and he says Grun and Joliat approve, No. 142 (Pardessus, *contrà*).

Suppose the first insurer to pay, can he make the late ones contribute?

Where property is insured, and then it, together with other properties, is insured by a policy reading for one entire sum for the totality of subjects, this makes necessary an apportionment.[1]

The charter of an insurance company provided forfeiture of any policy covering property otherwise insured, unless such double insurance shall be by consent of the company, endorsed by the secretary upon the policy. Held, that the company could not waive this provision, nor consent except by such indorsement.[2]

The rule in modern France is that if the entire value is not covered by the first policy, the later insurers have to make up the deficiency according to the dates of their policies. *Semble*, they are not *co-fidéjusseurs* so.

In the United States, a condition is frequent that if the insured have made other insurance prior in date, the last insurers shall be liable only for so much as the amount of the prior insurance may be deficient towards covering the property lost insured.

In Lower Canada, the first sued of several insurers, by different policies, has no right to ask the others to contribute; unless, on special grounds, they are bound to. Where there are several insurers, the one (never mind which) who is first made to pay, does nothing more than fulfil an obligation which is his alone. And where double insurance exists, the second can be sued before the first.

Of course, in case of double insurance, or treble, the insurer can never recover more than his loss. There can be gotten by him but one satisfaction for one loss.

The rights *inter se* of several insurers by different policies are various, and different, *semble*, from the ordinary rights of co-sureties by obligation, towards a creditor for a debtor.

[1] The case of *Howard Ins. Co.* v. *Scribner*, 5 Hill, is overruled, and this principle (of other insurance being making necessary a calculation) held in *Ogden* v. *East R. Ins. Co.*, 7 Alb. L. Journal of 1873, p. 330.

[2] *Couch* v. *City F. Ins. Co.*, 38 Connecticut, A.D. 1872-3.

Often the different insurances are affected by differing conditions on policies. Suppose the insured by several policies, to forfeit, by breach of a condition, his rights against one insurer, can the others, for instance later insurers, say they are free, from the fact of the insured having deprived them of contribution from others, or other? Does the insured contract so? Would the question be affected by knowledge had by the later insurer of the earlier insurance?

Policies may stipulate against contribution, and that the insurers shall be liable in the order of dates of their policies respectively, or that in case of subsequent insurance, the first insurer shall nevertheless be answerable for the full extent of the sum insured by him, without right to claim contribution from subsequent insurers.[1]

§ 186. *Limitation of liability in the case of several insurances.*

The following are clauses regulating contribution, or rather limiting the amount of liability of insurers in the case of several insurances:

"In case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property." (*Ætna* policy, of *Connecticut.*)

"And in all cases of assurance, this Company shall be liable only for such rateable proportion of the loss or damage happening to the subject assured, as the amount assured by this Company shall bear to the whole amount assured thereon, without reference to the dates of the different policies." (Other policies.)

Shaw (upon *Ellis*) says that where there are several policies containing the clause providing that, in case of other insurance, the insurers shall be liable to pay only a rateable proportion of the loss, they are all and each liable to pay such rateable proportions, though it happens that some have paid more

[1] 14 Wend. 399.