Where the insured made a general assignment of all his property, including "all policies of insurance," in trust for creditors, a particular policy, which at the time of the assignment was in the hands of an agent, subject to a lien, was held not to be invalidated, notwithstanding it contained a condition that it should become void by assignment without the consent of the insurers. The Court held, that the provision applied only to such policies as the insured could legally and effectually assign, and consequently did not affect the one in question which was, in a measure, out of his control.[1]

§ 230. *Consent of the Company's Secretary.*

Where assignment is prohibited unless by consent of the insurer manifested *in writing*, if the secretary in the office of the company consent upon the policy, his authority to do so and to bind the company will be presumed.[2]

If consent in writing be required, the Courts may hold this not an essential condition. Verbal consent with *commencement de preuve par écrit* and circumstances concording will do.[3]

As to who may make the endorsement on the policy, though policies of a company require to be signed by the President, the secretary in the office may endorse on a policy assignment of it, unless prohibited positively, and such endorsement will bind the company, particularly if the secretary, for the company, receive something at the same time, such as a guarantee.[4]

§ 231. *Acts not amounting to consent.*

The mere fact of issuing a policy, with notice from the insured of his desire to assign it, is not of itself, a consent of the insurers to such an assignment, where one of the conditions requisite for the assignment has not been performed; nor do the insurers by issuing the policy under such circumstances waive the performance of any condition specified as a prerequisite to the validity of the assignment.[1]

When there are two *bona fide* assignments of a policy, one accompanied by a delivery, and the other not, the former will prevail.[2]

§ 232. *Interest secretly retained will not avail.*

If the insured makes a conveyance absolute on its face, he will not be permitted to prove, in order to preserve his claim upon the insurers, that it was intended to be conditional, and that he retained an interest, when this will show an attempt on his part to conceal his property fraudulently from his creditors.[3]

A insures and transfers to B by a deed absolute,—there is a *contre lettre* stating transfer to be merely formal; no real transfer to be meant; this transfer will not vacate an insurance.[4]

§ 233. *Assignment of policy after loss.*

Assignments of policy after loss are held to be merely transfers of claims perfected, and not to require insurers' consent.[5] The case of *Mellen* v. *Hamilton F. I. Co.*[6] is to the same effect. It was an action by an assignee for the benefit of the creditors of O'Brien. The policy contained a condition that it could not be assigned without the assent of the insurers manifested in writing. After a fire O'Brien assigned the policy without any consent in writing of the insurers. Yet, per Duer, J., "the restriction in the policy refers only to an assignment during the pendency of the risk, and accompanying a transfer of the interest in the property insured. Here the assignment was no more than the assignment of a debt."

Some policies preclude the insured from assigning his right of action even after loss.[7] The authors of American Leading Cases

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[1] *Lazarus* v. *Commonwealth Ins. Co.*, 5 Pick. 76, S. C. 19 id. 81.

[2] *Conover* v. *Mut. Ins. Co.*, 1 Comst.

[3] So decided by the Cour de Cass. 19 June, 1839. See Cession de Bail, Approbation tacite du propriétaire, Journ. du Palais of 1864, p. 1044.

[4] *New England Insurance Co.* v. *De Wolfe*, 8 Pick.

[1] *Smith* v. *Saratoga Co. Mut. Fire Ins. Co.*, 1 Hill, 497; S.C. 3 *id.* 508.

[2] *Wells* v. *Archer*, 10 Serg. & Rawle, 412.

[3] *Carroll* v. *Boston Marine Ins. Co.*, 8 Mass. 515; *Dadmun Manufacturing Co.* v. *Worcester Fire Ins. Co.*, 11 Metcalfe, 429.

[4] So held by the majority of the Court of Appeal, Montreal, in *Montreal Ass. Co. & McGillivray*, 8 L.C.R. But the law of *contre lettres* is that third persons are never bound by them, but the parties are. See Merlin.

[5] *Brichta* v. *N. Y. Lafayette Ins. Co.*, 2 Hall.

[6] 5 Duer.

[7] 2 Am. Lead. Cas., p. 623.