

follows: "The meaning and effect of the condition has been considered and dealt with in a number of cases. The broad principle deducible from the decisions is that, unless the property is assigned so as absolutely to divest the assignor of all right, title, and interest thereto and therein, the condition does not take effect, and that quite irrespective of the form of the instrument of assignment. Thus a mortgage created, or a transfer to a bare trustee for the transferee, are outside of the condition, and other cases can readily be supposed to which unquestionably the condition would have no application." In that very case it was held that an assignment under the Assignments and Preferences Act did not come under the condition. A fortiori, such an assignment as that here made would not be affected.

Objection was also taken to the plaintiffs' right to recover under the second policy for \$300, which was issued to Terry on a new pool table, etc., purchased and placed by him in the premises; but, by the terms of the policy, the loss was made payable to the plaintiffs, so that this objection should not be allowed to prevail.

The main ground, however, on which the claim was contested was, that a portion of the building in which the insured chattels were situate, and which, at the time of the application for the second policy, was occupied by the proprietor, John Morton, a brother of one of the plaintiffs, as a real estate and insurance office, and was so indicated on the plan accompanying the application, had been subsequently leased as a restaurant, and was so used at the time of the fire. Gasoline was used in the cooking, and this was kept in a five-gallon can, two or three gallons being purchased at a time. One of the assistants had spilt some gasoline on the floor, and, in mopping it up, the mop came into contact with a heater, and the fire and loss resulted. Some time previously there had been a fire in the restaurant, which was extinguished without damage. The evidence is conflicting as to whether this was caused by the burning of some grease which was being heated, or whether it arose from escaping gasoline.

At the trial the whole case for the defendant was made to bring it within the authority of *Equity Fire Insurance Co. v. Thompson*, 41 S.C.R. 491, which had been decided shortly before in the Supreme Court, and in which it was held that keeping gasoline on insured premises, under circumstances not very dissimilar to those of the present case, was a violation of the tenth statutory condition and rendered the policy void. Before judgment was rendered by the trial Judge, this case was reversed by the Privy Council: *Thompson v. Equity Fire Insurance Co.*, [1910] A.C.