

insured for themselves and not for plaintiff; they were held liable in damages, as for negligence, and because they ought not to have discontinued insuring for plaintiff, without notice to him.<sup>1</sup> See Domat, Liv. 1, Tit. xv, sec. 3, art. 4.

If two accept a procuration they are liable *in solido*, if *préposés*, for instance, to keep safely a house or a thing.

If a vendor at a distance from the vendee has, in former transactions, insured the goods sold, or if he receive instructions to insure, he must insure.<sup>2</sup>

In *Mawman v. Gillett*<sup>3</sup> it was held that printers getting from booksellers paper, are not bound, in the absence of contract, to insure for the booksellers the paper of the works that they print.

#### § 138. Tutors.

Are tutors to minors bound to insure their ward's property? I would hold them bound, generally. *Quotiescunque non fit nomine pupilli quod quivis paterfamilias idoneus facit, non videtur defendi*; l. 10, Dig. De adm. et per. tut. Certainly a tutor, careful about his own property and insuring it, ought to insure his ward's. Certainly, if property left by a father be insured and the policy, after the death of the father, expire with notice to the tutor, if he have funds of his ward he must insure.

According to Rolland de Villargues,<sup>1</sup> a tutor is not bound to insure his minor's property. As to the tutor's responsibility, it is not to be that of extreme diligence of a *père de famille*. Yet he is bound to renew registrations (*ib.*), and I would say to keep up insurances.

As to the tutor, he is responsible if guilty of *mauvaise gestion*. Art. 290 C. C. of Quebec. This is reasonable. Certainly if, having funds in hand and being in the habit of insuring his own property, he do not insure his ward's, and it be burnt, the tutor ought to pay, being in fault. So if he be appointed tutor to minors owning houses always kept

insured by their father, and he (the tutor) fail to renew, though the father never did insure, or had so much property that he was always his own insurer, the tutor may not go free. Because he (the tutor) is guilty of *mauvaise gestion*. This is clear.

The modern law of France makes the *héritier par bénéfice d'inventaire* liable in his administration only for *fautes graves*. He need not insure, C. N. Art. 804. But Art. 673 of our Civil Code puts upon the beneficiary heir the care of a prudent administrator. It obliges the guardian of *chose d'autrui* to all the care of a good father of a family (the omission of this care is *faute moyenne*), C. N. Art. 1137.

The tutor to minors is bound to observe the same care and he is responsible for bad administration (*semble*, he is bound to insure, C. N. Art. 450, 290 C. C. of L. C.). Yet the Court of Besançon held that neither tutor nor *usufruitier* were bound to insure, there not being breach of positive obligation. But the Court added, if the tutor insure, and then fail to continue, he will be held liable, in case of a house insurance. Moveable property only was in question, and in the case judged, as he had never insured it, he was held free.<sup>2</sup>

#### § 139. Trustees, Executors, etc.

Are trustees bound to insure? Yes, under many circumstances, and where they are in funds they ought to.

In *Garner v. Moore*<sup>3</sup> an executor without special authority applied the testator's assets for several years in insuring the life of a debtor to the estate. He then dropped it without consulting anybody. He was held liable for the sum that would have been received had he kept up the policy.

In *Fry v. Fry*<sup>4</sup>, the testator, as a lessee, bound himself to insure. He allowed the insurance to expire 25th March. He died on the 27th March, without the insurance

<sup>1</sup> Dict. Vo. Ass. Mar. No. 21, § 2. Grun cited, 170.

<sup>2</sup> Bioche, Vol. 29, Art. 8118.

<sup>3</sup> 3 Drew. 277; 24 Law Journal (Chancery) 687.

<sup>4</sup> 27 Beavan. The case is cited on p. 79, Digest of English Jurist for 1860. Reported also in 28 Law Journal (Chancery).

<sup>1</sup> *Ralston v. Barclay et al.*, 1 Cond. R. La. p. 519.

<sup>2</sup> *Smith v. Luscelles*, 2 D. & E.; *Cothay v. Tate*, 3 Camp.

<sup>3</sup> Note on p. 325, 2 Taunton.