

§ 257. *Delay for payment of loss.*

"Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved."

And in the body of the policy this company only binds itself to pay within sixty days after notice and proof of loss. Even without such precision of expression, the delay would probably run only from proof perfected and oath. The plaintiff suing before will be non suited.¹ *Cum solvendi tempus obligationi additur, nisi eo præterito peti non potest.* Dig. Book 50; De Reg. Juris. 186.

Generally the sixty days do not run from the date of the fire.

§ 258. *Partial loss.*

"XV.—That in the event of the total loss of the sum insured by this policy, the insured shall, upon settlement of the claim, deliver up the policy to the association or their agent to be cancelled. And, in the event of a partial loss, the insured shall, after payment of the sum agreed upon, deliver to the association or their agent, and leave with them or him, his, her, or their policy for seven clear days, for the purpose of having a memorandum of the payment of such partial loss endorsed thereon; which endorsement shall evidence the partial satisfaction of the sum insured, and shall reduce the policy by the amount so paid, from the date or dates of such loss or losses until the next term of renewal."

Loss by fire of house insured ends the policy. If it be rebuilt new insurance is required. P. 441, 2 Alauzet.

As to partial losses, do they annihilate the policy *pro tanto*? See *subject insured*.

Pouget says no, and that the insurer may have to pay \$15,000 or \$20,000 in a year, though the policy be only for \$5,000. May it not depend upon bad wording?

Sinistre—Partial loss. French policies stipulate generally the *faculté* on paying partial loss to rescind the insurance contract for the rest of its agreed or originally fixed term. *Fremery*, p. 349.

Partial loss. A mill worth £1,000 is insured to the extent of £400. A fire injures it in the first month to the extent of £300, and this is

paid. Query? if repairs be made and again, during the term first fixed by the policy, the mill be burned, must not the company pay £100?

Generally the insurer agrees to pay to the extent of the sum insured. If a partial loss happen and he pay, and afterwards there be a total loss, the insurer is not obliged to pay so as to make excess beyond the original sum insured; but the partial loss paid shall be considered, and the insurer has only to pay the balance. So, in the *Curry* case¹ it was held that a total loss happening, what was previously paid under the same policy on a partial loss has to be deducted.

In a case in *Sirey*, A.D. 1858,² the court held the following to be a good condition: that after a loss, for no matter what amount, the company may rescind the policy by a notification, and even all other policies in the name of the assured. In case of such rescission, the premiums on the other policies will be refunded in proportion to the time unexpired; but as to the one concerned in the loss, no premium shall be returnable.

Accident by fire: *Leeds v. Chatham*, 1 Simm. 146. Tenant having covenanted to repair he must do so and cannot ask landlord to apply any insurance moneys to rebuilding or repairs, and tenant must pay his rent. He might have provided for suspension of rent. Why didn't he? *Lofft v. Dennis*, 1 Ell. & Ell. follows the above.

Faute of B, a neighbor, house of A is burnt. A is well insured and the insurance company has paid him. He cannot sue B; and B would go free, under the French law, but for insurance company's stipulation on policy that it should on paying stand subrogated in all A's rights. By virtue of this stipulation the insurance company can sue B. Nos. 174, 175, XI. *Toullier*.

Defendant is sued for damage to plaintiff's house, by carelessness setting it on fire. He cannot claim reduction of damages on the ground that plaintiff had recovered from the insurers. If he could he could do wrong and pay nothing. *Bartlett v. Holmes*, 13 C. B., 630.

¹ 10 Pick., 535.

² C. cases, p. 439, 1st part. 1134 C. N. cited as warrant for judgment.