Fabrique, and claims a definite portion of the damages which the *Fabrique* was entitled to, and shows that those damages were sustained by the neglect of the defendants. The plaintiffs do *not* sue in their own right. The first reason for the reversal of the judgment therefore fails. The other objections are more important. If the title under which plaintiffs sue is considered merely as an assignment, or *cession transport*, there are difficulties—for the curé and marguillier alone could not sell or convey, and title under curé and one marguillier would be bad. But the plaintiffs do not so shape their claim, either on the face of their declaration or in proof. They insist that they were duly *subrogated*, and an act of subrogation by one who could give a discharge is valid, though an assignment otherwise would not be valid, and they say that although subrogated only for part of the damages, they have a right to recover that part in the present action. We are of opinion that plaintiffs are right in all these propositions. The counsel for the plaintiffs admit that they did not fall within the description of persons who are subrogated by operation of law without requisition to or convention with the creditors, nor strictly to the class of co-obligors or sureties to whom Pothier ascribes the right of requiring the creditor, when they pay the debt for which they are jointly bound or responsible to him, either to subrogate or discharge them; but the plaintiffs contended that an assurer by a policy is clearly within the equity of the rule, and has a similar right to require a subrogation at the time of the payment of the loss. The authorities cited seem to us to establish that position. They are Alauzet, p. 384; Pardessus, Dr. Comm., No. 595; Toullier, vol. xi, No. 175; Pothier, Assurance, No. 161; Emerigon, ch. 12, sec. 14. These authorities are so consistent with justice, and founded upon so equitable a principle, that we have no difficulty in adopting them, and we do *not* think that any of them are shown to have been derived (as was suggested in argument) from the Code Napoléon, which is not in force in Canada. Assuming, then, that it is the old law of France that an assurer may upon payment require to be subrogated, other objections remain to be answered. First, it is said that the *acte* upon which plaintiffs rely was not a subrogation, but a *cession transport*. This objection is answered by the authority from Toullier, vol. vii, who states that if the transaction be a subrogation, it is immaterial whether the creditor uses the term subrogation or cession in the act itself. Another objection is that the curé and one marguillier alone could not make a valid subrogation. That they could not by an ordinary sale cede or assign property of the church is beyond dispute. But the *marguillier en charge* may give a legal discharge for a debt due to the *Fabrique* paid, and if the money cannot be received except under the equitable obligation of subrogating the insurers, as we think it cannot, it follows that there must be incidentally a power in one authorized to receive to execute, on request, an instrument of subrogation. One other point is to be disposed of: whether the plaintiffs, who sue as being subrogated to a part of the claim for damages (namely, so much as they paid), can sue without joining the *Fabrique* as co-plaintiff? It seems reasonable that the defendants, *quasi* debtors, should not be liable to several actions by reason of the adoption of the equitable proposition that the insurers have a right to be subrogated. Toullier, tit. 3, art. 120, says that the debtor has a right to require all to be united; but it appears to us to be clear that this defence is not available under the general issue."

London & N. W. R. Co. v. *Glyn*[1] was a case of carriers insuring "*goods their own and in trust as carriers*," £15,000. The plaintiffs declared that certain goods "of plaintiffs, in trust, as carriers, in said warehouse, had been destroyed by fire, whereby plaintiffs sustained a loss on said goods to amount of £15,000." Plea, that plaintiffs did not suffer any damage or loss upon said goods. The policy read that the company defendant should make good to "the assured" all damage and loss which "the assured" shall suffer, etc. Person insuring so as trustee bound in equity to act as such, whether or no the persons beneficially interested

[1] 1 Ell. & Ell., A. D. 1859, in the Q. B.