Lower Canada must grant subrogation. *Semble*, payment by the insurer does not in Lower Canada, without subrogation, give him right against the wrong-doer. In their own right, as insurers, no legal cause of action to them is against wrong-doer, says the Court of Appeals, Quebec, March, 1846, and the Privy Council seem not to disapprove.

In *Hicks* v. *Newport, etc., R. Co.* (3 Doug.) Lord Campbell told the jury to deduct a sum received from an accident insurance company from the damages.

If a loss under a fire policy occurs by the wrongful act of a third person, the insurance company upon paying is subrogated into the rights and remedies of the assured, and may maintain action against the wrong-doer.

If the assured receive indemnity from the wrong-doer before the insurer has paid him, the amount so received will be applied *pro tanto* in discharge of the policy.

The wrong-doer, after payment by the insurance company, he knowing of the payment, cannot go and settle with the assured. This would be fraud on the insurance company. 24 Engl. R., p. 212, citing *Com. F. Ins. Co.* v. *Erie, etc.*, 73 N. Y. Rep.

In *London Assurance Co.* v. *Sainsbury*, in which the judges were two against two, it was held that an insurance company paying the insured for loss by a mob could not sue the hundred.

Is not the remedy different now in England? See *Clark* v. *Inhabitants of Hundred of Blything*, 3 D. & Ry.

In *King* v. *The State Mutual F. I. Co.*[1] the plaintiff insured his interest in a barn (occupied by a man who owed him $400). His interest was not particularly stated. *Per* Shaw, J.: If the plaintiff should hereafter, after getting paid by the insurance company, get paid from the mortgagor, any claim of the insurance company against the plaintiff must yet be merely equitable, and that insurance company can have no claim at all till such money be recovered. The plaintiff paid the premium from his own funds. He has no account to give the mortgagor for what may be gotten from the insurance company. It is not payment in whole or in part of *the mortgage debt.* After the loss and before suit defendants notified plaintiff that they were ready to pay him if he would assign his mortgage interest to extent of the amount offered or gotten by him from insurer defendant.

This subrogation ought to be favored for other reasons, to prevent gaming.

Up to 1746 regular gaming by marine insurances used to be. See *Harman* v. *Van Hatton*, for instance.[1] (Like King's case.)

In 1746, 19 Geo. II was passed; but it only applied to ships and goods in them. Afterwards 14 Geo. III was passed, prohibiting all insurances without interest; fire insurance comprehended.

In *London Assurance Co.* v. *Sainsbury*[2] it was held that an insurance company, after paying the insured, could not sue the hundred but in the name of the insured, because a man cannot transfer his right to a chose in action. Any insurer assignee must sue in name of assignor. The defendant argued that it would be intolerable, if there were a dozen or fifty insurers, that the hundred should have to support a dozen or fifty actions. The plaintiff argued that if the insured should refuse his name, the insurers would be without remedy. (And so, it seems they are; it is for them by policy to stipulate to get assignments with right to use name of insured.) So, in Upper Canada, it was held that generally the assignee of a policy must sue in the name of the original insured. (Not so in Lower Canada.) A mortgagee might have maintained an action under Act of Geo. I.

Interest of a mortgagee in possession, insured *eo nomine* at his own expense. Fire before mortgage debt paid. The insurance company can't, offering to pay him his insurance and balance of mortgage money, ask in equity that mortgage be assigned to them and that they get subrogation. *Suffolk F. I. Co.* v. *Boyden* (1864), 9 Allen's Rep. (Mass.) The policy contained a clause, "Whenever "this company shall pay any loss, the "assured agrees to assign over all his rights

[1] 7 Cushing's R., p. 1. Decided in 1851.

[1] 2 Vernon, decided in 1716. Marshall, Insurance, p. 100.

[2] 3 Doug.