

CHAPTER III.

OF INSURABLE INTEREST, THE SUBJECT INSURED,
AND WHO MAY BECOME INSURED.§ 51. *Insurable interest.*

All kinds of things that are subject to risk may be insured by the persons interested in them. Lord Eldon has defined an insurable interest to be "a right in the property, or a right derivable out of some contract about the property, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party."¹

§ 52. *Insured must have interest.*

The person insuring must have an interest in the property insured. To permit wager policies would be most mischievous, and often lead to arson. Even before the 14 Geo. III. Lord King, in *Lynch v. Daltzell*, said "the insured must have a property at the time of the loss or he can sustain no loss, and consequently can be entitled to no satisfaction." In a case somewhat similar, Lord Hardwicke said: "I am of opinion that it is necessary that the party insured should have an interest or property at the time of insuring and at the time the fire happens." They would have held insurance against fire without interest void, in England, at common law. The English Act, 14 Geo. III. c. 48, recites "that the making of insurances on lives or other events wherein the insured shall have no interest, hath introduced a mischievous kind of gaming;" it goes on to enact in substance that no insurance shall be made on the life of any person or on any other event wherein the person for whose use or benefit or on whose account the policy shall be made shall have no interest, or by way of gaming or wagering, and that every insurance to the contrary shall be null. "And in all cases where the insured hath interest in such life, or event, no greater sum shall be recovered from the insurer than the value of the interest of the insured on such life, or other event." That statute never had force in Ireland, or in the Colonies; it never was law in Lower Canada.

Is it necessary that the assured should

¹ *Lucena v. Crawford*, 2 Bos. & P. new R. See also Civil Code of Lower Canada, Art. 2571.

have an insurable interest at the time of insuring? This question was answered in the negative by the Supreme Court of the United States in a marine insurance case,² where a policy of insurance on cargo was obtained by H. & Co. "on account of whom it may concern," in case of loss to be paid to their order (H. & Co.'s). The Court held that interest at the time of effecting the insurance was not necessary.

Injury from loss, or benefit from preservation of it, is a sufficient insurable interest.³

§ 53. *Particular nature of interest.*

Phillips, § 588, says in general the insured need not disclose the particular nature of his interest, e.g. a trustee. Arts. 2569 and 2571 of the Civil Code of L. C., which say that the nature of the interest must be specified, seem to be against this.⁴

Art. 2480 of the same Code says that a policy in the object of which the insured has no insurable interest is null. So, on a sale of a ship by B to C, if there be no registration, and the forms for transfer that are prescribed by the Shipping and Navigation Acts be not observed, no interest is in C.

The interest of the insured may be that of an owner, or of a creditor, or any other interest appreciable in money in the thing insured. C. C. of L. C. Article 2571.

In New York and Massachusetts it has been held (as in *Caldwell's* case above) that the insured need not declare the nature of his interest unless a condition of the policy require it; but may insure as owner general.

§ 54. *Description of interest in marine insurance and in fire insurance.*

As to the description of the interest, in marine insurance no description is required of the peculiar nature of the interest of the insured, whether it be legal or equitable, absolute or contingent, permanent or temporary, but any particular or special interest may be protected by a policy in

² *Hooper*, applt., 8 Otto.

³ *Lucena v. Crawford*, 3 Bos. & Pul. was cited; also 1 Perkins' Arnould, 298.

⁴ In *Caldwell v. Stadacona F. & L. Ins. Co.*, the Supreme Court of Canada held that under the law of Nova Scotia the interest of the insured need not appear unless required by the conditions of the policy. (1883.)