Case No. 7,453.

# JONES v. AETNA INS. CO.
# SAME v. INS. CO. OF NORTH AMERICA.

{7 Reporter, 644;[1] 19 Alb. Law J. 522; 8 Ins. Law J. 415.}

Circuit Court, D. Massachusetts. April 22, 1879.

INSURANCE—GENERAL AGENT WAIVING CASH PREMIUM—AGENT KEEPING ACCOUNT CURRENT—AGENT CHARGING HIS PERSONAL CREDITOR WITH PREMIUM.

1. A general agent of an insurance company may waive the condition of the policy for a cash premium. He may give credit for the premium.
2. An insurance agent may keep an account current with his company, and he may therein charge himself with any or all premiums.
3. In such case the agent may charge his personal creditor with the amount of his premium, and credit the company as against himself.

These cases were tried together. They were brought upon an oral promise to insure, which promise was denied by the defendants. The agent, who made the insurance, one Hyde, had been acting for these companies for many years and was a general agent intrusted with policies signed in blank, and he made such contracts of insurance as he deemed expedient and for the interest of the companies. He testified, among other things, that he was in the habit of giving credit to the various persons whom he insured, and that he settled a monthly account with the companies, charging himself with all the premiums whether he had collected them or not. The plaintiff's testimony about the premiums was that Mr. Hyde, the agent, owed him for beef, and that they agreed that Hyde should send in his account for premiums, and if there was a balance due from the plaintiff he should pay it in money. The defendant contended that such a contract, if made, was void upon its face as an attempt to pay the agent's debt with the principal's insurance. The Judge ruled and instructed the jury upon this point that, while the defendant's position was a sound one, in the general law of principal and agent, an exception has been admitted in the law of insurance, and that, if the agent had agreed to give credit to the insured and himself to become the debtor to the company, the contract of insurance would not be rendered void by the fact that the agent had agreed to receive a credit on his own account instead of money for the premiums. The verdict was for the plaintiff, and a motion for a new trial was made by defendants. The ruling of the court chiefly objected to was that concerning the payment of premiums.

C. Allen, for plaintiff.

H. G. Parker and J. D. Bryant, for the different defendants.

LOWELL, Circuit Judge. Upon a review of the point, aided by the able and learned arguments on both sides, I am unable to see that the ruling was wrong. There was no

question of actual fraud, or of the insolvency of either the agent or the plaintiff, and the decisions, it seems to me, make out such an exception as I referred to in the ruling. In certain classes of mercantile agencies the law founded originally in usage permits the agent to keep an account current with both sides and to settle with one of them by an offset, such as was agreed on in this case. Stewart v. Aberdein, 4 Mees. & W. 211; Catterall v. Hindle, L. R. 2 C. P. 368, 370. The power of insurance agents to make a contract of this sort is recognized in Chickering v. Globe Mut. Life Ins. Co., 116 Mass. 321, which illustrates the difference between insurance agents and partners in the point under discussion. Mississippi Valley Life Ins. Co. v. Neyland, 9 Bush, 430; Bouton v. American Mut Life Ins. Co., 25 Conn. 542; Post v. Aetna Ins. Co., 43 Barb. 351. There are many cases in the supreme court as well as other courts which establish the general proposition of the plaintiff, that one who is given the powers which this agent

had is a general agent, and may waive the condition for a cash premium. Insurance Co. v. Colt, 20 Wall. {87 U. S.} 560; Angell v. Hartford Fire Ins. Co., 59 N. Y. 171; Hoffman v. Hancock Mut. Life Ins. Co., 92 U. S. 161. Motion for new trial denied.

[1] {Reprinted from 7 Reporter, 644, by permission.}