having been renewed. His executors did not effect any insurance. A fire took place 26th May. It was held that the executors were not personally liable.

Query, is an executor bound to insure houses more than the lives of debtors of his testator? Yes; insurance on lives of debtors is rare.

§ 140. *Creditors — Common carriers — Pawnbrokers.*

Is a creditor holding a house *ut in pignore* bound to insure it? He is liable even for *faute très legère*, says Merlin. So, he says, is a partner. Yet he does not support the doctrine that they are bound to insure.[1]

Common carriers generally are liable in England, if goods entrusted to them be burned, even by accident (unless, indeed, by lightning). So they ought to insure. A carrier is in the nature of an insurer, said Lord Mansfield.

In England, under the Pawnbrokers' Act of 1872, pawnbrokers must insure, and may do so to the extent of the estimated value. The person holding a pledge is bound to use the diligence of a diligent pater-familias. If a fire happen he is to prove that he was in no fault. Even then I would hold him bound to insure,—certainly if, habitually, he insured his own goods.

If fire happen, the pawnbroker, in Lower Canada, must prove that he could not prevent it; if *faute* even *legère* can be shown against him he is bound to pay. A depositary, in Lower Canada and in France, is only liable for *faute lourde*; a pawnbroker for *faute legère*. Even in England a pawnbroker is liable for loss by fire if he be negligent or in default.[1]

§ 141. *Directors of Joint Stock Companies.*

I would hold the assignee of a bankrupt's estate, as he is bound to take care of it, liable in damages for bad gestion; and not insuring stock I would consider such; and buildings if insurance of them would profit the mass, but not otherwise.

[1] It has been seen that if a mortgagee officiously insure, he cannot recover the premiums from the mortgagor. *Dobson* v. *Laud.*

[1] *King* v. *Lording*, 1 Nev. & Mann, *per* Parke, J.

When is there fault in such persons? What is due diligence or care? This is best to be decided by a jury, says Bell, Princ. No. 232; and Proudhon says[1] "by judge exercising office of jury."

CHAPTER V.

THE POLICY.

§ 142. *Policies—Open and valued.*

Policies are either open or valued. An open one contains no declaration of the value of the subject insured, or of the insured's interest, and under it the insured has the burden of proving the value and loss, when a loss happens. A policy is valued when it has admitted, or specified, in it a sum as value of the subject insured, or of the insured's interest, as when the policy reads to cover goods "worth £500 value fixed," or "valued by all parties," or "valued at £500 without further account."

§ 143. *What may be recovered under an open policy.*

Most policies are open. Under such, when goods insured are lost by fire the insured gets the actual value of them. Quinn sued the Equitable Fire Insurance Company in the Superior Court, Quebec, upon a policy by which he, a block maker, insured his stock, consisting of blocks, for £200. He obtained judgment for that sum. By the policy the insurers agreed to pay the insured "all such loss or damage as he should suffer from fire," &c. Quinn claimed the value of the blocks in the market. The Company contended that it was liable only for the cost of them, particularly as Quinn had made no insurance on profits. Quinn proved the value of the blocks burnt to have been £200. The cost of them was proved to have been much less. The insurers appealed, at the same time offering Quinn £100 with interest and costs. In March, 1861, the Court of Queen's Bench dismissed the appeal.[2]

[1] Droits d'usage, No. 1523.

[2] See *Harris* v. *Eagle Insurance Co.*, 5 Johns.