

Case No. 5,649. GRACE ET AL. V. AMERICAN CENT. INS. CO.

[7 Reporter, 388;¹ 8 Ins. Law J. 95.]

Circuit Court, E. D. New York.

Oct., 1878.²

INSURANCE—OPTION TO CANCEL—NOTICE BY AGENT.

Where a policy authorized the company to terminate it at any time by giving notice of cancellation: *Held*, that a statement made by the agent of the company, that upon return of the policy he would cancel it, or a mere wish expressed to have it cancelled, was not a sufficient notice of cancellation; but if the agent by words or acts conveyed to the insured a knowledge of a cancellation at the time, there was a sufficient notice.

Action [by William R. Grace and others against the American Central Insurance Company of St Louis] on a policy of insurance for loss by fire. The policy contained a clause authorizing the company to terminate the policy at any time by notice of cancellation. A written notice was not required, nor was it necessary that the policy should be returned in order to effect a cancellation. The question in the case was one of notice.

W. Britton, for plaintiffs.

G. W. Parsons, for defendants.

BENEDICT, District Judge (charging jury). By this contract the parties have agreed that a notice of cancellation shall put an end to it. The question of fact is, whether there was notice of the cancelling of the policy given by Carroll, who acted for the company, to Anthony, who for the purposes of this question must be taken to be the agent of the plaintiffs. Counsel on the part of the plaintiffs insists that I should decide, as matter of law, that there was no notice given; but it seems to me that it is proper for the jury to consider what was said and done by Mr. Carroll and Mr. Anthony in regard to cancelling the policy, and say as a matter of fact whether or no Mr. Carroll gave Mr. Anthony notice that that was the end of that policy. If you should come to the conclusion that what Mr. Carroll said amounted to this, that upon returning the policy he would cancel it, then that would not be a notice of cancellation sufficient to terminate the contract. Cancellation can be effected without returning the policy, but if all that Mr. Carroll did was to express a wish to have the policy cancelled, that would not be cancelling the policy. The question is, whether he did or said what conveyed to Anthony knowledge of a cancellation of the policy by him at that time. If he gave such notice, then the defendants are entitled to a verdict. If he did not, then the plaintiffs are entitled to a verdict.

[The jury rendered a verdict for the defendants, and the plaintiffs moved for a new trial, which was denied. Case No. 5,648. The judgment of the circuit court was reversed in 109 U. S. 278, 3 Sup. Ct. 207.]

¹ [Reprinted from 7 Reporter, 388. by permission.]

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² [For subsequent proceedings in supreme court, see note at end of case.]