

marine insurance cases. In London the fire brigade can pull down houses to stop a fire (Act of 1865), and this shall be held damage by fire. In New York, houses may be pulled down or destroyed, the municipality is to pay all damage. If insurer pay he can go against the municipality in the name of the insured.

The common law of England allows any one to destroy a house if necessary for the public safety, and nobody shall be liable as for trespass, for so doing. 2 Kent's Comm., 338, 339; 12 Coke.

If firemen or magistrates, to stop a fire, pull down a house insured, the insurers are not liable under common policies; some French policies stipulate for this case in favor of the insured. Alauzet, vol. 2.

Under the Droit Commun of France, in case of *peril évident il est permis d'abattre les maisons voisines pour arrêter un incendie.*

Celsus scribit circa eum qui incendii arcenti gratia vicinas sedes intercidit... cessare Aquilæ actionem. Sive pervenit ignis, sive ante extinctus est. Law 49 § 1. Digest ad legem Aquilianam.

Rarely, however, except in villages, can the case occur now, says Merlin, Rep. vol. 36, Voie de fait.

In cities, private persons can't do it, but magistrates may, says Merlin.

See what I have said in earlier chapter. In France companies pay where demolition takes place of house insured.

Suppose a house pulled down to arrest the progress of a fire. In New York the mayor was authorized to do this, and there was to be an assessment to pay it. If pulled down the insurers are not liable, and the insured had no other remedy than the one of moving for and getting the assessment.<sup>1</sup>

P. 304, 17 Wendell. If the Legislature allow city magistrates to order a demolition, to stop a fire, and go no further, perhaps the city would not be liable to make up the loss; but the Legislature would have to be applied to to legislate further. This legislation further has been done in New York by the

Revised Statutes. Houses may be blown up, or pulled down, to stop a fire, upon order of certain magistrates; and damages are ordered to be paid by the city in such cases, and the mode of ascertaining them is fixed; and in New York not only will the city be made to pay for the houses blown up so, but also for the movables in them, lost through the blowing up of the houses.<sup>1</sup>

24 Wendell. The *Mayor et al. of New York v. Pentz*, Court of Errors of New York. Pentz's property was destroyed by order of the Mayor to stop a fire. Property destroyed by authority to stop a fire. Semble, evidence by opinions of witnesses, ruled out in New York, good in Lower Canada. Montreal Corporation Acts allow order to demolish. It is silent as to indemnity or none.

The Chancellor of New York was in favor of making all benefited by the demolition of a house to stop a fire, whether the demolition was upon order of a magistrate, or not, contribute to make up the loss, and pay the owner of the house demolished (as in case of jettison).<sup>2</sup>

*Casaregis, Disc.* 46, No. 45, states the case of a ship destroyed in port to save other ships. He asks, would those saved be held bound to pay a kind of salvage?

During a fire, A's house is knocked down to stop the fire running. He can claim contribution from his neighbours. Proudhon, *Usuf*. Tom. 3, 1594. *Contra* Toullier, vol. xi, No. 180.

In *Bowditch v. City of Boston*,<sup>3</sup> buildings were blown up to check the extension of a fire. The chief engineer authorized fire wards A, B, and C to blow up buildings. A was assigned to the ward in which was the building blown up. The Massachusetts statute authorized three fire wards of the city to do so. A board of engineers were the fire wards. When the chief engineer authorized A, only one other engineer was present. The city was not held liable, the statute not having been followed so as to bind it.

<sup>1</sup> Monthly Law Reporter of 1863-4, page 624. Compare with *City Fire Ins. Co. v. Corties, ante*. Is pulling down worse for the owner of house than firing by explosion?

<sup>1</sup> *The Mayor et al. of New York v. Lord et al.*, 18 Wendell: p. 314, Sedgwick, 2d. edition.

<sup>2</sup> 18 Wendell.

<sup>3</sup> 11 Albany Law Journal, A. D. 1875.