Book Review of William A. Kerr, "THE LAW OF INSURANCE. Fire, Life, Accident and Guarantee." (1902).

After William A. Kerr served one six year term as Special Municipal Court Judge in Minneapolis, 1895 – 1901, he finished writing a 917 page treatise on insurance law. It was published in 1902, and received a harsh review in the *Virginia Law Register* in December of that year:

> "This book is without *raison d'etre*. It is impossible to condense the subjects of fire, life, accident and guarantee insurance into a single volume to answer the purposes of practitioners—and if the work is intended for the use of students it is a signal failure. What a student wants above all things is legal doctrine, with the reasons upon which it is based. What he would actually find in this work is a mass of case law, with no effort to reconcile conflicting views, or to work out the true doctrine from principle.
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> "Mr. Kerr may have a local reputation as an insurance lawyer, but he is a 'prentice hand in the making of a text-book on the subject of insurance.
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> "The inaccuracies, loose statements, omissions and faults generally of form and substance discovered, not in reading the whole volume (which we have not done), but in examining a few sections dealing with particular questions, are numerous. Mention has already been made of the absence of discussion— that intelligent criticism of erroneous or conflicting rulings, and that diligent search after principles, which give a text-book its real value.
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> "Our initial test of the work was to look for the author's treatment of the effect on the policy of the removal of personal property from its designated location. The index does not contain the title "Removal,"

but by searching the table of cases for a well known Virginia case on the subject the desired matter was located. The author's treatment exhibits no conception of the distinction under a policy insuring goods as contained in a particular place, where the nature of the goods indicates to the insurer that the ordinary every-day use of the property will necessitate its removal from the named depository, and where the ordinary use of the property does not require such removal. The former class is illustrated by policies upon vehicles in use, wearing apparel, rolling stock of a railroad, horses, cattle, etc. Here even where removal from a designated depository is prohibited in the printed conditions, the courts are practically unanimous in holding that there is implied consent to use the property in the ordinary way, without a forfeiture of the policy. See *Niagarc Fire Ins. Co. v. Elliott*, 85 Va. 962; *McCluer v. Girard Fire & M. Ins. Co.*, 43 Iowa, 349, 22 Am. Rep. 49; *Noyes v. Northwestern etc. Ins. Co.*, 64 Wis. 415, 54 Am. Rep. 631; *Haws v. Fire Ins. Co.*, 114 Pa. St. 430, 7 Atl. 159, and numerous other cases to the same effect. The result of these decisions has recently been obviated by the insertion in the standard policy of the words "while contained in." *Village of L'Anse v. Fire Ass'n* (Mich.), 78 N. W. 465. On the other hand, if the property is not of such a nature as to require removal in the ordinary use of it, then it is settled that removal forfeits the policy. The author has been energetic enough in finding and citing the authorities in both these classes of cases, but he apparently sees no distinction (certainly he points out none) between them, and apparently regards the two lines of authority as conflicting.

“In the author's discussion of "Subrogation of Insurer to Rights of Mortgagee," the rule that the mortgagee

insuring for his own benefit will not be entitled to recover and retain both the insurance money and the mortgage debt, but that the insurer will be subrogated to the mortgage debt after the creditor is paid in full, is not mentioned, except as the right is secured by contract between the insurer and the insured. There are some cases denying the rule, but the weight of reason and authority abundantly sustains it. *Carpenter v. Ins. Co*. 16 Pet. 495; *Phoenix Ins. Co. v. Bank*, 85 Va. 765.

"At page 682, we learn that "a policy payable to the 'legal representatives' of the insured belongs to his heirs or next of kin"; but on page 693, that if payable "to the legal representatives of the assured," the policy forms a part of the estate of the insured, and is for the benefit of creditors. Both of these propositions cannot be true.

"The treatment of the question of damage by smoke is most unsatisfactory—the distinction between smoke caused by a hostile fire and by a friendly one, well elucidated in *Cannon v. Phoenix Ins. Co*., 110 Ga. 563, cited by the author, is not referred to, nor is any principle stated by which may be determined the question as to when the insurer is liable for smoke damage and when not.

"These faults fairly indicate the general character of the work. It suggests a more liberal use of the Century Digest, Title "Insurance," than a careful study of the cases. "The insurer is called "it" apparently throughout the volume. A large part of the law of fire insurance consists in the judicial construction placed upon the various clauses in the policy—particularly of the standard policies now in common use. Little or no attention is devoted to the meaning of these clauses.

> "Several material omissions were observed in a hasty examination of the index. We cannot conscientiously recommend Mr. Kerr's book as worth the price."

The complete text of Judge Kerr's treatise is posted in the "Treatise/Textbook" category of the MLHP. The Judge died on April 16, 1919, at age fifty-one. For a biographical sketch, see "William A. Kerr (1867-1919)" (MLHP, 2013).

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