INVOLVES NOTICE OF CANCELLATION

Jury Holds Company Failed to Terminate Liability

A case of very great interest to fire insurance companies, and which, if sustained on appeal, will have the effect of causing many of the large companies to redraft their notices of cancellation which are sent out in cases where the premium is not paid by the insured, has just been decided in Trial Term. Part XIII, before Justice Cohalan and a jury, New York.

According to the evidence adduced at the trial, the North British & Mercantile Insurance Company on July 1, 1917, issued to the estate of George Patterson a policy of fire insurance in the sum of $10,000, for which the premium was $181.45. The policy covered the assured for one year. On September 20, 1917, the premium never having been paid, the company sent the assured the following notice, which the assured admitted having received on September 23, 1917.

"Dear Sir.—The premium remaining unpaid on Policy No. 1529913, issued to you by this company at this office, covering on stocks and machinery situate 112 Fourth avenue, this company hereby notifies you that it elects to cancel said policy in accordance with lines 51-55, inclusive, thereof.

"All liability thereunder on the part of this company will cease and determine at the expiration of five days from the receipt by you hereof, unless during such period the full premium of $181.45 is paid."

Premium Never Paid.

It was admitted at the trial that no part of the premium had ever been paid, and the company claimed that the notice constituted an effective cancellation of the policy, and that on January 8, 1918, at the time of the destruction of the property by fire, the company had no valid insurance thereon. It further appeared that on January 2, 1918, six days before the fire, but three months after the expiration of the notice of cancellation, the insurance company placed in the hands of a lawyer specializing in collections a claim for earned premium from July 1 until September 28, which concededly was $42.75.

Instead of demanding this amount, however, the attorney wrote to the assured on January 2, 1918, the following letter:

"Dear Sirs.—The North British & Mercantile Insurance Company has handed me for collection your account of $181.45. premium on its policy No. 1529913, covering property at above address, one year from July 1st, 1917; Mr. H. L. Holly, broker. It is understood that this policy has been cancelled, and that, upon the return thereof, settlement may be made on the earned premium basis of $72.58; otherwise we will sue for the full amount thereof. Please advise me by return mail whether this item can be adjusted without suit, and oblige,

It further appeared that on January 12, 1918, four days after the fire, the attorney commenced an action in the Municipal Court to recover the sum of $72.58 as an earned premium, at the same time stating in the complaint in that action that the policy had been previously cancelled, but did not give the date of cancellation. The action was subsequently discontinued by consent. The plaintiff claimed upon the trial that the notice of September 20, 1917, was ineffectual to cancel the policy, because said notice, instead of being an unequivocal cancellation, was a conditional cancellation, that is to say, that the policy "would be canceled unless" the premium was paid, and that such a notice, being as he claimed, a conditional and not an absolute one, did not in fact cancel the policy.

He also claimed that the letter from the attorney dated January 2, 1918, was a waiver of the cancellation, assuming that one had been effected, and even though the $72.58 was not in fact paid, this letter revived the policy and the same was in force at the time of the fire. It was proven that the $72.58, if it had been paid, would have carried the policy to November 1, 1917, that is, past the date of cancellation but not up to the date of the fire.

Questions of Fact to Jury.

The Court was asked to instruct the jury as a matter of law that the cancellation notice of September 20, 1917, having been received by the insured and no part of the premium having been paid, the policy came to an end five days after the receipt of the notice, to wit, September 28, 1917. This the court refused to do but left the effect of the notice to be decided by the jury as a question of fact, that is, as to whether the notice did in fact cancel the policy or did not.

The court also left to the jury the effect of the letter of January 2, 1918, that is, the jury were required to determine whether in the face of this letter the policy had in fact been cancelled or if cancelled was revived or the cancellation waived. The plaintiff offered evidence that he had suffered a loss of upward of $19,000 and upon this issue the defendant offered no evidence in contradiction.

After deliberating for five hours the jury rendered a verdict in favor of the plaintiff for but $3,000, although the policy called for $10,000. It is understood that the company will take an immediate appeal to the Appellate Division, as it has been sending out this form of notice of cancellation in cases of non-payment of premium for a considerable period of time under the belief that it was effectual to cancel its liability.

Hugo Wintner represented the estate of George Patterson. William Otis Badger, Jr., and Joseph Thurlow Weed appeared for the North British & Mercantile Insurance Company.