did not get it, the policy never attached, and so the consideration failed and ought to be recovered back on that ground. . . .

I am of opinion that the judgment should be affirmed.

There is no reason for saying that the policy is not a fire insurance policy. The plaintiffs call it a "liability" insurance policy, whatever that may mean, but it is essentially a policy of insurance against loss by fire, and, if they had any insurable interest in the property destroyed, they might insure it in any company whose charter powers extended to the insurance of such property, just as a common carrier might do.

"Any legal or equitable estate which may be prejudicially affected or any responsibility which may be brought into operation by a fire will confer an insurable interest:" Bunyon on Fire Insurance, 4th ed., p. 13.

"Interest may arise from mere liability. An insurable interest may arise from mere liability which the insured incurs with relation thereto, though he is not in possession of the property, and has no interest therein beyond the danger of pecuniary damage from the loss of the property by reason of such assumed liability; such liability may arise by statute or by contract or may be fixed by law from the obligations which the insured assumes:" Am. & Eng. Encyc. of Law, 2nd ed., vol. 13, p. 147; and see Hart v. Western R. W. Co., 13 Metc. 99.

The statute law of the State of Maine has for many years imposed such liability and conferred an insurable interest in property the subject of it upon corporations in the situation of plaintiffs.

"When a building or other property is injured by fire communicated from a locomotive engine, the corporation using it is responsible for such injury and may procure insurance thereon:" Revised Statutes ch. 51, sec. 87. A similar provision exists in other State jurisdictions, and it has recently found a place in our own legislation: Dominion Railway Act, 1903, sec. 239.

The State law has been considered in many cases, some of which are cited in the judgment of Clute, J. It is not necessary to refer to them at length. The liability and right to insure in respect of the interest created is generally recognized. In some of these cases fences and forest trees are