has been a change of title in the property insured." Has there been such as to vacate the policy?

At the time of the loss B stood proprietor; the insurer has not contracted with him, and is free from A.

Yet! *semble* if, by agreement, before and at the auction, deed with mortgage in it for the unpaid price were stipulated for, to be passed before possession should be claimable (condition suspensive), the real proprietor at the fire might be held to have been A. No. 54, Troplong. (Vente.)

In Lower Canada a mere *promesse de vente* will not avoid a policy.

A mortgage is not considered an alienation within a clause providing for the avoidance of the policy in case "the property insured shall be alienated by sale or otherwise.[1] *A fortiori* in Lower Canada, where fee simple is in the mortgagor, who is the proprietor and remains possessor usually.

A sale of the premises with a mortgage taken back immediately to secure the payment of the purchase money, thus changing the interest of the insured from that of a mortgagor to that of a mortgagee, was held in *Tittemore* v. *Vt. Mut. Fire Ins. Co.*[2] to be an alienation within this clause.

Assignments in bankruptcy or for the benefit of creditors have been held alienations within this clause.[3]

So, in Lower Canada, except under the bankrupt law, *semble*. See Parsons.

A descent of the property to the heir of the insured is a transfer by operation of law *not* within a clause against alienations.[4]

Sed? sometimes does not clause of policy control in such case, even? Generally, this is a matter of policy regulation.

The insured sold the property insured, taking a judgment for part of the purchase money, and keeping the policy. The building was burned while the judgment was unpaid. Held, that an action did not lie upon the policy.[5]

[1] *Jackson* v. *Mass. Mut. Fire Ins. Co.*, 23 *Pick.* 418; *Conover* v. *Mut. Ins. Co. of Albany*, 3 *Denio*, 254.

[2] 20 Vt., 546.

[3] *Dadmun Manufacturing Co.* v. *Worcester Mut. Fire Ins. Co*, 11 *Metcalfe*, 429; *Moore* v. *Protection Ins. Co.*, 29 *Maine*, 97.

[4] P. 627 Am. Lead. Cas., vol. 2.

[5] *Grevemeyer* v. *Southern Mut. Ins. Co.*, 22 Penn. Rep.

Long leases are frequently made with the proviso that if the lessee should assign without the consent of the lessor, the term of the lease shall determine, and the lease become void. Such was held to apply to voluntary assignments only. So the clause is often expressed now, and providing for voluntary or involuntary assignments, so that lessor shall not have a stranger forced upon him without his consent.

In case of a lawful bankruptcy commission such clause as the last would work. The lessor may say that on an act of bankruptcy by the lessee, lease shall end. Of course a bankruptcy commission issuing improperly would not be such as to make term of the lease.[1]

But a policy is not forfeited under this condition by a compulsory sale on execution, provided the assured retains a right to redeem the property by paying the debt.[2]

What of pawn, by the assured, of the subject insured, he retaining the right to redeem, but transferring possession, to secure the lender of the money? (Chapman case.)

In *Wolfe* v. *Sec. Fire Ins. Co.*,[3] it was held that goods insured may be transferred, then reacquired by the assured, who will afterwards, if loss happen, recover (for stocks of goods may be freely sold.) The policy again becomes effectual on reacquisition of the goods, or like goods. But suppose a house insured? Would it be so? Could the policy revive if the condition read that policy is avoided on sale of the subject insured? *Semble*, land is different from goods. *Conditio semel defecta non restauratur.*

In England and Upper Canada, the assignee of a fire policy cannot sue in his own name, but only in that of the original party.[4]

(Not so in Lower Canada, and query now in England.)

Shaw, upon Ellis, says: A subsisting interest at the time of the loss being the main test of the right of the insured to recover on the policy, it seems that a sale, and subsequent

[1] See *Doe* v. *Ingleby*, 15 Mees. & W.

[2] *Strong* v. *Manufacturers' Ins. Co.*, 10 Pick. 40; *Clark* v. *N. E. Mut. Fire Ins. Co.*, 6 Cushing, 342. So held of sale for taxes in Quebec, 4 Q. L. Rep. Tax titles in Lower Canada allow the land to be redeemed.

[3] 12 Tiffany

[4] 16 Q. B. Rep. Upper Canada.