

DESTRUCTION OF PRIVATE PROPERTY TO PREVENT SPREAD OF FIRES.

of those cases to which the maxim applies, *salus populi, suprema lex.*" In *The Mayor, etc., v. Lord*, 18 Wend. 129, it is said by the Chancellor Walworth that "the rule appears to be well settled that in case of actual necessity, to prevent the spreading of a fire, the ravages of a pestilence, the advance of a hostile army, or any other public calamity, the private property of an individual may be lawfully taken or destroyed for the relief, protection or safety of the many, without subjecting those whose duty it is to protect the public interests, by whom or under whose direction such private property was taken or destroyed, to personal liability for the damage which the owner has thereby sustained." See, also, to the same general effect, *Russell v. Mayor, etc.*, 2 Denio, 461; *Hale v. Lawrence*, 1 Zab. 714; *American Print Works v. Lawrence*, 1 Zab. 248; *Lorocco v. Geary*, 3 Cal. 69; *Meeker v. Van Rensselaer*, 15 Wend. 397; *McDonald v. Pedwing*, 13 Minn. 38. The Supreme Judicial Court of Massachusetts had also said, in *Taylor v. Inhabitants of Plymouth*, 8 Metc. 465, that, "independently of the statute, the pulling down of a building in a city or compact town in time of fire, is justified upon the great doctrine of public safety, when it is necessary."

So much for the general principle. It remained, however, for a railroad company to assert that it was unlawful to lay a fireman's hose across its track to reach the only water which was accessible in order to save a large manufacturing establishment which was on fire. While in such emergencies the houses of private citizens may be torn down and blown up, and their property taken or destroyed as far as necessary, the convenience of a corporation must not be temporarily interrupted! The court, however, thought otherwise. Mr. Chief Justice Chapman, after reiterating the general principle laid down in the foregoing cases, said:

"The elaborate provisions which our statutes have made for the extinguishment of fires, indicate the magnitude of the interest which the community has in preventing the spread of conflagrations, but these statutes do not supersede the common law. Their purpose is merely to enable the community to protect themselves more effectually than they could do otherwise. Thus the organization of

a fire department, with officers and implements, does not deprive the people of a neighbourhood from obtaining an engine and hose and crossing the neighbouring lands to obtain water for stopping a conflagration, without waiting for an organization; and individuals may climb upon neighbouring roofs to carry buckets of water. It is a sufficient justification that the circumstances made such an invasion of private property reasonable and proper in helping to extinguish the fire. The objection of the defendants that the officers of the fire department in Cambridge had no jurisdiction in Somerville, and could not act officially in that town, has no validity. They had a fire company organized, and an engine and hose, and were in the vicinity of the building, and they could not with propriety stand idly by and witness the spread of a fire which they might extinguish, merely because it was beyond the town line. They had a right, as citizens, to do what they reasonably could to prevent this public calamity, whether in their own city or a neighbouring town."

The court, however, intimate that there may be a limit to this principle, but where that limit is to be drawn is a question for the jury. Thus, the chief justice said: "It is urged that upon this principle one person may enter upon the property of another for the purpose of extinguishing a fire in a small building of no importance, and where there is no danger to other buildings. Undoubtedly the principle is to have a reasonable limitation. He who enters upon the property of another takes upon himself the burden of establishing the fact that there was a just occasion for it, and in this case the plaintiffs must submit to the jury, with proper instructions, the question whether there was good cause for laying the hose across the defendant's track. All that the court can say is that there is sufficient evidence to submit to the jury."—*Central Law Journal*.