

sion of this chosen Court, as *compromis* bind to arbitrations? If so, and suit be brought in a competent Court (otherwise), will not this Court dismiss the cause if the special matter be proved?<sup>1</sup>

Agents in provinces not authorized to grant policies or to oblige the insurance company cannot by merely taking requisitions for insurances, subject to approval of head office in Paris and its issuing policies, confer jurisdiction on the Court of assured's residence; the agent is a mere *intermédiaire*. It is indifferent where the assured got the policy delivered to him, if it be dated at head office. Vol. 24 Journal des Assurances, 1873.

§ 261. *Form of action on policies under seal.*

Some of the companies issue their policies *under seal*, others *not under seal*. Where a company consists of numerous proprietors it has been thought more advisable, as a further security to the insured, to issue policies under seal, thereby putting it out of the power of the insurers (parties to the deed) from pleading in abatement for want of parties, for otherwise, in strictness, every proprietor ought to be a party. The policy under seal had, until the framing of the new rules, a peculiar inconvenience as against an office that they were put to plead specially. Now, however, under the new system, even in cases of *assumpsit*, special pleas must to a certain extent and in certain matters be resorted to.

The form of action in cases of policies under seal is in general *covenant*. A general form of declaration *in debt* is given against the two public incorporated companies (the Royal Exchange and the London Assurance) by Stat. 6 Geo. I, c. 18, s. 4, 11 Geo. I, c. 30, s. 43, but it is not usually adopted in practice.

*Assumpsit* is not proper where the policy is of a corporation and under seal, says Marshall; but debt or covenant, private insurances by private writings, simple contracts, are sued upon in *assumpsit*.

§ 262. *Who may bring action.*

Shaw says:—The promise of indemnity in a fire policy is usually made to a particular person or persons mentioned by name in the policy, and every action on such a policy

must, of course, be brought in the name of the party so mentioned or his legal representatives, unless by the terms of the policy he is insured as agent.

But sometimes the form of describing the parties insured commonly used in marine insurance is also adopted in fire policies, and the parties for whom the insurance is effected are not specifically mentioned, but embraced under general words, as "whom it may concern" or "the owners." Frequently the name of the party effecting the insurance is mentioned, and then the general words are inserted. Thus the policy professes to insure "A for whom it may concern," or "A for himself and whom it may concern." In such cases, if the policy is not under seal, *assumpsit* may be brought in the name of A for the benefit of those concerned, or in the names of those concerned, or of any one of them, for whose benefit it appears that the insurance was intended by the party effecting it.<sup>1</sup>

But when the policy is under seal, notwithstanding the general words, covenant must be brought in the name of the party mentioned for the benefit of those concerned.<sup>2</sup>

But when A is insured "loss payable to B," an action may be brought on the policy in B's name. A may also sue on the policy if it appear that B consents thereto, or that he has no interest in the loss.<sup>3</sup>

In Quebec Province any person assignee of a policy sues in his own name, if he please.

In *Reed v. Pacific Ins. Co.*<sup>4</sup> it was held *per Shaw*, Ch. J., by usage one who procures insurance to be made in his own name for another may maintain an action in his own name; but he is a mere agent, and if his right to continue agent be revoked, he cannot sue, but the other, after loss, may assign to any third party; but the agent sometimes has an interest of his own in such policies.

If a man, broker or agent, insure "as

<sup>1</sup> *Sargeant v. Morris*, 3 B. & Ald. 277; *Skinner v. Stocks*, 4 id. 437; *Pacific Ins. Co. v. Catlett*, 4 Wend. 75; *Farrow v. Commonwealth Ins. Co.*, 18 Pick. 53.

<sup>2</sup> *American Ins. Co. v. Inley*, 7 Barr. 223.

<sup>3</sup> *Lazarus v. Commonwealth Ins. Co.*, 5 Pick. 76; *Farrow v. Commonwealth Ins. Co.*, 18 Pick. 53; *Ocean Ins. Co. v. Rider*, 20 Pick. 259; *Jefferson Ins. Co. v. Cotheal*, 7 Wend. 82.

<sup>4</sup> 1 Metcalf, 186.

<sup>1</sup> See 2 Carré, p. 182; 6 Carré, p. 649, No. 597.