not notified that Klein had retired from the business, and that he had no insnrable interest in the property to be insured, and this was a fact material to the risk.

(ii.) Statutory Condition No. 1 was also broken by the existence of prior mortgages not mentioned to or assented to by the Union Fire Insurance Co.

(iii.) Statutory Condition No. 8 was broken since there was a prior insurance unnotified and unassented to, of which there was no evidence to show the Union Fire Insurance Co. had any notice till after the fire.

(iv.) By suing on the policy the plaintiffs adopted the act of the Loan Co. in obtaining it, and must recover on it as it was or not at all.

(v.) The fact that there was no written application could not affect the policy or the conditions.

(vi.) It was not proved that when the Union Loan Co. effected the policy they were themselves aware of the retirement of Klein.

(vii.) The letter of March 14, 1881, from the Union Loan Co. to the plaintiffs, saying that the policy was indisputable, was written long after the policy had been effected, and there was no evidence plaintiffs did, or abstained from doing, any act in consequence thereof.

(viii.) The agreement endorsed on the policy, and to be read in conjunction therewith, brought the case within the meaning of *Springfield Fire and Marine Ins. Co.* v. *Allen*, 43 N.Y. 389, and as there so here, the mortgage must be held to be a valid security in the hands of the insurers, the Union Fire Insurance Co.

The manager of the Union Fire Insurance Co. had, before the hearing of this cause, made an offer of compromise to the plaintiffs, which the latter duly accepted.

Held, this did not bind the Union Fire Insurance Co.; for it could not be assumed that the offer was made pursuant to authority from the directors. The plaintiffs were bound to prove such authority, and they had not done so.

S. H. Blake, Q.C., (*Wood* with him,) for the plaintiffs.

Bethune, Q.C., (*Hodgins* with him,) for the Insurance Co.

Rose, Q.C., (*McDonald* with him,) for the Loan Co.

Ferguson, J.] [Sept. 15.

SMITH v. RALEIGH.

Municipal corporation—Drainage by-law—R. S. S.O. c. 174, sec. 529—ultra vires—Mandatory injunction—Parties.

On a petition of a proper majority of the land-owning ratepayers interested therein, a by-law was passed on Sept. 25th, 1880, by the defendants, the corporation of the Township of Raleigh, for the construction of a certain drain, known as the Bachus drain. The by-law provided for the assessment of the land to be benefitted by the drain, the plaintiff being the owner of part thereof. The plaintiff now complained that the drain had not been completed, though a sufficient time had elapsed; that the defendants employed a certain portion of the moneys assessed on the plaintiff's land in the construction of another drain not mentioned in the petition, report of the P. L. S. made pursuant to the Act, or the by-law aforesaid, and of no value to the plaintiff or the other petitioners for the construction of the Bachus drain; and he claimed an order compelling the defendants to complete the Bachus drain in accordance with the by-law and to pay the damages sustained by him, and an injunction against further misapplication of the moneys by the defendants, and an account of moneys assessed and raised by the defendants for the construction of the drain.

Held, the facts alleged as aforesaid by the plaintiff being proved, the plaintiff was entitled to all the relief asked. Although the statute limits no time in which the work should be done, it must be completed within a reasonable time.

The plaintiff was entitled to maintain the suit, and it was not necessary for the Attorney-General to be the plaintiff, on a like principle to that involved in *Wilkie* v. *Corporation of Clinton*, 18 Gr. 557.

The defendants, by virtue of the assessment under the by-law, became possessed of moneys which they were bound to expend in a certain way, and no other, for the benefit and advantage of certain land-owners and ratepayers, of which the plaintiff was one; in other words, a trust had been created, but it had been violated and not executed.

The defendants justified the diversion of part of the money raised in the following way. When the petition was signed, certain of the petitioners assessed, whose lands lay south of a certain