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Statement of the case.

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might have done, would it have been a sufficient answer to a suit brought by them against their insurers, that the fire which caused the steamer to sink was itself caused by a collision? No one will affirm that. Yet upon the theory of the plaintiffs in error, this is substantially what is now attempted. Before any policy was issued, the Transportation Company were their own insurers against collisions and fire, no matter how caused. They sought protection against some of the possible consequences of these risks, and they obtained a policy insuring them against all loss by fire, except fire caused by certain things, of which collision was not one. Against every other consequence of a collision than a fire, they remained their own insurers, but the risk of fire was no longer theirs.

We have already sufficiently said that the amount of the loss caused by the collision, apart from the fire, was distinctly ascertained, and the insurers were not charged with it. So was the amount of loss caused by the fire itself ascertained. If therefore it was a case of the concurrence of two causes of loss, one at the risk of the assured, and the other of the insurers, the damage resulting from each has been discriminated, and the insurers have been held liable only for that caused by the peril against which they contracted.\*

Judgment has therefore been given in conformity with the rules as above stated, in Phillips on Insurance. It is

AFFIRMED.

NOTE.

At the same time with the preceding case was adjudged another, in error, from the same circuit, to wit, that of

WESTERN MASSACHUSETTS INSURANCE COMPANY v. SAME  
DEFENDANTS,

In which the controlling question was the same as in the case just reported—a question which the court said that they did not propose to reconsider. This second case had been adjudged be-

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\* Vide Heebner v. Eagle Insurance Company, 10 Gray, 143.

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low, before the other one, and not on a finding of facts by the court, but on a verdict by a jury; the issues of fact being submitted to it under instructions from the court.

In this second case the policy provided that the loss or damage should be estimated according to the true and actual cash value of the said property "at the time the fire should happen;" and evidence of the value of the steamer before the collision took place having been offered by the owners of the steamer, the insurance company objected to it, and on their objection it was excluded.

Evidence was allowed to be given against the defendants' objection, to show how much it cost to raise the steamer, and \$22,500 were allowed; the value of the wreck when recovered

The plaintiff based his estimate of damages upon the cost of repairing and restoring the vessel to her former condition, exclusive of the amount properly chargeable to the collision.

The judge charged, that the main question for the jury to determine was whether the loss sustained by the plaintiffs was the natural, necessary, and inevitable consequence of the fire. Then, after referring to the facts as proved, he added:

"The question is, would the steamer have gone to the bottom but for the fire? This is a vital question, and must be decided by the jury before the plaintiff can recover. You will say, in view of the evidence, whether she would have gone to the bottom or only settled down to her promenade deck and remained suspended in the water but for the effect produced by the fire. If she would not have sunk but only settled in the water to the promenade deck, except for the effect of the fire in reducing her floating capacity, then the plaintiffs are entitled to recover."

As to the damages, after stating the plaintiffs' base of estimate, he said:

"You will determine upon the evidence whether in your judgment the repairs that were put upon her enhanced her value beyond her cash value before the commencement of the fire. If they did, you will deduct from the damage you find proved a sum equal to such increase of value."

The jury found for the plaintiffs, and judgment went accordingly.

*The case was argued by the same counsel as the preceding one; the objection by the counsel of the insurance company, plaintiffs in error, being to the charge on the main question, to the instruction as to damages and on the admission of the evidence to show how much it cost to raise the steamer, which the learned*

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counsel contended that the defendants could not in any event be liable for, the rule of damages being fixed in the policy.

Mr. Justice STRONG delivered the opinion of the court.

As the issues of fact in this case were submitted to a jury, it is to be considered whether they were submitted with proper instructions.

It is complained that the Circuit Court instructed the jury that the way to determine the question whether the insurers were liable was to consider and determine whether the steamer would have sunk except for the effect of the fire. This is hardly a fair statement of the manner in which the case was submitted. The charge must be taken, not in detached portions, but according to its general tenor and effect. That what the judge did charge, was, in our opinion, proper instruction, is sufficiently shown by what we have said in the case just decided. We have also shown that the policy contained no implied exception against the consequences of any marine peril.

The only other thing which need be noticed is the allegation of the plaintiffs in error that the jury were instructed to ascertain the amount of the damage, not by reference to the actual cash value of the subject, but by the cost of restoration. If this complaint were founded in fact, it would call for a reversal of the judgment, for the policy stipulated that loss or damage should be estimated according to the true and actual cash value of the property at the time the same should happen. But when the insured offered evidence to prove what was the actual cash value of the steamer before the collision, from which the damage caused by the collision might have been deducted, and thus the cash value of the property at the time when the fire attacked it might have been ascertained, the plaintiffs in error objected and the evidence was excluded. There remained, then, no way of establishing the cash value except by ascertaining the cost of restoration to the condition in which the steamer was before the fire. This was allowed, but the jury were instructed that if the cost of repairs exceeded the damage done by the fire they should deduct the excess. It is plain, therefore, that under such instructions the loss of the assured must have been measured by the standard provided in the policy.

It is sufficient to say of the admission of evidence to prove how much it cost to raise the steamer, that if it was erroneous



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it did no harm. The value of the boat when raised was proved to have been exactly equal to the cost of raising her, and the insurers had the benefit of it.

Nothing need be said of the other exceptions. They were not pressed in the oral argument, or in the printed briefs, and they exhibit no error.

JUDGMENT IS AFFIRMED

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## STATE TONNAGE TAX CASES.

COX v. THE COLLECTOR.

TRADE COMPANY v. SAME.

1. Although taxes levied, as on *property*, by a State upon vessels owned by its citizens, and based on a valuation of the same, are not prohibited by the Federal Constitution, yet taxes cannot be imposed on them by the State "at so much per ton of the registered tonnage." Such taxes are within the prohibition of the Constitution, that "no State shall, without the consent of Congress, lay any duty of tonnage."
2. Nor is the case varied by the fact that the vessels were not only owned by citizens of the State, but exclusively engaged in trade between places within the State.

## ERROR to the Supreme Court of Alabama.

These were two cases, which, though coming in different forms, involved one and the same point only; and at the bar—where the counsel directed attention to the principle involved, separated from the accidents of the case—were discussed together as presenting "precisely the same question." The matter was thus:

The Constitution ordains that "no State shall without the consent of Congress *lay any duty of tonnage*." With this provision in force as superior law, the State of Alabama passed on the 22d of February, 1866, a revenue law. By this law, the rate of taxation for property generally was the one-half of one per cent; but "on *all* steamboats, vessels, and other water crafts plying in the navigable waters of the State," the act levied a tax at "the rate of \$1 per ton of the registered tonnage thereof," which it declared should "be assessed and col-