

**Bonds.** The situation here is about the same. The road in question is the main line which connects the Erie system with its coal fields. Over this line, without payment of any freight, it hauls the coal which it uses to drive its engines on other parts of the system. The same remarks apply to these securities, and the same disposition should be made of them. Until further facts appear, the receivers should pay interest accruing on both these sets of bonds.

**No. 5. Funded Coupon Bonds of 1885.** In the years 1884 and 1885 the defendant railroad defaulted on the payment of four successive coupons of the second consolidated mortgage bonds. These coupons were deposited by their holders with the Farmers' Loan & Trust Company, as a trustee, to be held, "with all the rights, lien, remedies, and security incident thereto," in trust for the benefit of, and as collateral security for, a new issue of bonds, known as the "Funded Coupon Bonds of 1885," and taken by the holders of the coupons in exchange or substitution therefor. The funding coupon indenture, under which these funded coupon bonds were issued, expressly provides that all the rights, remedies, lien, and security incident to the coupon shall remain in full force for the purpose of obtaining or enforcing payment of said funded coupon bonds. The same indebtedness is represented both by coupons and bonds. By the terms of the second consolidated mortgage it is expressly provided that each due coupon must be paid in full before part payment of any coupon subsequently maturing. Upon winding up the affairs of the defendant railroad company, therefore, these coupons would have to be paid in full before any subsequent installment of interest or the principal of the second consolidated bonds. The debt, therefore, represented by these coupons and by the funded coupon bonds, is superior in point of lien to that represented by subsequent coupons of the second consolidated bonds, and there is no reason why the receivers should be instructed not to pay them, if there be net income available for that purpose.

**NOTE.** For prior hearing on motion of the New York, Pennsylvania & Ohio Railroad Company, as petitioner, to instruct the receivers of the defendant as to the making of certain payments to petitioner, see 57 Fed. 799.

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**PAGE et al. v. SUN INSURANCE OFFICE.**

(Circuit Court, D. Minnesota, Fourth Division. November 5, 1894.)

**INSURANCE—PRORATING LOSS.**

Where property is covered by both a specific and a compound policy, each containing a provision that the company shall not be liable for a greater proportion of any loss than the amount insured bears to the whole insurance, the full amount of the compound policy is available for its due proportion.

**Action by Edward S. Page and others against the Sun Insurance Office on a fire policy.**

In this case plaintiffs, lumber dealers at Anoka, Minn., held four policies of insurance for \$2,500 each, of which the defendant issued one, on the westerly block of their lumber yards. They also held policies, amounting

to \$40,000, covering the lumber on both the easterly and westerly blocks. A loss occurred, solely upon the westerly block, to the amount of \$30,982.02; and the only question to be determined is as to the contribution to be paid under the several policies. It is agreed that the values before the fire were \$42,368.46 on the westerly block, and \$16,727.06 on the easterly block which was not damaged. All the policies were of the Minnesota standard form, and contained the following clause: "This company shall not be liable under this policy for a greater proportion of any loss on the described property than the amount hereby insured shall bear to the whole insurance \* \* \* covering such property." Plaintiffs contend that the \$40,000 compound policies are available for the payment of the loss on the westerly block, only in the proportion that the valuation of the westerly block bears to the combined valuation of both blocks; or, in other words, that amount is to be obtained by adding together the valuations of each block, dividing the \$40,000 by that sum, and multiplying the dividend by \$42,368.46, which gives the amount of \$28,577.95; and it is stipulated that, if this view be correct, defendant is liable for \$2,002.56. On the other hand, defendant insists that the whole \$40,000 is available, and it is agreed that, if this rule is to be applied, the defendant is liable for only \$1,549.10, and for this sum it has offered judgment.

Kueffner, Fauntleroy & Searles, for plaintiffs.  
 Kitchel, Cohen & Shaw, for defendant.

NELSON, District Judge (after stating the facts). Under this clause in the Minnesota standard policy, which is the contract governing the case, the limitation of liability is for a proportionate part of the whole insurance covering the property; and the stipulation exempts the defendant from any greater liability than a part of the loss, to be measured by the whole amount insured. This rule, it seems to me, must be applied whether the other insurance is by specific or compound policies. There is no intimation in the clause that compound or floating policies covering the same and other property are not to be considered as part of the whole insurance covering such property. Let judgment be entered for plaintiffs in the sum of \$1,549.10.

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SCHERMERHORN v. DE CHAMBRUN.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

No. 136.

1. FRAUD—PARTIES IN PARI DELICTO.

C., who was engaged as agent of certain heirs of one J., in efforts to recover property formerly belonging to J., under an agreement for compensation contingent upon success, made a contract, in 1876, with defendant, a lawyer, for services. C. made the agreed payments, and afterwards paid defendant other sums for further services. During the year 1876, C. made contracts with sundry lawyers and other persons for services and advances, agreeing to pay them out of his share of the J. property, after payment of expenses and counsel fees, making their claims liens upon such share. In August, 1880, C. contracted in writing with defendant to pay him \$30,000 in consideration of services rendered, the amount to be a lien upon C.'s share of the J. property. Defendant had rendered and continued to render important services throughout the litigation. After its close, resulting in a comparatively small recovery, C. brought this suit to establish a trust for his benefit in the \$30,000 which had been paid to defendant, alleging that the contract of August, 1880, was made upon a secret understanding between C. and defendant