In a Nova Scotia case a policy not under seal contained the following provision: "Loss, if any, payable to the order of Peter Brush, if claimed within sixty days after proof, his interest therein being as mortgagee," and it appearing that the policy was obtained by the mortgagor in pursuance of a covenant entered into by him with Brush, that he should insure in the name and for the benefit of Brush, it was held that the mortgagee was entitled to sue on the policy in his own name (*v*).

In England it has been held that a covenant on the part of the mortgagor to insure, nothing being said as to the application of the insurance money, does not confer upon the mortgagee any right to the money in the event of the bankruptcy of the mortgagor (*w*), but in Ontario it has been held that a covenant to insure in the form provided by the Short Forms of Mortgages Act (*x*) operates as an equitable assignment of the insurance when effected (*y*). If there is neither a covenant to insure nor a provision that the money in case of loss shall be payable to the mortgagee, the mortgagee has no claim to money arising from insurance effected by the mortgagor (*z*).

Where an owner of property effects insurance thereon and subsequently mortgages the property, assigning the policy to the mortgagee, the insurance company cannot by arrangement with the mortgagee without the knowledge or consent of the mortgagor cancel the insurance. The mortgagor notwithstanding the assignment continues to be the person assured within the meaning of the Insurance Act, and the policy cannot be cancelled unless notice in writing is served upon the assured and the unearned portion of the premium is paid to him as required by the statute (*a*).

Where the mortgagor and the mortgagee effect separate insurances on their respective interests with different companies, and the mortgagee upon a loss occurring settles the amount of the loss with the company insuring him, this, even although the mortgagor may assent to such settlement, is not an estoppel against the mortgagor in favour of the other insurance company and the mortgagor may nevertheless claim payment under his policy (*b*).

A statutory condition (in Ontario) provides that if the property insured is assigned without the written permission of the company the policy shall thereby become void. This, however, applies only to an assignment of the property and not to an assignment of the policy unaccompanied by a transfer of ownership of the property (*c*).

If mortgaged property is insured in the name of the mortgagor, with loss, if any, payable to the mortgagee as his interest may appear, and a loss occurs, the surplus insurance money, after payment of the mortgagee's claim, belongs to the mortgagor by virtue of his contract with the insurer, and not by virtue of any obligation of the mortgagee to account in equity to the mortgagor. It follows therefore that the mortgagee is not entitled to invoke the doctrine

(*v*) *Brush* v. *Ætna Insurance Co.*, 1864, 1 Old. (N.S.) 459.
(*w*) *Lees* v. *Whiteley*, 1866, L.R. 2 Eq. 143.
(*x*) See § 2, *supra*.
(*y*) *Grant* v. *Citizens Insurance Co.*, 1880, 5 A.R. (Ont.) 596, affirming 27 Gr. 121; *Goldie* v. *Bank of Hamilton*, 1900, 27 A.R. (Ont.) 619.
(*z*) *Miller* v. *Teio*, 1909, 20 O.L.R. 77, at pp. 90, 91.
(*a*) *Morrow* v. *Lancashire Insurance Co.*, 1899, 26 A.R. (Ont.) 173.
(*b*) *Prittie* v. *Connecticut Fire Co.*, 1896, 23 A.R. (Ont.) 449.
(*c*) *McPhillips* v. *London Mutual Fire Ins. Co.*, 1896, 23 A.R. (Ont.) 524.