insurances, though known to the mortgage creditor.

It was stipulated that when a subsequent insurance on the same property should be made without the consent in writing of the defendants, it should, *ipso facto*, annul the first policy, and in a subsequent policy issued by later insurers, it was stipulated that if the insured "shall have made," or shall hereafter make, other insurance without the consent of such *subsequent* insurer, the (subsequent or later) policy should be null; it was held that the subsequent policy, being inoperative, could not be set up by the defendants as evidence of a subsequent insurance (a valid policy, only, being such), and that, consequently, the first policy remained in force.[1]

In *Traders' I. Co.* v. *Roberts*[2] (decided in 1832) R. insured with one company, 5th June, 1827, and at once transferred to B. a mortgagee. The policy contained a clause that if the insured effected other insurance, and did not give notice, the policy should cease. On the 3rd June, 1828, R. insured the same property with another company, and gave no notice. Fire happened. B sued in the name of A. He recovered. It was held that A had not power to affect B's rights by a release, and that he could not do so by breach of a condition. But the principle of this case and of *Tillon* v. *Kingston M. I. Co.*, which relied upon it, was afterwards, very properly, it would seem, disapproved in *Grosvenor* v. *Atlantic F. Ins. Co. of Brooklyn*, in the New York Court of Appeals.[3]

In the case of *Tillon v. Kingston Ins. Co.*[4] it was held that A, assigning his policy to secure B his mortgage claim, if A break the conditions afterwards, B gets nothing. The *Tillon* case would not be followed now, says Flanders (p. 503), who approves of the *Grosvenor* case as good law.[1]

A second insurance may be voidable by second insurers, and yet be a good and sufficient insurance to set aside a first insurance; being unnotified to the first insurers, contrarily to the conditions of their policy.[2]

Art. 359, Code de Commerce, orders to have no effect second or subsequent maritime insurances, when the value of the subject is covered by a first insurance. This nullity is held not to exist where the first insurance is ineffectual, owing to some breach of contract by the insured towards his first insurers.[3]

In the case of *Gilbert* v. *The Phoenix Ins. Co.*,[4] the condition was that notices of other insurances were to be endorsed on the policy or acknowledged in writing, otherwise the policy to be void. Verbal notice was given to an acknowledged agent of the company. But it was held that such agents have no authority to vary the original written policy agreement.[5]

Some companies have a clause reading against other insurance, or other policies on the same property, whether valid or invalid; but the validity of this condition has been questioned in New Hampshire in the case of *Gee* v. *Cheshire Mut. F. Ins. Co.*[6] On the other hand, its validity was not questioned but rather admitted in Maine, in the case of *Lindley* v. *Union Farmers' Mut. F. Ins. Co.*[7]

In *Bigler et al.* v. *The New York Central Insurance Company*,[8] it was held: When the condition of a fire policy requires the insured to give notice of any subsequent insurance, the policy is avoided by a failure to give notice of a subsequent insurance, although

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[1] *Jackson* v. *Mass. M. F. I. Co.*, 23 Pick. R. The authors of American leading cases doubt the above. Hunt's Magazine approves of the Massachusetts and Maine decisions instead of the New York cases.

[2] 9 Wend. Rep.

[3] Monthly Law Reporter, A.D. 1858. The Grosvenor case was approved by the Supreme Court of Illinois in 1870; *Illinois Mut. F. Ins. Co.* v. *Fix*, 5 Am. Rep.

[4] 1 Seld. 405.

[1] Yet the majority of the Queen's Bench, Quebec, followed *Traders' Ins. Co.* v. *Robert*, and *Tillon* v. *Kingston*, in *Black* v. *National Ins. Co.*, A.D. 1879.

[2] *Jacobs* v. *Equitable Insurance Company*, 18 U. C. Q. B. Rep., contrary to *Potter* v. *Ontario & L. Mutual Insurance Company*, 19 U. C. Q. B. Rep.

[3] So held in France, page 1092, Pouget.

[4] 36 Barbour, 376, A.D. 1862.

[5] The cases of *Bigler* v. *N. Y. Central Ins. Co.*, and *Hale* v. *Mech. Mut. F. Ins. Co.* were mentioned.

[6] 20 Am. Rep., A.D. 1874.

[7] 20 Am. Rep. See p. 320 for cases for and against.

[8] 22 N. Y. Rep. Hunt's Merchants' Magazine, vol. 45, A.D. 1861.