

*Aliter*, if previously he had refused to pay premiums.

§ 126. *Warehousemen.*

A, a wharfinger and warehouseman, insured goods in his warehouse, and "goods in trust and on commission therein." A had goods belonging to his customers, on which he had a lien for rent and charges, but no further interest of his own. He had never charged his customers insurance, nor did they know of the policy. The warehouse and goods insured were all consumed. The insurers refused to pay for customers' goods beyond the amount of A's lien. Yet A was declared entitled to get the whole insurance. He would be a trustee for part of it.<sup>1</sup>

Troplong, (Mandat) says that an agent charged to buy and ship things may insure, and charge the premium against his principal.

An agent not generally authorized to insure, may, in unforeseen exigencies, acquire a right to insure, to prevent a loss to his principal. Story, Agency, § 141.

In *Waters v. The Monarch Ins. Co.*,<sup>2</sup> the plaintiffs (warehousemen) not insurers were not liable to the owners of goods which were burnt. But the plaintiffs had insured the whole value of the goods, though their personal interest was only for their charges as warehousemen, for which they had a lien. The insurance company was held liable in full.

Warehousemen and wharfingers may insure goods deposited with them, though without the previous authority of the owners, and the insured are entitled to recover the whole value. Then they must account to the true owners for all except their own interest (say for charges on the goods).<sup>3</sup>

A warehouseman is *negotiorum gestor* of those who have goods with him, so that if he insure such goods, and get paid, he may be sued by those who had goods. It is not so, however, in England—at law at any rate.

<sup>1</sup> *Waters v. The Monarch F. & L. Ass. Co.*, 5 El. & Bl. Also Jurist, A. D. 1856.

<sup>2</sup> 5 El. & Bl.

<sup>3</sup> *Watts v. The Monarch L. & F. Ins. Co.*, 34 E.L. & Eq. R.

A ship's husband cannot insure and charge the owners with the premium.<sup>1</sup>

A managing owner of a ship has no power to insure and charge part owners with premiums.<sup>2</sup>

In *Sideaways et al. v. Todd et al.*,<sup>3</sup> a wharfinger without the knowledge of the depositor insured goods deposited. The goods were placed with the wharfinger in storage and for sale by him. A fire happened and the goods were lost. The wharfinger received the insurance money. It was held that though he needed not insure,<sup>4</sup> yet having done so, and received the money he was bound to account to the depositors. He held the goods for them.

§ 127. *Common carriers.*

In *London & N. W. R. Co. v. Glynn*,<sup>4</sup> the plaintiffs, common carriers, insured goods "their own and in trust as carriers," against all loss that the assured should suffer by fire on the property particularized in the policy. It was held that, to the amount of the policy, the whole value of the goods in plaintiffs' possession as carriers was insured, and not merely their interest as carriers; and that plaintiffs would be trustees for the owners of the goods of the amount recovered, less plaintiffs' charges as carriers, and in respect of the goods.<sup>5</sup>

In *Crowley v. Cohen*,<sup>6</sup> an insurance "on goods" was held sufficient to cover the interest of carriers in the property under their charge; for in general, if the subject of insurance be rightly described, the particular

<sup>1</sup> *French v. Backhouse*, 5 Burr.

<sup>2</sup> *Bell v. Humphries*, 2 Starkie R.

<sup>3</sup> 2 Starkie R., p. 400.

<sup>4</sup> Above it is said "though he needed not insure." But query; for he really had two qualities: he was agent to sell, as well as wharfinger, and a commission on sales was agreed for. As to fire insurance, wharfinger's liability, the decision of the Master of the Rolls was affirmed, *N. B. & Merc. Ins. Co. v. Liverpool, L. & Globe*, 36 L. T. 629. (A. D. 1877).

<sup>5</sup> 1 Ellis & Ellis. A. D. 1859.

<sup>6</sup> See also *London & N. W. R. Co. v. Glynn*, 1 Ell. & Bl. 5 Jurist N.S., in which it was held that carriers may insure goods entrusted to them, and to their full value, and not merely to cover their charges. But they must insure the goods as in trust, and for themselves in so far as interested.

<sup>7</sup> 3 B. & Ad.