

J. J. Coughlin, for the appellants.

E. P. Brown, for the liquidator.

BOYD, C.:—When the appellants were called on by the liquidators to pay up \$160, balance due on premium note representing insurance from the 31st January, 1908, they wrote that the policy had not been in force since December, 1907; that it was then cancelled by the company refusing to carry the insurance because of the installation of a gasoline engine; that they had insured their building in another company, and notified the company of what had been done. They referred to the correspondence in verification of this position. The correspondence, taking the language used by the company, fully substantiates this defence. This I may briefly summarise, premising that the policy was for \$5,000 for three years, at a total cost of \$200, and that the assured had paid \$40, covering the first year of the policy, which was dated the 31st January, 1907; and that one Ward was the local agent of the company at Stratford, with whom the correspondence with the company was had, and by him communicated to the assured. . . .

[Summary of correspondence, etc., between the 8th July, 1907, and the 24th February, 1908.]

The liquidation order was made on the 22nd March, 1909.

There was but little evidence given before the Official Referee. . . . From that it appears that the appellants reinsured on the 14th January, 1908—the engine being then installed—and that Ward cancelled it then. (This is in McDonald's evidence.) Ward was examined also, who says he had an interview at the head office with the manager, White; will not say whether he cancelled or agreed to cancel the policy, but understood he would report favourably. . . . Nothing done to close of year, when renewal receipt came, which he returned, and told the company that the firm had insured in another company.

White is called, and says he did not agree to cancel policy. . . .

I have no doubt that the transaction, as thus detailed in the correspondence, clearly indicates that the parties joined issue as to the extra rate; that it was insisted on by the company as a condition essential to the continuance of the insurance; and that the assured refused to pay it, and were told by Ward that the effect of their refusal, coupled with the installation of the gasoline plant, was tantamount to a release or cancellation of the policy.

In the circumstances, I feel no difficulty in holding that the company are estopped from now saying that the policy and the