extent of such payment be legally subrogated to all the rights of the party to whom such payment shall be made under any and all securities made by such party for the payment of said debt; but such subrogation shall be in subordination to the claim of the said party for the balance of the debt so secured, or said company may, at its option, pay to the mortgagee the whole of the debt so secured, with all the interest which may have accrued thereon to the date of such payment, and shall thereupon receive from the party to whom such payment shall be made, an assignment and transfer of said debt, with all securities held by said party for the payment thereof."

The right of the insurance companies to subrogation to the right of mortgagees both when there is and when there is not such a subrogation clause in the policies of insurance, has come before the courts in the United States in several cases and also before our own, though there appears to be little English authority forthcoming on the subject. The most recent instances in which the matter has come up in our own Courts are the cases of *Howes* v. *The Dominion Insurance Co.*, before Proudfoot. J., noted *supra*, p. 264; and *Klein* v. *The Union Insurance Co.*, before Ferguson, J., *supra*, p. 344, neither of which are yet reported in the Ontario Reports. It may be useful, in connection with these decisions, to state what appears to be the principles which govern the subject, referring to such Canadian and American cases as seem most clearly to illustrate them.

The fundamental principle in relation to the subrogation of insurance companies appears to be as follows:—(i) Where the insurance company stands really in the position of a surety by reason of the insurance being one merely of the interest of the mortgagee, there is always a right of subrogation in favour of the insurance company. Thus in *Excelsior Fire Insurarce Co.* v. *Royal Insurance Co.*, 55 N. Y. 343 (1873), it is laid down at p. 359:—"It is settled that when a mortgagee or one in a like position towards property, is insured thereon at his own expense, upon his own motion and for his sole benefit, and a loss happens to it, the insurer on making compensation, is entitled to an assignment of the rights of the insured. This is put upon the analogy of the situation of the insurer to that of a surety." So, too, the same principle is illustrated by *Foster* v. *Van Reed*, in Appeal, 70 N. Y. 19 (1877), a case specially referred to and discussed by Proudfoot, J., in *Howes* v. *Dominion Insurance Co.* See also, per Richards, C. J., in *Reesor* v. *Provincial Insurance Co.*, 33 U.C.R. 358; and also a number of American cases cited in an article in the American Law Register, Vol. 18, p. 737. (ii) But where the insurance company does not stand thus in the position merely of a surety, but rather in that of a principal debtor, the insurance being on the property, and so enuring to the benefit of the mortgagor, as well as of the mortgagee, there is no right of subrogation in favour of the insurance company, *unless a contract to that effect has been agreed to by the mortgagor himself.* Thus in *Waring* v. *Loder*, 53 N.Y. 581, and in *Ulster County Savings Institution* v. *Decker*, 18 S. C. N. Y. 515, the mortgagor had not consented to or ratified any such agreement, and, therefore, there was held to be no right of subrogation. For the general rule is quite clear that the assignee of a mortgagee takes it subject to all equities affecting it in the hands of the mortgagee: *McPherson* v. *Dougan*, 9 Gr. 258; *Elliott* v. *McConnell*,, 21 Gr. 276; *Pressey* v. *Trotter*, 26 Gr. 154; and it is manifest that as against the mortgagee, the mortgagor in the absence of special agreement, is entitled to have the amount paid by an insurance company to the mortgagee on a policy effected for his (the mortgagor s) benefit, credited to him on his mortgage: Wood on Insurance, Ed. 1878, sec. 471.

But in *Springfield Fire and Marine Insurance Co.* v. *Allen*, 18 S. C. N. Y. 389, and in *Klein The Union Insurance Co.. supra* p. 345, in which Ferguson, J., specially refers to