

Case No. 7,015.

IN RE INDEPENDENCE INS. CO.
EX PARTE DERRY MILLS.

{7 Am. Law Rev. (1872) 573.}

District Court, D. Massachusetts.

FIRE INSURANCE—RETURN PREMIUM—HOW RECKONED.

{A policy contained a stipulation that the insured might surrender it at any time, and that thereupon the company would retain the customary short time rates of premium for each month entered upon. It was shown that a tariff of short time rates was in general use. *Held*, that the meaning of the stipulation was that, if the insured surrendered his policy during the year, he should allow the company to retain such premium as would have been payable according to the above rates if he had originally insured for the time during which he had actually been insured.]

In bankruptcy.

Before LOWELL, District Judge.

Petition for the allowance of a claim for a return premium. The Derry Mills held three policies issued by the Independence Insurance Company, each for one year. They surrendered the policies during the year and before the bankruptcy of the company. The policies contained a stipulation that the insured might surrender them at any time, and that thereupon the company should retain the customary short time rates of premium for each month entered upon before the surrender. It was proved that a tariff of premiums known as short time rates was in general use in Boston, which fixed the amount to be paid for any time short of a year at a certain proportion of the yearly premium. For instance, the charge for one month was twenty per cent of a yearly premium, for two months thirty per cent, and so on up to eleven months, which was ninety-five per cent. Two of these policies had been for eight months and twelve days, and the third for five months and eleven days before they were surrendered. The insured had proved a claim for a return premium reckoned on a basis of simple proportion of time, charging themselves with so much premium as the time their policies had run bore to the whole year.

The question now was whether this claim should stand in full or be diminished. The judge held that the meaning of the stipulation was that if the insured surrendered his

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policy during the year he should allow the company to retain such premium as should have been payable according to the above-mentioned tariff, if he had originally insured for the time during which he had actually been insured, counting a month which had been begun as a whole month. Thus, on two of the policies he must allow the short time rate for nine months, and in the other, the rate according to that table, for six months, and that he might move for the difference between the sum thus ascertained and the amount of premiums originally paid by him in advance. By this calculation it appeared that the debt originally proved by the Derry Mills must be diminished about one-half.