

liability for the unearned premiums continued in force; that they are estopped from setting up that there was no actual cancellation by the official act of the company. There is no statutory requirement as to the shape in which a cancellation shall be made, and it would be a gross injustice to allow the appellants to be put on as contributories for \$160.

The 3rd statutory condition indorsed on the policy is that a change material to the risk shall void the policy—that the company, when notified, may cancel the policy and return the premium for the unexpired period, or may demand an additional premium, which the assured is to pay if he desire the continuance of the policy, and, if he neglect to pay, the policy shall no longer be in force. And the 19th condition indorsed is that the insurance may be terminated by the company giving notice to that effect. What took place here was tantamount to that notice to terminate; and, apart from that, the policy was no longer in force by the refusal of the company to continue the insurance unless the extra rate was paid.

The judgment of the Official Referee errs as to the facts when he says the change material to the risk did not take place till February, 1908, and that it was without notice to the company. The judgment also appears to omit entirely the fact of and effect of the correspondence between the 7th October and the 29th November, in which the company treat the policy as terminated and withdraw the proffer of rebate.

The judgment should be reversed with costs.

Technically, perhaps, the name of the insured should not be removed from the list of contributories; for, if any losses or claims accrued during the year in which they were insured, ending January, 1908, which are yet outstanding against the company, the appellants may have to answer for their share on the footing of mutual assessments for that period. But, as I understand, there was no such claims: see R. S. O. 1897 ch. 203, sec. 111.

SUTHERLAND, J.

NOVEMBER 11TH, 1910.

MORTON v. ANGLO-AMERICAN INSURANCE CO.

Fire Insurance—Proof of Loss—Sufficiency—Provision for Arbitration—Waiver—Gasoline Stored or Kept on Premises — Change in Occupation of Premises Material to Risk—Absence of Knowledge by Insurers—Knowledge of Local Agent.

Action upon a fire insurance policy.