

## FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

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## CHAPTER IX.

ALIENATION OF SUBJECT AND ASSIGNMENT  
OF POLICY.

[Continued from p. 15.]

§ 229. *Assignment of policy without transfer  
of property insured.*

Some English authors say that Fire policies are not assignable at law in England apart from the subject insured; but they are in equity, and *Lynch v. Dalzel*, and *Sadler's Co. v. Badcock* are cited.

In *Lynch v. Dalzel et al.*<sup>1</sup> it was held that a policy on a house does not attach to the realty, so as to go with it; but insurance is (in England) rather of the person of the insured against loss. The policy is not in its nature assignable, apart from the house. Here the insured parted with his property; and only afterwards executed an assignment of the policy; and this was after the fire, or loss. The policy was dated July, 1721. The insured's son and executor continued the insurance from Christmas, 1726, to Christmas, 1727. In June, 1727, the insurer sold out. A fire afterwards happened and the policy was assigned only after the fire. The insurer was held free very properly; for want of interest in the insured at the date of the fire, and his assignee having no more right than himself.

*Sadler's Co. v. Badcock*<sup>2</sup> merely decides this: that his interest ceasing in the subject insured, the insured cannot transfer his policy sum. The interest insured was in a house leased. It was burnt, after expiry of lease; and the policy sum was assigned after that. Certainly no insured can transfer more rights than he has. The assignment here could give no right that the original insured had not. He could have recovered nothing, for want of interest in the subject.

Assignment of policy, condition 8 of Home Insurance Company. In absence of condition suppose assignment, without subjects transferred. *Semble* the Company may well ask proof of loss by original insured. But

query, is the burden of proof less on the assignee than under the operation of the Home policy? Or ought the assignee to be fixed with the burden of making *semi pleine preuve*?

In Lower Canada most of the policies in use prohibit assignment of policy without the consent of the insurers.

In France the policy passes, without assignment, upon a sale of the subject insured, as accessory to it; except where condition of policy prohibits it. But this would not be held in Quebec Province, nor is it so held in the United States,<sup>1</sup> nor in Massachusetts.<sup>2</sup>

If the insurer be a surety, can his suretyship bond to A be transferred by A to B? I think so.

Where no condition against assignment of policy is in the policy, it is in England assignable with the subject. 1 Phill. Ins. §. 78. But what if without the subject? And very often will not the subject be assigned, and yet not the policy?

It appears that in the United States there is not, in the absence of express condition in a policy, difference between marine and fire policies in regard to their assignable qualities.<sup>3</sup>

Some seem to be of opinion that all policies are, in their general nature, susceptible of assignment, without the consent of the insurers, *with this equitable and salutary exception however*, that whenever the contract, or the circumstances attending its execution, import that the subject is to be under the personal care of the assured, and the transfer would expose the insurers to be injuriously affected by the acts of new parties, contrary to their expectation, the assignment will render the insurance inoperative.

If the insurers desire to prohibit all assignments unless made with their consent, they can and frequently do so by inserting a clause in the policy to that effect. The non-assignability of a policy is not incident or peculiar to fire insurance, but depends entirely upon the terms of the policy, or the peculiar circumstances attending its execution.

<sup>1</sup> *Carpenter v. P. Wash. Ins. Co.*, 16 Peters.<sup>2</sup> 3 Metcalfe, 66.<sup>3</sup> *Traders Ins. Co. v. Robert*, 9 Wend. *Carpenter v. Prov. Wash. Ins. Co.*, 16 Peters.<sup>1</sup> 3 Brown's Cases in Parliament.<sup>2</sup> 2 Atk. 1 Wils.