ance proceeds are not the landlord's by any privilege, but go to B's creditors generally among them. P. 83, 2nd part, Sirey of 1862.

In modern France an insurance company has not subrogation by mere force of law against the *locataire* on paying landlord assured. Dalloz of 1853, 1st part, p. 165.

The general rule of the C. C. 1251 is not applicable. An insurance company paying so pays only its own personal debt, due by its policy, but the proprietor may cede even in advance to the insurance company his rights against any *locataire*. Companies stipulate for subrogation in such cases in consequence, and that any payment they make is to be only on terms of subrogation into the rights of the *incendié*. P. 165, 1st part, Dalloz of 1853.

Landlords getting insurances may subrogate the insurance company into their rights against tenant. (*Ib.*) And the companies sue the tenants, and get condemnation often. J. du P. of 1877, p. 987.

Subrogation of insurance company into proprietor's rights against tenant, in fault for the fire, *n'a pas lieu de plein droit*. Dalloz of 1854, note 3, 2nd part, p. 166. (Toullier and Boudousquié, *contra*. Toull., tom. xi, p. 254.)

If the assured subrogate the insurer into his place and actions against third persons responsible for the fire, the insurers, after paying, can sue those third persons; but this subrogation has not place *de plein droit*, and the assured may reserve (if he be not fully paid his loss by the insurer) his rights for the balance of his loss against those third persons. P. 100 Dict. du Cout. Comm.

§ 316. *Where subrogation is not stipulated.*

Where policies (as in Lower Canada) do not usually stipulate subrogation in favor of companies paying losses, have the companies subrogation? *Semble* not, unless on paying they get subrogation express. The policy clause on the subject is only a promise of subrogation. It itself is not subrogation. P. 395, 2 Alauzet, is very much against this subrogation to companies to enable them to persecute tenants, etc. Mere payment by assurer to assured without clause of subrogation is not cause for subrogation *de plein droit*, says Dalloz, cited on p. 390 *Ib.*

The *Quebec Fire Assurance Co.* v. *Molson et al.*[1] shows the law of Lower Canada on this subject; it was an interesting case, decided finally in the Privy Council. It was commenced in 1843 in the Queen's Bench, Montreal. The insurance company plaintiffs alleged by their declaration that by policy of insurance, 27th February, 1841, they insured for twelve months the *Fabrique* (administrators) of the Parish of Boucherville against loss by fire that might happen to the parish church, sacristy, etc., the several sums insured amounting together to £3,300; that the policy was renewed, and while in force on the 20th June, 1843, the defendants' steamboat "St. Louis," on her voyage from Montreal, reached Boucherville, and while she was lying at the wharf there sparks from her chimney set fire to the buildings in the neighborhood, whence the fire spread until the church and property insured were destroyed; that the fire "was wholly attributable to the gross negligence, mismanagement and want of ordinary precaution" of the defendants and their servants on board the "St. Louis;" that the loss to the Fabrique exceeded £4,230 12s. 3d., which was covered by the policy only to the extent of £3,045 15s.; that on the 4th of August, 1843, plaintiffs paid the latter sum to the curé (priest) and the *marguillier en charge* (churchwarden) of the parish, who by act of the same day acknowledged receipt thereof, by the same act assigning to plaintiff "all right, title, interest, property claim and demand whatsoever," to extent of said sum, which they, the curé and marguillier, or the parish, could have or be supposed to have against the owners of the "St. Louis" as the originators of the fire which had caused the loss and damage; that the assignment was duly notified to defendants; that by means of the premises and through the gross negligence, mismanagement and the want of proper precaution of the defendants and their servants the plaintiffs had sustained damage to the amount of £3,045 15s.; conclusions accordingly.

The defendants severally pleaded the general issue only. On the 26th January, 1846,

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[1] 1 L. C. R. 223.