

lease. Judgment for plaintiffs against railroad corporation. This ought to have led Ch. J. Shaw to a different judgment in the *King* case.

A note on p. 168, Smith on Contracts (ed. of 1853) says: A man insured, who receives the amount of his mortgage claim or other debt, cannot claim the amount of the insurance too; and *Goodall v. Boldero* is cited; and also *Irving v. Richardson*, 2 Barn. & Ad.

In the United States, where the vendor of property, by an executory contract of sale, has effected an insurance thereon for his own benefit, and, after its destruction by a peril insured against, has recovered of the insurer the amount due him upon the contract from the vendee, the insurer is entitled to his claim upon the vendee, and may use the vendor's name in an action against the other party to recover the amount which is still due. *Ætna Ins. Co. v. Tyler*, 16 Wend. 385.

So, also, the insurer of the interest of a mortgagee, on paying to the insured after the destruction of the property the amount of the mortgage debt, takes an equitable assignment thereof, and may recover it of the mortgagor in the name of the mortgagee. *Carpenter v. Providence Washington Ins. Co.*, 16 Peters, 501; 2 Phillips Ins. 248 and 399. But see contra *King v. State Mut. Ins. Co.*, 7 Cushing 16.

A mortgagee insures on his own account. After loss by fire, at payment of mortgagee by insurer, this insurer may claim assignment from him and may recover debt from mortgagor. Payment by the insurer changes the creditor. *Carpenter v. The Prov. Wash. Ins. Co.*, 16 Peters.

Therefore it will be seen that the insured frequently has two means of obtaining compensation for his loss, one by an action against the wrong-doer occasioning it, or, in the case of the insurance of the mortgagee's or vendor's interest, against the debtor, and the other, by a suit on the policy against the insurer; and he may elect of which of the two he will avail himself. But since insurance is purely a contract of indemnity, the law will suffer him to recover no more than is sufficient to indemnify him for his actual loss. Therefore, if, before payment by the

insurer, the insured receives anything from any other party on a claim connected with the subject matter of the insurance, and which goes to diminish the amount of the loss he has sustained, his right of recovery against the insurer will be diminished *pro tanto*. (*Pentz v. Ætna Ins. Co.*, 9 Paige Chan. R. 568.) But if, after payment by the insurer, he receives anything on such a claim from a third party, who can never set up as a defence to his own liability the payment by the insurer, he will hold it as the insurer's trustee to be surrendered to him at his request.

But the basis of the payment by the third party must be a legal claim belonging to the insured on that party, which the law will enforce; a simple gratuity received by the insured to compensate for his loss, or a payment to him under a mistaken supposition of an obligation to indemnify him, will not discharge or diminish the insurer's liability. (*Lucas v. Jefferson Ins. Co.*, 6 Cowen 635.)

GENERAL NOTES.

COUNTY COURT JUDGES AND THEIR SONS.—We are certainly disposed to agree with the opinion expressed by the bar committee at their annual meeting that the sons of County Court Judges should be discouraged from practising before their fathers. It is obviously not in accordance with the best traditions of the bar that they should do so. Such a practice must of necessity give rise to a suspicion of partiality on the part of the judge, and although the suspicion may be perfectly groundless, it would seem most undesirable to make it possible to entertain it.—*Law Journal*.

HOW HE PAID HIS LAWYER'S FEE.—"My first case in San Francisco," said Attorney James K. Wilder, was the defense of a young fellow charged with stealing a watch belonging to a Catholic priest. I was appointed by the court, because the prisoner said he had no money.

"The jury returned a verdict of not guilty, and as the defendant was leaving the court-room I called him back, and, just as a joke, handed him my card and told him to bring me around the first fifty dollars he got.

"Next day he walked into my office and planked down two twenties and a ten.

"Where did you get all that money?" I demanded, as soon as I got over my surprise enough to speak.

"Sold the priest's watch," he replied, as he bowed himself out."

AN ADVOCATE, seeing that there was no longer any use in denying certain charges against his client, suddenly changed his plan of battle, in order to arrive at success in another way.

"Well, be it so," he said, "my client is a scoundrel, and the worst liar in the world."
Here he was interrupted by the judge, who remarked, "Brother B—, you are forgetting yourself."