themselves had been in the possession and enjoyment of the premises for a period exceeding that for which the interest on the purchase-money had been paid, which, at least, must be regarded as an equivalent for the money thus paid.

DECREE AFFIRMED.

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## INSURANCE COMPANY *v.* CHASE.

One of five trustees of a church edifice, being the agent of an Insurance Company, accepted a risk in it from another of the trustees to whom the church was indebted, the policy being in the individual name of the insuring trustee, with a proviso that in case of loss the amount should be paid to a creditor of him the insuring trustee, to whom, however, the church was not indebted. The insuring trustee paid the premiums out of his own funds but on account of the parish, and with the assent of the trustees; and the fact of two previous insurances in other companies, where the insurance was made in the name of the proprietors of the church generally, was recited in this policy made in the individual name of the one trustee. A loss having occurred—

*Held*, that the creditor of the insuring trustee was entitled to recover on the policy; the case showing that the insurance in the form in which it was made, was made with the assent of all the trustees, and it being a matter immaterial to the company (supposing the risk to be the same) whether the person appointed by the insuring trustee to receive the money retained it to his own use or paid it to the trustees.

ERROR to the Circuit Court for the District of Maine.

This controversy arose on a policy of insurance. The underwriter admitted the loss by fire, but denied the obligation to pay, chiefly because the party insured, had not an insurable interest in the property which was destroyed.

The case was this: William Chase, Sewall Chase, J. F. Day, John Yeaton, and J. W. Munger were the trustees of the Congregational Church on Congress Street, in Portland, and held the legal title to it, in trust for the society. Munger, one of the trustees, was also the agent at Portland of two insurance companies created by the laws of Massachusetts,—the Howard and the Springfield. On the 25th of November, 1859, he took fire risks for each company to the

amount of $5000 on the church property—the party assured in the Springfield Company being described in the policy as "The proprietors of the Union Church, Portland, Maine," and in the Howard Company as "William Chase, of Portland, Maine, payable, in case of loss, to Grenville M. Chase." Each policy contained a statement of the several sums for which the property was insured in the different companies.

Prior to these contracts of insurance, the Continental Insurance Company of New York had insured the church for an equal amount, in the name of the proprietors; but the policy, although dated in 1857, recites the risks taken by the Springfield and Howard Companies in 1859. The reasonable explanation of this, being, that when the policy was afterwards renewed, these additional risks were incorporated into it.

William Chase, the assured in the Howard policy, was the treasurer of the parish for several years, and paid the premiums on the policies and the renewals of them. The premiums on the Springfield and Continental policies were charged to the parish; the Howard premiums were not, but were paid out of his private means, on account of the parish, which was done with the assent of the trustees. The society was indebted to William Chase in the sum of $15,000, but not to G. M. Chase. William Chase was, however, indebted to G. M. Chase, and obtained the Howard policy to secure him.

All this appeared by William Chase's own testimony, he having been called by the defendants in the case, and the only witness in it.

The church was badly damaged by fire on the 15th of March, 1862, and the Springfield and Continental Companies, recognizing their liability, paid to the trustees two-thirds of the loss sustained by the fire. The Howard Company declining to pay, were sued by G. M. Chase, the payee in the policy, for the remaining third.

The declaration set forth that "William Chase was the owner and possessor in trust of the Union Congregational brick and slated Church," &c., and that "said Insurance

Company in consideration of a premium in money then and there paid to them therefore by said William, made a policy of insurance, and thereby agreed to and with said William to insure upon said property," &c.

Under instructions of the court a verdict and judgment were given for the plaintiffs, and the case was now brought here on error.

*Messrs. Fessenden and Butler, for the plaintiff in error:*

I. There is a fatal variance between the allegation of interest in the declaration and the proof.

The allegation is, that William Chase was "the owner and possessor in trust."

The proof offered was, that William Chase was one of five trustees.

An averment of an entire interest is not supported by proof of a joint interest.*

The legal title to the church was vested in five trustees, and to give validity to their acts, it was necessary that they should act jointly in what concerned the joint property.

II. Regarding the insurance as "for the parish," the plaintiff is limited by the proof of the interest of William Chase, as trustee—viz.: one-fifth, as he was only one of five trustees.

1. Because he had no other interest.

2. Because he does not aver that anything more than his individual interest was insured, and the policy contains no formal words—as "for whom it may concern."†

III. If the preceding point is sound, then, as there were two other policies on the same property to an equal amount each, for the benefit of the same parties, the plaintiff in this

* Graves *v.* Boston Mar. Ins. Co., 2 Cranch, 419; Phillips on Insurance, 3d ed., vol. 2, §§ 20, 21, p. 614; Bell *v.* Ansley, 16 East, 141; Cohen *v.* Hannam, 5 Taunton, 101; Catlett *v.* Keith, 1 Paine, 594; Burgher et al. *v.* Col. Ins. Co., 17 Barbour, 274.

† Cases cited under 1st point: Phillips on Insurance, 1, § 380; Dumas *v.* Jones, 4 Massachusetts, 647; Pearson *v.* Lord, 6 Id. 81; Finney *v.* Warren Ins. Co., 1 Metcalf, 16; Same *v.* Bedford Ins. Co., 8 Id. 348; Turner *v.* Burrows, 5 Wendell, 541.

action can recover only one-fifth of one-third, on the same principle.

IV. The proof shows that William Chase, having no other interest than as trustee, in fact insured the property for his individual benefit, and not "for the parish."

Having had no other interest than as trustee, and having insured the property in terms for his individual benefit, he could not recover.

Such insurance is void, either with or without notice to insurers.

1. Because insurance is simply a contract of indemnity, and the insured had no personal interest for the loss of which he could be indemnified.

2. Because if without notice to insurers, it is a fraud upon them. One of the first elements, entering into the question of *risk*, is the interest of the assured to protect the property. If he has no pecuniary interest in the trust property, as in case of a mortgage, it is for his interest that a loss should occur, for he is thereby benefited. Had instructions to this effect been given, the jury would have found a different and proper verdict.

3. Whether with or without notice, such insurance is void, because against public policy, tending to create an interest in the destruction of the property, and adverse to the interest of the *cestui que trust.*

*Mr. John Rand, contra.*

Mr. Justice DAVIS delivered the opinion of the court.

A recovery in this case is strenuously resisted, because it is said the individual interest of William Chase was insured, and not his interest as a trustee; and, as his only interest was that of a trustee, it follows that the contract of insurance was a gaming one, and void from considerations of public policy.

A contract of insurance, is intended to indemnify one who is insured against an uncertain event, which, if it occurs, will cause him loss or damage. The assured must therefore have

an interest in the property insured; otherwise, there is a temptation to destroy it, which sound policy condemns.

If, then, the Howard Company did not insure the interest of William Chase as a trustee (it is conceded he had no other), the policy is void, although he was a creditor of the church, paid a fair premium for the policy, and disclosed everything to the underwriter. But the recovery in this case, is based on the ground that William Chase had an insurable interest as trustee, and insured the property for the benefit of the society. The declaration expressly avers that William Chase, being the owner and possessor in trust of the Union Congregational Church, for a premium paid in money, effected an insurance on the property in the Howard Insurance Company. If this were true, and the proofs sustained it, the verdict and judgment of the Circuit Court cannot be disturbed. It is unnecessary in this case to discuss the general law of insurance with reference to what interests are, or are not insurable. The courts of this country, as well as England, are well disposed to maintain policies, where it is clear that the party assured had an interest which would be injured, in the event that the peril insured against should happen.

That a trustee having no personal interest in the property may procure an insurance on it, is a doctrine too well settled to need a citation of authorities to confirm it. As early as 1802, the judges of the Exchequer Chamber, in the case of *Lucena* v. *Craufurd*,* held, that an agent, trustee, or consignee could insure, and that it was not necessary that the assured should have a beneficial interest in the property insured, and the rule established by this case, has ever since been followed by the courts of this country and England.†

* 3 Bosanquet & Puller, 75.

† Columbian Insurance Company *v.* Lawrence, 2 Peters, 25; S. C. 10 Peters, 510; Swift *v.* Mutual Fire Insurance Company, 18 Vermont, 313, note by Redfield, J.; Goodall *v.* New England Fire Insurance Company, 5 Foster, 186; 2 Greenleaf's Evidence, § 379; Parsons's Mercantile Law, chapter 18, § 3; Putnam *v.* Mercantile Insurance Company, 5 Metcalf, 386; Angell on Life and Fire Insurance, §§ 56, 57, 73; Craufurd *v.* Hunter, 8 Term, 13.

A trustee, therefore, having the right, is justified in insuring the property, even to its full value, although there is no obligation on him, in the absence of express directions, to insure at all.*

But it is argued, that the legal title to the Congregational Church was vested in five trustees, and that to give validity to their acts, they must act jointly in whatever they do for the benefit of the property.

It is true, that in the administration of the trust, where there is more than one trustee, all must concur, but the entire body can direct one of their number to transact business, which it may be inconvenient for the others to perform, and the acts of the one thus authorized, are the acts of all, and binding on all. The trustee thus acting is to be considered the agent of all the trustees, and not as an individual trustee.† If, within the scope of his agency, he procures an insurance, it is for the other trustees, as well as himself. If he does it without authority, still it is a valid contract, which the underwriter cannot dispute, if his co-trustees subsequently ratify it.‡ In fact, so liberal is the rule on this subject, that where a part-owner of property effects an insurance for himself and others, without previous authority, the act is sufficiently ratified, where suit is brought on the policy in their names.§

It is contended that the contract of insurance, being in the name of William Chase, could only cover his individual interest, or, at the furthest, but the fractional part of the interest which he had as trustee. But the law of insurance is otherwise; for, as any one having any legal interest in property can insure it as his own, and in his own name, without specifying the nature of his interest, it follows that if Wil-

* Lewin's Law of Trusts and Trustees, 383; Page *v.* Western Insurance Company, 19 Louisiana, 49; 1 Phillips on Insurance, 163; Angell on Fire and Life Insurance, § 73.

† The Law of Trusts and Trustees, by Tiffany and Ballard, pp. 539, 540, and the cases there cited.

‡ Blanchard *v.* Waite, 28 Maine, 59.

§ Finney *v.* The Fairhaven Insurance Company, 5 Metcalf, 192.

liam Chase insured the church with the assent of his co-trustees, for the benefit of the *cestui que trust*, that the insurance company cannot complain, that the character of the interest was not incorporated in the policy, unless, if described, it would have had an influence on them not to underwrite at all, or not to underwrite except at a higher premium than the one actually paid by the insurer.* It has been held in some cases, that the party applying for insurance need not disclose his interest, unless asked by the insurer.

Whether the disclosure of the interest was material to the risk incurred, and would have enhanced the premium, is always a question of fact for the jury.

Applying these rules and principles of mercantile law, to the facts of this case (for evidence is properly receivable *aliunde* the policy, to explain the character of the interest insured), is it not apparent, that the defences interposed cannot avail the insurance company? Could Munger, who issued the policy, and was a co-trustee with William Chase, have been in ignorance, that the property was insured for the benefit of the parish? If so, why was he not called to contradict William Chase, who testified that although he paid the premiums on the original policy, and for each renewal, out of his private funds, yet it was done for the parish and with the assent of the trustees.

If this statement was untrue, and Munger did not authorize the payments of the premium on account of the parish, it was surely his duty to the company he represented to have denied it. Not having done so, the inference is irresistible that William Chase told the truth. If he did, there is an end of the controversy, for an assent on the part of the trustees to the payment of the premiums, is an assent to the procurement of the policy of insurance. Besides, this authority was a continuing one, for the policy was several times renewed, and each time for the benefit of the parish. The jury had no right to disregard the evidence of William

* Parsons on Mercantile Law, chapter 19, § 3; 1 Phillips on Insurance, 165, 30; Columbia Insurance Company *v.* Lawrence, 10 Peters, 516.

Chase, for he was called by the defence, and was the only witness sworn on the trial. And why was the sum for which each policy was given, inserted in the other, unless to show that it was one and the same transaction? If the insurance to William Chase was not a part of the general plan of the trustees to insure the church property, it is not easy to see why the fact of such insurance is recited in the policies issued by the other companies. On what ground, then, can the Howard Company resist the payment of this demand? William Chase swears he acted for the parish with the assent of the trustees; confirmatory evidence is furnished by the policies of insurance, and there is not a particle of countervailing testimony. Why the trustees, in insuring the church for fifteen thousand dollars, allowed one policy to issue in the name of William Chase, payable, in case of loss, to G. M. Chase, is not disclosed by the record; but it is a fair inference, from the evidence, that it was designed, if the peril insured against should occur, to appropriate the money to the use of William Chase, and thus discharge in part the indebtedness of the society to him; and that William Chase, under the direction of the trustees, chose to have the money paid to his creditor, furnishes no defence to the insurer.

As we have seen, William Chase, with the assent of the trustees, could insure the trust title in his own name, and whether the party appointed by him to receive the money, after having recovered it, can retain it to his own use, or must pay it to the trustees, is wholly immaterial to the insurer. This depends on the private arrangement between the trustees, William Chase and Grenville M. Chase, with which the Howard Company has no concern.*

If the trust property was insured, and the benefit of the insurance goes to the society, and there was no concealment or unfair dealing which could avoid the risk, then the underwriter is concluded from any further inquiry. That there could have been no undue concealment, is very evident, because Munger, the agent of the underwriter, was a co-trustee

* King v. The State Mutual Fire Insurance Company, 7 Cushing, 7.

with William Chase, and had equal knowledge with him of the whole transaction.

The foregoing views dispose of this case, and it is unnecessary to refer in detail to the charge of the Circuit Court, because it was in conformity to them.

The instructions asked by the insurance company were properly refused. A portion of them were right in the abstract, but would have misled the jury, there being no evidence in the case applicable to them. The rest were inconsistent with the law of the case as given in this opinion.

The judgment of the Circuit Court is

AFFIRMED WITH COSTS.

Mr. Justice MILLER dissented.

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## THE SIR WILLIAM PEEL.

1. Regularly, in cases of prize, no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board.
2. If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.
3. If, preparatory to the first hearing, testimony was taken of persons not in any way connected with the ship, such evidence is properly excluded, and the hearing takes place on the proper proofs.
4. If a ship or cargo is enemy property, or either is otherwise liable to condemnation, the circumstance that the vessel at the time of capture was in neutral waters, would not, by itself, avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territories had suffered trespass, for apology or indemnity. But neither an enemy, nor a neutral acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.
5. Where several witnesses stated facts which tended to prove that a vessel was in the employment of an enemy government; and that part, at least, of her return cargo was in fact enemy property; while the statements of others made it probable that the vessel was in truth what she professed to be, a merchant steamer, belonging to neutrals, and nothing