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it might order the defendant to remain completely inactive.⁹ Instead, the court reasoned thus: "But the continuance of such an injunction would depend upon continuance of the defendants' obligation to the plaintiff; and the continuance of that obligation would in turn depend upon the plaintiff's continued performance of its duties under the contract. These are as uncertain as the defendants' * * *." This language seems to indicate that the court based its decision on some phase of the doctrine of "lack of mutuality." If so, it was not on the discredited doctrine of "lack of mutuality of remedy"⁸ but on what some writers have termed "lack of mutuality of performance."⁹ Regardless of what the doctrine be called, the court here indicated that it would grant an injunction only if it could be assured that the plaintiff would perform his duties under the contract.¹⁰ Since the plaintiff's duties were so uncertain, the court felt that, should an injunction be granted, it would be difficult to know if the plaintiff were performing.

Assuming, as it did for argument's sake, the existence of a contract enforceable at law, the court correctly found it not specifically enforceable in equity. It is submitted, however, that the court could as readily have denied relief because mutuality of obligation in the purported contract was altogether lacking.

T. B.

INSURANCE—PARTIAL DESTRUCTION OF INSURED PREMISES—EFFECT OF A MUNICIPAL ORDINANCE UPON LIABILITY OF INSURER—[Wisconsin].—An insured house was damaged to the extent of fifty per cent of its original value; and thereafter, in accordance with a municipal ordinance, it was ordered razed. In an action upon the fire insurance policy, *held*, that the insurer was liable for the total value of the house.¹

This case restates the general rule that, where a building is partially destroyed and, pursuant to a fire ordinance, is either ordered completely

6. Such an injunction would not have benefitted the plaintiff; it would have merely penalized the defendant. Such injunctions are not favored in equity. See *Metropolitan Exhibition Co. v. Ewing* (C. C. S. D. N. Y. 1890) 42 Fed. 198, 199, 7 L. R. A. 381, 383; *Rice v. D'Arville* (1895) 162 Mass. 559, 561, 39 N. E. 180, 181; *Tribune Ass'n v. Simonds* (N. J. Eq. 1918) 104 Atl. 386, 389; *Arena Athletic Club v. McPartland* (1899) 41 App. Div. 352, 353, 58 N. Y. S. 477, 478; 5 Williston, *Contracts* (Rev. ed. 1937) 4051, sec. 1450.

7. *Bethlehem Engineering Export Co. v. Christie* (C. C. A. 2, 1939) 933, 935.

8. See McClintock, *Equity* (1936) 116, sec. 66. Earlier in its opinion the court disclaimed any considerations of "mutuality", but whether it meant lack of mutuality of obligation or of remedy does not clearly appear.

9. Ames, *Mutuality in Specific Performance* (1903) 3 Col. L. Rev. 1, 8; McClintock, *Equity* (1936) 116, sec. 66.

10. See Cook, *The Present Status of the "Lack of Mutuality" Rule* (1927) 36 Yale L. J. 897, 904; Restatement, *Contracts* (1932) sec. 373, where a formal label for this "equity" is avoided but the process for discovering it is described.

1. *New Hampshire Fire Ins. Co. v. Murry* (C. C. A. 7, 1939) 105 F. (2d) 212.

destroyed or a permit to rebuild is denied, the insurer is liable for the total cost of the building.² Similarly it has been held that, if a municipal ordinance requires more expensive materials to be used in rebuilding after the fire, the insurer is liable for the increased cost.³ An ordinance of this type is considered part of the contract of insurance.⁴ But if the ordinance is void this rule does not apply and damages are to be ascertained without regard to it.⁵

For the rule to apply to the determination of damages in a condemnation proceedings, as distinguished from a mere refusal of a permit to rebuild, there must be a causal connection between the fire and the administrative action.⁶ Thus, where a building was somewhat damaged by fire and was condemned because of deterioration through exposure to the weather, the insurer was not liable for a total loss.⁷ There is dictum that the insurer would be liable if the structure were condemned due to antecedent defects followed by fire.⁸ But, where the insured solicited the administrative order to destroy, it has been held that the rule does not operate.⁹

The validity of a policy provision excluding the loss occasioned by the ordinance, either of condemnation or a refusal to allow insured to rebuild, and limiting liability to the actual cost of rebuilding, is dependent upon the existence or non-existence of a valued policy statute.¹⁰ Where a valued policy statute does not exist, the limitation of liability is binding and the

2. *Brady v. The North Western Ins. Co.* (1863) 11 Mich. 425; *Larkin v. Glens Falls Ins. Co.* (1900) 80 Minn. 527, 83 N. W. 409, 81 Am. St. Rep. 286; *Rutherford v. Royal Ins. Co.* (C. C. A. 4, 1926) 12 F. (2d) 880, 49 A. L. R. 814. Also see Note (1927) 49 A. L. R. 817.

3. *Fire Ass'n v. Rosenthal* (1885) 108 Pa. 474, 1 Atl. 303; *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. Philadelphia Contributorship* (1902) 201 Pa. 497, 51 Atl. 351, 57 L. R. A. 510.

4. *Larkin v. Glens Falls Ins. Co.* (1900) 80 Minn. 527, 83 N. W. 409, 81 Am. St. Rep. 286.

5. *Lux v. Milwaukee Mechanics' Ins. Co.* (1929) 322 Mo. 342, 15 S. W. (2d) 343.

6. *Liverpool & London & Globe Ins. Co. v. Nebraska Storage Warehouses* (C. C. A. 8, 1938) 96 F. (2d) 30.

7. *Ibid.*

8. *Security Insurance Co. v. Rosenberg* (1929) 227 Ky. 314, 12 S. W. (2d) 688.

9. *Kotlarsky v. Fidelity Union Fire Ins. Co.* (1933) 137 Kan. 609, 21 P. (2d) 305.

10. A valued policy statute is one which provides that if the insured property is completely destroyed the amount named on the face of the policy shall be paid as liquidated damages; but, if the property is partially destroyed, only actual loss can be recovered. Some statutes permit deduction of depreciation between the policy date and the time of total loss. Approximately one-half of the states have such statutes: Ark. Pope's Dig. of Stats. (1937) sec. 7720; Cal. Deering's Code (1937) secs. 2050, 2052-2056; Del. Rev. Code (1936) sec. 511; Fla. Gen. Laws (1927) secs. 6240, 6241; Ga. Code (1933) tit. 56, sec. 701; Iowa Code (1935) secs. 8977, 9049; Kan. Gen. Stats. (1935) tit. 40, sec. 905; Ky. Carroll's Stats. Ann. (Baldwin's Rev. 1936) sec. 762a (22); La. Gen. Stat. (Dart, 1939) secs. 4183-4188; Minn. Mason's Stats. (1927) sec. 3516; Miss. Code (1930) sec. 5183; Mo. Stat. Ann. (1932) c. 37, sec. 5819; Mont. Rev. Code (1935) sec. 8162.1.

insurer is not liable for a total loss.¹¹ On the other hand, in those states where there is a valued policy law, a provision of this type is generally inoperative.¹²

In some instances, instead of insuring the building, the policy insures the rent or income which the building usually produces. Here a refusal by the city officials to issue a permit to rebuild, in pursuance of a municipal ordinance, will not increase the liability of the insurer. The insurer is liable only for income losses during the time it would have taken to replace the building if such an ordinance did not exist.¹³ Thus, there are two distinct rules of damages. If the building itself is insured, the operation of the ordinance increases the liability of the insurer unless the policy contains a provision to the contrary and, as stated, such limitation is effective only in the absence of a valued policy statute. But if rents are insured, the liability of the insurer is not increased by local legislation.

M. C.

TAXATION—DELINQUENT TAXES—LIENS—VALIDITY OF STATUTE—GENERAL OR SPECIAL LEGISLATION—[Missouri].—Suit upon an agreed state of facts¹ by a delinquent taxpayer owning real estate in the City of St. Louis, to enjoin the Collector of Revenue of the city from proceeding by suit, under the provision of House Bill 677, 60th General Assembly, to enforce the state's lien for general real estate taxes on delinquent tax bills charged

sec. 8; N. D. Comp. Laws (1913) secs. 6609, 6623; Ohio Gen. Code (1926) sec. 9583; S. C. Code (1932) secs. 7977, 7980; S. D. Comp. Laws (1929) sec. 1458; Tenn. Code (1932) sec. 6174; Tex. Vernon's Stats. (1936) 4929; Wash. Pierce's Code (1933) sec. 3013; W. Va. Code (1931) c. 33, art. 4, sec. 9; Wis. Stats. (1937) sec. 203.21.

11. *Hewins v. London Assurance Corp.* (1903) 184 Mass. 177, 68 N. E. 62; *McCready v. Hartford Fire Ins. Co.* (1901) 61 App. Div. 583, 70 N. Y. S. 778; *The Midwood Sanatorium v. Firemen's Fund Ins. Co. of San Francisco* (1933) 261 N. Y. 381, 185 N. E. 674.

12. *New Orleans Real Estate Mortgage & Securities Co. v. Teutonia Ins. Co.* (1911) 128 La. 45, 54 So. 466; *Palatine Ins. Co. v. Nunn* (1911) 99 Miss. 493, 55 So. 44; *Dinneen v. American Ins. Co.* (1915) 98 Neb. 97, 152 N. W. 307, L. R. A. 1915E 618, Ann. Cas. 1917B 1246. Contra: *Gouin v. Northwestern Nat'l Ins. Co.* (1927) 145 Wash. 199, 259 Pac. 387, in which, however, the court failed to notice the existence or effect of a valued policy law, Wash. Code (1933) sec. 3013.

13. *Amusement Syndicate Co. v. Prussian Nat'l Ins. Co.* (1911) 85 Kan. 367, 116 Pac. 620; *First Investment Co. v. Vulcan Underwriters* (D. C. D. Ore. 1927) 33 F. (2d) 785. But see *Palatine Ins. Co. v. O'Brien* (1908) 107 Md. 341, 68 Atl. 484, 16 L. R. A. (N. S.) 1055.

1. The more important facts are: (1) Percentage of sales in St. Louis and St. Louis County are two per cent and eight per cent, respectively, whereas average percentage for other counties is thirty-eight per cent. (2) City of St. Louis invested \$199,454.02 at sales held under Jones-Munger Law in 1936, 1937 and 1938, for the purchase of property being offered a third time to protect liens for state, city and school taxes against said property. (3) General real estate markets in St. Louis and St. Louis County vary to a great extent from those in other counties of the state. (4) There is a greater demand for insuring titles to real estate in St. Louis and St. Louis County than in most other counties of the state.