indisputable on any grounds, were such as the said Company was bound to make good, especially since the only difficulty in the plaintiffs' way to recover was occasioned by the neglect of the Loan Company (acting as the plaintiffs' agent), in not having the other insurances properly assented to in the policy.

(V.) As to the claim of the Insurance Co. to foreclose the mortgage, as assignees of the Loan Co., this claim could not be entertained, because (1) since the plaintiffs could recover on this policy but for the failure to have endorsed on it the two prior insurances, and since such omission would be remedied on a properly framed record, it followed that the Union Fire Insurance Co. could not take advantage of their own default and neglect in making the formal entry of assent in their policy, to bring into play the subrogation clause for their own advantage. (2) Apart from this, the case was not governed by *Springfield Fire Insurance Co.* v. *Allen*, 43 N. Y. 389, which is distinguishable in that (*a*) there the policy became avoided by subsequent act of the mortgagor insured; (*b*) the policy there was made and accepted by the mortgagee personally intervening with full knowledge of all the terms and conditions of the policy, including the subrogation clause. Neither of the elements existed in the present case. Here the Union Fire Insurance knew that the premiums were being paid by or charged against the mortgagors, and, therefore, that the equity of the plaintiffs was to have the policy moneys applied in reduction of the mortgage, and as between mortgagors and mortgagees this could not be changed by an arrangement made between the latter and a third party, without the knowledge or assent of the mortgagors. Hence, in the present case, the claim of the plaintiffs to have the insurance money applied in satisfaction of the mortgage, was to be preferred to that of the insurers to have the mortgage assigned to them as a security. The mortgage, as a chose in action, passed to the insurers, subject to all equities.

Semble, there was sufficient evidence, if it had been necessary, to establish an affirmation of the contract by the Union Fire Insurance Co., and an election to treat the policy as valid.

S. H. Blake, Q.C., for appellants.

Rose, Q.C., and *Macdonald*, for the Union Loan and Savings Co.

Bethune, Q.C., and *A. Galt*, for the Union Fire Insurance Co.

Ferguson, J.] [March 7.

HUGHES v. REES.

Private international law — "Community property"—Concurrent suit in Quebec—Locus of bank stock.

In the Province of Quebec when there is no ante-nuptial settlement the law makes a settlement of the property of the parties upon their marriage, and also of property subsequently acquired. This is called "Community Property," and it is not in the power of the husband, during the coverture, to make a gift of the community property, directly or indirectly, to his wife, although he is the administrator of it, and may make gifts to the children if the gifts are properly accepted. This legal settlement takes effect whether the marriage ceremony takes place in Quebec or elsewhere, and whether the property of the wife happen to be in that Province or elsewhere, provided the domicile of the husband is in that Province, and the parties intend immediately to go and reside in Quebec. Until two or three years ago the laws of the Province of Quebec did not recognize a trust created by deed *inter vivos*.

In this case the parties were married in Toronto in 1859. The husband was domiciled and carrying on business in Montreal. They intended, immediately after marriage, to go and reside in Montreal, which they did. On March 3, 1875, a deed was executed at Toronto between the wife of the first part and one A., and the husband of the second part, whereby the three parties covenanted that certain Ontario bank stock, in which certain monies which the wife had received after the marriage had been laid out, and which were then held in the name of the husband in trust for the wife, should be duly transferred into the names of A. and the husband, and that this stock, as well as a sum of $4,000, which the wife had received from her mother at the time of the marriage, and which had been put into the commercial business of the husband in Montreal, should be held by A. and the husbund in trust to invest as therein mentioned, and to permit the wife, during her life, to receive the income to her own use, and after her death in trust for the children of the marriage, and in default of surviving issue, over. The husband had always, up to the time of this suit, resided in Montreal; A. resided, and had long resided, in Toronto. On February 8, 1877,