the Queen's Bench, Montreal, condemned the defendants, jointly and severally, to pay said £3,045 15s., with interest from service of process, and costs.

The defendants appealed severally to the provincial Court of Appeals. Their reasons of appeal were nearly alike, the chief of them being, substantially, as follows: That plaintiffs had no right to their action, because by their act of incorporation they were prohibited from entering into certain contracts and acquiring property, except for the purposes therein specified; by the common law of Lower Canada the payment of the loss by the insurers gives them no right of action against the wrong-doers; such payment creates no subrogation legal, or *pleno jure*, in favor of the insurers; in order to create such substitution or subrogation there must be express stipulation, and the validity of this may always be questioned; that the act of the 4th of August, 1843, by the curé and one marguillier was not valid; there ought to have been consent in it by the parish in general, ordinary, assembly, or by all the marguilliers as a body; that the act of the 4th August involved no subrogation; that the act assigned only a part of the loss, the damage was indivisible; the act was void.

On the 10th of March, 1846, the Court of Appeals reversed the judgment of the Queen's Bench, Montreal, and dismissed the insurance company's action. "Considering" (says its judgment) "that the declaration of respondents, as the same is worded, imports a demand of damages by plaintiffs in their own right as insurers, and not as assignees of the *Fabrique* of the parish of Boucherville, and considering that the respondents, by reason of any of their allegations, had not and have not, in their own right as insurers, any legal cause of action against the appellants; considering that said declaration doth not contain the requisite allegations to sustain an action for damages by the respondents as assignees as aforesaid, and doth not allege or show that damage to any amount was due to the said *Fabrique*, which might or could be made the subject of an assignment from the *Fabrique* to the respondents, nor that the right to such damages and the recovery thereof in course of law was afterwards by the *Fabrique* legally assigned to the respondents, whereby the respondents might or could demand the said damages as having become vested with the same in right of the said *Fabrique*, but, on the contrary, the damage demanded is expressly said to be damage done to the respondents as insurers; and considering that it doth not appear that the said assignment was made by persons legally competent to make the same, and that said assignment was made of a part only of the damages which the *Fabrique* claimed to have right to have by reason of the loss therein mentioned; considering, therefore, that plaintiffs' declaration doth not set forth a legal cause of action against the appellants; considering also that no subrogation of the respondents into the rights of the said *Fabrique* in what respects the damage in question in this cause was alleged or proved in the Court below, as supposed by the judgment of that Court, etc."

Upon appeal to the Privy Council this judgment was reversed and the judgment of the original Court confirmed, on the 22nd of February, 1851. Baron Parke delivered the judgment, stating, firstly, the nature of the action and of the judgments of the Courts below, and afterwards saying, among other things: "The fire is satisfactorily shown to have been communicated by the sparks from the steamboat; there was no *grille* (grating) on the top of the funnel, and that measure of precaution ought to have been taken, considering the light wood used for fuel on board the boat. The *Fabrique* could have recovered against the defendants. The question is whether plaintiffs can recover in their right, and upon a declaration framed as this is. The objections to their recovering are, first, that the declaration imported a demand in the right of the plaintiffs as insurers, in which character they have no right of action; secondly, that if it imported right, as assignees of the *Fabrique*, the title to sue in that character was not sufficiently alleged, nor did it appear to be made by parties competent to convey; and, thirdly, that no subrogation of the plaintiffs was alleged or proved. The declaration is substantially good. It discloses a derivative title in the plaintiffs, under the