## ASSIGNMENT OF FIRE POLICY AS COLLATERAL SECURITY.

Fire insurance policies invariably contain a clause which varies more or less, but to the general effect that an assignment of the policy without the consent of the company shall render it void, and a large proportion of the cases in which fire insurance companies are sued on their policies is where the company defends on the ground that there has been a breach of the assignment clause on the part of the insured and that the policy is consequently void.

The leading Canadian case on the point is Salterio vs. London Mutual Fire Insurance Company, decided by the Supreme Court of Canada, in which the policy in question contained a clause in the following words:—

"If during this assurance any change takes place in the title to or possession of the property described in the policy, or in the event of any change affecting the interest of the assured therein, whether by sale, legal process, judicial decree, voluntary transfer or conveyance of any kind, or if the assured is not the sole and unconditional owner of the property insured, or of the premises in or upon which the same may be situate, or has not such more limited interest in the property insured or in the premises in or upon which the same may be situate, as may be described in the application for the policy and approved by the company, or if the policy or any interest therein be assigned, parted with, or in any way encumbered, or if possession of the premises becomes vacant by removal of the owner or occupants, then in every such case this assurance shall be absolutely void, unless the consent thereto of the company in writing shall have been obtained and indorsed hereon."

In this case the insured gave a creditor a chattle mortgage on all the insured property and an assignment of all policies of insurance thereon and all renewals thereof, without obtaining the consent of the London Mutual Fire Insurance Company, and, a fire having occurred the Company refused to pay on the ground that there had been a breach of the assignment clause quoted above.

It was argued on behalf of the insured, in view of the fact that the insured held other policies which did not forbid an assignment, the assignment should be limited to such policies, but the Supreme Court of Canada decided in favor of the Company and disposed of this argument in the following words:—

"It was argued that the assignment should be limited to such of the policies as contained no restraint upon assignment, upon the ground that it would be insensible for the mortgagor to destroy his security under the policy, as neither he nor the mortgagee could derive any advantage from it. It was also contended that the insured could not be said to have assigned or encumbered the policy when the policy did not admit of such assignment or encumbrance being made effectual except upon a condition that was not performed. But I conceive that what was meant by the condition is that the policy shall be voidable by the insurance company upon breach of the condition, and the Messrs. Gault, had, by the assignment and encumbrance, the legal possibility of advantage through the chance of the company's consent being given. The encumbrance was effectual so far as Salterio was concerned, and might be entirely an affectual security by the company electing not to avoid the policy. Unless the clause of the policy operates to render voidable what but for it would be a valid assignment or encumbrance it is difficult to see what it can mean. Here there was the transfer of the insured property by way of mortgage, and the transfer by way of mortgage of the insured's interest in the policy and the policy itself, and this seems to be an encumbrance of the policy or of an interest therein within the meaning of the condition."

In this connection, it is to be noted, the company in the policy provided that any change in the title to or possession of the insured property, without the consent of the company, should avoid the policy, and in this case there was a palpable breach of the policy when the insured gave a chattel mortgage on the insured property. Suppose, however, that the insured, without transferring the insured property, simply transfers the policy itself, not by way of absolute assignment but simply as collateral security for the debt. Will such an assignment by way of collateral security only without the consent of the company be considered as a breach of the assignment clause?

This point does not seem to have been directly decided by the Canadian Courts, but dozens and perhaps hundreds of cases along that line have been decided by the courts of the United States, which have laid down the general rule that an assignment of a policy by way of collateral security only, without the consent of the company is not a breach of the assignment clause, on the ground that the assignee of the policy acquires a mere equitable claim which does not destrtoy the legal title of the insured. A leading American Court has laid down this rule in the following words:—

"As to the first contention made by appelant, that the assignment of the policy before loss occurred, without the consent of the company, invalidated the policy, we find, after an extensive and careful investigation of the authorities on that question, that the weight of authority and the better rule is that the assignment of an insurance policy as collateral security for a debt is not such an assignment