

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

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CHAPTER I.

OF THE CONTRACT OF INSURANCE, HOW MADE,
WHEN PERFECTED, AND OF THE APPLICATION.§ 1. *Definitions of fire insurance.*

Fire insurance is a contract by which one person takes upon himself the risk of fire to which a thing is exposed, and obliges himself towards another, to indemnify him for any loss he may suffer by fire, if fire destroy or damage the thing insured, and this in consideration of a sum of money, price of the risk run.

The Civil Code of Quebec, Article 2468, says: "Insurance is a contract whereby one party, called the insurer or underwriter, undertakes for a valuable consideration, to indemnify the other, called the insured, or his representatives, against loss or liability from certain risks or perils to which the object of the insurance may be exposed, or from the happening of a certain event."

Art. 2569 of the same Code, says: "A fire policy contains the name of the party in whose favor it is made;—a description or sufficient designation of the object of the insurance and of the nature of the interest of the insured; a declaration of the amount covered by the insurance, of the amount or rate of the premium, and of the nature, commencement and duration of the risk;—the subscription of the insurer with its date;—such other announcements and conditions as the parties may lawfully agree upon."

It may be defined in other words as a contract of indemnity, by which one person in consideration of a sum of money, undertakes, usually, to guarantee another, to the amount of the sum insured, against any loss or damage which he may, during a time fixed, sustain by fire damaging the property described.¹

¹ The best definition of the contract is said to be given in 2 Bl. Comm: 458:—"A policy of insurance is a contract between A and B, that upon A paying a premium accepted as equivalent to the risk, B will indemnify against a particular event."

In 1880, in the Court of Appeal in England, the Lord

§ 2. *Partial loss and average.*

The insurers may stipulate not to be liable for partial loss, and some policies are made subject to condition of average, so that if at the time of a fire the value of the objects insured exceed the sum total of the insurance, the insured is considered his own insurer for the excess.

Conditions of average make the liability of the insurer relative only for an amount in the proportion that the sum insured bears to the value of the property at risk. The insured is considered as himself insuring for the proportion of the value of the property which exceeds the amount of the insurance, and therefore liable to contribute in that proportion in case of loss. (Bunyon.)

§ 3. *Nature of the contract.*

The contract of insurance is consensual, and synallagmatic or bilateral. If payment of the premium be admitted in the policy the contract is unilateral, says *Le Dictionnaire des assurances terrestres*, 588. But though the premium be paid there are such obligations on the assured that the contract viewed in its entirety must be held conditional, and bilateral. Policies in France are generally for a term of years, for annual or semi-annual premiums promised, and with fifteen days of grace to pay each instalment of premium, and all premiums are *portables*. The policies are synallagmatic contracts, and must be made in duplicate, signed by both parties (Art. 1325, Code Napoléon).

In Quebec, policies in duplicate are not usual nor required, and as to signatures our Code (2569) points only to signature by the insurer.

§ 4. *The parties, and the premium.*

The person who charges himself with the risk is the insurer; the other is the insured; the sum paid or agreed to be paid, as the price of the risk, is called the premium, and the act or writing made to evidence the contract, the policy.

Justices, in *Darrell v. Tibbitts*, held the contract of Fire Insurance a contract for indemnity, and a contract of the same kind as from a marine policy—the insured can't get paid twice over. 5 Q. B. Div. 560.

The contract is not to pay a certain sum on a particular event like in life assurance. *North Br. Ins. Co. v. London, Liverpool & Globe*, 5 Ch. Div. 569, cited.