M at the time of the loss had no interest in the property insured. M sustaining no loss, the insurers were not liable to pay, so G had nothing to claim. G knew the conditions on which the insurers were to be liable. These were no less conditions after the assignment than before.[1]

Angell, § 61, says the consent of the insurers that the policy issued to the owners of a property, may be assigned to the holder of a mortgage, will be deemed in the nature of a contract with him by which he becomes insured to the amount which the assignment was intended to secure. (Citing Tillon case.) Yes, but he may be affected in many ways by the original insured's breaches of conditions. This § 61 I disapprove.

Pouget, Dict. des Ass., vol. 2, p. 1103, says it is better to take a direct policy than an assignment of another man's, for in this last case the assignee is at the mercy of the assignor. A mortgagee had better not be content with a transfer of the mortgagor's policy.

A policy contained a condition that it should cease to have force if any change take place in the title or possession of the insured, whether by legal process, or judicial decree, or voluntary transfer. The insured was made a bankrupt and all his property became vested in an assignee. Fire happened. Held, that the insurers were free. The policy had ceased to have force, before the loss.[2]

In *Br. Amer. Ass. Co.*, appellant, and *Appleton Iron Co.*, respondent, (Supreme Court of Wisconsin) there was an insurance on moveables, with the condition that if the property be sold, or if any change take place in title or possession, whether by legal process or judicial decree, or voluntary conveyance, the policy shall be void. The insured became bankrupt, and had to transfer to a trustee under order of the Court. But the loss had all along been appointed to be paid to mortgagees whose claims exceeded the insurance. As such mortgagees in Wisconsin are considered owners and as having legal title to the property mortgaged, the policy was held not avoided; but it was conceded that had the subject insured been real estate, such bankruptcy proceedings, and assignment by the bankrupt under compulsion of a bankruptcy law, would be held an alienation or transfer fatal to the policy.

If the mortgagor insure his house in his own name and transfer the policy to the mortgagee, and afterwards sell the house to a third person without notice to the insurer and his consent, required by the policy, and fire happen, the mortgagee cannot recover. *Carpenter* v. *The Prov. W. In. Co.*, 16 Peters.

To which I add: If A, a mortgagee, insure for twelve months his interest in B's house mortgaged to him, *semble* though B afterwards sell, if the house be burned down within the twelve months, the insurers must pay.[1]

It was said in *Jackson* v. *Mass. Fire Ins. Co.*[2] that the mortgage of a house takes nothing from the insurable interest of the mortgagor, even when the policy contains a clause that the policy shall be void if the property be alienated without the consent of the insurers.[3] The rule is the same where only personal property is in question.[4]

A policy interest is assigned without transfer of subjects. The assignee of the policy must, after fire, prove that his assignor lost, and what he lost.[5]

A insures and mortgages his house to B, and B is registered by the insurance company as the transferee of the interest of A in the policy. A sells afterwards to C. Fire happens subsequently. Shall A recover? No. Shall B? Yes, said the majority of the Court, in the case of *McGillivray*. But I think that B cannot recover.

"Aliened by sale" means an absolute and

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[1] Yet in the Queen's Bench, 1879, Black's appeal, the Grosvenor case was not followed, 3 Leg. News, 29.

[2] Perry, applt. v. The Lorillard F. Ins. Co., N. York, 1874, 19 Am. Rep.

[1] Observe in Quebec the mortgagor is free to sell, does not cease to be owner, from the mere fact of mortgaging.

[2] 23 Pick.

[3] *Rollins* v. *Columbian F. Ins. Co.*, 5 Foster.

[4] *Rice* v. *Tower*, 1 Gray.

[5] So I judged in *Whyte* v. *Home Ins. Co.*, Nov., 1871, which judgment was confirmed by the Court of Queen's Bench, two dissenting, and by the Privy Council.