

August, 1942

University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Eight Issues, Published Annually, by the University of Pennsylvania Law
School. Copyright 1942, by the University of Pennsylvania

\$4.50 PER ANNUM FOREIGN, \$5.00 CURRENT COPIES, 75 CENTS

BOARD OF EDITORS

WILLIAM B. JOHNSON, *Editor-in-Chief*

JOHN K. MYERS, *Case Editor*

JOHN SULLIVAN, *Secretary*

BERNARD M. BORISH

ROBERT HACHENBURG

MILES W. KIRKPATRICK

WILLIAM VAN HORN, *Managing Editor*

MARTIN L. HAINES, II, *Legislation and
Note Editor, and Acting Book Review
Editor*

CHARLES M. KACHINKA

ROBERT W. MCCONNELL, JR.

EDMUND J. MCCULLOUGH

JOHN N. STULL

Editors granted leave of absence for service in the Armed Forces of the United States:

LEON EHRLICH, *Book Review Editor*

JOHN L. ESTERHAI

MICHAEL VON MOSCHEISER

Correspondence concerned with editorial matters should be directed to the EDITOR-
IN-CHIEF; address business inquiries to the SECRETARY.

NOTES

"Actual Cash Value" of Insured Property: The Normal Rules and Their Wartime Modifications

The "actual cash value" clause of the standard property insurance policy does not purport to fix a definite rule for determining the amount of the loss, but requires examination beyond the terms of the policy to ascertain what this clause really means. The first undertaking in this note is to clarify the results reached by the courts in their interpretation of "actual cash value" under normal conditions; the second is to determine the effects of governmental rationing and priority regulations upon the measure of recovery, and to consider the interpretations open to the courts under the present abnormal conditions.

An insurance policy with relation to property,¹ whatever definition may be given to it, essentially is indemnity to the assured.² It "is a contract whereby the insurer becomes bound, for a definite consideration, to indemnify the insured against loss or damage to certain property named in the policy, by reason of certain perils to which it may be exposed."³ Recovery, generally speaking, depends upon the terms of the policy and the extent of the loss or injury.⁴

Almost all standard forms⁵ of insurance policies regarding property contain similar provisions as to the amount of damages recoverable under them. The provisions of the standard fire insurance policy of the State of New York are typical of most modern standard policies.

"This company . . . does insure . . . to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture. . . ."⁶

Thus "the actual cash value" at the time of loss is the measure of damages provided in the policy, with a limitation on the amount recoverable,⁷ *i. e.*, "not exceeding the amount which it would cost to repair or replace, etc." "The actual cash value" is recognized by statute as that sum necessary to indemnify the assured.⁸ In order to determine the measure of damages, it is necessary to examine the manner in which the courts have interpreted the terms of the standard policy; the rule, though easily stated, has involved serious difficulties of application.⁹ Different measures of value have been applied to different kinds of property, and it shall be seen that the test in any particular case may be wholly inapplicable in another situation. Upon analysis, a seemingly irreconcilable group of decisions fall into definite categories based upon the type of property involved.¹⁰

1. Unless otherwise indicated, "property" includes both real and personal property.

2. "Property insurance is essentially and entirely a contract of indemnity." VANCE, *INSURANCE* (2d ed. 1930) 123.

3. *Dover Glass-Works Co. v. American Fire Insurance Co.*, 1 Marv. 32, 45, 29 Atl. 1039, 1041 (Del. 1894).

4. *U. S. Fidelity and Guaranty Co. v. Corbett*, 35 Ga. App. 606, 134 S. E. 336 (1926).

5. The older form of the New York standard policy was drafted by the New York Board of Fire Underwriters, and was adopted by New York in 1886, other states soon following. A more concise form was drafted by a committee appointed by the National Convention of Insurance Commissioners in 1916, and has been adopted by many states. See PA. STAT. ANN. tit. 40, § 658 (Purdon, 1930); N. Y. CONS. LAW, Book 27, § 168 (McKinney, Supp. 1942).

6. N. Y. CONS. LAW, Book 27, § 168 (McKinney, Supp. 1942).

7. *Western Massachusetts Insurance Co. v. Transportation Co.*, 12 Wall. 201 (U. S. 1870); *Jackson v. Canada Accident & Fire Assurance Co.*, 52 N. B. R. 33 (1924). *Contra*: *Butler v. Security Insurance Corp. of New Haven*, 244 Ill. App. 379 (1927). Allowance must be made for depreciation in all cases. In addition, it has been held that the cost of replacement provision is for the benefit of the insurer, and must be pleaded by him. *Home Insurance Co. v. Sullivan Machinery Co.*, 64 F. (2d) 765 (C. C. A. 10th, 1933); *Keystone Paper Mills Co. v. Penna. Fire Insurance Co.*, 291 Pa. 119, 139 Atl. 629 (1927).

8. See Pennsylvania and New York Statutes cited in note 5 *supra*.

9. 7 COUCH, *INSURANCE* (1930) § 1840.

10. *S. v. Erb v. German-American Insurance Co.*, 98 Iowa 606, 616, 67 N. W. 583, 586 (1896) ("a different rule as to replacing might obtain as to some classes of property"); 7 COUCH, *loc. cit. supra* note 9.