véritable assurance," says Troplong, No. 16.

Scaccia says: "Contractus assecurationis in substantia est contractus fidejussionis." This is true where the surety is paid as by creditor above. But if it were the debtor who paid the surety to bind himself towards the creditor, this would not be a contract of insurance, says Troplong, (but *louage* probably.)

Ordinary *cautionnement* is a contract unilateral. The creditor binds himself to nothing, and so the contract is unilateral. But in insurance both contract expressly. *Semble, contrat synallagmatique.* Yes! says Troplong.

The insurer, a cautioner, must be freed often, where changes are made. *Cautionnement* cannot be extended from one thing or case to another. We are recommended "de ne pas étendre l'engagement de la caution au-delà des limites dans lesquelles il a éte contracté." No. 148, Troplong, Cautionnement.

An alteration in the obligation or contract in respect of which a person becomes surety, discharges him, unless he has consented to the contract so altered. Ch. viii., Suretyship.

Any subsequent addition to, or deviation or alteration from the contract, is such an alteration as discharges the surety—*Ib.*

The cautioner is freed by any essential change consented to by the creditor without the consent of the cautioner. (Bell's principles.)

If there be alteration in the constitution of an office it ceases to be that in respect of which the surety became bound for the principal, and the surety will be free, unless he authorize or consent to the change of constitution of the office.

If by act of the creditor or by Act of Parliament, the duties of an office are changed, so that the peril of the surety is increased, the surety is free.[1]

An insurance company insures A's dwelling house occupied by A, for £500, and outbuildings in rear, £250. A knocks down his dwelling to rebuild it. While it is down and the ground on which it stood is empty, A not using his outbuildings, these are burnt at night. The insurance company say they are free. Are they? If a condition ordered

[1] *Boardman* v. *Merrimack M. F. I. C.*, 8 Cushing. §154 *a*. Angell.

[2] 1 Hall R. 632.

[3] 10 Pick. 535.

[1] *Oswald* v. *Mayor of Berwick.*