

to execute a policy stamped (in pursuance of unstamped slip).

Where there is a covenant to insure, if the covenantor do not act promptly and pay the premiums, the covenantee may pay them and sue for the amount.<sup>1</sup>

In Louisiana, it is held that no bailee is liable to insure unless he have instructions to do so. *Duncan v. Boye*, 17 Ann. Rep. Yet he may have to pay sometimes, if fire occur, and he had better insure, apparently, (for himself, at his own expense).

If a man agree to keep insured, and get delay in consequence, he must not allow the property to be uninsured even for two days; else he breaks his agreement and his delay ceases.<sup>2</sup> This treaty is frequent where compromises are made.

By covenant people may bind themselves to insure, e.g., a tenant may, often does, under pain of forfeiture of lease. Such covenants are strictly enforced.<sup>3</sup>

And if a lessee bind himself to insure in the joint names of himself and lessor he must do so literally. Mere verbal evidence of the lessor saying that he would be satisfied with less (evidence of waiver pretended) is *nil*. (*Ib.*)

So a purchaser of a house, paying part, promising always to keep insured, for security extra of balance, failing to do so must pay balance if that be stipulated.

The plaintiff, a lessee, promises to keep insured. He does not. The landlord insures. No fire happens. Afterwards the landlord charges the tenant. It was held that he has no right to be repaid specifically the money spent by him in premium of insurance; unless as a kind of nominal damages. The jury, in this case, gave the plaintiff nominal damages against the lessee, viz., the very amount the plaintiff had expended (in reality more than nominal damages). But this verdict the Court would not interfere with.<sup>4</sup>

#### § 135. *Gratuitous mandatary.*

In the United States a mere gratuitous

promise to insure, unconnected with any relation of principal and agent subsisting between the parties, or with any duty arising from usage, is not binding, provided the promisor does not enter upon its performance. Such gratuitous mandatary can only be held liable for misfeasance, not nonfeasance,<sup>1</sup> and so it would be in England. But in Lower Canada it would be otherwise.

The *negotiorum gestor* ought to declare his quality, and insure.

In the United States and England, if such agent or person attempts to fulfil his promise, and is guilty of *gross* negligence or unskillfulness in the execution of his voluntary trust, he will be liable to the other party in an action on the case for all damages resulting from such negligence.<sup>2</sup>

But when the situation or profession of the one who makes this gratuitous offer is such as to *imply* skill, as if, for instance, he is an insurance broker, or known to be well acquainted with the business of insurance, an omission of that skill will be held to be *gross negligence*.<sup>3</sup>

#### § 136. *Effect of usage.*

Usage undoubtedly may impose obligation to insure. Neglect to effect insurance where the usage is and has been to insure will give an action of damages. By a general custom of the trade a printer may be bound to insure paper and printed work of a work that he is printing for an author or third person. True, that in *Mawman v. Gillett*<sup>4</sup> no such custom having been proved the printer got free.

#### § 137. *Joint owners, etc.*

Plaintiff and the defendants were joint owners and partners in a ship of which the defendants had the care and exclusive possession. Defendants had insured plaintiff's interest and their own; subsequently they

<sup>1</sup> *Mayne on Damages*, p. 200. *Hey v. Wiche*, 12 L. J. Q. B. 83.

<sup>2</sup> *Parry v. Great Ship Co.*, English Jurist of 1864.

<sup>3</sup> *Doe v. Gladwin*, 6 Q. B. R.

<sup>4</sup> *Hey v. Wiche*, 2 Gale & Dav. New York Legal Observer, Vol. 2, p. 235.

<sup>1</sup> 4 Johns. 84.

<sup>2</sup> *Tracy v. Wood*, 3 Mason, 132; *Thorne v. Deas*, 4 Johns. 84.

<sup>3</sup> *Skiele v. Blackburne*, 1 H. Bl. 158; *Wyld v. Pyckford*, 8 Mees. & Wels. 443.

<sup>4</sup> 2 Taunt.