manning " is even an implied warranty, says Marshall.

In *Weir* v. *Aberdein*, the underwriters were held to have been aware of things, and to have assented to the vessel's putting back, and so were condemned. It really was not a decision contrary to *Forshaw* v. *Chabert* [1] in which last case the underwriters were freed, though the loss of the vessel was after all that had been wrong was rectified. A ship was sent out unseaworthy, and put into a port and was made seaworthy, and afterwards was lost.

§ 179. *Loss by negligent deposit of ashes.*

"This Company will not be liable for any "damage caused by fire originating from "depositing ashes or embers in wooden "vessels."

Losses by negligence of servants or tenants, must generally be paid by the insurers, but if, in the face of a condition such as above, fire happen by violation of the condition, the insurers will be free.

Even without such a condition, gross personal negligence of the insured or his servants may amount to fraud, and the insurers in such case will go free; if for instance the insured's servants be in the habit of depositing ashes in wooden vessels in a stable adjoining the insured's house insured, and the insured be notified of the fact, and asked to prevent such conduct, but does not, and the stable catch fire and communicate fire to the house insured, the insurer may be freed.

Suppose a policy for 12 months, renewable by annual payments of premium, that obliged the insured to conform to all regulations of police, and he having introduced a furnace, to heat his house, had not gotten it certificated, if fire happened from any cause whatever, *semble*, the insurer would be free. But if after the insured had got it certificated, a renewal premium be taken by the insurer and a fire later happen, *semble* the insurer, would be liable, and not to say that the policy once was void for a time of no certificate.

Suppose a condition to forbid entering a stable at night with a lighted candle. Though

[1] 3 Br. & B.

no mischief has ensued, the policy is vacated by entering the stable at night with a lighted candle. There was a possibility of causing a conflagration. [262] Vattel by Chitty. But *Alauzet* says that in *assurance terrestre* it is *not* as in marine insurance, where a deviation once made, the policy is avoided. He would not be free if fire happened in a general conflagration for instance, *not* from the lighted candle.

Parsons favors Alauzet.—Parsons on Contracts—Conditions—Introduction. He says there is a difference where one is bound to do a thing actively before the other shall be bound to pay. But query? If a man say, you to pay me, but not if I do a thing, (passively even) or allow a condition of things stated, surely the man ought to be bound.

If a condition order the insured to comply with police or city regulations as to sweeping of chimneys, if he do not comply, and fire take from a chimney, the insurer is free. If the condition be that chimneys shall all be swept once a month, default on the part of the insured will free the insurers. If the condition read that the insured shall observe the police regulations as to sweeping of chimneys, and these order sweeping once a month, it is the same thing.

§180. *Fires resulting from hurricanes, earthquakes, and burning of forests.*

Some companies except fires resulting from hurricanes, earthquakes, and burning of the forests, or from fire set for clearing lands.[1]

Shaw, upon *Ellis*, says: "In order to bring a loss within the protection of a fire policy, it must appear that fire was its *proximate*, or rather its *efficient* cause, and not merely incidental to it." [2]

If he mean that the falling of a mill, and fire afterwards happening in it from displacement of the stoves, would give no action to the insured, he is wrong. Suppose a fire to take place from the falling of a building having stoves in it. The insurer must pay. The amount of loss is another question, and

[1] See *Gilman* v. *The Queen*, at Cornwall, Oct., 1871.

[2] In concussion, by explosion of gunpowder far off, fire is not the proximate cause of loss.