

RECENT ENGLISH DECISIONS.

pletion thereof, the fire took place, and the vendors received the insurance money from the company. The purchase was afterwards completed, and the purchase money agreed upon, without any abatement on account of the damage by fire, was paid to the vendor. The insurers then brought this action to recover the money paid by them on the policy, contending that the contract of insurance was merely a contract of indemnity, and unless they recovered in this action the defendants would receive double satisfaction. Chitty, J., however, held that the insurers were not entitled to recover back the insurance money from the vendors, either for their own benefit or as trustees for the purchaser. The Court of Appeal now over-ruled this, holding that the Company were entitled to recover a sum equal to the insurance money from the vendors for their own benefit, and it seems safe to predict that their judgments will hereafter be cited as the strongest authorities for the proposition that policies of fire or marine insurance are contracts of indemnity, and nothing more, and as enunciating the right of subrogation of insurers in its broadest and most extended form. The following passage in the judgment of Brett, L. J. puts this matter in a clear light, and is apparently concurred in entirely by the other judges: "In order to give my opinion upon this case, I feel obliged to revert to the very formation of every rule which has been promulgated and acted on by the Courts with regard to insurance law. The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only, and that this contract means that the assured, in case of a loss against which the policy has been made, *shall be fully indemnified, but shall never be more than fully indemnified.* That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent

the assured from obtaining a full indemnity, or which will give to the assured more than a full indemnity, that proposition must certainly be wrong * * * The doctrine of subrogation does not arise upon any of the terms of the contract of insurance; it is only another proposition which has been adopted for the purpose of carrying out the fundamental rule which I have mentioned, and it is a doctrine in favour of the underwriters, or insurers, in order to prevent the assured from recovering more than a full indemnity; it has been adopted solely for that reason. It is not, to my mind, a doctrine applied to insurance law on the ground that underwriters are sureties. Underwriters are not always sureties. They have rights which sometimes are similar to the rights of sureties, but that again is in order to prevent the assured from recovering from them more than a full indemnity. But it being admitted that the doctrine of subrogation is to be applied merely for the purpose of preventing the assured from obtaining more than a full indemnity, the question is, whether that doctrine as applied in insurance law can be in any way limited * * * Now it seems to me that in order to carry out the fundamental rule of insurance law, this doctrine of subrogation must be carried to the extent which I am now about to endeavor to express, namely, that as between the underwriter and the assured the underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be, or has been exercised, or has accrued, and whether such right could or could not be enforced by the insurer in the name of the assured by the exercise or acquiring of which right or condition the loss against which the assured is insured can be or has been diminished. That seems to be to put this doctrine of subrogation in the largest possible