If one co-heir can be considered agent of the others he ought not to use his sole name as if owner.

§ 118. *Lessees.*

A farmer whose harvest has been destroyed by accident (say hail) may claim reduction of rent from the proprietor, in the terms of Art. 1650 C. C. of Lower Canada, though he may be entitled, for the same loss, to an indemnity from an insurance company. In such a case, the proprietor may be declared without right to profit by this latter indemnity stipulated in a contract to which he was not a party. *Thiroux* v. *Filion*.[1] Filion had insured against hail. Thiroux contended that a farmer's right against the proprietor to go free of rent ceased on his being paid by the insurance company. The case of *King* v. *The State Mutual F. Ins. Co.*, (*supra*), differs from that of *Thiroux* v. *Filion*, it seems, only in this, that the insurance company paid Filion, and did not ask from him subrogation, apparently, and Filion sued his landlord.

Is not Shaw, Ch. J., in the *King* case, in a dilemma? How hold, as he does, and at the same time admit that the mortgagee can only insure to the amount of his debt claim? And again, that if his debt be paid the policy cannot operate?[2]

§ 119. *Mandataries.*

Troplong, Mandat, No. 624, speaks of the *mandataire* being authorized to go to expense to carry out the *mandat* and to conserve the subject. He may incur necessary expenses, and even *dépenses utiles* must be reimbursed him. Thus he may insure and reimburse himself the moneys paid in premiums. It suffices that insuring was or might be *utile*. Can it be opposed that a *mandataire* without mandate to insure has no right to insure? No, for power is implied, in most mandates, to *soigner*.

[1] Cour de Cassation, 4 May, 1831; reported in Dalloz, Jur. Gén. du R.

[2] The *Filion* case is not as bad as the *King* case; for Filion was not master to make a hail storm; but King could set fire. King's case is as bad as Harman's, mentioned in Marshall on Insurance, and called there a gaming case (and overruled apparently).

§ 120. *Insurance for owner without his authority.*

One may insure in his own name the property of another for the benefit of the owner without the latter's previous authority. Such insurance will enure to the party's interest intended to be protected, upon his subsequent adoption of it, even after a loss. Angell, § 79;[1] and so in Quebec.

In *Dumas* v. *Jones*[2] the policy (a marine one), was in the name of the plaintiff only. It was an insurance on freight valued at $5,000. The defendant underwrote for $1,000; five others had underwritten previously for $2,500. At the trial it appeared that plaintiff's interest was only one-half of $5,000; another person being interested in the subject insured. Plaintiff was limited to his own loss, and had recovered that from earlier underwriters, before suing Jones. Jones was therefore condemned only to return to plaintiff the premium received on the amount insured beyond the plaintiff's insurable interest.

One of several owners of a vessel and cargo took a policy in his sole name, he intending the insurance for all. On a loss the insurers paid the insured more, considering his individual interest, than he was entitled to, and the insurer was declared entitled to recover back the excess, as paid in ignorance of fact.[3]

§ 121. *Beneficiary heirs, tutors, etc.*

The beneficiary heir may insure. Tutors may insure, in fact ought to be held bound to do so if in funds. Assignees of a bankrupt's estate may insure. So, churchwardens and trustees may; and the *cestui que trust*.[4]

[1] 9 Barr (Penn.) R. On peut faire le bien d'une personne à son insu. Beneficium est etiam invito prodesse. A man may become surety for B towards A without B's knowledge.

[2] 4 Mass. R.

[3] *Pearson* v. *Lord*, 6 Mass. R. Our article 1047, C. C., would allow so.

[4] *Hill* v. *Secretan*, 1 Bos. & Pul. Though the trustee insure, the *cestui que trust* may, by the condition, be the person to get the money. Monthly Law Reporter, A. D. 1858, *Brown* v. *H. Ins. Co.*