Art. 2569, C.C.L.C., says the interest of the insured is to be stated in the policy.

§ 15. *Fire insurance in France.*

In old France fire insurance as now known was little practised, but the contract was lawful and could subsist without a policy. It was complete upon the consent of the parties. In modern France the contract may be made out from a policy, notarial act, private writings, receipts for premiums, and so forth; and parol evidence will be admitted to complete the proofs. Pardessus says that between traders (*commerçants*) proof of the contract may be by mere parol, but he is in error. Dalloz, Jur. du Royaume, Vol. for 1859.

Article 195 of the Code de Commerce orders sales of ships to be in writing, yet they may in France be verbal only, *inter partes*. The Code de Commerce is not so prohibitory as the English Ship Registry Acts. Yet Pouget lays it down that for insurance a writing is necessary, and a duplicate (*double*) even, unless there be an acknowledgment in the policy of the payment of the premium. Duplicates (*doubles*) are not required in commercial matters, and companies are sued in France before the Tribunals of Commerce even on "assurances terrestres." Yet in France in "assurance terrestre" *doubles* are usual.

§ 16. *Proof of the contract.*

An insurance under 100 livres could be proved by mere parol in old France (Valin), and so in modern France (Merlin and Locré). C.C. 332 is to be understood so, and is not contrary. Merlin, Questions de droit, *vo.* Police, et Contrat d'Assurance.

In *Sanborn et al.* v. *Fireman's Insurance Co.*, decided in November, 1860,[1] it was held (per *Hoar, J.*) that the "contract of insurance is "not required to be in writing, by common "law, nor by any statute of Massachusetts. " . . . An agreement for it, if sufficiently "proved by oral testimony, will be enforced."

Duer is not opposed to the above; but says it is doubtful whether an action on such proofs alone would be maintained, usage of written contract has so long prevailed. See also 1 Phill. Ins. § 8.

In *Cockerill* v. *Cincinnati Mutual Ins. Co.*,[1] it was held that a writing is absolutely required for maintenance of an action as on a contract of insurance.

It was said *per* Hoar, J., in *Sanborn et al.* v. *Fireman's Ins. Co.*,[2] that the principle of *Head* v. *Providence Ins. Co.*,[3] is not unsound, that a corporation can have no powers but such as the Act creating it gives, but the application of the principle has been modified in later cases; as in *Tayloe* v. *Merchants Fire Ins. Co.*;[4] also, in *Commercial Marine Ins. Co.* v. *Union Mutual F. Ins. Co.*[5]

So where the charter says that the company may contract so and so, but without words of restriction, the company is not restrained from contracting otherwise.[6]

In New York, a parol agreement to insure binds the insurance company [7] to issue a policy for the amount. It is otherwise in Georgia by statute. But in New York there must be a completed contract.

An insurance company cannot refuse to execute a policy where a contract for insurance is proved and the premium has been taken; but if the premium has been promised merely, and the promissor has been put in default to pay, the insurance company is not bound.[8]

§ 17. *The law in the United States as to the mode of insurance.*

Whether a valid contract of insurance can

[1] 16 Gray's Rep.

[1] 16 Ohio.

[2] 16 Gray.

[3] 2 Cranch.

[4] 9 Howard.

[5] 19 Howard.

[6] 19 Howard, 321.

[7] *Fiske* v. *Cottinet*, 14 Am. Rep. 715. The plaintiff had no policy, had paid no premium—payment was waived till policy. Before the policy was issued from the Head Office, the fire occurred. The Company was condemned to pay.

Audubon v. *Excelsior Insurance Co.*, 27 N. Y. Rep. But if the charter of the company order otherwise no parol contract can bind: as where a Statute says that all applications shall be written or printed, and all conditions printed or written, and all policies or contracts shall be signed by the President;—*Henning* v. *The U. S. Insurance Co.* (Missouri) 4 Am. Rep.

[8] *Sanford* v. *The Trust F. Ins. Co.* N. Y. 1842, Chancery. The bill in this case was to enforce a parol contract for insurance; the premium was tendered after the fire.