The question remains: was this a fire insurance at all, within the scope of the provincial Act above referred to, or is it ultra vires? . . . The argument was . . . to this effect:—The property burned was not insured nor intended to be insured. The scope of the contract was, in short, a guarantee to indemnify defendants against a possible loss which they might be called upon to pay by reason of fire originating from defendants' locomotives, if claim should be made and successfully made, and the loss amount to more than $5,000 from any one fire. That it was in the nature of a guarantee similar to the risks covered by employers in case of injury to their workmen, and that it was not a fire insurance, in any proper sense of the term or within the scope of defendants' charter.

I have reached the conclusion that this point is not well taken. The contract is expressed to be "an insurance against loss or damage by fire . . . of property, as per wording hereto attached: $75,000 on all claims for loss or damage caused by locomotives to property located in the State of Maine, not including that of the insured. . . ." It is the property for the destruction of which plaintiffs may be liable, and not that liability itself, which is insured against loss or damage: see Eastern R. R. Co. v. Relief Fire Ins. Co., 98 Mass. 420, 424.

The contract being within the powers of defendants to make, was there such an insurable interest in plaintiffs in any property along the line of their railway through the State of Maine as would enable them to effect an insurance upon it against loss or damage which they might be called upon to pay by reason of fire originating from their locomotives? It is laid down in Mr. Porter's work on Insurance, 4th ed., p. 57, that, "although risk and property generally go together, they are not necessarily associated, and the risk alone will suffice to sustain the insurance: Anderson v. Morice, L. R. 10 C. P. at p. 619; Colonial Ins. Co. v. Adelaide Ins. Co., 12 App. Cas. 128. The peril must be such that its happening might bring on the insured a pecuniary loss, but it is sufficient that it might bring a loss, and by no means necessary that it should certainly have that consequence were it to happen: Anderson v. Morice, 1 App. Cas. 742, per Lord O'Hagen." A common carrier has an insurable interest in the goods carried by him, which he may insure to their full value without regard to his liability to the owner of the goods: Crowley v. Cohen, 3 B. & A. 478; London and North Western R. W. Co. v. Glyn, 1 E. & E. 652; so also has a warehouseman: Waters v. Monarch Ins. Co., 5 E. & B. 870.