his interest in the subject insured, but before the loss recover it, the policy is good.[1]

If a policy be terminated by an alienation, a repurchase by the original insured, before a loss happens, will nevertheless not make the policy revive.[2]

If the second extract from Shaw *ante* involve that, in marine insurance, if a deviation have been made, the return of the ship in safety to her course will revive a policy, so as to make the insurers liable for a loss afterward, it is downright error. Bell's Princ., § 492.

Alauzet says that in fire insurance in France the strict rule of English marine insurance is not followed; but query? Ought it not to be? *causa data, causa non secuta.*

There is no more reason in the marine insurance rule than would be, or is, in the fire insurance rule that I would have held in Power's case.

The principles that I would apply to a case like Power's are familiar enough. In the law of wills a special devise is made; the testator orders, as a condition, that the devisee shall not alienate. If the devisee sell, although he repurchase after having so sold, the condition has been broken irrevocably. 6 Toullier, No. 646. In sales, if A sell on time to B, but B is not to resell, else total purchase money is to be payable forthwith afterwards; if B sell, though he repurchase before any suit, the total purchase money is exigible. So judged in *Watson* v. *Tully*, Montreal.

In the *McMorran* case it was held that if a building be insured in one class when it was in another more hazardous, the insured cannot recover by afterwards, before the fire, making the thing insured answer the description of the policy.

§ 227. *Assignment of Policy.*

The insured, to recover upon a policy; must have an interest in the subject at the time the loss by fire happens. As to interest at the date of the insurance, we have already spoken of it; it may be an expectant, or future one.

"The mere assignment of a policy," says Ellis, "would be useless unless the subject insured be assigned also."

Ellis adds: "But if a policy be assigned to a person already in possession of the subject insured, and the office allows the assignment, it may bind them, the assignment being as against them to be considered a new contract. Without reference to illegality, it would be highly dangerous to permit any trafficking in policies against fire, and offices would be extremely negligent of their duty to the public if they consented to pay upon a policy where there was no accompanying interest."

Positive conditions on many policies prohibit the assignment or transfer of them except by consent of the insurers; see clauses.

Art. 2482 C. C. L. Ca. prohibits transfers of fire policies to persons who have in the object insured no interest susceptible of insurance. In Scotland, fire policies seem assignable as other pecuniary obligations, *unless the policy prohibit.* 1 Bell's Com.

§ 228. *Consent of insurer to assignment.*

Generally, the benefit of the insurance can be gotten only by the person insured, as named in the policy; and no equity attaches in favor of any third person in the absence of contract to that effect.

In England, on a sale of property insured, a policy which the vendor had previously effected does not pass to the purchaser, unless he has been accepted by the insurers. So, too, in Lower Canada.

If an assignee of the subject insured wish to get the benefit of a policy by which it has been insured, he must, under the conditions of almost all policies, see that the policy is transferred to him, and the transfer allowed by the insurer, "expressed by endorsement," say both the English and American clauses *ante.*

In England, although a purchaser may have possessed house, or goods, insured, if the policy covering them be assigned to him only after the interest of the insured has ceased, whether before or after the fire, with

[1] See *Crozier* v. *Phœnix Ins. Co.*, 2 Hannay, 200, cited in 4 Supreme Ct. R., Can., p. 663. (What of the rule *Conditio semel defecta*, etc?)

[2] *Cockerill* v. *Cincinnati M. Ins. Co.*, cited in § 198 Angell (Fire Ass.), note 3 to which section I do not approve. But in modern France, where a lease was made, stipulating that there should be no sub-letting, under pain of resolution of the lease, and there was sub-letting, but the sub-letting itself was rescinded before any suit by the original lessor, the latter was held too late to sue *en résolution de bail.*