

§ 57. *Interest to be stated truly.*

The mortgage creditor insuring ought to state his interest particularly, and truly.

A policy issued by a mutual company was expressly made subject to their by-laws, one of which provided that "unless the applicant shall make a true representation of the property insured, and of his title and interest in it, and also of all incumbrances and the amount and nature thereof, the policy shall be void." The applicant represented, in answer to questions, that the property was owned by him and not incumbered; whereas he was only a mortgagee. Held, that the policy was void.<sup>1</sup>

If disclosure of insured's interest or title be called for by the conditions, A insuring goods as his when they are really the property of a partnership, the policy will be held null. But Flanders, p. 307, says, if no call for such disclosure be made by the conditions, A will get his proportion of the amount of the policy. The Civil Code of Lower Canada, however, requires the nature of the interest to be specified (Art. 2571).<sup>2</sup>

§ 58. *Interest not insurable unless legal.*

An important requisite of an insurable interest is its *legality*. If it is illegal, it will not be insurable. The general principle in regard to the illegality of the interest is well-stated by Mr. Phillips to be, "that if a contract be intended to indemnify the owner from loss on property by reason of its being implicated in an illegal trade, or applied to an illegal use, or which, according to the laws of the country where the contract is made, it is criminal for the owner to hold, such contract is void; and accordingly the owner has no insurable interest."<sup>3</sup>

This principle is frequently applied to marine insurance in cases of policies on cargoes of contraband goods or on ships sailing in violation of an embargo, etc., and though no cases are reported of its application to fire insurance, there seems to be no

reason why it does not govern that branch of the subject as well as the other. It is forcibly remarked by Mr. Duer, "that there can be no more direct encouragement to the violation of a law than a contract that secures an indemnity to the transgressor."<sup>4</sup> Therefore it may well be questioned whether in such States as have enacted very stringent prohibitory laws in regard to the sale of intoxicating drinks, as Maine, Vermont, Massachusetts, and others, an insurance upon a stock of liquors, held in contravention of such a law, would not be invalid. In marine insurance, if the trade be illegal, it defeats the policy on the ship as well as that on the cargo, but it is doubtful whether an illegal trade on land would vitiate the insurance upon the building in which it is carried on, particularly when the owner of the building is not the person engaged in the prohibited traffic.<sup>5</sup>

A policy illegal by the law of insured's domicile was sustained, the law of the Company's domicile not prohibiting; this was where the insured's proposal was received, and the policy granted as asked.

But the legality of a note given for premium depends on the law of the place where made. *Ch. of England Ass. Co. v. Hodges*, 1857. See Savigny, by Guthrie. P. 184.

§ 59. *Insured must have interest at time of effecting insurance.*

Ellis says:—"Another distinction may also be observed between marine policies and those against fire. It is sufficient if a marine policy be effected before the interest of the property commences, if it be made in time to meet the risk insured against, for the stat. 14 Geo. 3, c. 48. s. 1, does not extend to marine policies, and such restraint would be

<sup>4</sup> Duer's Ins. 315.

<sup>5</sup> In *Johnson v. Union Ins. Co.*, Mass., 1879 (P. 5 Alb. L. J. of 1890), the plaintiff insured on his stock and personal property; \$900 on billiard tables, \$500 on bar and saloon fixtures; \$100 on stock in trade, liquors, cigars, glass ware, contained in building on Franklin street. The plaintiff was not licensed to keep billiard tables for gain, which he was doing. The policy was held illegal, and the whole contract held void. The case was held to be governed by *Kelly v. Home Ins. Co.*, 97 Mass.—Is insurance null on liquors kept by an unlicensed person? The *Kelly* case says yes.

<sup>1</sup> *Jenkins v. Quincy M. F. I. Co.*, Monthly L. Rep. of 1856.

<sup>2</sup> In *Catron v. Tennessee Ins. Co.*, the insured, who owned only half of a house, insured it as his, and the policy was held null. Flanders, p. 307, note.

<sup>3</sup> 1 Phillips' Ins. 133.