

terest? I cannot doubt it. Stoppage *in transitu* assumes the continuance of the contract of sale; the vendor may sue for the original price, notwithstanding the stoppage *in transitu*, if he be ready to deliver the goods on payment of their price. Moreover, the vendor has no right to resell till the period of credit has expired; till then the goods, though stopped, are at the risk of the vendee. Even after the period of credit has expired the goods are the vendee's, who is not divested of them until put *en demeure* (until he has had the goods offered to him but has refused to take them and pay). Up to the last minute, so long as the vendee has not been divested of his property in the goods, he may pay, get the goods, make a profit. I see clearly that he has an insurable interest. I would add that stoppage *in transitu* may be made though the goods have been paid for in part. Nobody can doubt that in this case the vendee has insurable interest.

In the United States the vendee of property under an executory contract of sale has an insurable interest, though he has paid no part of the consideration, nor even obtained actual or constructive possession of it. The test of his interest, if he has expended nothing upon the property, is his liability to the vendor. If the destruction or injury of the property will not cancel or diminish this liability, his interest is insurable. Neither will his interest be affected by his failure to do some act, upon the performance of which the obligation of the vendor depends, because, notwithstanding this breach of the contract by the vendee, the vendor may not choose to take advantage of it, and may still compel the vendee to receive the property, and comply with the remaining terms of the purchase.¹

§ 95. *Insurable interest of unpaid vendor.*

The vendor also, as long as he retains the

¹ *Sparks v. Marshall*, 2 Bing. N. C. 761; *Kenny v. Clarkson*, 1 Johns. 385; *Rider v. Ocean Ins. Co.*, 20 Pick. 259; *McGivney v. Fire Ins. Co.*, 1 Wend. 85; *Aetna Fire Ins. Co. v. Tyler*, 12 Wend. 507; S. C. 16 *id.* 385; *Columbia Ins. Co. v. Lawrence*, 2 Peters 25. But the contract must be a valid one, and made according to law, or an insurance will not be sustained. *Stockdale v. Dunlop*, 6 Mees. & W. 224; *Warder v. Horton*, 4 Binney 529.

legal title, has an insurable interest to the amount of the sum remaining due upon the contract, for though he has the right to compel the purchaser to pay for the property, notwithstanding its destruction by fire before the execution of the contract, still he may be unable to do so by reason of the insolvency of the vendee, or from some other cause, in which case the property is his only security, and any injury to it will be a loss to him.¹

The interest of a vendor, mortgagor, etc., is so entirely distinct from that of the vendee or mortgagee, that the simultaneous existence of two policies on the same property, one affected by the former, and the other by the latter, will not amount to a double insurance.²

§ 96. *Person who has promise of sale.*

The vendee of property under an executory contract of sale has an insurable interest to its full value, provided the destruction or injury of the property would not affect his liability to the vendor. If he has paid the purchase money, or expended anything upon the subject insured, he has a direct insurable interest in the nature of an equitable ownership, without regard to his liability to the vendor, and if he has not, he may still be obliged to pay the price and receive the property, notwithstanding any diminution of its value, and he is consequently materially interested in its preservation.³

In Lower Canada, a man, having obtained a promise of sale to him of a house and paid for it, may insure the house to the extent of his interest. But he ought to describe his interest?

§ 97. *Bailee who is liable for loss.*

In England and the United States, a bailee of property, who is liable to the owner in case of its loss, has an insurable interest therein to the full extent of its value;⁴ and the value of the insurable interest of an in-

¹ *Aetna Fire Ins. Co. v. Tyler*, 16 Wend. 385.

² *Aetna Fire Ins. Co. v. Tyler*, 12 Wend. 507; S. C., 16 *id.* 385.

³ *Aetna Fire Ins. Co. v. Tyler*, 12 Wend. 507; S. C. 16 *id.* 385; *Columbian Ins. Co. v. Lawrence*, 2 Peters 25.

⁴ *Crowley v. Cohen*, 3 B. & Ad. 478.