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PITTSBURGH:
TUESDAY MORNING, SEPT. 3, 1861.

From the Pittsburgh Legal Journal.

DISTRICT COURT OF ALLEGHENY CO.

Waldo Marsh, for use of Jas. Rees, now also for use of Wm. Barnhill & Co., W. F. Ewing & Co., & R. E. Sellers & Co.
vs.
The Citizens' Insurance Company.

Insurance on Steamboat, loss payable to mortgage creditor—Negligence of the assured no defence to underwriter.

1—Where an insurance is effected upon the interest of the owner of a steamboat, the loss, if any, payable to a mortgage creditor, being intended, as between the owner and mortgagee, as a security for the claim of the latter, of which fact the underwriter is informed when the application for insurance is made—it cannot be regarded as an insurance of the interest of the mortgagee, although intended for his benefit; and where the owner cannot recover on the policy there can be no recovery in his name for the use of the mortgage creditor.

2—In the absence of fraud or willful misconduct, the loss is to be attributed to the proximate cause, and if occasioned by a peril insured against is within the policy, although the remote cause may be the negligence of the assured, his servants or agents. The simple fact of negligence in either, however great in degree, is no defence to the underwriter.

3—Where there is no evidence that turpentine, by means of which the boat was set on fire, was carried without the license required by the Act of Congress, the legal presumption is that the requirements of the law in this respect were complied with.

This was an action of covenant on a policy of insurance.

The history of the case is fully given in the opinion *infra.*

Barton, Shinn and Penney, for plaintiffs.

Woods and Williams, for defendants.

The opinion of the Court was delivered August 31, 1861, by

WILLIAMS, A. J.—This is an action of Covenant, brought by Waldo Marsh, for the use of James Rees and others, against the Citizens' Insurance Company, upon a policy of insurance, bearing date the 13th of April, 1858, issued by the said company, causing the said Waldo Marsh, loss if any, payable to James Rees, to be insured in the sum of $5,000, upon the one fourth of the side-wheel steamboat "Ocean Spray," whereof the said W. Marsh was then master: Beginning the adventure upon the said steamboat, lost or not lost, at noon, April 2d, 1858, and to continue and endure until the 2d of May, or until notified by James Rees; in consideration of a premium at the rate of 12 per cent. per annum. The insurance, specified in the policy, is a general insurance to navigate the Ohio river and its tributaries; the Mississippi river at and between Keokuk, Iowa and New Orleans, La.; and the Illinois river, as said streams are usually navigated by boats of her class; and the adventures and perils insured against are of the seas, lakes, rivers, fires, enemies, pirates, assailing thieves, and all such losses and misfortunes which shall come to the hurt, detriment, or damage of the said steamboat, "Ocean Spray," according to the true intent and meaning of the policy; and it is agreed that the company shall not be liable for any loss or damage arising from, or occasioned by the said steamboat being unduly laden, nor for any loss or damage arising from, or occasioned by, the bursting of boilers, the collapsing of flues, or the derangement, or the breaking of the engine or machinery, or any consequences resulting therefrom, unless the same be caused by unavoidable external violence. The policy also contains various other stipulations and conditions—such as are usual in marine policies, which it is not necessary to specify or notice. The agreed value of the boat was $30,000, and the agreed amount of other insurance thereon, $15,000.

Prior to the issuing of the policy, the said Waldo Marsh, by indenture bearing date, duly executed, acknowledged and recorded, the 23d of April, 1857, in the office of the Surveyor and Inspector of the Revenue, &c., in and for the port of Pittsburgh, had mortgaged the said steamboat, "Ocean Spray," to James Rees in trust to secure to the said James Rees, W. Richardson, Thornsburg & Boyd and their respective endorsees, the payment of certain promissory notes drawn by the said Waldo Marsh, bearing even date with the said indenture, and payable as follows, viz:

Three to the order of James Rees for $1740 each, payable respectively at four, six and nine months—being the balance due him for building and furnishing the engines and boilers of the said steamboat, "Ocean Spray."

Two to the order of W. Richardson for $1150 each, at four and eight months—being the balance due him for building and furnishing the cabin and joiner work of said steamboat.

Two to the order of Thornburg & Boyd for $350 each, payable at six and eight months—being the balance due the said firm for the painting and glazing of the said steamer, "Ocean Spray."

One, if not two, of the notes payable to the order of James Rees, was subsequently indorsed and delivered to Wm. Barnhill & Co. The notes to the order of W. Richardson were indorsed to W. F. Ewing & Co., and the notes to Thornburg & Boyd were indorsed to R. E. Sellers & Co., and are now held by said indorsees respectively.

After the indorsement and delivery of the notes as aforesaid, James Rees, on the 31st of October, 1857, with the consent of the indorsees, assigned the mortgage to Jared M. Brush, of the firm of Wm. Barnhill & Co., for the special purpose of enabling him, as their attorney in fact, to collect the amount of their respective claims, and to satisfy the said mortgage. Mr. Brush proceeded to St. Louis, where the boat then was, and there received from Captain Marsh the sum of $1,000, which is all that has been paid on account of the said claims. The notes and mortgage were afterwards sent to Messrs. Thomas & Sharp, attorneys at law, of St. Louis, for collection and foreclosure, who instituted the necessary proceedings for this purpose; and upon Capt. Marsh's voluntary appearance and confession, judgment was obtained for the amount due with a decree for the sale of the boat.

Capt. Marsh then proposed to the said attorneys, in order to obtain time for the payment of the judgment, and to prevent, if possible, a sale of the boat, to assign to Mr. Rees, for the benefit of the parties in interest, two policies of insurance on the boat—one issued by the Quaker City Insurance Company for $5,000, which would expire on the 1st of April, 1858, and the other issued by the Delaware Mutual Insurance Company for $3,000, which would expire on the 16th of April, 1858—and in furtherance of the proposition, and because he could not assign the policies without the consent of the said Insurance Companies, he delivered them to the said attorneys, authorizing them to send the same to Mr. Rees for renewal at his expense, promising to pay the premium therefor, with the suggestion that if Mr. Rees did not consider these offices entirely safe, he was at liberty to insure the same amount in any good offices as security for the said judgment.

Accordingly Messrs. Thomas & Sharp, on the 18th of March, 1858, wrote to Mr. Rees informing him that judgment had been obtained for the amount due with a decree for the sale of the boat—of Marsh's proposition and request for indulgence—inclosing the policies and suggesting the propriety of having them renewed, or new ones issued, making the loss, if any, payable to himself—and advising the extension of the indulgence requested by Marsh if consistent with a due regard to his own and the others' interests. Mr. Rees exhibited this letter to the Secretary of the Citizens' Insurance Company when he made application for the policy in this case, who indorsed an acceptance thereon, in terms and conditions similar to those contained in the policy subsequently issued and delivered to Rees, and upon which this action is brought.

The steamboat, "Ocean Spray," was destroyed by fire, on the 22d of April, 1858, on the Mississippi river, three or four miles above St. Louis, while on her way to Peoria. She left the port of St. Louis between four and five o'clock in the afternoon, in charge of Waldo Marsh, captain and owner, and, at the time of the casualty, was racing with the "Hannibal City," which had started from St. Louis about the same time, bound for Keokuk. When the "Ocean Spray left, she had but "a small head" of steam, as the Captain was intending to land about a mile and a half above, and take on board a quantity of salt; but when the boats commenced racing, this intention, at the solicitation of the passengers, was abandoned; and, in order to get up steam, a small quantity of rosin was at first used for the purpose of igniting and increasing the combustion of the wood and coal—and then, upon the suggestion of a passenger who had a barrel of turpentine on board, the Captain, after consulting the engineer, and being advised that the turpentine would not be dangerous if properly used, gave orders for its use. The barrel of turpentine was taken out of the hold by the mate and some of the hands, and placed in front of the furnace, about fifteen or eighteen feet from the furnace doors. The mate then knocked out the head of the barrel, and dipped out two-thirds of a bucket of the turpentine, and sprinkled or poured it over the coal in the box near the furnace. Some of the hands, and some of the passengers also, dipped a number of sticks of wood into the barrel of turpentine, immersing and saturating them with the fluid, and threw them upon, or at the side of, the box of coal near the furnace. Some of the wood and coal, thus covered with the turpentine, was thrown into the furnace; and, shortly after, in again opening the furnace doors to stir up the fire, some burning coals fell down upon the saturated wood, setting it on fire. Efforts were made to throw the burning wood overboard, but it was found impossible to do this, as the wood had become almost instantaneously enveloped in the flames. Orders were then given to remove, or throw overboard the barrel of turpentine, but, in the attempt, the barrel was upset and its contents poured out. The turpentine, as it ran down the deck to the burning wood, took fire; and as the fluid ran the flame followed, and in a few moments all that part of the boat was ablaze. The pilot ran the boat to the Missouri shore, but the flames spread with such rapidity that the passengers had barely time to escape. Four or five were drowned, and in a short time the boat was burned to the water's edge, and the burning hulk floated down the current.

The company refused to pay the insurance on the ground that the loss was occasioned by the misconduct of the Captain and crew acting under his orders, and thereupon this action was brought to recover, for the use of the mortgage creditors, the sum insured.

The declaration contains two counts: The first count sets out the policy at length, and alleges its execution and delivery by the defendant to the plaintiff, on the 13th of April, 1858; and avers that, on the 22d of April, 1858, on the Mississippi river between Keokuk, Iowa, and New Orleans, La., to wit: about five miles above St. Louis, Missouri, the said steamboat, "Ocean Spray," caught fire and was burned, and became, and was a total loss.

The second count sets out an application by James Rees, creditor, &c., to the proper officers and agents of the said Insurance Company to insure him against loss by accident or danger to the said steamboat, "Ocean Spray," whereby his security for the said debt, owed by the said Waldo Marsh, owner, &c., and secured by a mortgage on the said steamboat, should be lost; and alleges the execution and delivery by the said company to him of the policy mentioned in the first count, on the day and year aforesaid, whereby the said company covenanted and agreed to pay him the said sum mentioned therein, in case the said steamboat should be lost—and avers that, on the 22d of April, 1858, at or near St. Louis, Missouri, the said steamer, "Ocean Spray," caught fire and was consumed, and became a total loss.

The defendant pleaded covenants performed *absque hoc,* &c., and upon the trial of the issue the foregoing facts were developed by the evidence.

A number of points were submitted by the counsel on both sides, upon which they prayed the instruction of the Court to the jury.

But the Court declined to charge the jury on the questions of law presented by the counsel, reserving the same for the consideration of the court in banc, and, as it was agreed by the said counsel that there was no dispute in regard to the total loss of the said boat by fire, on the 22d of April, 1858, nor as to the value thereof, or the interest of the insured therein—proof of loss and proof of interest, &c., to the assurers, as required by the policy, all of which were admitted, the court submitted three questions of fact to the jury for their determination, viz:—

I. Was the loss of the steamboat "Ocean Spray," occasioned by the fault or negligence of the legal plaintiff, Waldo Marsh, captain and owner of said boat?

II. If so, did such fault amount to gross negligence, recklessness, or willful misconduct?

III. Was the said steamboat lost without any fraudulent intent on the part of the said Waldo Marsh to destroy the said boat?

And directed the jury to assess the damages arising from the said loss, subject to the opinion of the court in banc, upon the question reserved, viz:—whether the plaintiff, under the pleadings and the admitted facts in the case, the application and the acceptance thereof, and the policy and mortgage given in evidence, (Prout same) is entitled to recover the said damages on the finding of the jury upon the questions of fact submitted to their determination. *Prout* same:—

And in answer to the said questions submitted for their determination, the jury found —

I. That the loss of the steamboat "Ocean Spray," mentioned in the policy sued on, was occasioned by the fault or negligence of the legal plaintiff, Waldo Marsh, captain and owner thereof.

II. That the fault of the said captain, in this behalf, did amount to gross negligence, but not to recklessness, or willful misconduct.

III. That the said steamboat was lost without any fraudulent intent on the part of the said Waldo Marsh to destroy the said boat.

And the jury assessed the damages at $5659,50, which they found for the plaintiff, subject to the opinion of the court upon the question of law reserved.

Is the plaintiff, then, upon the reserved question, entitled to a judgment for the amount found by the jury? His counsel contend that he is—on two grounds:—

I. The policy was intended to be, and is, an insurance of the mortgage interest of James Rees, in his own right and as trustee, in the steamboat "Ocean Spray."

II. The loss of the said steamboat by fire was one of the perils insured against:

And therefore, on both grounds, the defendant is liable for the loss although occasioned by the gross negligence of the captain and owner.

The defendants' counsel, on the other hand, contend that the company is not liable for the loss, and that the plaintiff is not entitled to recover therefor—

I. Because the insurance contracted for in the policy, is an insurance of the interest of Waldo Marsh—as owner of the one fourth of the steamboat "Ocean Spray," and not an insurance of the mortgage interest, or lien of the mortgage creditors:

II. The loss of the said boat by fire was occasioned by the gross negligence of the captain and owner.

What then was the contract as evinced by the policy in this case? Who were the parties thereto, and what was its subject matter? Was the contract with the owner or with the mortgagee, to whom the loss was made payable? Was it the interest of the owner, or the interest of the mortgage creditor, that was insured? Undoubtedly the purpose and object of the insurance, as between the owner and mortgagee, was the protection and security of the interest of the latter, and the underwriter was informed of this when the proposal for the policy was made and accepted.—But the motive inducing a contract, or the collateral purpose to be subserved thereby, does not necessarily determine its nature and character. It may help to determine its meaning, where the language is doubtful or obscure. But where the parties to the contract are expressly named, its subject matter, stipulations and conditions clearly defined, neither the motive inducing the contract, nor the collateral use to be made thereof, can be allowed to control or vary its interpretation. The contract in this policy was clearly with the owner. It was his interest that was insured. It matters not that the insurance was effected, in his absence, at the instance of Rees, to whom the loss was made payable. Rees was but the agent of the owner in making the contract, and his appointee to receive the money in case of a loss. And, therefore, if the owner cannot recover for the loss in question, there can be no recovery in his name for the use of his appointee: State mutual Fire Insurance company vs. Roberts, 7 Casey 438. Doubtless the latter, by reason of his participation in the contract, and because, by its express terms, the loss is made payable to him, might maintain an action therefor in his own name: Esling vs. Zantzinger, 1 Harris 50; Myers vs. The Keystone Mutual Life Insurance Company, 3 Casey 268; but the undertaking to pay the appointee was an undertaking collateral to, and dependent upon the principal undertaking to insure the owner, and the right of the former, being wholly derivative, cannot exceed the right of the latter under whom he claims: Per HARRIS, Justice, in Grosvenor vs. The Atlantic Mutual Insurance Company, 3 Smith 391. And this brings us to the consideration of the main question in this case: Is the company liable for the loss of the boat by fire occasioned by the gross negligence of the insured? If the negligence were of so gross a character as to border closely on fraud, or to amount to willful misconduct, the underwriter would not be liable for the loss: Chandler vs. Worcester Mutual Fire Insurance Company, 3 Cush. 328. But the jury in this case have found that the negligence of the insured did not amount to recklessness, or willful misconduct—and that there was not a fraudulent intent on his part to destroy the boat. By recklessness, the jury must have understood something more than gross negligence—as importing a rash and culpable disregard of the obvious consequences of one's acts, and as synonymous with willful misconduct. So that by the finding of the jury we have the case of a loss occasioned, not by the willful misconduct or fraud of the insured, but by his gross negligence. The only question, therefore, is, whether the underwriter is liable for a loss occasioned by the gross negligence of the insured.

Whatever may be the conflict between the earlier and later cases, it seems to be now settled that the mere negligence of the assured, however great in degree, will not operate as a discharge of the liability of the underwriter. In the absence of fraud or willful misconduct, the loss is to be attributed to the proximate cause, and, if occasioned by a peril insured against, is within the policy, although the remote cause may be the negligence of the insured, his servants or agents: Patapsco Insurance Company vs. Coulter, 3 Pet. 222; Columbia Insurance Company vs. Lawrence, 10 id 517; Waters vs. Merchants' Louisville Insurance Company, 11 id. 213; Mathews vs. Howard Insurance Co, 13 Barb. 234; Hynds vs. Schenectady County Mutual Insurance Company, 16 id. 119; Gates vs. Madison County Mutual Insurance Company, 1 Selden 469; Mathews vs. Howard Insurance Company, 1 Kernan 9; Delano vs. Bedford Insurance Company, 10 Mass. 355; Copeland vs. New England Marine Insurance Company, 2 Met. 432; Catlin vs. Springfield Fire Insurance Company, 1 Sumner, 434; Williams vs. Suffolk Insurance company, 3 id. 276; Perrin vs. Protection Insurance Company. 11 Ohio 147; St. Johns vs. American Insurance Company, 1 Duer 371; Walker vs. Maitland, 5 B. & A. 171; Shaw vs. Robberds, 6 A. & E. 75; Sadler vs. Dixon, 8 Mees. & Wels. 895; American Insurance Company vs. Insley, 7 Barr 223.

Let us look at some of the authorities. In the case of the Patapsco Insurance Co. against Coulter, Johnson, Justice, in delivering the opinion of the Court, said:—"It seems generally conceded, that in the case of insurance against fire on land, negligence of servants or of the tenant, is no defence, nor of the proprietor, unless of such a character as to sustain the imputation of fraud or design. And the rule that a loss, the proximate cause of which is a peril insured against, is a loss within the policy, although the remote cause may be the negligence of the master or mariners, has been affirmed in several cases in the English Courts."

In the Columbia Insurance Company of Alexandria, against Lawrence, it was ruled that a loss by fire, occasioned by the mere fault and negligence of the assured, or his servants or agents, and without fraud or design, is a loss within the policy, upon the general ground that the fire is the proximate cause of the loss; and also upon the general ground that the express exceptions in policies against fire, leave this within the scope of the general terms of such policies.

The case of Waters vs. The Merchants' Louisville Insurance Company, deserves special notice; resembling, as it does, the present in every essential feature. The action was on a marine policy insuring the plaintiff on the steamboat "Lioness," of which he was owner and master. The terms and conditions of the policy, and the perils insured against, were, in substance, the same as in the policy in this case. The boat was lost while in charge of the owner, as captain, by being blown up, and destroyed by means of fire, communicated to gunpowder. In this case, as we have seen, the boat was destroyed while in charge of the owner, as captain, by means of fire communicated to turpentine.

The defendants filed six pleas to the declaration in that case, the first three of which sufficiently indicate the nature of the defence set up:

I. That the officers and crew of the Lioness, at the time of her explosion and sinking, so negligently and carelessly conducted themselves in managing and attending to the safety of the cargo on board, that the steamboat was, by means of fire, negligently and carelessly communicated to gunpowder in the hold by the officers and crew, blown up and destroyed.

II. That the Lioness was loaded in part with gunpowder, and that the officers and crew, or some of them, carelessly and negligently carried a lighted candle or lamp into the hold where the powder was stored, and negligently handled the candle or lamp at the time that the powder was exploded; and thereby produced the explosion and destruction of the said steamer.

III. That the Lioness was in part loaded with gunpowder; and the same was so unskillfully, negligently, and carelessly stowed away in the boat, by the officers and crew, or some of them, that the gunpowder took fire by reason of the said unskillfulness, negligence, and carelessness; and the boat was consequently lost and destroyed by explosion.

The plaintiff demurred to the pleas, and the defendants joined in demurrer.

On the argument of the cause before the Judges of the Circuit Court, for the district of Kentucky, four questions and points occurred, upon which the judges were divided in opinion; and the same, at the request of the defendants, were stated and certified to the Supreme Court for its opinion; only two of which, viz: the 2d and 3d, need be noticed here:

2d. Does the policy of insurance cover a loss of the boat by fire, caused by the negligence, carelessness, or unskillfulness of the master and crew of the boat, or any of them?

3d. Is the allegation of the defendants in their pleas, or either of them, to the effect that the fire by which the boat was lost, was caused by the carelessness, or the neglect, or unskilful conduct of the master and crew of the boat, a defence to this action?

It will be perceived that these two questions virtually raise but one point, viz: Whether a loss by fire, remotely caused by the negligence, carelessness, or unskillfulness of the master and crew of the vessel, is a loss within the true intent and meaning of the policy.

In delivering the opinion of the Court, Justice Story said: "If we look to the question upon mere principle, without reference to authority, it is difficult to escape from the conclusion, that a loss by a peril insured against, and occasioned by negligence, is a loss within a marine policy; unless there be some other language in it, which repels that conclusion. Such a loss is within the words, and it is incumbent upon those who seek to make any exception from the words, to show that it is not within the intent of the policy. There is nothing unreasonable, unjust, or inconsistent with public policy, in allowing the insured to insure himself against all losses from any perils not occasioned by his own personal fraud. It was well observed by Mr. Justice Bailey, in delivering the opinion of the Court in Bush vs. The Royal Exchange Assurance Co., 2 Barn. & Ald. 79; after referring to the general risks in the policy, that 'the object of the assured, certainly, was to protect himself against all the risks incident to a marine adventure. The underwriter being therefore liable, prima facie, by the express terms of the policy, it lies upon him to discharge himself. Does he do so by showing that the fire arose from the negligence of the master and mariners?' 'If indeed the negligence of the master would exonerate the underwriter from responsibility, in a case of a loss by fire; it would also in cases of a loss by capture, or perils of the sea. And it would, therefore, constitute a good defence in an action upon a policy, to show, that the captain had misconducted himself in the navigation of the ship, or that he had not resisted an enemy to the utmost of his power.' There is great force in this reasoning, and the practical inconvenience of carving out such an implied exception from the general peril in the policy, furnishes a strong ground against it; and it is to be remembered, that the exception is to be created by construction of the Court, and is not found in the terms of the policy. The reasons of public policy, and the presumption of intention in the parties to make such an exception, ought to be very clear and unequivocal, to justify the Court in such a course. So far from any such policy or presumption being clear and unequivocal, it may be affirmed that they lean the other way."

"This is not all: We must interpret this instrument according to the known principles of the common law. It is a well established principle of that law, that in all cases of loss we are to attribute it to the proximate cause: *causa proxima non remota spectatur*: and this has become a maxim, not only to govern other cases, but (as will be presently shown) to govern cases arising under policies of insurance. If this maxim is to be applied, it disposes of the whole argument in the present case; and why it should not be so applied we are unable to see any reason." And the learned Judge, after referring to a number of authorities, and alluding to the circumstances under which the case of the Columbia Insurance Company of Alexandria vs. Lawrence came on for argument, concludes the discussion of the question in these words: "The Court then thought, that in marine policies, whether containing the risk of barratry or not, a loss whose proximate cause was a peril insured against, is within the protection of the policy, notwithstanding it might have been occasioned remotely by the negligence of the master and mariners. We see no reason to change that opinion; and on the contrary, upon the present argument, we are confirmed in it." And accordingly the Supreme Court ordered it to be certified to the Circuit Court as its opinion: "2d, that the policy does 'cover a loss of the boat by fire, caused by the negligence, carelessness or unskilfulness of the master and crew of the boat, or any of them.' '3d, that the allegations of the defendants in their pleas, or either of them, to the effect that the fire, by which the boat was lost, was caused by the carelessness, or the neglect, or unskillful conduct of the master and crew of the boat, is not a defence to this action.'"

The doctrine of this case has been followed by the Supreme Court of this State, in the American Insurance Company vs. Insley, and by the courts of all the other States where the question has arisen.

In Hynds vs. Schenectady County Mutual Insurance Company, Harris Justice, in delivering the opinion of the Court, said: "I think the Judge who tried this cause has correctly stated the law on the question of negligence. The counsel for the defendant is entirely mistaken in supposing that the general principle which will not allow a party, himself guilty of negligence, to recover for the loss or injury to which he has thus contributed, is appplicable to an action upon a policy of insurance. The general doctrine on that subject is, that mere negligence, whether of the insured or his agents or servants, constitutes no defence for the insurers. Ellis on Insurance, 72. In Waters vs. The Merchants' Louisville Ins. Co. 11 Pet. 213, it was said by Story J. that the doctrine had, for a great length of time, prevailed, that losses occasioned by the mere fault or negligence of the assured or his servants, unaffected by fraud or design, are within the protection of policies. The charge in this case contains nothing more. The jury were told that mere negligence was not sufficient to defeat a recovery; that before this ground of defence could be made available, there must be evidence of such a degree of negligence as would evince a corrupt design. This I understand to be the well settled rule of law on this subject. If it were not so, policies of insurance against loss by fire would be of comparatively little value; for the cases are few in which losses by fire cannot be traced to some sort of carelessness or negligence on the part of the assured, or his family or servants. It is one of the objects of insurance to protect the party insured against negligence."

And in Gates vs. Madison County Insurance Company, Jewett Justice, said: "But another question arises upon the evidence offered, namely, whether a loss arising from the gross carelessness and negligence of the insured, his servants, or others, is within this policy. There can be no doubt that one of the objects of insurance against fire is to protect the insured from loss, as well against his own negligence as that of his servants, and others; and, therefore, the simple fact of negligence in either, however great in degree, has never been held to be a defence in such policy.

The rule is well established, not only in the English, but in the general American insurance law; that in the absence of all fraud, the *proximate* cause of loss, only, is to be looked to; and the same rule now prevails in marine insurance."

Let these citations suffice to show upon what grounds and how firmly established in the law of insurance is the doctrine that where the immediate cause of the loss is a peril expressly insured against, it is no defence that the mere negligence of the assured or his servants, however great in degree, occasioned such peril, or brought the insured property within its dominion.

One or two other positions taken by the defendant's counsel remain to be noticed, viz: that the loss was occasioned in part by the misconduct of the insured in carrying oil of turpentine on board of the boat without special license therefor, or without the guards and precautions prescribed by the Act of Congress; and in navigating the boat in a manner different from that in which the Mississippi river is usually navigated by boats of her class. It is a sufficient answer that the jury have found no facts upon which to base such a defence. They have not found that the plaintiff was carrying oil of turpentine on board of his boat contrary to the provisions of the Act of Congress, or that he was navigating his boat in a manner different from that in which the Mississippi river is usually navigated by boats of the same class. True, these questions were not submitted to the jury for their determination: and why not? Because the Court was then of the opinion, as now, that there was no sufficient evidence to justify the jury in finding either of said allegations to be true, or the Court in submitting them as questions of fact to the jury for their determination. No notice was given to the plaintiff, by plea or otherwise, that any such defence would be set up. No evidence was given to show, either that the turpentine was carried without a license, or that the boat was not provided with chests and safes as required by the Act. There is no legal presumption that the plaintiff was, in this respect, violating the Act of Congress; and before the fact could be legitimately found by the jury the defendant was bound to give some evidence to show it. Thornton vs. Lance, 4 Camp. 231; 2 Greenl. on Ev. Sect. 402. The evidence in regard to the barrel of turpentine was given not for the purpose of showing that it was unlawfully carried on board of the boat, but that it was improperly and negligently used; and that the plaintiff was guilty of misconduct in this respect. All the evidence we have in regard to the barrel of turpentine is that it belonged to a passenger, and that, upon his suggestion, it was brought up out of the hold of the boat by the orders of the captain. There is nothing in the evidence tending to show that it was not secured there, as required by the Act of Congress, or that the plaintiff had no license for carrying this as well as the other articles specified in the Act. The legal presumption, as we have seen, is that the plaintiff had done his duty in the premises, and observed all the requirements of the law.

So also in regard to the allegation that the boat was not navigating the Mississippi river as it is usually navigated by boats of her class. The only evidence tending to support this allegation is that which directly tends to show that the fire, by which the boat was destroyed, was occasioned by the negligence of the captain and crew. It is not pretended that there is any other evidence to support this allegation; and it is insisted that this is sufficient. If this be so, then the underwriters would not be liable, in any case, for a loss occasioned by the negligence of the master and crew. Because the very same evidence which tended to show that the loss of the boat was occasioned by the negligence of the master and crew, would also tend to show that the boat was not navigating the river, when the loss occurred, as it is usually navigated by boats of her class; and if sufficient to establish the one allegation, it would necessarily establish the other. And so, upon defendant's hypothesis, the underwriters would not be liable for the loss of a boat in any case when occasioned by the negligence of the master and crew.

The whole purpose and tendency of the evidence, given by the defendants, was to show that the loss of the boat was occasioned by the negligence and misconduct of the captain and owner, and the Court submitted to the jury for their determination all the questions legitimately arising thereon.

Let judgment be entered in favor of the plaintiff, on the question of law reserved, for the amount found by the jury with interest to be computed thereon from the date of the verdict, on payment of the verdict fee.

LETTER FROM WASHINGTON.

WASHINGTON, Aug. 31, 1861.

The secessionist referred to by Mr. Russell in his last letter as in the employment of the Postmaster-General, is a Mr. Philips, whose wife was arrested a few days since. Mr. Russell saw him in the post office, where he was permitted to take letters for Southern friends, directed to this office. The city postmaster, Mr. Clephane, makes an explanation in order to relieve Mr. Blair, but no reason is given why a secessionist should be permitted inside the post-office, and that, too, since the battle of Bull Run.

Indians Joining the Rebels.

Advices received at the War Department confirm the report that the Kiowas and Camanches, from whom Government have this year withheld their usual presents on account of previous rascalities, have united their fortunes with the Southern Confederacy. The principal rendezvous of the tribes is near Fort Bent.

The National Detective Police.

The national detective police will speedily be organized and in active operation. At its head will be placed a well known western detective, of national reputation, and the supervision of the force will extend over the whole country.

A Contraband Surrenders.

A contraband named Isaac Bannett, belonging to a Virginian residing near Falls Church, came yesterday to our pickets near Mount Olivet, on a splendid horse. He stated that everywhere in the vicinity the slaves were being impressed into the service of the rebels, and put under arms. His uncle, also a slave, was serving as a soldier at Manassas; and he preferred if he must fight, to be on this side. He reports at Falls Church three hundred rebel infantry and four hundred cavalry.

The Marshals and the Slave Trade.

It will be remembered that the United States Marshals of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Maryland—being all those whose districts embrace ports of entry in the loyal States—met at New York for the purpose of consulting together to devise the more effectual measures for the suppression of the African slave trade. The scheme adopted by them will necessarily not be made public, but it is understood to be such as will, in a very short time, put a complete extinguisher upon this nefarious and inhuman traffic—at least so far as the citizens of our own country are concerned.

Aid and Comfort.

We understand that quite a number of deserters from the Federal army are daily crossing the Chesapeake bay into the counties of Dorchester, Talbot and Queen Ann's, Md., and are making their way into Delaware to get on the Maryland and Delaware Railroad, thereby to enable them to get to their homes. These men are aided by the rebels of St. Mary's, Charles, Calvert and Anne Arundel counties, Md., who give them money, clothes, &c., besides putting them over the bay, during the night in small boats. They are usually taken over in small parties of from four to twelve persons. In addition to this, there is a trade constantly carried on between the rebels by carrying contraband goods over the bay and Potomac river into Virginia, thereby giving "aid and comfort" to the enemy. A good Union man, recently from Talbot county, reports that fifty men landed there in one day.

Gen. Fremont and the War Department.

Gen. Fremont, appreciating his official integrity and ability, three days since requested the editor of the Missouri *Democrat* to deny and discourage the false rumors that he had complained of the want of efficient support from the Secretary of War; on the contrary, he acknowledges heartily Mr. Cameron's energetic endeavors to strengthen him for the suppression of the rebellion in Missouri.

Brigadier Generals of the Volunteer Force.

The President will to-morrow appoint the following officers Brigadier Generals of the volunteer force:

Major L. P. Graham.

Col. Abercrombie, now in command of a Brigade under Gen. Banks.

Col. Charles J. Biddle, Member of Congress from the IId Pennsylvania District.

Col. Duryee, of Duryee's Zouaves.

Col. Casey.

Capt. Meade, of the Topographical Engineer Corps.

J. A. Rawlins, of Illinois, and John Mason Norval, appointed Assistant Adjutant Generals, with rank of Captain. The former is assigned to the staff of Gen. Grant, and the latter to that of Gen. Richardson.

John M. Huntington, a descendant of a signer of the Declaration of Independence, is appointed Assistant Quartermaster.

Rebels Brought to the Navy Yard—The Mathias Point Affair.

The Resolute this afternoon brought up to the Navy Yard three Rebels, the captain, a seaman and a passenger of the schooner Remittance, loaded with tobacco, captured by the Yankee off Port Tobacco. The prisoners, according to a negro sailor of the Remittance, bore a Rebel officer from Maryland to Virginia. The Resolute also brought up four contrabands, escaped from King George Court House, Virginia, who say that the Rebels admit that eight of the men who assassinated our three boatmen at Mathias Point were killed in the engagement; that there were no large guns at Mathias Point, and that the Rebels are suffering for lack of provisions.

A short time since a scow load of bacon was smuggled from Maryland. They also lack military equipments. Negroes, both slave and free, are forced into the Confederate army. Some join voluntarily. The slaves on both sides of the Potomac hope and pray for our success, and when able will work for it.

Arrest of Suspicious Characters.

Col. Porter, the Provost Marshal, is active in the arrest of suspicious persons. About fifty arrests are made daily. A man who pretends to be deaf and dumb was recently placed in the guard-house, who is no doubt a quick-eared spy, and one who would be talkative in Richmond.

No More Horses.

The War Department has given orders for horses to parties in Kentucky, Virginia, Missouri, Maryland and Delaware. As an immense supply is expected, no further authority to purchase will be given.