Case No. 4,202. DUTCHER ET UX. V. BROOKLYN LIFE INS. CO.

{3 Dill. 87; 4 Ins. Law J. 812; 2 Cent. law 3. 153; 4 Bigelow, Ins. Cas. 665.}[1]

Circuit Court, E. D. Missouri. Sept., 1874.[2]

LIFE POLICY—FORFEITURE—PAYMENT OF PREMIUMS—ELECTION TO TAKE PAID-UP POLICY—AMBIGUITY—USAGE.

Construing the provision of the policy in suit, in the light of the practical construction [previously] put upon similar policies by the company: *Held,* that the plaintiff was entitled, on electing to discontinue the payment of premiums, to a paid-up policy, without first paying a note held by the company for part premiums, but that said note with interest, less the dividends, was to be deducted from the amount insured when the policy became payable.

[See note at end of case.]

This is a bill in equity {by Clinton O. Dutcher and his wife} against the company to enforce the issue and delivery to the plaintiff of a paid-up policy for $4,000. On February 29, 1868, the defendant issued its policy to Mrs. Dutcher, in which, for the annual premium of $615.40, for ten years, the company insured the life of the husband for $10,000, "with participation in profits." This amount was payable "within sixty days after due notice and proof of death." After the payment of four annual premiums, the plaintiffs (Mr. and Mrs. Dutcher) file the present bill, claiming that they are entitled to a paid-up policy for $4,000. This is resisted by the company.

The following is a copy of the material portions of the policy: "Non-forfeiture policy. The Brooklyn Life Insurance Company. No. 3718. Amount, $10,000. Premium, $615.40. Age, 40. By this policy of assurance, in consideration of the representations and agreements contained in the application therefor, and the sum of six hundred and fifteen dollars and forty cents, to them in hand paid, by Annie C. Dutcher, wife of Clinton O. Dutcher, and of the annual premium of six hundred and fifteen dollars and forty cents, to be paid on or before the twenty-ninth day of February, in each and every year until ten full years premiums shall have been paid, do assure the life of Clinton O.

Dutcher in the amount of ten thousand dollars, for the term of his natural life, with participation in profits. And the said Brooklyn Life Insurance Company do hereby promise and agree, to and with the said Annie C. Dutcher, well and truly to pay or cause to be paid the said sum assured, to her; or, in case she shall die before the said Clinton O. Dutcher, to pay the said sum assured to her heirs, etc., or assigns, within sixty days after due notice and proof of the death of said person whose life is hereby insured, the balance of the year's premium, if any, and all indebtedness due or to become due to the company, to be first deducted therefrom. Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by this company, and accepted by the said Annie C. Dutcher, upon these express conditions, that in case the said Annie C. Dutcher shall not pay or cause to be paid the premium as aforesaid, on or before the day herein mentioned for the payment thereof, or any note or notes which may be given to and received by said company in part payment of any premium, on the day or days when the same shall become due, the said company shall not be liable for the payment of the sum assured or any part thereof, and this policy shall cease, and be null, void and of no effect And it is further understood and agreed by and between the parties hereto, that the dividend of profits which may become payable by virtue of this policy to the holder thereof, shall be applied toward the payment of the note taken for part premiums aforesaid, and that if this policy shall cease or become null or void, the said Annie C. Dutcher, her heirs, executors, administrators or assigns, shall be liable to pay to said company the amount of all notes taken for premium which shall remain unpaid on the note taken for part premium and made payable at twelve months from date, and that the said last mentioned note is to be cancelled by the company on the surrender and cancellation of the said policy, and also that this policy shall not be assigned without the consent of the said company in writing, previously obtained. And it is also further understood and mutually agreed, that in case the said person whose life is hereby insured, shall be or become in any sense an inebriate, the company shall have the right to declare this policy cancelled, and shall be absolved from all liability under it on paying to the holder thereof, or tendering in payment the amount of all unearned premiums, actually received thereon up to the time of such payment or tender of payment. After two annual payments, should the party wish to discontinue (notice to the company being given before the next premium becomes due), the company will issue a paid-up policy for as many tenths of the amount originally assured as there have been annual premiums paid in cash. In witness whereof, &c, this twenty-ninth day of February, one thousand eight hundred and sixty-eight"

The parties agreed upon the following facts: "That the plaintiff, Annie C. Dutcher, and the defendant contracted and agreed together that the annual premium, $615.40, due upon said policy, should be payable each year as follows: $369.24 in money, and $246.16 in her promissory note, payable twelve months after date, with interest thereon at the rate

of seven per centum; that upon the payment of said sum of money and the delivery of said note, the defendant would execute and deliver to said plaintiff, Annie C. Dutcher, a receipt for $615.40, the premium upon said policy for twelve months, the amount of said note to be a permanent loan from the defendant to Annie C. Dutcher, plaintiff, bearing interest at the rate of seven per centum until paid by dividends, and that at maturity of said note a new note bearing the same interest and covering the amount of said first mentioned note, except as reduced by dividends, and the amount of $246.40 of premiums for the current year should be given, and so on from year to year. That said Annie C. Dutcher, plaintiff, did on the 29th of February, 1868, pay to defendant $369.24, in money, and $246.16, in her promissory note, payable twelve months after date and bearing interest at the rate of seven per centum, and in return therefor defendant did deliver to said plaintiff a receipt for $615.40, the premium due February 28th, 1868, on policy 3718, insuring 10,000 dollars for twelve months ending February 28th, 1869; that said Annie c. Dutcher did, on the 28th day of February, 1869, pay to defendant the like sun; of money and the like note increased to the extent of the amount of the preceding note unpaid by dividends, and in return therefor defendant did deliver to said plaintiff a receipt for $615.40, the premium due February 28th, 1869, on policy 3718, insuring 10,000 dollars for twelve months, ending February 28th, 1870; that the said Annie C. Dutcher plaintiff, did pay to the defendant the like sum of money and the like note to that last above mentioned, on the 29th day of February, 1870, and also on the 29th day of February, 1871, for the years then next ensuing and defendant in return therefor die deliver at each of said dates to said plaintiff a like receipt to the above; that the delivery of said like sum of money and said like note upon the 28th day of February, 1871, continued said policy 3718 in force until the 29th day of February, 1872. Said receipts were in the form and to the same tenor and effect as the receipt hereto annexed and marked 'A,' and hereby made a part of these agreed facts. That, on the 1st day of February, 1872, there was due and owing to defendant by said Annie C. Dutcher, on ac count of the notes hereinbefore mentioned to have been given by the said Annie C

Dutcher to defendant, the sum of $793.64. That on the 1st day of February, 1872, the said Annie C. Dutcher notified defendant that she wished to discontinue policy 3718 and desired a paid-up policy therefor, and offered to deliver up to defendant said policy 3718; that defendant refused to accept said policy and deliver to Annie C. Dutcher, plain? tiff, a paid-up policy as requested, because the said Annie G. Dutcher refused first to pay defendant said amount of $793.64 which was then and there a lien against policy 3718. That from the time defendant began business to the 20th day of January, 1871, it was the Course of business of defendant to issue paid-up policies to policy holders on demand without deducting the loans of the defendant to the policy holder and to hold the same as a lien against the paid-up policy, but that on and after said date defendant refused to give a paid-up policy to any policy-holder without the payment first of any loans due defendant by such policy holder."

Krum & Patrick, for plaintiffs.

Sharp & Broadhead, for the company.

Before DILLON, Circuit Judge, and TREAT, District Judge.

TREAT, District Judge. This is a bill for specific performance. On the 29th of February, 1868, the defendant issued a non-forfeitable policy. The sum insured was $10,000; annual premium $615.40; number of premiums to be paid, ten; term, natural life of the insured, "with participation in the profits." Payment of the $10,000 was to be made within sixty days after death and proof thereof—"the balance of the year's premium, if any, and all indebtedness due, or to become due to the company, to be first deducted therefrom." This seems to contemplate that there would be, or might be, a part of a year's premium and other indebtedness due at the death of the insured.

The policy further provides that "in case" "the premium, as aforesaid," shall not be paid "on or before the day herein mentioned for the payment thereof, or any note or notes which may be given to and received by said company in part payment of any premium, on the day or days when the same shall become due," the policy shall become void. It further provides that "the dividend of profits which may become payable by virtue of this policy to the holder thereof, shall be applied towards the payment of the note taken for part premiums aforesaid, and that if this policy" shall become void, said holder of the policy "shall be liable to pay to said company the amount of all notes taken for premiums, which shall remain unpaid, except the balance remaining unpaid on the note taken for part premiums and payable at twelve months from date, and that the said last mentioned note is to be cancelled by said company on the surrender and cancellation of said policy." There is also a clause absolving the company from liability if the insured becomes an inebriate, "on paying to the holder thereof the amount of all unearned premiums actually received thereon up to the time of such payment."

The next and last provision is as follows: "After two annual payments, should the party wish to discontinue (notice to the company being given before the next premium becomes due), the company will issue a paid-up policy for as many tenths of the amount originally assured as there have been annual premiums paid, in cash." In this ease the required notice was given after four payments had been made, and a paid-up policy was demanded for the prescribed four-tenths of the amount insured. The defendant refused the request, unless the plaintiffs would first pay their notes for premiums held by the company; contending that the last clause, cited above, contemplated a previous payment of the annual premiums, in cash. The plaintiffs, on the other hand, insist that those notes are mere loans to them, to be paid out of their share of the dividends, should their share equal the amount of said notes, at the death of the assured—said notes being a lien on the policy for the sum finally due thereon—or, if that be not the true construction of the policy, then the defendant should issue a paid-up policy for $4,000, less the amount of said notes.

The terms of the policy as to notes, quoted above, are not very clear; for they seem to imply in one phrase that many notes for premiums may be outstanding, and in another phrase, that there can be only one outstanding note of the kind, and that for a part of the last premium due. The course of dealing between the parties, however, has put a practical construction on the contract. The receipt for each annual premium paid (as for the last in this case) is as follows:

"Received from Clinton O. Dutcher, $615.40, which continues in force policy 3718, issued by this company, until the 29th day of February, 1872, in accordance with the terms and conditions of said policy.

"Old note returned herewith, the indebtedness being debited against the policy, $547.48; amt of premium loaned this year, $246.16,—$793.64."

The original agreement, it is admitted, was that of the $615.40 for the annual premium, $369.24 should be paid in cash, and $246.16 in a note at twelve months at seven per cent interest, whereupon a receipt for the payment of the whole premium should be given, the amount of said note to be a permanent loan by the company, until paid by dividends, and that at maturity of said note, a new note, at the same rate of interest, should be given, including the $246.16, and the amount of the former note, less the dividend applicable to its payment. This was the mode pursued each year.

It is further admitted in this case that defendant

had always, prior to January 20th, 1871, issued paid-up policies on demand without deducting the loans on outstanding notes, holding such notes as a lien against the paid-up policy; and that since that date the defendant has uniformly refused to issue a paid-up policy unless the holder first paid the outstanding loans or notes.

As there are many like suits pending against this defendant on somewhat similar policies, issued at different times, it may be well to examine them with reference to any changes made by the company in the terms of its subsequent contracts. Thus policy No. 6060, issued March, 1869, is the same as that with reference to which this suit is instituted, except that on the back thereof, in print and writing, the cash-surrender value of the policy is stated for successive years—that value being "exclusive of the value of any dividend, deposits or reversions, which the company will pay in addition;" also that "the above amounts, less any outstanding loans or notes, will be paid on the surrender of this policy, duly receipted, within two months after being forfeited by non-payment of premiums."

The policies of the defendant were stated from the first to be non-forfeitable; yet they contained clauses of forfeiture. Subsequently, as above, the non-forfeitable provisions were attempted to be defined—that is, a surrender-cash value was stated, if the policy was surrendered within two months after forfeiture. Still, in the body of the policy the forfeiture clause for non-payment of premium and notes when due was retained.

Policy 5633, issued in January, 1869, omits the words "non-forfeiture policy," and substitutes for the provision above quoted as the last in the policy, No. 3718 (that in question), these words:

"On surrender of this policy, while in force, after the full amount of two or more annual premiums have been paid in cash, including the payment of any note or notes given on account of premiums, the company will issue a paid-up policy for the amount of premium paid, less any and all dividends paid on said policy."

On the back of policy No. 5633 was the same agreement as to cash-surrender value as that endorsed on policy No. 6060. The company had thus added to the new policies, subsequent to plaintiffs', the requirement of previous payment of notes given on account of premiums; indicating, on its part, that there was previous uncertainty on that point.

It thus appears that the policies issued by this company at the commencement were designed to induce the holders to understand that they included several distinct provisions favorable to the insured, viz.:

1st. They were non-forfeitable. Afterwards they defined, under the head of cash-surrender value, the precise meaning of their non-forfeitable qualities, and limited to two months the condition of non-forfeiture; still retaining on the face of the policy their non-forfeiture designation, and among the conditions, a forfeiture clause. Such seemingly in-

consistent and conflicting provisions exact a construction against the company most favorable to the insured.

2d. They gave to the insured a participation in the profits. For what period of time? When he was insured for his natural life, would not his participation in the profits continue until his death? It matters not that the annual premiums were to cease at the expiration of ten years, if the insurance was for life. The participation in profits may be in various ways—either by corresponding reduction of premiums, in annual cash dividends, or in additions, with or without accumulations of interest, to the principal sum assured.

3d. The defendant's policies determined the mode of the participation in profits when part payment of annual premium was by note. At the time of the next annual premium, which would be the same time the previous note fell due, there would be credited on the note the dividend of profits to which it was entitled. Then the balance, together with the amount payable by note for the next premium, would be included in the new note, and the former note would be cancelled. In that way there would be only one note outstanding. Such was the practical construction given and assented to; yet serious difficulties might have arisen if a forfeiture had been claimed; for it is provided that the holder, when forfeiture occurs, shall be liable to pay all unpaid notes taken for premiums, "except the balance remaining unpaid on the note taken for part premiums and made payable at twelve months from date," and said last note is to be surrendered and cancelled on surrender and cancellation of the policy. If that was the only note which could, in the routine of business be outstanding, and that was to be surrendered and cancelled, for what would the holder be liable? It would seem he would lose only the cash paid on the premiums, and that his notes would be surrendered. But under the clause concerning inebriates, when the company cancels a policy, it must pay back the amount of all unearned premiums actually received. What is meant thereby? Actually received only in cash, or both in cash and notes? The main question in dispute here, is, whether the defendant is bound to issue a paid-up policy except when the annual payments are actually paid in cash or the notes given are also first paid in cash. Under the clause concerning inebriates, the company must pay bade the amount of unearned premiums actually received. How received? In cash merely? Certainly, it cannot be fairly contended that the company would absolve itself Under that clause by returning the cash payments and holding the assured liable on his notes for premiums. The payment of premiums includes both cash and notes given. Why

then, should not the phrase in the last clause as to annual premiums, paid in cash, receive equally as broad and favorable a construction?

4th. The policies contemplated part payment by note, and indicated how the notes should be treated in connection with the profits, and also how the sum due on said notes should be met when the policy became payable, viz.: that the sum insured should be paid, less the amount due on the notes.

5th. If the ten annual payments had been made, the original policy would have stood as a paid-up policy, and the last note would have been outstanding, payable in twelve months, by its terms, less dividend accrued. Was it contemplated that it should be paid at the end of said twelve months, when it is admitted that the sum named therein was to be a permanent loan at seven per cent, debited against the policy? If so, what was the inducement as to part payment by note, and as to participation in profits to be applied to the payment of the note? How was the participation of profits to be thereafter enjoyed? The theory of the plan proposed and acted on was a receipt for the annual premiums as for cash, while actually cash was to be paid for part, and a note was to be received as cash payment for the balance. Throughout the ten years no actual payment, even of interest on the notes, was expected, but the balance due thereon was carried into a new note. Practically, it seems, the plan offered to the insured was found not to work satisfactorily to the company, and hence it changed not only the phraseology of its later policies but its own interpretation of the earlier policies. It changed the last clause concerning paid-up policies for tenths, as to "annual premiums paid in cash," so that it should read, "including the payment of any note or notes given," etc.

Through all the various provisions concerning the non-forfeiture, cash-surrenders, issuing of paid-up policies for tenths, and giving of notes, the way those notes should be treated on cash-surrender, or cancellation in case of inebriates—in short, throughout the various contingencies attempted to be provided for, the notes are treated as sums to be accounted for on the final payment of the policies, and not before. It is impossible to reconcile the various provisions with each other, or with the manifest theory on which the earlier policies were based, or with the practical construction given, unless it is held that paid-up policies were to be issued for the tenths named, without the previous payment of the notes, or the deduction of them from the amount of said tenths. If deducted, what was to become of the participation of profits, and what of the interest they bore? The conclusion is, that the plaintiffs are entitled on the facts agreed, to the paid-up policy. The company will hold the notes bearing seven per cent interest, and whatever balance due, less dividends, there may be at the time of the death of the assured, will be deducted from the tenths assured.

The defendant agreed that plaintiffs should participate in the profits during the natural life of the assured; that they should give notes for part of annual premiums; that at the

expiration of ten annual premiums the policy should be considered paid up; that the dividends should be applied towards payments of the notes; that the amount payable at the death of the assured should be $10,000, less the balance due on the final note given as above stated. It could not be determined until the death what would be due on that note; for while it bore seven per cent interest annually, it was subject to reduction for dividends. It was uncertain whether the dividends would exceed the interest, or amount to the whole note, principal and interest. Hence, when the paid-up policy for tenths was demanded, the plaintiffs were entitled thereto, without previous payment of the notes.

DILLON, Circuit Judge. The policy here in question is dated February 29th, 1868. The payment of the premiums was to be made each year, part in cash and part in a note for the amount of the premium "loaned by the company to the assured," upon interest. After making four annual payments, the plaintiff elected to avail herself of the last provision of the policy, which is in these words: "After two annual payments, should the party wish to discontinue, the company will issue a paid-up policy for as many tenths of the amount originally assured as there have been annual premiums paid in cash." The company holds the note of the assured, given for previous premiums, less dividends, for $793.64, drawing seven per cent interest.

The assured now demands a paid-up policy for $4,000, which the company refuses to issue, unless she will first pay in cash her note for $793.64, held by the company. The assured concedes, if the company issues the policy for $4,000, that her outstanding note for $793.64, with interest to the death of the person whose life is assured, less dividends, is, by the terms of the policy, then to be deducted from the $4,000.

As shown by my Brother TREAT, the provisions of the policy bearing upon the question now to be decided are far from being harmonious or clear. Under the circumstances, it seems to me that we cannot go far wrong if we hold the company in this case to the same measure of liability that down to January 20,1871, it voluntarily admitted. It is peculiarly a case, as it seems to me, in which the practical construction put upon the same kind of contract by the company for years should be adopted by the court.

In the agreed statement of facts is the following: "That from the time the defendant began business to the 20th day of January, 1871, it was the course of business of the defendant to issue paid-up policies to policy-holders on demand, without deducting the

loans of the defendant to the policy-holder, and to hold the same as a lien against the paid-up policy, but on and after said date the defendant refused to give a paid-up policy to any policy-holder without the payment first of any loans due defendant by such policy-holder." I give to this course of dealing a controlling influence in my judgment, and, accordingly, am of opinion that the plaintiffs are entitled, on the agreed facts, to a paid-up policy for $4,000, payable at the time and on the terms specified in the present policy as here expounded.

Decree accordingly.

NOTE [from original report]. The following note was prepared by Hon. J. O. Pierce, of Tennessee:

"1. The policy in this case was described as 'non-forfeitable,' and provided that, on discontinuing the payment of annual premiums, the assured might have in lieu a paid-up policy 'for as many tenths of the amount originally insured as there have been annual premiums paid in cash.' But it was not contracted in the first instance that the premiums should be paid wholly in cash. A note was received for a portion of the annual premium, and the remainder was paid in cash. For these was exchanged a receipt for the annual premium 'as for cash.' Upon this 'theory of the plan,' it is held that the premium was actually paid by the delivery of the note and the cash. This conclusion accords with the following cases: Hodsdon v. Guardian Ins. Co., 97 Mass. 144; McAllister v. New England Ins. Co., 101 Mass. 558; New England Mut. Life Ins. Co. v. Hasbrook, 32 Ind. 447; Mowry v. Home Life Ins. Co., 9 R. I. 346; Baker v. Union Life Ins. Co., 6 Abb. Pr. (N. S.) 144.

"The court is aided in its conclusions by the practice of the insurer in expounding its own policies of like character for several years. This was clearly proper in view of the vague and inconsistent provisions which the policy bore upon its face. Custom and usage will be resorted to, to explain or construe insurance contracts whose provisions are ambiguous. May, Ins. § 173; Bliss, Ins. p. 604; Coit v. Commercial Ins. Co., 7 Johns. 385; Robertson v. French, 4 East, 135; Fowler v. Aetna Fire Ins. Co., 7 Wend. 270; Astor v. Union Ins. Co., 7 Cow. 202; Reynolds v. Commerce F. Ins. Co., 47 N. Y. 597; Strohn v. Hartford Ins. Co. (Wis.; 1874) 7 West. Ins. Rev. 452. But not to defeat the essential provisions of the contract, where there is no ambiguity. Mutual Safety Ins. Co. v. Hone, 2 N. Y. 235; Stebbins v. Globe Ins Co., 2 Hall, 632; Mutual Ben. Life Ins. Co. v. Ruse, 8 Ga. 534; Ruse v. Mutual Ben. Life Ins. Co., 23 N. Y. 516; Howell v. Knickerbocker Life Ins. Co., 44 N. Y. 282; Hearne v. New England Mut. Ins. Co. [20 Wall. (87 U. S.) 488]; Busby v. North American Life Ins. Co. [40 Md. 572]; King v. Enterprise Ins. Co. [45 Ind. 43].

"3. The court construes the language of the policy strongly against the insurer, because it is his language, and is intended for his benefit. In this it is in accord with a great weight

of authority. Pelly v. Governor, etc., of Royal Exch. Assur., 1 Burrows, 349; Catlin v. Springfield Ins. Co. [Case No. 2,522]; Breasted v. Farmers' Loan & Trust Co., 8 N. Y. 305; Westfall v. Hudson River Fire Ins. Co., 2 Duer, 490; Fowkes v. Manchester & L. Life Assur. & L. Ass'n, 3 Best & S. 917; Hoffman v. Aetna F. Ins. Co., 32 N. Y. 414; Western Ins. Co. v. Cropper, 32 Pa. St. 351; Reynolds v. Commerce F. Ins. Co., 47 N. Y. 597; McMaster v. President etc., of Ins. Co. [55 N. Y. 222]; Boon v. Aetna Ins. Co. [Case No. 1,639]; James v. Lycoming Ins. Co. [Id. 7,182].

"4. It is worthy of remark that while this policy was ostensibly non-forfeitable, its sole provision for avoiding a forfeiture was that referred to in note 1, supra. But this, according to the construction contended for by the insurer, required the performance, by the assured, of a condition not a part of the original contract, namely, the payment of all premiums to date wholly in cash. Grammatically, this construction involved a solecism; in morals, it 'kept the word of promise to the ear' merely. Viewed from a legal stand-point, it is well illustrated by the deductions of the court, in Kentucky Mut. Ins. Co. v. Jenks, 5 Ind. 103. 'It is not good policy in the courts to favor such cunningly devised insurance policies, as that, whatever event happens, the underwriters may reap the premium and escape the risk. On the contrary, some degree of acuteness should be called in to uphold and enforce such agreements, whenever there has been a fair contract and a substantial compliance.'

"Chief Justice Marshall said, in 1809, 'policies of insurance are generally the most informal instruments which are brought into courts of justice; and there are no instruments which are more liberally construed in order to effect the real intention of the parties, if that intention can be clearly ascertained.' Yeaton v. Fry, 5 Cranch [9 U. S.] 342. 'Cessante ratione legis, cessat ipsa lex.' But whenever their policies assume a form as incongruous as that exhibited in the principal case, insurers may expect the courts to renew their application of Judge Marshall's rule."

[NOTE. On appeal by the defendant the decree was affirmed by the supreme court. Brooklyn Life Ins. Co. v. Duteher, 95 U. S. 269. The decision there was rested both upon the interpretation of the policy taken by itself, and upon the practical construction theretofore put upon it by the company. Upon this latter topic Mr. Justice Swayne, delivering the opinion of the court, said: "The practical interpretation of an agreement by a party to it is always a consideration of great weight. The construction of a contract is as much a part of it as anything else. There is no surer way to find out what parties meant than to see what they have done. Self-interest stimulates the mind to activity, and sharpens its perspicacity. Parties in such cases often claim more, but rarely less, than they are entitled to. The probabilities are large in the direction of the former. In considering the question before us, it is difficult to resist the cogency of this uniform practice, during the period mentioned, as a factor in the case. It was competent for the company, under proper

circumstances, at any time to change its rule with respect to the future; but it could not affect vested rights acquired in the past, while a different rule prevailed."}

[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission. 4 Bigelow, Ins. Cas. 665, contains only a partial report.}

[2] {Affirmed in 95 U. S. 269.}