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WITNESSES FOR PLAINTIFFS.

WITNESSES FOR DEFENDANT.

PLAINTIFFS' EXHIBITS.

DEFENDANT'S EXHIBITS.

Notice of Appeal.

Filed June 27, 1930.

New Jersey Supreme Court.

PASSAIC COUNTY.

J. H. PEARSON and C. P. PEARSON, JR., Plaintiffs, vs. GENERAL CASUALTY AND SURETY COMPANY, Defendant.	Action at Law. Notice of Appeal.

To: HARLEY, COX and WALBURG, ESQS., Attorneys of Defendant:

Sirs:

Please Take Notice that the plaintiffs do hereby appeal to the New Jersey Court of Errors and Appeals in the last resort in all causes from the whole and every part of the final judgment entered in the above entitled cause, in favor of the defendant and against the plaintiffs.

Dated: June 24th, 1930.

Respectfully yours,

FEDER & RINZLER,
Attorneys of Plaintiffs.

Service of the within instrument is hereby acknowledged this 25th day of June, 1930.

HARLEY, COX & WALBURG,
Attorneys of Def.

Grounds of Appeal.

Filed June 27, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

J. H. Pearson and C. P. Pearson, Jr., Plaintiffs-Appellants,	Action at Law. On Appeal.
vs.	
General Casualty and Surety Company, Defendant-Appellee.	Grounds of Appeal.

To: Harley, Cox & Walburg, Esqs., Attorneys of Defendants-Appellees:

Sirs:

Please Take Notice that the plaintiffs-appellants assign the following grounds of appeal on their appeal to the Court of Erros and Appeals of New Jersey from the whole and every part of the final judgment entered in this cause:

1. The trial court erred in directing a verdict of no cause of action in favor of the defendant-appelee and against the plaintiffs-appellants.

2. The trial court erred in not submitting the cause to the jury for their determination, it being a question of fact for a jury to decide.

Dated: June 24th, 1930.

FEDER & RINZLER,
Attorneys of Plaintiffs-Appellants.

Service of within instrument acknowledged this 25th day of June, 1930.

HARLEY, COX & WALBURG,
Attorneys of Defendant.

Complaint.

Filed September 30, 1929.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

J. H. PEARSON and C. P. PEARSON, JR., Plaintiffs, vs. GENERAL CASUALTY AND SURETY COMPANY, 36 Clinton St., Newark, N. J. Defendant.	Action at Law. Complaint.

Plaintiffs residing in the City of Passaic, County of Passaic and State of New Jersey, say that:

1. On March 8th, 1929, the defendant company was engaged in the issuing of insurance policies indemnifying people against all loss, pilferage or injury to automobiles, such as resulting in collision or accident.

2. Said defendant company for a premium paid to it by the plaintiffs herein issued Policy No. A 64833 and amongst other things agreed as follows:

"To insure the Assured against actual loss of or damage to any automobile described in said Declarations, including its operating equipment and tires, if caused solely by accidental collision with another object, or by upset, excluding however, damage to tires unless other material damage to the automobile is sustained and excluding also damage or destruction by fire from any cause whatsoever. The total damage to the insured automobile resulting from any one accident or collision shall be considered in the aggregate as constituting one claim, and from the total amount so determined there shall be deducted the amount stated to be deductible in Declaration 7, and the Company shall be liable for loss or damage in excess of the deductible amount only.

3. On the 19th day of July, 1929, the automobile of said plaintiffs, to wit, a Buick Sedan was totally demolished by reason of an accident occurring to it, resulting in damages to the plaintiffs in the sum of Two Thousand ($2,000.00) Dollars.

4. Plaintiffs have complied in all respects with all the terms, conditions and provisions of said policy and although due demand has been made for the payment of the aforesaid sum, defendant has failed and refused and still fails and refuses to pay the whole or any part thereof.

Wherefore plaintiffs demand damages in the sum of Two Thousand ($2,000.00) Dollars, together with costs of suit.

FEDER & RINZLER,
Attorney of Plaintiffs.

Answer.

Filed September 30, 1929.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

J. H. PEARSON and C. P. PEARSON, JR., Plaintiffs, vs. GENERAL CASUALTY AND SURETY COMPANY, Defendant.	Action at Law. Answer.

Defendant, General Casualty and Surety Co., answering the plaintiffs' complaint, says that:

1. It denies the allegations of paragraphs one, three and four.

2. It admits the allegations of paragraph two.

FIRST SEPARATE AND DISTINCT DEFENSE.

1. The policy of insurance referred to in the plaintiffs' complaint provided, among other things, the condition I-Cancellation: "This policy may be cancelled at any time by either of the parties upon written notice to the other party, stating when thereafter cancellation shall be effective and the date of cancellation shall then be the end of the policy period. If cancelled by the Assured, the Company shall receive or retain the short rate premium calculated according to the table or short rates printed hereon. If cancelled by the Company, the Company shall be entitled to the earn-

ed premium pro rata. Notice of cancellation in writing, mailed to or delivered at the address of the Assured as given herein, shall be a sufficient notice from the Company. The check of the Company, or of its duly authorized agent, or representative, may be similarly mailed or delivered in satisfaction of any unearned premium, otherwise, unearned premium shall be payable on demand."

2. On or about the 10th day of June, 1929, the defendant company sent a notice by registered mail, to the plaintiffs at the address given in their policy, notifying the plaintiffs that the policy would be cancelled as of June 15th, 1929, at 12:01 P. M., standard time.

3. Thereafter and on the 15th day of June, 1929 at 12:01 P. M., standard time, the policy of the defendant company issued to the plaintiffs was cancelled by the defendant company in accordance with the notice sent to the plaintiffs as set out above.

4. There was no policy of insurance in effect with the defendant company insuring the plaintiffs against the loss described in the plaintiffs' complaint at the time of the alleged accident..

HARLEY, COX & WALBURG,
Attorneys for Defendant.

Reply.

Filed October 17, 1929.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

J. H. PEARSON and C. P. PEARSON, JR., Plaintiffs, vs. GENERAL CASUALTY AND SURETY COMPANY, Defendant.	Action at Law. Reply.

Plaintiffs, replying to the answer filed by the defendant in the above entitled cause, say that:

AS TO FIRST SEPARATE AND DISTINCT DEFENSE.

1. Plaintiffs deny each and every allegation contained therein.

2. Plaintiffs deny each and every allegation contained therein.

3. Plaintiffs deny each and every allegation contained therein.

4. Plaintiffs deny each and every allegation contained therein.

FEDER & RINZLER,
Attorneys for Plaintiffs.

Testimony.

NEW JERSEY SUPREME COURT.

PASSAIC CIRCUIT.

J. H. PEARSON and C. P. PEARSON, JR.,
Plaintiffs,
vs.
GENERAL CASUALTY AND SURETY COMPANY,
Defendant.
At Law.

Paterson, N. J., June 2, 1930.

Before HON. WILLIAM B. MACKAY, Judge, and a Jury.

APPEARANCES:
For the Plaintiffs: FEBER & RINZLER, ESQS.
For the Defendant: HARLEY, COX & WALBURG, ESQS., by JOHN J. FRANCIS, ESQ.

(A jury was called and sworn and counsel for the respective parties opened to the jury.)

JULIAN H. PEARSON, sworn.

Direct-examination by Mr. Feder:

Q. Mr. Pearson, you are one of the plaintiffs in this case? A. Yes, sir.

Q. Were you the owner of an automobile in 1929? A. Yes, sir.

Q. What kind of an automobile? A. Well, my brother and myself owned a 1929 Buick brougham.

Q. Where did you purchase this automobile? A. From the Bergen Auto Company.

Q. Was it a new car when purchased? A. Yes.

Q. What did you pay for it? A. $2,135.

Q. Do you recall the exact time when this was bought? A. Well, it was about the second week in August, I think, when the new 29's came out, as soon as we could get delivery.

Q. In what year? A. In '29, when the 29's came out. That was in '28.

Q. Now, then, your business is what? A. Carpenter.

Q. Did this car subsequently become involved in an accident? A. Yes, sir.

Q. Where? A. In Wayne Township.

Q. Under what circumstances? A. Well, this car was wrecked on the Pompton Turnpike; it ran into a culvert, was crowded off the road by another car was the story that was told to me.

Q. You were not there? A. No, I was not in the car.

Mr. Feder: Is there any denial about the accident?

Mr. Francis: No; we admit it was involved in an accident. We do not know to what extent it was damaged.

Q. Were you able, subsequent to the injury to this car, to use it or operate it? A. No, it was beyond repair, so they said.

Q. Where was the car taken?

Mr. Francis: May it please the Court, I ask that the auto was beyond repair be stricken out.

The Court: Yes.

Q. Well, subsequent to this accident were you able at any time after that to operate this car? A. No.

Q. Where was it taken, if anywhere? A. It was taken to a garage at Mountainview.

Q. Then subsequent to that where was it taken? A. I reported the accident to Mr. Breslin, the one that carried the policy, and he ordered me to have the car—

Mr. Francis: I object to that, if the Court please.

The Court: Yes.

Q. Now, wait a minute. Just tell us where it was taken after this Mountain View garage? A. To the Bergen Auto Company.

Q. Where is the Bergen Auto Company? A. In Passaic, New Jersey.

Q. Who was the gentleman in the Bergen Auto Company with whom you dealt respecting the purchase of this car? A. Well, Mr. Easter.

Q. Is he in court? A. Yes, he is present.

Q. Is that the man that you bought the car from as the representative of the Bergen Auto Company? A. I wouldn't say that. Mr. Easter was the manager, sales manager for the company. We purchased the car from a salesman.

Q. Under him? A. Under Mr. Easter.

Q. Now, then, did you personally issue any checks to the payment of a premium on this policy of insurance issued by the General Casualty and Surety Company? A. Yes.

Mr. Feder: Counsel consents, if your Hon-

or please, to the offer of an insurance policy bearing number A-64833 issued by the General Casualty and Surety Company, issued to J. H. Pearson and C. P. Pearson, Junior, 168 Brook Avenue, Passaic, on March 8, 1929, to March 8, 1930, and covering a sedan 1920, factory numbers M-2296083, Buick, MD1-51-29, S-2171164. Any objection?

Mr. Francis: We have no objection to this, Mr. Feder.

(Policy of insurance marked Exhibit P-1.)

Q. Did you ever receive the return of any part of the premium that you paid for this policy, which is offered in evidence as Exhibit P-1?

Mr. Francis: I object.

A. No, sir.

Mr. Francis: I object on the ground there is no testimony in the case as yet that the premium was paid.

The Court: Did he testify to that?

Q. Did you pay the premium? A. Yes, sir.

Q. Was this premium or any part of it ever returned to you? A. No, sir.

Cross-examination by Mr. Francis:

Q. Where do you live now, Mr. Pearson? A. 153 Marietta Avenue, Passaic.

Q. Where did you live at the time this policy was issued? A. I lived 168 Main Avenue.

Q. Were you living there at the time this accident happened? A. Yes.

Q. Were you living there at the time this poli-

cy was issued? A. I don't know whether—I wouldn't say. I think I was on Brook Avenue then. Isn't the policy made out to Brook Avenue?

Q. Yes, Brook Avenue, Passaic. That is where you were living at the time this policy was issued? A. Yes.

Q. How long did you live there after the policy was issued? A. I wouldn't like to say. I don't remember the date I moved from there. That is where my brother was living.

Q. Can you tell us approximately how long you lived there after the policy was issued? A. No; my brother was living there then, and I couldn't say exactly the time I left; but it wasn't two blocks—I never moved two blocks away from that address.

Q. Are you J. H. or C. P.? A. J. H.

Q. You are J. H., and Martha W. Pearson is your wife or your brother's wife? A. My brother's wife.

Q. He is the one who lived on Brook Avenue? A. On Brook Avenue.

Q. You were living with him at the time this policy was issued? A. Yes, I was there.

Q. What was the premium on this policy? A. Well, I wouldn't like to say offhanded; I think you have checks there showing what was paid and the receipt.

Q. What was the amount of the premium that you paid? A. What was the amount I paid?

Q. Yes. A. Well, the premium was paid—we had a policy on a car before that.

Q. No; I merely asked you what was the amount of the premium on this policy. A. May I see the check you have which is signed by my name?

(Paper produced.)

A. I gave a check on March 16, 1929, of $26.85. We had a return from a previous policy we had on another car that we had and transferred, and we got the premium back of—haven't you a receipt there from H. B. Clark? I would like to see the receipt to see the amount that was refunded.

Q. Is the payment of this premium represented by those checks that you have? A. Yes.

Q. Well, can't you tell us what the amount of each check is? A. Well, these checks were paid to H. B. Clark and we have the checks, cancelled checks, of H. B. Clark paid for the policy. The amount of it is $130.20.

Q. The amount of your checks which you say went to pay this premium— A. $130.20.

Q. One check? A. Two checks.

Q. What are the amounts of each? A. The amount is $73.15 and $66.25. Just a moment on that. Let me get that right, now. (Examines papers.) We got a refund of $52.55 for our other policy; my brother gave a check of $56.80 and I gave a check of $26.85.

Q. Both of those checks are drawn to H. B. Clark? A. H. B. Clark, and here is the checks that H. B.—

Q. Just a minute. H. B. Clark is the insurance broker, is he, who paid—who procured this insurance policy for you? A. Yes, sir.

Q. Why did you issue two checks for this premium instead of one? A. For the simple reason my brother and myself owned the car together, and we had made the amount out.

Q. The premium on this policy was $130.20, wasn't it? A. Yes, sir; it is on the receipt.

Q. Why did you issue your check for $26.85 and your brother for $56.80, both to Mr. Clark? A. Maybe I didn't have enough money in the bank to pay my part and my brother put that additional amount on it.

Q. You are sure that the refund that you obtained on that other policy was $52.55? A. Well, it was enough to make up the policy. We have the cancelled checks.

Q. Are you sure the refund on the other policy was $52.55? A. I would not say to the exact penny.

Q. Didn't you pay this premium to the exact penny? A. Yes, sir.

Q. Now, this policy that was concelled, that you mentioned, was in the National Casualty Company, wasn't it? A. I couldn't say offhand. I haven't the policy.

Q. Don't you remember what company your policy was in before this one? A. I do not.

Q. That policy was cancelled for non-payment of premium, wasn't it? A. I could not say.

Q. Don't you know whether or not it was cancelled for non-payment of premium? A. Not that I know. It was cancelled for—not that policy on that car. We had a refund. We had a check on a refund.

Q. Didn't you say some time ago that the refund on this National Casualty policy amounted to $73.15? A. I did not state what company it was or anything of that kind.

Q. You are not C. P. Pearson, are you? A. No, I am not. I am J. H.

Q. This refund that you speak of from the National Casualty Company, did you see the check

that came back from that company which you say constituted a refund on the first policy? A. A refund on the first policy? Well, I wouldn't say for sure, but as well as I remember we gave Clark that check and the balance that was in our checks to make up the amount.

Q. Then, you did see a check from the National Casualty Company? A. No, I did not say for positive.

Q. You don't know what the amount of that check was? A. No, I do not. We paid—that is the receipt for what we paid for this policy, $130.-20.

Q. Those two checks that you have there, one for fifty-six dollars and some cents and one for $26 are both drawn to your broker, Clark? A. Yes.

Q. What Clark did with that money you don't know, do you? A. Yes, sir.

Q. Of your own knowledge? A. Yes; we have the cancelled—

Q. Just a minute. Did you see Clark turn that money over to anybody? A. No, sir.

Q. So that when you say Clark turned that over to somebody else, that is information you have obtained from Clark, isn't it? A. Well, the information—

Q. Isn't that right? Information that you obtained from Clark? A. It is the cancelled checks made out payable for Pearsons' policy.

Q. Wasn't that information you obtained from Clark? A. That is was paid for our policy?

The Court: No; as to Clark paying it over to the company?

The Witness: Well, yes. We received our policy.

The Court: Well, you got that from Clark?

The Witness: No, sir; it came through this broker or whoever it was from West New York. We were taking a policy out through Clark, and Clark discontinued carrying the policy and he turned us over to the General Casualty or whichever company it is that we are having trouble with now, and he made out two checks payable to this broker that we got our policy through in full, and it shows two checks, "Pearsons' policy" written on the two cancelled checks, and we secured from him a long time—he had to look over all his checks to find out he really paid for our policy—and every time we got received word of cancellation and we called this broker from West New York that give us this policy and he came over and told us there was a mistake in names.

Mr. Francis: I object to that.

Mr. Feder: It is in answer to a question.

The Court: No; I did not ask him about that. He just started talking.

By Mr. Francis:

Q. Mr. Pearson, you received a cancellation notice from this policy, did you not? A. Yes, sir, we received a cancellation.

Q. How many cancellation notices did you receive? A. I never saw but one.

Q. Did you examine that notice? A. Yes, that notice, and we had a reinstatement of the cancellation.

Q. Just a minute. I ask that that be stricken out as not responsive, sir.

The Court: Strike it out.

Q. Did you look at that cancellation notice? A Yes.

Mr. Francis: May I have that, Mr. Feder?

Mr. Feder: Yes, any one of them. Which one do you want? There are three of them. There was A. J. Doherty, General Casualty agent.

Mr. Francis: I will take them all, the three of them.

Mr. Feder: Now, this bill which has been used and that is mentioned or referred to by counsel, I think ought to be marked Exhibit P-2.

Mr. Francis: I have no objection.

(Paper marked Exhibit P-2.)

By Mr. Francis:

Q. Is this the cancellation notice that you received from the company? (Handing witness a paper.) A. Is this the first cancellation?

Q. Yes, that is the first. A. Yes, sir. This is the one I saw.

Q. And this cancellation was to become effective the 15th of May, 1929, was it not? A. This is the first cancellation?

Q. Can't you look at that notice and answer my question?

Mr. Feder: Well, now, give him a chance. He wants to be fair with everybody.

The Court: Doesn't the notice say so?

Mr. Feder: Yes, sure it does.

The Court: Why ask him?

A. Yes, sir; that is the cancellation.

Mr. Francis: I ask that it be marked for identification.

Mr. Feder: It may be marked in evidence.

Mr. Francis: All right.

(Paper marked Exhibit D-1.)

Q. After that cancellation notice was received you recieved this reinstatement notice, did you not? A. Yes, sir.

Mr. Francis: Want that to go in?

Mr. Feder: Yes.

(Paper marked Exhibit D-2.)

The Court: When was that?

Mr. Francis: This cancellation notice is dated May 16, 1929, and reinstated as of May 15, 1929.

Q. Now, after that reinstatement notice you received the second cancellation notice, dated June 10, did you not? A. May have come, but I don't remember seeing it.

Q. Did you ever see this statement before that you are looking at now? A. Yes, sir.

Q. Did you see it in June, 1929? A. I saw this cancellation after the accident had happened.

Q. Who showed it to you then? A. We found it when we—at the house.

Q. When you say "we found it at the house," who do you mean? A. Well, it was at my brother's house.

Q. Who do you mean by "we"? A. Well, I guess my brother.

Q. Were you with him when he found it at the

house? A. No; I was not with him when he found it. He showed it to me.

Q. He showed it to you when? A. Well, I couldn't say exactly the date.

Q. Was it before or after the accident? A. It was after the accident.

Q. Do you know where he got it from? A. I don't know.

Q. Do you know the signature of his wife, Martha W. Pearson? That is her signature? A. I couldn't say whether that is her signature. No, I couldn't say whether that is her signature.

Mr. Francis: Do you want this second statement to go in, Mr. Feder?

Mr. Feder: Every one can go in.

(Paper marked Exhibit D-3.)

Q. This second cancellation notice became effective as of June 15, 1929, did it not? A. That is what it reads.

Q. Now, what was the date of this accident? A. It was on the 19th or 21st.

Q. 19th or 21st of July, 1929? A. Yes, sir.

The Court: July.

Q. July 19, 1929; that is right, isn't it? A. I think it was the 19th or 21st.

Q. 19th, 20th, or 21st of July? A. Yes, sir.

Q. That is all.

Redirect-examination by Mr. Feder:

Q. Now, Mr. Pearson, you say the policy came by mail from West New York. Do you recall who

shipped that policy, who sent it to you? A. Morris Beshlian, I think it was.

Q. Who was this Morris Beshlian? A. He was the one that we got the policy through.

Q. Is that the man whose stamp is on this policy of the General Casualty and Surety Company, Exhibit P-1? A. Yes, sir.

Q. Now, then, in respect to any discussions subsequent to the receipt of these notices sent by Mr. Doherty on the stationery of General Casualty and Surety Company, who did you take the matters up with with respect to these notices? A. Well, we took them up with Morris Beshlian.

Q. Then, in turn whom was the matter referred to, if anybody?

(Objected to. Question withdrawn.)

Q. These premiums that you refer to, the payment of the refund, who was that taken up with? A. H. B. Clark.

Q. As the result of your calculating the refund and payments, was that the receipt that was given to you, marked P-2, on the stationery of Morris Beshlian? A. Yes, sir.

Q. That is all.

Mr. Feder: Now, these checks ought to be marked in a batch, I guess. If your Honor please, counsel examined the witness and called for checks. I would ask that they be marked in evidence.

Mr. Francis: If your Honor please, I have no objection to the two checks which this plaintiff says that he and his brother drew being marked in evidence, but I object to the two checks which are signed by a man

named Clark and directed to, I don't know who is the payee, on the ground that they are hearsay, unless the man who drew them is produced to testify that he drew them.

Mr. Feder: The testimony is, your Honor, that Morris Beshlian is the man who has caused this policy to be issued for the General Casualty and Surety Company, and his name and stamp is attached to this written document. The checks that were made by H. B. Clark were made to this person who is in the testimony the one who caused the policy to be issued, and both of them endorsed by him. Now, then, it seems to me it is evidence, both on the theory that they were called for by the defendant in explanation of how the premiums were paid, and he is bound by the answers; and, secondly, that the checks were issued to this individual, who is the individual who caused this policy to be issued for the defendant. On that theory it seems to me it is evidential.

The Court: Who is Clark? I mean, is there any evidence as to who Clark is?

Mr. Feder: Yes; Clark is the man who had the policies issued through this man Morris Beshlian whose name is on this policy, and characterized by counsel as broker. So the connecting link in the evidence is that Clark, the maker of the check, explained by the witness to be the broker, made payable to Beshlian, the man whose name is on this policy and who caused the policy to be issued. That is the connection. And the other two checks are by the plaintiff direct.

The Court: I will admit the two checks.

I won't admit the other two as yet.

Mr. Feder: Which two?

The Court: The Pearson checks.

Mr. Feder: I ask an exception.

(Checks marked Exhibits P-3 and P-4.)

The Court: You are not in shape yet to produce them. You may produce evidence later.

STEWART R. EASTER, sworn.

Direct-examination by Mr. Feder:

Q. Mr. Easter, what is your general occupation? A. Salesman.

Q. Salesman of what? A. Salesman of the Bergen Auto Company, of Buick automobiles.

Q. Were you connected with that company in 1928? A. I was.

Q. Do you know Mr. Julian H. and Charles P. Pearson? A. I do.

Q. Did you have occasion to transact with them the sale of an automobile, Buick car, sedan, in 1928? A. I was in the sales—Ray Banks was salesman on the deal, but I was mixed up with it in an indirect way.

Q. Were you a superior man to Ray Banks? A. At that time.

Q. Do you know whether they purchased this car from the Bergen Automobile Company? A. They did.

Q. What model car was it? A. That was 1929, wasn't it?

Q. Do you know the price of that car when it was sold to them? A. That car delivered at

$2,120 and they had special equipment or I think they changed the lamps on her, which brought it up to about $2,135.

Q. Did you see that car subsequent to the sale in 1929, in the month of July? A. Yes.

Q. Did you see it in a damaged condition? A. No; the car was in very good condition then.

Q. When you saw it in 1929? A. You mean just before the accident?

Q. Do you know about the accident? A. About a week or so before.

Q. Where did you see the car? A. At our place.

Q. Under what circumstances did you see it at that time? A. Well, they came in for a change of oil and greasing and general checking over about every month or every few weeks.

Q. Did you personally supervise that? A. No, I did not.

Q. Did you see the car there at that time? A. I was talking to them, yes, and leaning up against the car at that time.

Q. Now, did you see it after that occasion, and if so, where? A. The next time I saw the car it was being towed into our service station.

Q. Was that in the same month? A. That was in July.

Q. Now, then, Mr. Easter, how many cars, Buick sedans of this model, I mean, did you dispose of or sell, rather, in your experience as general manager of the Bergen Auto Company? A. Well, shortly after that purchase I gave up the managership of the Passaic branch.

Q. Before that? A. We had just come out with that model. It was a new model when they purchased that car.

Q. You sold other cars, other than this Buick,

did you not, at the Bergen Auto? A. Yes.

Q. What, in your opinion, Mr. Easter, was the value, marketable value, of this car on the occasion you saw it just prior to the accident in July, 1929?

Mr. Francis: I object to that on the ground that the testimony of this witness clearly is that he stood there and talked to them while the car was physically present, but there is nothing to indicate that he made any examination of it or anything to show that by virtue of an examination he is qualified to testify to the value of that particular car.

The Court: I think that is so.

Mr. Feder: Well, I will put it this way:

Q. Did you notice the paint on the car, whether it was in good condition or not? A. It was in good condition.

Q. Did you have occasion, either that day or during that day, rather, to observe the mechanism of that car? A. No, I did not. That is not my line.

Q. Well, was it tested in any way in your presence on that day? A. Our chief mechanic was out at the car at the time.

Q. Were you present while he was testing? A. I was. I was there until Pearsons drove away.

Q. Were you there watching him inspect the car or make his different tests? A. I was there.

Q. Did you have occasion to see the motor of the car during the time he was making his tests? A. Yes, he had the hood raised.

Q. Did you, while watching him, make observation as to the condition of that car in general, as

to its motor and outside condition? A. I did just for this reason, that shortly afterwards, that is, on July 27, we were coming out with a new model, a 1930 model, and we knew that Pearson purchased a new car about every year, and for that reason I looked over and Pearsons asked me that day what we would give them for it on a 1930 model.

Mr. Feder: Now, is there any objection to the question?

Mr. Francis: No.

Q. Now, then, by virtue of that inspection you made and observation, what would you say was the marketable value of that car?

(Defendants counsel objects on the ground that the witness is not qualified to answer. Objection overruled; exception noted to defendant.)

(Question repeated by the reporter.)

A. I told Mr. Pearson at that time I thought we could get together with him on a new car at around $1,350 to $1,400, $1,450, possibly.

Q. Now, then, did you see the car subsequent to that, after you told Mr. Pearson what you would give him? A. Next time I saw the car it was being towed into the place.

Q. Did you see it at your place? A. At our place, yes, sir.

Q. Now, what was the marketable value of the car at the time you saw it? A. Our appraiser gave him a figure on it of $75.

Mr. Francis: I object to that and ask that it be stricken out.

The Court: Strike it out.

Q. Don't tell us what your appraiser did. Tell us what you considered the value of the car at that time.

The Court: Your opinion.

Q. Did you agree with your appraiser? Did you see it?

Mr. Francis: I object.

The Court: No.

Q. Did you see the car? A. Yes.

Q. What condition was it in? A. It was a total wreck.

Q. Now, then, what was the marketable value of the car at the time you saw it in a totally wrecked condition? A. Well, not more than 75.

Cross-examination by Mr. Francis:

Q. Mr. Easter, there is a difference between trade-in value and value in the open market, is there not? A. Not with Buick.

Q. What is that? A. Not with a Buick.

Q. When a patron of yours who owns a Buick wants to buy a new Buick, you give him a greater trade-in value than you could get for the car if you went out in the open market and sold it? A. We give the customer what the car will bring in the market.

Q. Do you mean to say this car which you saw before the accident was worth $1,350 in the open market? A. It was worth $1,350 in the open market.

Q. Do you know how many miles were on the

speedometer? A. If I am not mistaken, about 32,000.

Q. 32,000? A. Along in there.

Q. And the car was about how old then? A. It was then eleven months old.

Q. Eleven months old? A. Yes.

Q. There is a twenty-five per cent. depreciation as soon as a car is driven around the block, is there not? A. Then or after six months, yes.

Q. Then or after six months? A. Yes.

Q. What was the purchase price of this car? A. It was $2,135.

Q. Does that include—what is the actual purchase price of the car less freight and finance charges and so forth?

(Question objected to. Question withdrawn.)

Q. The extent of your inspection consisted in just standing alongside of the car and looking at it? A. I walked around the car and looked it over.

Q. And you learned that there were 32,000 miles on the speedometer? A. Naturally. We usually check those things up.

Q. Does the mileage on the car affect its value? A. Mileage does affect the value, but if the condition is right the mileage does not have any great affect on it.

Q. So that if a car had gone 32,000 miles and it is in good condition, it is worth as much as one that has gone 1,500 miles? A. Well, I wouldn't say 1,500 miles; I would say 15,000 miles.

Q. Then, mileage does make some difference in the value of the car? A. It makes a slight difference.

Q. Makes a slight difference? A. Yes, sir.

Q. No greater than that? A. Not very great, no.

Q. You think this car was worth $1,350 with 32,000 miles on it? A. We would have taken it in at that figure.

Q. You would have taken it in? A. Yes, and sold it at that figure.

Q. And gotten that much in the open market? A. Yes.

CHARLES P. PEARSON, sworn.

Direct-examination by Mr. Feder:

Q. Mr. Pearson, where do you live? A. I live now 153 Marietta Avenue, Passaic.

Q. Where did you live in March, 1929? A. 168 Brook Avenue, Passaic.

Q. Did you in March, 1929, have a policy issued to yourself by the General Casualty and Surety Company? A. Yes.

Q. And to your brother? A. Yes.

Q. Covering an automobile, Buick sedan? A. Yes.

Q. Who else was the owner of this automobile aside from yourself? A. My brother.

Q. Now, then, who did you go to regarding the obtaining of this policy? A. We saw Mr. Clark first.

Q. Who was Mr. Clark? A. Mr. Clark was an insurance broker.

Q. Talk louder. A. Mr. Clark was an insurance broker who we had dealt with before.

Q. Where are his offices? A. Well, in his home.

Q. Where is that? A. Westervelt Place, I think it is 72.

Q. Passaic? A. Passaic.

Q. Now, then, after you gave him the order for the policy did you pay for it? A. Yes, sir.

Q. How did you pay for it? A. My brother gave a check and I gave a check and there was some on another policy on the other car that we had refund to make the amount up.

Q. Now, this policy marked Exhibit P-1, how did that come to you? A. Came through the mail, sir.

Q. Mailed from where, do you recall? A. West New York, as well as I remember.

Q. Now, then, I call your attention to the name on this policy or slip here, Morris Beshlian, 8 Twentieth Street, West New York. Do you know this man? A. Yes, sir.

Q. Did you see this man and speak to him concerning this policy? A. Yes.

Q. When did you receive this, marked Exhibit P-2, dated April 1, 1928, Morris Beshlian, insurance, 8 Twentieth Street, 38864833 General Casualty, 130.20, paid, Beshlian? When did you receive that? A. I received that in my home.

Q. How did you receive it? A. Mr. Beshlian gave it to me himself.

Q. Now, then, after the policy was issued did you have an accident with this car? A. I did.

Q. Who was driving the car when the accident occurred? A. William Perry.

Q. Who was in the car with him? A. I was.

Q. Where was this accident? A. Wayne Township.

Q. Now, then, subsequent to the accident did

you get in touch with anyone about this policy for recovery of your damage? A. Yes, sir.

Q. Who did you speak to? A. Mr. Beshlian.

Q. And then after speaking to Mr. Beshlian who did you speak to? A. Mr. Doherty.

Q. Now, when you refer to Mr. Doherty, do you see him in the court-room today? A. Yes, sir.

Q. Where is he? A. Sitting right down there by this gentleman.

Q. Referring to the gentleman next left of counsel, Mr. Francis? A. Yes, with the glasses on.

Q. Do you know whether he is the same Mr. Doherty that forwarded you these notices of cancellation for non-payment of premium? And also reinstating the policy? A. Yes, sir, I judge he is the same man.

Q. Is he the same man? A. Yes.

Q. Now, then, how soon after this accident to your car did you speak to this Mr. A. J. Doherty of the General Casualty and Surety Company? A. The following week.

Q. Who was with you? A. Mr. Beshlian.

Q. Were you able to use this car again? A. No, sir.

Q. What, if anything, did Mr. Doherty say respecting the payment of the premium on this policy at the time you saw him?

Mr. Francis: I object, if the Court please, on the ground that there is no testimony to indicate that Mr. Doherty had any authority to bind the company.

The Court: I will permit it.

Mr. Francis: I ask an exception.

(Question repeated by the reporter.)

A. Well, Mr. Beshlian took me to Mr. Doherty's office and asked Mr. Doherty to bring out some papers and asked him was this policy in force. Mr. Doherty got the papers.

Mr. Francis: I object to anything that Mr. Beshlian said to Mr. Doherty, on the ground it is hearsay.

The Court: You were present?

The Witness: Yes, sir, also Mr. Perry.

Q. Go ahead.

Mr. Francis: I ask an exception.

A. Mr. Doherty brought in these papers with the pictures of the accident and Mr. Beshlian asked him was the policy such-and-such a number in force, and Mr. Doherty said yes. Mr. Doherty also offered to settle at eleven and a quarter—

Mr. Francis: I object and ask that it be stricken out.

The Court: You say, "Such-and-such a a number." What number?

The Witness: Well, the number of the policy.

Q. Was he referring to this policy marked Exhibit P-1? A. Yes, sir.

Mr. Francis: I ask the witness be insrtucted—

Mr. Feder: To be fair with counsel, I do not know whether your Honor wants me to ask the question quietly so that it does not prejudice the jury—I do not want to prejudice them in any way—and then your Honor can rule on my question. I am going

to ask a question which counsel, I know, may want to argue about, and I have prepared myself with legal argument, that I think is admissible, and I think your Honor can hear counsel.

Mr. Francis: I have no objection to the question being asked. For the present I move that the expression that Mr. Doherty offered to settle be stricken from the record.

The Court: I do not think it is responsive.

Q. He answered, you said, about the policy being in full force and effect? A. Yes.

Q. How long was that after the accident? A. The following week after the accident.

Q. Is this man Beshlian the same man whose name appears on the policy? A. Yes.

Mr. Francis: I object. Did your Honor rule on the application to strike out that?

The Court: Yes, I struck it out. I said it was not responsive.

Q. Did he, as a matter of fact, after that question take up with you the discussion of the way in which this accident happened and the damage to your automobile? Yes or no. A. Yes.

Mr. Francis: I object to that as leading.

The Court: No, I do not think it is leading.

Mr. Francis: I ask an exception.

Q. Did he at that time discuss with you the amount of the damage as he fixed the amount?

Mr. Francis: I object to the question as leading.

Q. Yes or no. A. Yes.

The Court: It is a little leading. You can ask what was said.

Mr. Feder: All right.

Q. What was said, is the question. Go ahead and answer that as fully as you want.

The Court: Regarding the damages.

Q. What did he say regarding the amount of the damages? A. Well, a total wreck, and he had ——

Mr. Francis: I object.

The Court: What did he say?

Mr. Francis: I object to the question on the ground that there is nothing in this case to indicate Mr. Doherty had any authority to speak concerning the question of damages.

The Court: Well, I presume those letters relate to the authority, don't they?

Mr. Francis: These letters relate to nothing other than cancellation of this policy for the non-payment of premiums. I object to any conversation had with Mr. Doherty relating to the damage to this car.

Mr. Feder: All right, if you want to argue that.

Q. Did he discuss with you about the car?

Mr. Francis: I object to that on the same ground, nothing to show Mr. Doherty had any authority to bind this company.

The Court: Stripped of all argument, what you are trying to do is to show this

man was the agent of the company and had the authority to bind them. I do not think you can do that that way. I will sustain the objection.

Mr. Feder: All right, your Honor. I ask an exception.

Q. Anyway, how long did you remain with Mr. Doherty at that time when you were there? A. About thirty minutes, I should judge.

Q. Was Mr. Beshlian present during that time? A. Yes, sir.

Q. Did he at that time say anything to you in respect to your failure to pay premiums? A. How is that?

Q. Did he say anything to you at that time in regard to any failure of yours or your brother to pay the premium on that policy? A. No, sir.

Q. Now, what, if anything, did he say to Mr. Beshlian and yourself regarding that notice of June 10?

Mr. Francis: If your Honor please, I object to that on the same ground.

Q. Which he wrote?

The Court: Who wrote it?

Mr. Feder: Mr. Doherty.

The Court: I will permit it.

Mr. Francis: I ask an exception.

A. Well, I called Mr. Beshlian up about the—

The Court: No.

Q. Tell us what Mr. Doherty said, Mr. Pearson, at that time? A. Mr. Doherty said the policy was in full force.

Q. All right. Take the witness.

Cross-examination by Mr. Francis:

Q. How long after the accident was the first time you talked to Mr. Doherty? A. The following week.

Q. The following week. You say that you paid the premium? A. Yes, my brother and I.

Q. And you drew two checks, your brother drew one and you drew one? A. Yes.

Q. Why were two checks drawn? A. Because we are in partnership with the car.

Q. Equal partnership? A. Yes.

Q. Why was his check $26 and yours $56? A. As he says his balance was low and I paid more than half of it.

Q. And those checks of yours and your brother were drawn to Mr. Clark, weren't they? A. Yes.

Q. He was the broker who placed the insurance for you? A. Through Mr. Beshlian, yes.

Q. You had a policy with the National Casualty Company before this one? A. I think it was the National; I am not sure, though.

Q. Why was that cancelled? A. That policy was on another car and we had it transferred to this car and I don't know why it was cancelled, but we got a refund of it of seventy-three dollars and some cents.

Q. $73.15? A. Yes.

Q. You turned all that refund over to Mr. Clark to pay this premium? A. No; all of that refund did not go to pay that premium.

Q. Well, how much of that refund went to pay this premium? A. Fifty-odd dollars, I forgot just exactly.

Q. How did the check come? Was it drawn to you or Mr. Clark? A. It was drawn to—I don't remember.

Q. Did you get any change from the check? A. No; we owed Mr. Clark some money previous to that.

Q. You owed him some money and you paid him out of this $73.15? A. That was paid and also there was enough left on the refund with our two checks to pay this twenty and some odd dollars on this.

Q. These two checks both drawn by you to Clark do not represent other debts to Mr. Clark by any chance? A. No, sir.

Mr. Feder: I object. He has been referring to these two checks.

Mr. Francis: I am referring to these two checks in evidence.

Q. Now, Mr. Pearson, you received this cancellation notice dated May 10, did you not? A. Yes, sir.

Q. And subsequently you received this reinstatement notice? A. Yes.

Q. And subsequently to that you received this second cancellation notice dated June 10? A. Yes, sir.

Q. Effective on June 15? A. Yes, sir.

Q. And that, of course, was before this accident happened, wasn't it? A. Yes, sir.

Q. And the date of the accident was July 19, 1929? A. Yes, sir.

Q. And this return receipt which I show you is signed by your wife, is it not? A. Yes, sir.

Mr. Francis: Want that to go into evidence, Mr. Feder?

Mr. Feder: I have no objection.

(Paper marked D-4.)

Q. Now, when you received this first cancellation notice did you take it up with Mr. Clark? A. Took it up with Mr. Beshlian.

Q. Beshlian? A. Yes.

Q. After that you received the reinstatement notice, did you not? A. Yes, sir.

Q. And subsequent to that you again received a cancellation notice? A. Yes, sir.

Plaintiff Rests.

MOTION FOR NON-SUIT.

Mr. Francis: May it please the Court, I desire to move for a non-suit at this time on behalf of the defendant General Casualty and Surety Company, on the ground that the evidence in the plaintiff's case discloses that the policy upon which this suit is predicated was cancelled June 15, 1929, over a month prior to the happening of this accident, and therefore there was no coverage extended under its terms; and, second, there has been no proof that the automobile which has been referred to as damaged in this case is the automobile covered by the particular policy.

The Court: I will deny the motion.

Mr. Francis: May I have an exception on both grounds?

The Court: Yes.

DEFENDANT'S TESTIMONY.

ALLEN J. DOHERTY, sworn.

Direct-examination by Mr. Francis:

Q. Mr. Doherty, are you connected with the General Casualty and Surety Company? A. I am.

Q. In what capacity? A. Branch manager.

Q. Of what office? A. Newark office.

Q. How long have you been connected with the company? A. About two and one-half years.

Q. Now, were you familiar with the policy which was issued by the company to J. H. Pearson and C. P. Pearson, Junior? A. Only to the extent that it was issued through the branch of which I am in charge.

Q. Did you issue this cancellation notice of that policy to the two plaintiffs? A. I had it issued.

Q. You had it issued. For what reason? A. Non-payment of premium.

Q. When you say you had it issued, whom did you instruct to issue it? A. One of my assistants.

Q. Did you subsequently instruct that assistant to issue a reinstatement notice? A. I did.

Q. Do you recollect why that reinstatement notice was issued? A. As I recall, it was a telephone call from Mr. Beshlian to the effect that the premium would be paid, that is after this first cancellation notice went out.

Q. Yes. A. That the premium would be paid, and to therefore send out a reinstatement, and we did.

Q. Is Mr. Beshlian an agent of the company? A. He was at that time.

Q. What were his powers as agent of the company?

(Objected to. Question withdrawn.)

Q. Who authorized Beshlian to work for the company?

Mr. Feder: I object to that unless he knows personally.

The Court: If he knows.

A. Yes. I did.

Q. What authority did you give him? A. Authority to solicit insurance for our company in the State of New Jersey.

By the Court:

Q. What authority did you have to give him that authority? A. My authority as manager of the Newark office of the company.

Q. So you were fully empowered to authorize him? A. Yes.

By Mr. Francis:

Q. His authority, then, was to solicit insurance for the company? A. Yes, sir.

Q. Did he have the authority to accept risks for the company? A. Only to this extent, to accept them and submit them for final acceptance or decline.

Q. At the time you sent out this first cancellation notice, had the premium been paid, according to your records? A. It had not.

Q. Now, after the reinstatement notice was sent out was the premium paid, according to your records? A. It was not.

Q. What did you do then? A. Cancelled it again.

Q. I show you a paper marked D-3 in evidence and ask you if that is the second cancellation no-

tice that you sent out. A. That is the one I caused to be sent out.

Q. That cancellation was to become effective on June 15, 1929? A. That is correct.

Q. Had the premium been paid at that time? A. It had not.

Q. Now, after June 15, 1929, did you have any conversation with Mr. C. P. Pearson, Junior? A. Not until some time subsequent to the accident which occurred on July 19.

Q. Can you give us any idea as to how long after the accident you talked with him? A. Ten days to two weeks.

Q. Ten days to two weeks. Have you, by virtue of your position as branch manager of this office, any authority to reinstate policies without permission from the home office?

Mr. Feder: I object to that. The record speaks for itself, and second, it would be a conclusion on his part.

The Court: I will sustain the objection.

Mr. Francis: I ask an exception.

Q. What are your powers with respect to cancellation and revival of policies after cancellation? A. Well, an agent is allowed—

The Court: No.

Q. No; your powers with respect to cancellation and renewal. A. Well, I cannot reinstate or carry any policy where the premium is unpaid over a period of sixty days.

Q. How do you determine whether the premium has been paid? A. Why, the company's books at the home office.

Q. Did your records in this particular case show that the premium had not been paid for— A. They do.

Mr. Feder: I object. The record speaks for itself.

Q. Had the premium been paid in this case?

Mr. Feder: I object. The records are the best evidence.

Q. Did you reinstate this policy after June 15, 1929? A. No, sir.

Q. Did you have any authority to reinstate this policy after June 15, 1929?

Mr. Feder: I object.

The Court: Sustain the objection.

Mr. Francis: I ask an exception.

Q. Will you tell us specifically just what your authority is respecting reinstatement of policies after cancellation?

Mr. Feder: I object on the ground it is repetition, in the first place, and secondly, it would be a conclusion on his part in stating what he things his authorities are. It is what we infer from what he does.

The Court: No; I will permit that.

(Question repeated by the reporter.)

A. They can be reinstated after the sixty-day period only upon payment of the premium to the company.

Q. When you say that, make that statement, do you mean that that is the only time that you have the authority to reinstate? A. That is the only time I have the authority to reinstate.

Mr. Feder: I object to that as very leading.

The Court: Yes.

Q. Have you authority on any other occasion or in other circumstance to reinstate policies? A. Only when they are within the sixty-day limit.

Q. I mean, outside of that period have you any authority to reinstate policies? A. No.

By the Court:

Q. Well, you could reinstate a policy within sixty days after you sent out a notice of cancellation? A. No; within sixty days of the effective date of the policy, that is, the beginning of the policy.

Q. Well, you reinstated this policy, didn't you? A. Yes; in May, I believe, which was within the sixty-day period. The policy was written in March.

Q. The policy was written March 8? A. Yes.

Q. And May 8 was sixty days? A. We run our sixty-day period from the—

Q. You sent a notice of cancellation on the 15th, didn't you? A. Yes, sir.

Q. That was more than sixty days from the date that the policy became effective, wasn't it? A. That is true.

Q. You sent a letter with your signature underneath the name of the company reinstating it, didn't you? A. Yes, sir. May I qualify that?

Q. No; your attorney will take care of you.

By Mr. Francis:

Q. From what day of the month do you compute the sixty-day period? A. From the 20th of the month. From the 20th of the month in which the business was written.

Q. Why do you do that?

Mr. Feder: I object. I don't know whether that is material, why he does things. It is not binding on us why he does things that way.

Mr. Francis: We are setting forth the practice of the company and the authority of this man to act.

Mr. Feder: It is not binding upon us.

The Court: What is the question?

Q. Well, you say you compute the sixty-day period from the 20th of the month?

The Court: Then it is not a sixty-day period, is it?

The Witness: Well, it is sixty days from the first of the month.

The Court: It is not the sixty-day period, then?

The Witness: That is true. No, it is not.

By Mr. Francis:

Q. Did you ever tell C. P. Pearson that the policy was in force? A. No, sir.

Q. Have you any authority to reinstate a policy which has been cancelled, orally?

Mr. Feder: I object to that.

The Court: That was cancelled orally?

Mr. Feder: It was not cancelled orally. That was what he asked.

Q. I said, has he any authority to reinstate a policy, which has been cancelled? A. Absolutely not.

Q. That is all.

Cross-examination by Mr. Feder:

Q. Mr. Doherty, you say that your branch office is in Newark, New Jersey, taking in this district, including Passaic County? A. Yes, sir.

Q. In other words, you are the general supervisor and manager of this General Casualty and Surety Company, the defendant in this case, covering Essex County and Passaic County? A. With certain limitations.

Q. I didn't ask you that. Covering these counties, I said.

Mr. Francis: I object.

Q. You are the general manager?

Mr. Francis: I object. The witness is entitled to say, "With limitations." We are entitled to put in the record what the limitations are. We are entitled to say they are limited powers.

The Court: He says, "Yes, with limitations."

Q. Now, you do recall speaking to Mr. Beshlian and Mr. Pearson subsequent to the accident to this Buick sedan? A. I remember them being in the office.

Q. You recall what? A. I remember them being in the office.

Q. How long did they stay in the office? A. Well, not very long.

Q. About an hour? A. Oh, I don't think it was that long.

Q. Three-quarters of an hour? A. Well, I didn't put a stop-watch on them; I don't know how long they were there. They may have been there

twenty minutes, twenty-five minutes, or half an hour.

Q. About a half an hour? A. Possibly.

Q. And this man Beshlian, you say, was an agent causing policies to be issued of this General Casualty and Surety Company of which you are manager? A. That is right.

Q. Where is this man Beshlian? A. I don't know.

Q. Well, didn't you try and find him?

Mr. Francis: I object to that as immaterial.

Mr. Feder: I withdraw the question.

Q. Is he in court today? A. I don't see him.

Q. Well, did you make an effort to bring him in court today?

Mr. Francis: I object to that as immaterial.

The Court: How is that material?

Mr. Feder: I will withdraw the question.

Q. Did you speak to Mr. Beshlian since the occasion you say he was at your office and you spent a half hour with him and Mr. Pearson regarding the subject-matter of this suit? A. Not that I remember.

Q. You know, Mr. Doherty, that this man Beshlian, your agent, embezzeled moneys belonging to that company, don't you? A. Yes.

Mr. Francis: I object to it as immaterial.

Q. And you know that this premium on this policy was paid to your agent, don't you? A. I do not.

Mr. Francis: I object.

The Court: He says he does not.

Q. Well, didn't you ever ask Mr. Beshlian that question? A. Only so far as his monthly statement was concerned, which may or may not have included this particular item.

Q. Oh, you don't know? A. That I don't know.

Q. I see.

By the Court:

Q. Did Beshlian have the right to collect the premiums and turn them over to you? A. Yes, if the premium was paid to him.

By Mr. Feder:

Q. You don't know whether in his monthly statements this premium was included or not, do you?

Mr. Francis: I object to that on the ground that the monthly statement is the best evidence of what it contains.

The Court: No. If he knows.

Q. Do you know whether this premium on this policy is included in Mr. Beshlian's statement or not? A. I don't know.

JOHN L. TOMASKO, sworn.

Direct-examination by Mr. Francis:

Q. Mr. Tomasko, are you connected with the General Casualty and Surety Company? A. I am, sir.

Q. In what capacity? A. I am the underwriter.

Q. In the underwriting department? A. Yes.

Q. In that department do you have charge of sending out cancellation notices for the company? A. Yes, sir.

Q. Under whose supervision do you work? A. Mr. Doherty.

Q. I show you a cancellation notice marked D-1 in evidence and ask you if you sent that out at Mr. Doherty's request. A. I did, sir.

Q. I show you reinstatement notice marked D-2 in evidence and ask you if you sent that out at Mr. Doherty's request. A. I did, sir.

Q. I show you the second cancellation notice marked D-3 in evidence and ask you if you sent that out at his request. A. I did, sir.

Q. How did you send that second cancellation notice out? A. By going over to the post-office in Newark, New Jersey, myself and procuring a white registered receipt from the post-office authorities which indicated that this was sent registered mail.

Q. Did you subsequently receive through the mail that return receipt? A. Yes.

No cross-examination.

Defendant Rests.

PLAINTIFFS' TESTIMONY IN REBUTTAL.

Mr. Feder: If your Honor please, I think now I am justified in offering these two checks, in view of the testimony, made by

Herbert B. Clark to Morris Beshlian, one for $66.25, marked paid, for deposit, Morris Beshlian; and another check for $73.15 to Herbert B. Clark, Pearson policy, both of them marked Pearson policy, for deposit, Morris Beshlian. This is the same man that is mentioned as the person who has the authority to collect premiums for this company.

The Court: Are those two checks made to Beshlian?

Mr. Feder: Yes. It says, "Pearson policy."

The Court: Well, there is testimony as to these checks, isn't there?

Mr. Feder: Yes, there is.

The Court: Testimony as to the fact that they were paid?

Mr. Feder: That is right.

The Court: To Beshlian? How are these papers themselves evidential?

Mr. Feder: Excepting that the witness testifies to your Honor that Beshlian had a right to accept premiums for this company as their agent. Now, these two checks on their face indicate Pearson policy, to this man Beshlian, whose name appears on the policy and who is the agent of the company authorized, rather, by them given permission to cause policies to be issued.

The Court: Well, that does not seem to be disputed, does it?

Mr. Feder: I do not think so. I just want to offer them as corroborative of the oral testimony.

The Court: It would only be corroborative.

Mr. Feder: That is what it would be exactly, corroboration.

Both Sides Rest.

MOTION TO DIRECT VERDICT.

Mr. Francis: If the Court please, I desire to move for a directed verdict for the defendant on the ground that the uncontradicted testimony shows that this policy which is the subject of this suit was cancelled prior to the happening of this accident and it was not in force at the time of the happening of the accident.

The Court: I will deny the motion and allow you an exception.

Mr. Francis: I ask for an exception, sir.

(Counsel for the respective parties summed up to the jury.)

(Adjourned to June 3, 1930, ten o'clock A. M.)

Paterson, N. J., June 3, 1930, 10 A. M.

The Court: (In Chambers) Counsel for defendant moved for a direction of a verdict in this case, which I denied. I was rather inclined to believe there were two facts adduced in evidence which might warrant the jury's consideration. The plaintiff seeks to recover the value of an automo-

bile damaged in collision under a policy of insurance issued by the defendant. Two plaintiffs jointly owned the car and insured it. They took the insurance out through a Mr. Clark originally, but he having gone out of business, the plaintiffs were turned over to an agent in West New York by the name of Beshlian. They paid the premium on the policy, which was to run for one year from March 8, 1928, to March 8, 1929. On or just prior to May 15 notice was served on the plaintiffs of the cancellation of the policy under the cancellation clause by giving five days' notice. Plaintiffs went to the agent, Beshlian, and they in turn went to Doherty, who was the agent of the company in the Passaic County District, and a reinstatement notice was issued. Doherty testified he had power to reinstate within sixty days after March 20, but after that it had to go direct to the home office of the company. On or about June 10 another notice was sent by registered mail, which one of the plaintiffs admitted receiving, but to which he apparently paid no attention. By virtue of this notice the policy was cancelled at the expiration of five days.

One or both of the plaintiffs then testified that after the accident happened on July 19, 1929, in talking with Mr. Doherty, he is alleged to have made the statement that the policy was in full force. This, of course, Mr. Doherty denied, and he also testified that he had no power to reinstate after the second notice without permission from the home office. The premium was never returned to the plaintiffs.

I was inclined to think, as I said before, that the failure to return the premiums and the state-

ment made by Doherty to the effect that the policy was in full force, might raise a question for the jury to determine whether or not the policy was cancelled. But on the question of a returned premium I find in the case of Davidson versus The German Insurance Company, 74 New Jersey Law, page 487, the following:

"Under the cancellation clause in a standard policy of fire insurance the company is not required to pay or tender the unearned premiums in order to bring about a cancellation of the policy."

In the case of Fritz versus Pennsylvania Fire Insurance Company, 85 Law, page 171, on the question of whether or not the cancellation effectively cancelled the policy, it holds:

"An insurance policy contained the following clause: 'This policy shall be cancelled at any time at the request of the insured, or by the company, by giving five days' notice of such cancellation.' A written notice of cancellation given under this clause examined and held to be sufficient in form."

Then, too, in the case of Siegler versus New Amsterdam Casualty Company, 3 New Jersey Miscellaneous Reporter, page 1069, the Court held:

"Even though the notice of cancellation set forth that the reason for cancellation was the failure to pay the premiums, and although that statement was untrue, nevertheless it did not affect the cancellation."

I am, therefore, at a loss to find anything that can be submitted to the jury in this case, and will direct a verdict for the defendant as previously requested.

Motion Granted for Direction of Verdict.

The Court: (In open court) Members of the jury: I have come to the conclusion in this case that there is no question of fact for you to determine, and I have already stated my reasons on the record, so I am granting the defendant's motion for a direction of a verdict, and that will be the course that will be taken in this case, a verdict directed in favor of the defendant against the plaintiffs.

Mr. Feder: Your Honor allow me an exception?

The Court: Yes.

INCORPORATED UNDER THE LAWS OF THE STATE OF MICHIGAN

NUMBER

A 64833

GENERAL CASUALTY & SURETY COMPANY

A STOCK COMPANY

DETROIT, MICHIGAN

In Consideration *of the payment of the Premium and of the statements contained in the Schedule hereinafter set forth, the*

General Casualty & Surety Co.

INSURING AGREEMENTS

herein called the Company, in consideration of the premium herein provided, and of the Declarations forming a part hereof, DOES HEREBY AGREE, as respects accidents occurring within the United States of America and Dominion of Canada during the period of this policy.

LEGAL LIABILITY FOR BODILY INJURIES OR DEATH

(1) To insure the Assured against loss from the liability imposed by law upon the Assured for damages, on account of bodily injuries, including death at any time resulting therefrom whether instantaneous or not, accidentally suffered, or alleged to have been suffered by any person or persons (except as provided in Condition B hereof) as a result of the ownership, maintenance or use, for the purposes described in Declaration 10, of any automobile described in Declaration 8, and to pay and satisfy judgments finally establishing Assured's liability in actions defended by the Company all subject to the limits expressed in Paragraph 5 of the Declarations;

LEGAL LIABILITY FOR DAMAGE TO PROPERTY OF OTHERS

(2) To insure the Assured against loss by reason of the liability imposed by law upon the Assured for damages (including damage resulting from loss of use of property damaged or destroyed), on account of damage to or destruction of property of any description (except property of the Assured or property in the custody of the Assured and for which the Assured is legally responsible or property carried in or upon the automobiles covered hereby) resulting from the ownership, maintenance or use of any automobile described in said Declarations, including damage or destruction from fire caused thereby.

DAMAGE TO ASSURED'S OWN AUTOMOBILES

(3) To insure the Assured against actual loss of or damage to any automobile described in said Declarations, including its operating equipment and tires, if caused solely by accidental collision with another object, or by upset, excluding, however, damage to tires unless other material damage to the automobile is sustained and excluding also damage or destruction by fire from any cause whatsoever. The total damage to the insured automobile resulting from any one accident or collision shall be considered in the aggregate as constituting one claim, and from the total amount so determined there shall be deducted the amount stated to be deductible in Declaration 7, and the Company shall be liable for loss or damage in excess of the deductible amount only;

DEFENSE OF CLAIMS AND SUITS

(4) To investigate accidents covered by the policy which come within the meaning of insuring agreements (1) and (2) foregoing, to negotiate settlement of claims made on account of such accidents as may be deemed expedient by the Company, and to defend suits for damages, even if groundless, brought on account of such accidents in the name and on behalf of the Assured, unless and until the Company shall elect to effect settlement thereof;

TAXED COST AND INTEREST

(5) To pay (a) all cost taxed against the Assured in any legal proceedings defended by the Company according to the foregoing paragraph, and interest accruing upon such part of the judgment rendered in connection therewith as is not in excess of the Company's limit of liability as hereinafter defined, (b) such proportionate premium charges on appeal bonds required in such legal proceedings in accordance with the Company's limit of liability as hereinafter defined, (c) and all expenses incurred by the Company for investigation, negotiation and defense; and

FIRST AID

(6) To reimburse the Assured for the expense incurred in providing such immediate surgical relief as is imperative at the time of the accident.

ADDITIONAL ASSURED

The insurance granted by the foregoing Insuring Agreements shall apply to any person while riding in or legally operating any automobile described in Declaration 8, with the permission of the Assured or of any adult member of the Assured's household other than a guest, boarder, roomer, chauffeur or domestic servant, also to any person, firm or corporation (except an automobile repair shop, garage, automobile sales agency or service station and the agents and employees thereof) for whom said automobile is being operated (which said person, firm or corporation shall be known hereunder as "Additional Assured") in the same manner and under the same conditions as to the Assured, provided that any Additional Assured who is covered by valid and collectible insurance against a claim also covered hereby shall have no right of recovery under this policy. The insurance hereby granted to such Additional Assured shall be subject

FORM A 254—REV. 1-4-26—POL. No. 41772—8-23-28-3M

to Conditions A, B, C, CC, D, E and F, and also to Declarations 8, 9, 10, 11, 12, 13 and 14 hereof, and said Conditions and Declarations shall apply to and be binding upon Additional Assured in the same manner and to the same extent as to and upon the Assured. If an automobile covered by this policy is sold or transferred, the indemnity provided herein shall not extend to such purchaser or transferee, unless the interest in the policy is assigned in accordance with Condition H hereof.

The foregoing agreements are subject to the following conditions:

LIMITS OF LIABILITY

A. The Company's limit of liability under Insuring Agreements (1) and (2) foregoing, to one or all Assured's in respect to each automobile described in Declaration 8 is limited to the amounts and as expressed in Declarations 5 and 6, and the insurance provided by Insuring Agreement (3) foregoing is limited to the actual value of the property destroyed at the time of its destruction or the cost of its suitable repair or replacement (the deduction from the full amount of a claim may be either Nil, $50 or $100), to be determined as herein provided.

EXCLUSIONS

B. This policy does not cover the liability of the Assured as respects bodily injuries or death (1) suffered by any employee or employees of the Assured while engaged in the duties of their employment other than domestic servants who do not operate, maintain or repair any automobile; nor does it cover the obligations, requirements, impositions or penalties of any Workmen's Compensation plan or law; (2) caused by any automobile covered hereby while operated by any person whose age is less than the age limit fixed by law, or under the age of sixteen years in any event; nor does it cover damage to property of others or property of Assured when caused by any automobile while so operated; (3) caused by any automobile covered hereby while towing or propelling any trailer or vehicle, or while operated in any race or any competitive speed test.

ACCIDENTS, CLAIMS, SUITS AND APPRAISAL

C. Upon the occurrence of an accident involving bodily injuries or death, or damage to property of others, the Assured shall give immediate written notice thereof with the fullest information obtainable at the time to the Home Office of the Company or to one of its duly authorized agents. The Assured shall give like notice with full particulars of any claim made on account of such accident. If suit is brought against the Assured to enforce such claim the Assured shall promptly forward to the Home Office of the Company every summons or other process that may be served upon the Assured.

CC. Upon the occurrence of an accident involving damage to any automobile described in said Declarations the Assured shall give prompt written notice thereof with the fullest information obtainable at the time to the Home Office of the Company or to one of its duly authorized agents. If claim be made under Paragraph (3) of the Insuring Agreements as respects such accident, the nature and extent of the loss or damage shall if possible be determined between the parties hereto; but in the event of disagreement as to either the nature and extent of the loss or the amount of damage, the same must be determined by competent and disinterested appraisers before recovery can be had hereunder. The Assured and the Company shall each select an appraiser, and if they are unable to agree the two appraisers so selected shall select a third, and the award in writing of any two of the appraisers shall determine the nature, extent and amount of such loss or damage. The Company and the Assured shall pay the appraiser respectively selected by them and shall bear equally the other expenses of the appraisal and the third appraiser if one is selected. The Company may accomplish such repair or replacement so determined by such means as it may elect, or at the option of the Company pay in money the amount of the loss as fixed by the appraisers.

CO-OPERATION OF ASSURED

D. In connection with accidents coming within Paragraphs (1) and (2) of the Insuring Agreements the Assured shall not voluntarily assume any liability, nor incur any expense other than for immediate surgical relief, nor settle any claim, except at the Assured's own cost. The Assured shall not interfere in any negotiation for settlement, nor in any legal proceeding, but, whenever requested by the Company, and at the Company's expense the Assured shall aid in securing information and evidence and the attendance of witnesses, and shall co-operate with the Company (except in a pecuniary way) in all matters which the Company deems necessary in the defense of any suit or in the prosecution of any appeal.

INSOLVENCY OF ASSURED

E. The insolvency or bankruptcy of the named Assured shall not release the Company from payment of damage sustained or loss occasioned during the life of the policy, and if execution against the named Assured in an action for damages is returned unsatisfied because of such insolvency or bankruptcy, the injured, or his personal representative in case of death, may maintain an action against the Company for the amount of judgment obtained not exceeding the limits of the policy.

SUBROGATION

F. The Company shall be subrogated, to the extent of its payments, to all rights which the Assured may have against any person, partnership, corporation or estate, as respects any payment made under this policy, and the assured shall execute all papers required to secure to the Company such rights.

CONCURRENT INSURANCE

G. If the Assured carries a policy of another insurer against a loss covered by this policy, the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the amount hereby insured bears to the total amount of valid and collectible insurance.

ASSIGNMENT

H. No assignment of interest under this policy shall be binding upon the Company unless such assignment is consented to by endorsement signed by the President and Secretary of the Company, but in the event of the death, insolvency or bankruptcy of the Assured within the policy period, the policy during the unexpired portion of such period shall cover the legal representative of the Assured, provided that notice in writing is given to the Company within thirty days after the date of such death, insolvency or bankruptcy.

CANCELLATION

I. This policy may be cancelled at any time by either of the parties upon written notice to the other party, stating when thereafter cancellation shall be effective and the date of cancellation shall then be the end of the policy period. If cancelled by the Assured, the Company shall receive or retain the short rate premium calculated according to the table of short rates printed hereon. If cancelled by the Company, the Company shall be entitled to the earned premium pro rata. Notice of cancellation in writing, mailed to or delivered at the address of the Assured as given herein, shall be a sufficient notice from the Company. The check of the Company, or of its duly authorized agent, or representative, may be similarly mailed or delivered in satisfaction of any unearned premium, otherwise, unearned premium shall be payable on demand.

INSPECTION

J. The Company shall be permitted, at all reasonable times during the policy period, to inspect any of the automobiles covered by this policy. The Company shall have reasonable time and opportunity to examine any damaged automobile or its equipment covered hereby before repairs are undertaken or physical evidence of the damage is removed, but the Assured shall not be prejudiced hereunder by any act on the Assured's part or in the Assured's behalf undertaken for the protection or salvage of the damaged automobile or its equipment.

CHANGES

K. No change in the Agreements, Conditions or Declarations of this policy, either printed or written, shall be valid unless made by endorsement signed by the President and Secretary of the Company, nor

A

shall notice to, or knowledge possessed by, any agent or any other person, be held to waive any such Agreements, Conditions or Declarations.

SPECIFIC STATUTORY PROVISIONS

L. If the limitation of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the State in which it is claimed that the Assured is liable for any such loss as is covered hereby, such specific statutory provision shall supersede any condition in this policy inconsistent therewith.

DECLARATIONS

M. The Assured herein-before referred to, is the Assured designated in the following Declarations, of which those numbered one to fourteen inclusive, the Assured, by the acceptance of this policy, makes and warrants to be true.

1. Name of the Assured J.H. Pearson and C.F. Pearson Jr.

2. Residence Address 168 Brook Avenue, Passaic, New Jersey
(Street, Town and State)

2A. Business Address .....
(Street, Town and State)

3. The Assured is Co-partnership (Individual, Co-Partnership, Corporation or Estate) 3A. Business Contracting.

4. The Policy period shall be from March 8th, 1929, to March 8th, 192..30, at noon, Standard Time, at the named Assured's Address, as to each of said dates.

5. The Company's liability under Paragraph (1) of the Insuring Agreements on account of bodily injuries to, or the death of, one person is limited to the sum of Ten thousand Dollars ($10,000) and, subject to that limit for each person, the Company's total liability on account of bodily injuries to, or the death of more than one person is limited to the sum of Twenty thousand Dollars ($20,000)

6. The Company's liability under Paragraph (2) of the Insuring Agreements, exclusive of damage resulting from loss of use, is limited to the actual value of the property destroyed at the time of its damage or destruction, which shall not be greater than the actual cost of the repair or replacement thereof, and in no event shall the Company's liability under any or all of the provisions of said Paragraph (2) exceed the sum of One thousand Dollars ($1,000) for one accident resulting in damage or destruction of property of one, or more than one, claimant.

7. The Company's liability under Paragraph (3) of the Insuring Agreements, shall be in excess of the sum of $50.00 Ded. Dollars ($.....).
(Deductible) (If Collision Insurance is desired, give list price in Declarations)

8. The automobiles covered by this Policy and the premium charges therefor are as follows, it being understood and agreed that the Company will not be liable under any of the first three of the insuring agreements except that agreement or those agreements for which a specific premium is provided in the following table:

TRADE NAME OF AUTOMOBILE	FACTORY NO. OF ENGINE	TYPE OF BODY IF TRUCK STATE LOAD CAP.	YEAR OF MODEL	MOTIVE POWER	LIST PRICE	PREMIUM CHARGE UNDER INSURING AGREEMENTS NO. 1	NO. 2	NO. 3
Buick Mdl-51-29	M-2296083 S-2171164		1929	Sedan	Gas	67.20	16.00	47.00
					TOTAL PREMIUM	67.20	16.00	47.00

9. The automobiles are and will be principally used and garaged in the City or Town of Passaic, N.J.

10. The automobiles are and will be used for the following purposes only:
A. Truck type automobiles (if any) for transportation of materials or merchandise incidental to Assured's business or occupation.
B. Pleasure type automobiles (if any) for pleasure and family use and business calls.

11. None of the automobiles herein described are or will be rented to others or used to carry passengers for a consideration, except as follows: no exceptions

12. No trailer or vehicle serving as a trailer is used by the Assured.

13. The automobiles are owned by the Assured except as follows: no ex

14. No automobile insurance has been declined or cancelled by any company except as follows: no ex

In Witness Whereof *the GENERAL CASUALTY & SURETY COMPANY has caused this policy to be signed by its President and Secretary at Detroit, Michigan, but the same shall not be binding upon the Company until countersigned by a duly authorized agent of the Company.*

Countersigned by

M. J. Black
Authorized Agent

B. Frank Buchman
President.

W. F. Graham
Secretary.

Form A

GENERAL CASUALTY AND SURETY CO.

SAFETY ALWAYS

HOME OFFICE

DETROIT, MICHIGAN

Automobile Liability Policy

2.16

No. A 64833

READ YOUR POLICY

ISSUED TO

J.H.Pearson & C.P.Pearson Jr

Passaic, New Jersey

March 8th 1930

PREMIUM $130.20

Short Rate Table

Periods exceeding 20 days, and not exceeding days, to be the rate of 25 days, and so on up to year.

If policy was written for ONE year and has b in force any number of days indicated in left h column, the company may retain from the ann premium the percentage indicated by the figures opposite in the right hand column.

1 day....	2	55 days		
2 days...	4	60	"	
3 " ...	5	65	"	
4 " ...	6	70	"	
5 " ...	7	75	"	
6 " ...	8	80	"	
7 " ...	9	85	"	
8 " ...	9	90	"	or three months.....
9 " ...10		105	"	
10 " ...10		120	"	or four months.....
11 " ...11		135	"	
12 " ...12		150	"	or five months.....
13 " ...13		165	"	
14 " ...13		180	"	or six months.....
15 " ...14		195	"	
16 " ...14		210	"	or seven months.....
17 " ...15		225	"	
18 " ...16		240	"	or eight months.....
19 " ...16		255	"	
20 " ...17		270	"	or nine months.....
25 " ...19		285	"	
30 " ...20		300	"	or ten months.....
35 " ...23		315	"	
40 " ...26		330	"	or eleven months....
45 " ...27		360	"	or twelve months...
50 " ...28				

Exhibit P-2.

Statement.

Telephone Union 543.

West New York, Apr. 1, 1928

Messrs. J. H. & C. P. Pearson
168 Broad Av. Passaic, N. J.

MAURICE BESHLIAN

Insurance

8 Twentieth Street

3/8	A-64833 Gen. Cas.	$130.20	
		77.65	
		52.55	

Paid
Beshlian

26 85
56 80

77 65

Exhibit P-3.

(*Sent wrong*)

Passaic, N. J. March 16, 1929. No. 23

PASSAIC PARK TRUST COMPANY 55-138

Pay to the
Order of H. B. Clark $26.85
Twenty six 85/100 Dollars
JULIAN H. PEARSON.

Endorsed on back:

H. B. Clark
For Deposit
Herbert B. Clark
Passaic National Bank and Trust Company
Paid
Mar 18 1929
Passaic N. J.

Garfield Trust Co.
Paid
Mar 20 1929
Garfield, N. J.

Exhibit P-4.

Passaic, N. J. Mar 16, 1929 No. 24

PASSAIC PARK TRUST COMPANY 55-138

Pay to the
Order of H. B. Clark $56.80
Fifty-six 80/100 Dollars
C. PEYTEN PEARSON, JR.

Endorsed on back:

H. B. Clark

For Deposit
Herbert B. Clark

Passaic National Bank and Trust Company
Paid
Mar 18 1929
Passaic N. J.

Exhibit D-1.

GENERAL CASUALTY & SURETY COMPANY
DETROIT, MICH.

Cancellation Notice

Mail one copy to Assured.
Send one copy to Home Office on same day
Cancellation Notice is sent to Assured.

May 10th, 1929

J. H. Pearson and C. P. Pearson Jr.,
168 Brook Ave.,
Passaic, N. J.

(A) You will please take notice that pursuant to the terms and conditions of Automobile Policy No. A-64833, issued to you by the General Casualty & Surety Company, and effective as of Mar. 8th, 1929, is hereby cancelled. Cancellation effective as of the 15th day of May, 1929, at 12:01 P. M. standard time, at the place where said policy was countersigned. Reason Non-payment of premium.

(B) Adjustment of the premium earned and due the company has been determined as provided by the policy.

(C) Enclosed you will find invoice covering premium 24.26 earned during time said policy was in force.

Yours very truly,

GENERAL CASUALTY AND SURETY COMPANY
By A. J. Dougherty.

Note:
If paragraph (C) is not necessary, "X" out.

Exhibit D-2.

GENERAL CASUALTY & SURETY COMPANY
DETROIT, MICH.

Policy Re-Instatement Notice.

Mail one copy to Assured.
Send one copy to Home Office on same day
Re-Instatement is made.

May 16th, 1929

J. H. Pearson and C. P. Pearson Jr.,
168 Brook Ave.,
Passaic, N. J.

You will please take notice that Automobile policy No. A-64833, issued to you by the General Casualty and Surety Company, under date of March 8th, 1929, and cancelled under date of May 15th, 1929, is hereby reinstated as of May 15th, 1929, and is in full force and effect as of such date.

Yours very truly,

GENERAL CASUALTY & SURETY COMPANY
By A. J. Dougherty.

Exhibit D-3.

GENERAL CASUALTY & SURETY COMPANY
DETROIT, MICH.

Morris Beshlin
543
8—20th St. West N. Y.

Cancellation Notice

Mail one copy to Assured.
Send one copy to Home Office on same day
Cancellation Notice is sent to Assured.

June 10th, 1929

J. H. Pearson and C. P. Pearson Jr.,
168 Brook Ave.,
Passaic, N. J.

(A) You will please take notice that pursuant to the terms and conditions of Automobile Policy No. A-64833, issued to you by the General Casualty & Surety Company, and effective as of Mar. 8th 1929, is hereby cancelled. Cancellation effective as of the 15th day of June, 1929, at 12:01 P. M. standard time, at the place where said policy was countersigned. Reason Non payment of premium.

(B) Adjustment of the premium earned and due the company has been determined as provided by the policy.

(C) Enclosed you will find invoice covering premium, $35.31 earned during time said policy was in force.

Yours very truly,

GENERAL CASUALTY AND SURETY COMPANY
By A. J. Dougherty.

Note:
If paragraph (C) is not necessary, "X" out.

Exhibit D-4.

Return Receipt.

Postea.

Filed June 13, 1930.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

J. H. PEARSON and C. P. PEARSON, JR., Plaintiffs, vs. GENERAL CASUALTY AND SURETY COMPANY, Defendant.	Action at Law. Postea.

The above entitled matter was tried before Honorable William B. Mackay, Judge of the Passaic County Circuit Court, to whom the same had been referred for trial on June 2nd and 3rd, 1930.

The jury, at the direction of the Court, returned a verdict of "no cause of action" in favor of the defendant, General Casualty and Surety Company.

WILLIAM B. MACKAY,
Judge.

Dated: June 12th, 1930.

Judgment.

Filed June 13, 1930.

NEW JERSEY SUPREME COURT,

J. H. PEARSON and C. P. PEARSON, Plaintiffs, vs. GENERAL CASUALTY COMPANY, Defendant.	Action at Law. On Postea. Judgment for Defendant.

Judgment entered this 13th day of June, 1930, in favor of defendant and against plaintiffs.

Costs
Attorney } $51.50
Disbursements }

WM. S. GUMMERE,
C. J.

New Jersey Court of Errors and Appeals

J. H. Pearson and C. P. Pearson, Jr., Plaintiffs-Appellants, vs. General Casualty and Surety Company, Defendant-Appellee.	Action at Law. On Plaintiffs' appeal from Supreme Court, Passaic Circuit.

BRIEF OF PLAINTIFFS-APPELLANTS.

Statement.

Plaintiffs appeal from the judgment of the Supreme Court which was entered on a verdict directed by the trial judge, William B. Mackay, at the Passaic Circuit.

Plaintiffs sued the defendant to recover their damages resulting from a collision involving the plaintiffs' automobile and which the defendant insured against loss or damage by collision, by policy No. 64833.

The evidence established that sometime previous to the collision the company had inadvertently cancelled the policy and that its representative later rectified the error by reinstating the policy. Subsequently, the company again cancelled the policy, but it was again reinstated by the same representative.

At the close of the case, the attorney for the de-

fendant moved for a directed verdict, on the ground that the case presented no evidence or authority, express or implied, for the representative of the defendant to cancel or reinstate the policy. The trial judge directed a verdict for the defendant.

The sole question presented by this appeal is, whether there was a question of fact to be submitted by the trial judge to the jury for determination under the evidence.

We say that the case does present a jury question, and that the trial court should not have taken that question away from the jury.

POINT I.

The trial court erred in directing a verdict of no cause of action and in refusing to submit the questions of fact to the jury for determination.

The grounds of appeal (Case, p. 2) are that the trial court erred in directing a verdict of no cause of action in favor of the defendant-appellee and against the plaintiffs—appellants, and in refusing to submit the case to the jury for their determination, there being a question of fact for the jury to decide.

Inasmuch as this appeal only involves the action of the court in directing a verdict for the defendant, on the theory that there was no evidence showing any authority on the part of the defendant's representative in reinstating the policy the second time, we consider it necessary to only discuss so much of the evidence as will be helpful in the consideration of that question.

The testimony of the plaintiff, J. H. Pearson, is that the policy having been issued to him by the

defendant, he paid the stipulated premium (Case, p. 10, ll. 35-40, and Case p. 11, ll. 25-30); the premium was paid by means of two checks, and were made payable to the order of H. B. Clark, the insurance broker, and by certain credits to which the plaintiffs were entitled on the cancellation of a policy that had been previously issued, and on a refund to which the plaintiffs were entitled (Case p. 13, ll. 1-40). Mr. Pearson says that he received a cancellation notice from the defendant, Exhibit D-1 (Case p. 56), dated May 10th, 1929, notifying him that on May 15th, 1929, his policy would be cancelled, but that later he received a letter, Exhibit D-2 (Case p. 57), dated May 16th, 1929, advising him that the policy "is hereby reinstated as of May 15th, 1929, and is in full force and effect as of such date" (Case p. 16, ll. 30-40; case p. 17, ll. 1-40, and Case p. 18, ll. 1-20). The collision in which the automobile was damaged occured on July 19th or 21st, 1929 (Case p. 19, ll. 10-30), and the amount of the damage was between $1350.00 and $1450.00 (Case p. 25, ll. 20-30). At the trial, counsel for the defendant conceded that the automobile was involved in an accident (Case, p. 9, ll. 25-30). After the accident, plaintiffs reported the accident to Mr. Beshlian, the company's agent who negotiated the policy.

Sometime after the accident happened, Mr. C. P. Pearson, this plaintiff's brother, called to his attention a second notice of cancellation that was received, Exhibit D-3 (Case p. 58), notifying the plaintiffs that the policy would be cancelled as of June 15th, 1929, (Case p. 18, ll. 25-40, and Case p. 19, ll. 1-30).

Mr. J. H. Pearson also testified that he received the policy from Morris Beshlian, whose name and address is stamped upon the back of the policy,

and who is the person through whom the plaintiffs procured the policy of insurance (Case p. 19, ll. 38-40, and Case p. 20, ll. 1-10); that the amount of the premium was never returned to him by the defendant, and he never received any rebate for the unexpired term of the policy after the alleged cancellation date (Case p. 11, ll. 15-30).

Mr. Charles P. Pearson, the other plaintiff, says he first spoke to Mr. Clark, the insurance broker, about obtaining an insurance policy, and paid him the premium for the policy by two checks, which were made payable to the order of H. B. Clark, and by certain credits to which the plaintiffs were entitled on the cancellation of a policy that had been previously issued, and on a refund to which the plaintiffs were entitled (Case p. 38, ll. 30-40; Case p. 29, ll. 1-15; and Case p. 13, ll. 1-40). He also says that the policy came by mail from Mr. Beshlian, #8 Twentieth Street, West New York (Case p. 29, ll. 15-30), and when the premium was paid, he received a receipt for the same from Mr. Beshlian (Case p. 29, ll. 20-30). After the accident, Mr. Charles P. Pearson spoke to Mr. Beshlian about the matter, and then to Mr. Doherty (Case p. 30, ll. 2-20); Mr. Doherty is the man who sent and signed both concellation notices, Exhibits D-1 and D-3, as well as the letter reinstating the policy after it was cancelled the first time, Exhibit D-2; *all of these communications were written upon the letterhead of the defendant and all were signed by Mr. Doherty.* The conversation between the witness and Mr. Doherty took place about a week after the accident in the presence of Mr. Beshlian. *Mr. Beshlian took Mr. Pearson to Mr. Doherty's office, and asked Mr. Doherty to bring out some papers, and also asked him whether the policy was in force whereupon Mr. Doherty got the*

papers with pictures relating to the accident, and Mr. Doherty stated that the policy was in force and offered to make a settlement (Case p. 20, ll. 20-40, and Case p. 21, ll. 1-30). *Mr. Doherty also discussed with Mr. Pearson the manner in which the accident happened and the amount of the damage to the automobile, and he acknowledged that the car was a total wreck* (Case p. 32, ll. 25-40, and Case p. 33, ll. 1-15). *The discussion lasted for about thirty minutes, yet Mr. Doherty did not make any mention about the alleged non-payment of the premium, although Exhibit D-3, which is the second notice of cancellation, gives non-payment of the premium as the reason for cancelling the policy* (Case p. 34, ll. 15-25).

"Q. Tell us what Mr. Doherty said, Mr. Pearson, at that time? A. Mr. Doherty said the policy was in full force" (Case p. 34, ll. 39-41).

The three letters that we referred and as already mentioned were written on the letterhead of the defendant, and all were signed by Mr. Doherty under the name of the company.

In this connection, the syllabus by the Supreme Court in *Leunis Co.* vs. *Singer et al.,* 102 N. J. Law, 68, applies:

> "A letter, received in due course of mail, apparently in response to a letter sent by the receiver, is presumed, in the absence of any showing to the contrary, to be the letter of the person or corporation whose name is signed to it. It is admissible in evidence without proof of the defendant's handwriting, being an exception to the rule requiring proof of handwriting."

It follows, therefore, that if the letters are presumed to be letters of the company and binding upon it, then the acts of Mr. Doherty, the company's

representative who signed and sent the letters, are also presumed to be the acts of the company.

Mr. Doherty was a witness for the defendant and testified that he is the defendant's branch manager, and that the policy covering the plaintiff's automobile was issued through the branch of which he is in charge; he says that he ordered the first cancellation notice issued because of non-payment of premium, and that later he instructed his assistant to issue a reinstatement notice; he says that he ordered the policy reinstated upon receiving a telephone call from Mr. Beshlian, by whom he was advised the premium would be paid. Mr. Beshlian, the witness says, was an agent of the defendant at that time, having authority to solicit insurance for the defendant, and to accept risks for the defendant, and to submit them for final acceptance or declination (Case p. 38, ll. 1-40; and Case p. 39, ll. 1-30). He says that after the policy was reinstated, the premium still remaining unpaid, he caused the second cancellation notice to be sent, Exhibit D-3 (Case p. 39, ll. 30-40, and Case p. 40, ll. 1-10). Mr. Doherty admits that about ten days or two weeks after the accident he held a conversation with the plaintiff, C. P. Pearson (Case p. 40, ll. 1-18) but denies that he reinstated the policy after June 15th, 1929, and adds that a policy can only be reinstated after a sixty day period upon the payment of the premium to the company, but says that the premium for this policy had not been paid *according to the records of the company* (Case p. 40, ll. 30-40, and Case p. 41, ll. 1-38). Within the sixty day limit, Mr. Doherty says he has authority to reinstate a policy himself (Case p. 42, ll. 1-10). In an examination by the court, however, Mr. Doherty admitted that he, himself, had reinstated the policy after it was cancelled the

first time, notwithstanding it was after the sixty day limit, and sent a letter reinstating the policy with his own signature underneath the name of the insurance company (Case p. 42, ll. 15-40).

To save himself from the pit into which the witness had fallen, he then tried to make it appear that the sixty day period is computed from the 20th day of the month in which the policy is issued (Case p. 42, ll. 38-40, and Case p. 43, ll. 1-18). Then, when the court said to the witness: "The Court: Then it is not a sixty-day period, is it? The Witness: Well, it is sixty days from the first of the month". Then, when the court again questioned the witness he again changed his testimony, viz.; "The Court: It is not the sixty-day period, then. The Witness: That is true. No, it is not" (Case p. 43, ll. 15-28).

On cross-examination, Mr. Doherty testified that he does not know the whereabouts of Mr. Beshlian who was an agent of the defendant and who issued the policy and that Mr. Beshlian, the company's agent, had embezzled monies belonging to the company (Case p. 43, ll. 1-38).

"By the Court: Q. *Did Beshlian have the right to collect the premiums and turn them over to you?* A. *Yes, if the premium was paid to him*" (Case p. 46, ll. 10-20). The witness said that a monthly statement was issued by the company, but he does not know whether the monthly statement which was issued by Mr. Beshlian included the premium on this policy (Case p. 46, ll. 20-30). *Exhibit P-2 is a statement acknowledging payment of the premium for this policy, on the letterhead of Mr. Beshlian and addressed to the plaintiffs, under date of April 1st, 1928.*

The only other witness for the defendant was a Mr. Tomasko, who says that, acting under instruc-

tions from Mr. Doherty, he sent both cancellation notices, as well as the notice reinstating the policy after it was cancelled the first time (Case p. 47, ll. 1-20).

At the close of the case, counsel for the defendant moved for the direction of a verdict "on the ground that the uncontradicted testimony shows that this policy which is the subject of this suit was cancelled prior to the happening of this accident". The trial judge first denied the motion and allowed an exception. Counsel for the respective parties then summed up to the jury, after which the court adjourned until the following morning. When court re-convened at the adjourned hour, the trial judge changed his ruling and granted the motion to direct a verdict for the defendant.

The evidence, therefore, demonstrates that Mr. A. J. Doherty, who had written the first cancellation notice and notice reinstating the policy, and the alleged second cancellation notice, all upon the letterheads of the defendant, subscribed by him, under the name of the General Casualty & Surety Company, the insurer, constituted him the authorized agent for the company, and by these acts the company held Mr. Doherty out as having at least implied authority to reinstate the policy, without limitation of time, or, if it should be assumed as true that Mr. Doherty, as he says, had the power to reinstate a policy only within the sixty day limit, such limitation was not made known to the plaintiffs and was a matter of absolute privacy and secrecy between the defendant and Mr. Doherty, and this secret limitation is not controlling on the plaintiffs.

Mr. Doherty even after the loss was sustained, acknowledged that the policy was in force, discuss-

ed with the plaintiffs the damage and the extent of the damage to the insured automobile, and offered to make a settlement. The plaintiffs had the right to rely on the apparent authority of Mr. Doherty to act for the company and the company is accordingly bound by Mr. Doherty's acts. The fact that the company did not make a rebate to the plaintiffs of premium for the unexpired term after the alleged cancellation supports the claim of the plaintiffs that, as Mr. Doherty told them, the policy was still in force.

Moreover, the testimony of Mr. Doherty, on examination by the trial judge, was so contradictory and conflicting that his credibility should have been properly left to the jury, not only on the question whether his authority to reinstate a policy was limited to the sixty day period, but as well as upon his denial of having stated to the plaintiffs and Mr. Beshlian the company's agent that the policy was still in force and upon all other parts of his testimony.

There is evidence of express authority on the part of Mr. Doherty to reinstate a policy, subject to the sixty day limit as he puts it, and the evidence presents a question of fact for decision by a jury with regard to Mr. Doherty's apparent authority to reinstate a policy without the sixty day limitation. In that state of the evidence, the trial judge should have submitted the case to the jury for determination. Had the alleged sixty day limitation been made known to the plaintiffs, the plaintiffs would have been bound thereby, but by failing to make known the alleged sixty day limitation the defendant is barred from setting that up as against the plaintiffs. *The plaintiffs had the right to assume, in the absence of knowledge of the sixty day limitation, that Mr. Doherty had the authority to bind the defendant by his acts.*

The reinstatement of the policy is apparently attributable to the fact that the plaintiffs had actually paid the full amount of the premium charged by the company, to Mr. Beshlian.

In *J. Wiss & Sons Co.* vs. *H. G. Vogel Co.*, 86 N. J. Law 618, this court said:

> "As between the principal and third persons the true limit of the agent's power to bind the principal is the *apparent* authority with which the agent is invested. The principal is bound by the acts of the agent within the *apparent* authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. And the reason is that to permit the principal to dispute the authority of the agent in such cases would be to enable him to commit a fraud upon innocent persons." (Citing Law v. Stokes, 32 N. J. Law, 249, 90 Am. Dec. 655). (Italics our own).

This statement of the law was reaffirmed by this court in *White Door Bed Co.* vs. *United States Mortgage & Title Guaranty Co. of New Jersey*, 7 A. R. 216, where the law as declared in the cited case was re-stated with approval.

In the last cited case, this court also said:

> "But assuming that no such authority was actually vested in Vice President Ward, that fact is not necessarily a bar to the respondent's right of action. * * * In view of the testimony to which reference has been made, it was clearly the function of the jury, and not of the court, to determine whether or not Ward, in referring the matter of the respondent's assignment to Perselay for the latter's consideration and determination, was acting as the duly authorized representative of the appellant, and, if not, whether his action

> was within his *apparent* authority as vice president of the corporation. For the reason indicated, we conclude that this ground of appeal is without legal substance." (Italics our own).

In *J. Wiss & Sons Co.* vs. *H. G. Vogel Co.*, supra, this court declared:

> "The question in every such case is whether the principal has, by his voluntary act, placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question, and when the party relying upon such apparent authority presents evidence which would justify a finding in his favor, he is entitled to have the question submitted to the jury."

POINT II.

The reinstatement of the policy by Mr. Doherty is binding upon the defendant, although not made by endorsement signed by the president and secretary of the company.

Although the policy provides that "No change in the Agreements, Conditions or Declarations of this policy, either printed or written, shall be valid unless made by endorsement signed by the President and Secretary of the Company," the reinstatement of the policy was binding upon the defendant without such endorsement, because, after the policy was cancelled the first time, Mr. Doherty had reinstated the policy and the company acquiesced in this act of its representative, without any such en-

dorsement being made by the President and Secretary of the company. The company should thereby be held to have waived that provision of the policy, by ratifying the act of Mr. Doherty in once reinstating the policy, without such an endorsement. The plaintiffs had the right to presume that the defendant had waived that provision of the policy, and that Mr. Doherty had binding authority to again reinstate the policy, without such endorsement. Here again, the company is bound by the acts of its agent, because, firstly, by the apparent authority of the agent to bind the company, and secondly, by the company's own acts, in ratifying the acts of Mr. Doherty when he reinstated the policy the first time.

CONCLUSION.

For the foregoing reasons, we respectfully submit that the judgment entered in the Supreme Court, on the motion to direct a verdict in favor of the defendant, should be reversed.

Respectfully submitted,

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Of Counsel.

New Jersey Court of Errors and Appeals

J. H. Pearson and C. P. Pearson, Jr., *Plaintiffs-Appellants,* *vs.* General Casualty and Surety Company, *Defendant-Appellee.*	**ACTION AT LAW.** **On Appeal from Supreme Court.**

BRIEF OF DEFENDANT-APPELLEE.

This matter is on appeal from the judgment entered in the Supreme Court for the defendant-appellee on the verdict which the jury returned by direction of the trial court.

Statement of Facts.

On March 8th, 1929, the defendant-appellee, General Casualty and Surety Company, issued to the plaintiffs-appellants an insurance policy, covering a certain Buick sedan automobile owned by them, for damage which the said automobile might receive through collision (S. C., 11, ll. 1-10; 53, *et seq.*). The coverage term was from March 8th, 1929 to March 8th, 1930 (S. C., 11, ll. 8-9). The premium for the policy was $130.20 (S. C., 53; 13, l. 39).

On May 10th, 1929, the defendant company sent to the appellants, at the address given in the policy, 168 Brook Avenue, Passaic, New Jersey, a cancellation notice (S. C., 16, ll. 31-33; 17, ll. 23-25; 39, ll. 31-33; 56, exhibit D-1). This notice is as follows:

"J. H. Pearson and C. P. Pearson, Jr.,
168 Brook Ave.,
Passaic, N. J.

(A) You will please take notice that pursuant to the terms and conditions of Automobile policy #A-64833, issued to you by the General Casualty and Surety Company, and effective as of Mar. 8, 1929, is hereby cancelled. Cancellation effective as of the 10th day of May, 1929, at 12:01 P. M., standard time, at the place where said policy was countersigned. Reason: Non-payment of premium.

(B) Adjustment of the premium earned and due the company has been determined as provided by the policy.

(C) Enclosed you will find invoice covering premium 24.26 earned during time said policy was in force.

Yours very truly,

General Casualty and Surety Company,
By A. J. Dougherty.
(S. C., 56)."

Subsequently, Allen J. Dougherty, Branch Manager of the Newark Office of the appellee company, received a telephone call from Morris Beshlean, the agent of the company through whom the policy in question was issued, who advised him that the premium would be paid (S. C., 38, ll. 29-34).

Pursuant to this conversation, Dougherty sent out a reinstatement notice (S. C., 18, ll. 10-13; 38, ll. 34-37) to the appellants. This notice, which was received in evidence and marked Exhibit D-2 (S. C., 57), is as follows:

"J. H. Pearson and C. P. Pearson, Jr.,
168 Brook Ave.,
Passaic, N. J.

You will please take notice that Automobile policy #A-64833 issued to you by the General Casualty and Surety Company, under date of March 8th, 1929, and cancelled under date of May 15th, 1929, is hereby reinstated as of May 15, 1929, and is in full force and effect as of such date.

Yours very truly,

General Casualty and Surety Company,
By A. J. Dougherty."

However, even after this reinstatement notice had been sent, on the strength of the promise to pay, the premium was not paid (S. C., 39, ll. 33-35). Consequently, it was again cancelled (S. C., 39, ll. 37-39) and a second cancellation notice dispatched to appellants (S. C., 39, ll. 38-40; 40, ll. 1-3).

This second cancellation notice was dated June 10th, 1929 and was marked Exhibit D-3 in evidence (S. C., 58; 19, l. 20). Its language is as follows:

"J. H. Pearson and C. P. Pearson, Jr.,
168 Brook Ave.,
Passaic, N. J.

(A) You will please take notice that pursuant to the terms and conditions of Automobile Policy #A-64833, issued to you by the General Casualty and Surety Company, and effective as of March 8th, 1929, is hereby cancelled. Cancellation effective as of the 15th day of June, 1929, at 12:01 P. M. standard time, at the place where said policy was countersigned. Reason: Non payment of premium.

(B) Adjustment of the premium earned and due the company has been determined as provided by the policy.

(C) Enclosed you will find invoice covering premium, $35.31 earned during time said policy was in force.

Yours very truly,

GENERAL CASUALTY AND SURETY COMPANY,
By A. J. DOUGHERTY."

Registered mail was employed in the sending out of this notice. It was received and receipted for on the return card by Martha W. Pearson, wife of appellant, C. P. Pearson (S. C., 36, ll. 39-40). This receipt was placed in evidence by consent and marked Exhibit D-4 (S. C., 37, ll. 1-6).

While appellants have printed all the other exhibits in the case, they have failed to include the return receipt. The record, p. 59, simply says: "Exhibit D-4. Return receipt." The receipt should have been set out in full, since it shows the date of delivery of the second cancellation notice to the wife and her acknowledgment of its delivery as of June 13th, 1929.

Since the service of the state of case, a stipulation has been filed containing a copy of the said return receipt and an agreement that it be considered part of the state of case.

In any event, the policy itself provides, in connection with the cancellation:

"SECTION I.

Notice of cancellation in writing mailed to or delivered at the address of the assured as given herein, shall be a sufficient notice from the company." (S. C., 53).

The second cancellation notice, as well as the others, was sent out by the witness Tomasko by registered mail and he subsequently received back the return receipt marked D-4 (S. C., 47, ll. 17-30).

On July 19th, 1929, a month and four days after the cancellation of the policy, the appellants' automobile was involved in a collision and damaged (S. C., 36, ll. 36-37). The company refused to pay the resultant claim because of the cancellation of the policy.

The appellant, C. P. Pearson, testified that the week following the accident (S. C., 35, ll. 1-3), Beshlian took him to Mr. Dougherty's office (S. C., 31, ll. 1-4). There they had a conversation with Dougherty, during the course of which Beshlian asked Dougherty if the appellants' policy "was in force" and Dougherty said "Yes." (S. C., 31, ll. 16-20).

Dougherty denied this statement (S. C., 43, ll. 27-30). He further said he had no authority to reinstate or carry any policy where the premium is unpaid over a period of sixty days (S. C., 40, ll. 32-37). The sixty day period referred to, according to the practice of the company, is computed from the twentieth of the month (S. C., 42, ll. 38-41). He also said he did not reinstate appellants' policy after June 15th, 1929 (S. C., 41, ll. 13-15).

There is a reference in appellants' brief to some testimony that Dougherty offered to settle the claim during this conversation (page 5 of Brief). This testimony was stricken out at the trial and is, of course, not available to appellants on this appeal (S. C., 32, ll. 1-10; ll. 20-25).

POINT ONE.

The trial court did not err in directing a verdict for the defendant-appellee since the policy in question had been cancelled prior to the date of the accident, in which the appellants' automobile was damaged.

The appellants introduced some evidence to show that the premium in question had been paid to Beshlian, the company's agent, in West New York. This testimony had not been set forth in the outline of the facts because, under the circumstances of the case, it is immaterial whether or not the premium had been paid. The provisions of the policy confer on either party to the contract the arbitrary right of cancellation at any time. No reason is required to be given in order to render the cancellation effective. The statement of a reason in the cancellation notice is superfluous and, consequently, its accuracy is immaterial.

So much of the cancellation clause as is pertinent is as follows:

> "This policy may be cancelled at any time by either of the parties upon written notice to the other party, stating when thereafter cancellation shall be effective and the date of cancellation shall then be the end of the policy period."

This provision was construed by the Supreme Court in *Sigler* v. *New Amsterdam Casualty Co.*, 3 Misc. 1069, in accordance with the view above set forth. There the insurance company issued a compensation policy to the plaintiff. The estimated premium was $27. Plaintiff paid this to his broker, who, in turn, gave it to the representative of the company. Subsequently, notice of cancellation

was sent to the plaintiff, the reason given being non-payment of premium. Later, a loss occurred and the company denied liability. At the trial, a verdict was directed for the company.

On appeal it was urged that the cancellation was ineffective because the reason given in the notice —non-payment of premium—was untrue.

The Supreme Court said:

> "The untruthfulness of the reason for cancellation was immaterial because, under the terms of the policy, no reason was required to be assigned."

Appellants concede receipt of the second cancellation notice, which was dated June 10th, 1929, and which by its terms became effective as of June 15th, 1929. They admit that the accident in which the car was damaged occurred on July 19th, 1929 over a month after the effective date of the cancellation.

Unquestionably then, appellants had no insurance coverage on their automobile at the time of the accident.

Their sole argument against the directed verdict is that a jury question was made out as to whether the policy had been reinstated by their testimony that Dougherty had said the following week after the accident that the policy was in force, and his denial of this alleged statement. This in effect is a contention that if the jury found that Dougherty had said *after the accident* that the policy was in force, such statement would effect a retroactive reinstatement of the policy and render the company liable for a loss, which occurred while the policy was not in force.

An analysis of this claim will reveal its tenuous character. On June 15th, 1929 the effective date

of the second cancellation, the contract between the parties came to an end. There no longer existed any future liability under the policy, either for the company against appellants or vice versa. A reinstatement, therefore, after this date would renew the life of the policy only as of the date of the reinstatement. *There would be no obligation on the part of the company for any loss which occurred during the interim between the date of cancellation and the date of renewal*—at least, in the absence of full knowledge of the loss and an express agreement made by the properly constituted authority of the company that the renewal should be retroactive.

Consequently, accepting appellants' theory that Dougherty's statement, if believed to have been made, by the jury, amounted to a reinstatement, it does not help them nor create a liability against the company for the loss, since it postdated the loss and created future, not past liability.

The contract here was at an end on June 15th, 1929. The parties bore the same relation to each other as if they had never contracted. To revive the policy in this posture of affairs required a new consideration and even then it would cover only future losses. There is no evidence here of a new consideration. Appellants do not even give a reason for the alleged reinstatement.

In 3 Cooley's Briefs on Insurance, 2356, it is said that "where a policy has been forfeited by a breach of warranty or condition, it can be revived and reinstated only by new agreement based upon a valid consideration."

Further, at p. 2931:

> "A tender of payment after the loss has occurred cannot revive a policy, so as to render the company liable for the loss. Even if a payment is accepted after the loss, it does

not relate back, so as to render the insurer liable for the loss but only revives the policy for the remainder of the term."

See

Dooley v. *Georgia Casualty Co.*, 1 Misc. 491.

Furthermore, Dougherty's testimony is uncontradicted that he had no authority to reinstate the policy at the time the appellants claim the reinstatement was made. This uncontradicted evidence, in any event, removes any efficacy that the statement attributed to Dougherty might have. The situation is somewhat akin to that where an operator of an automobile, who is not the owner, takes the stand and testifies that he was on his own business at the time of the accident or deviated from the course of his employment, or had the car without the owner's permission, thus by his uncontradicted and uncontroverted testimony negativing the presumption of agency which arises by implication of law upon proof of operation.

Appellants seek to surmount this obstacle by saying that the defendant held Dougherty out to the public as its agent and the company should, therefore, be bound by his acts, since they (appellants) had no knowledge of any limitations on his authority.

This argument is specious and not pertinent to the issue at bar. Appellee does not dispute the legal proposition that an agent is generally invested with those powers he appears to have or which appear to be necessarily or reasonably incident to his office, and that the principal is bound to third persons by the acts of the agent in the performance of these apparent powers, regardless of any secret limitations on them imposed by the principal. The legal background for this prin-

ciple is estopped. The courts charge the principal with the acts of the agent done in the apparent scope of his authority, where a third person has changed his position through dealings with the agent relying on the agent's indicia of authority.

This legal tenet has no relevancy to the present issue since there certainly is nothing to warrant the application of an estoppel. Appellants did not change their position to their detriment through a reliance upon any authority Dougherty seemed to have. Their insurance contract was at an end, their loss had accrued and their rights under the contract were fixed when they came to see Dougherty. Nothing he then said or did, could or did, in any wise change their position to their detriment by relying upon it.

POINT TWO.

The alleged reinstatement of the policy is not binding upon the defendant company since the conditions of the policy can be changed only by endorsement signed by the secretary and president of the company.

Appellants' policy provides:

> "No change in the agreements, conditions or declarations of this policy, either printed or written, shall be valid unless made by endorsement signed by the President and Secretary of the Company."

(Condition K).

The policy further provides:

> "In consideration of the payment of the premium and * * * the General Casualty and Surety Company, herein called the company,

in consideration of the premium herein provided * * * does hereby agree * * * to insure, etc. * * *."

The payment of the premium was an essential element of the contract. The company contended it had not been paid and, therefore, cancelled the policy on June 15th, 1929. Dougherty had no authority to waive the payment of the premium without the endorsement required by the policy.

The courts in construing the provisions of insurance policies, relating to change by endorsement, have universally held that only those provisions or conditions which are required to be performed after the loss can be waived and not those which go to the formation and continuance of the contract. Certainly, the payment of the premium is a condition which relates to the formation or continuance of the contract.

In *Robbins* v. *Farmers Mutual Fire Ins. Assn.*, 4 Misc. 533, the defendant company issued a fire policy which provided for the payment of assessments within thirty days after notice. Policy also stated that no officer, agent or other representative had power to waive any provision or condition of the policy.

Notice of assessment was given to plaintiff which provided that: "In default of payment within thirty days from the date of this notice, your policy will be null and void."

Plaintiff testified he visited office of local agent of the company and informed him that he was short of money and could not pay the assessment "right now." The agent thereupon (according to the plaintiff's testimony) called the secretary of the company on the telephone and as a result of the conversation, informed him that if he would pay the assessment before any other became due "it would be all right."

Defendant later notified plaintiff that his policy was null and void for failure to pay the assessment referred to. Subsequently, a loss occurred. Defendant company denied liability.

At the trial a motion by the defendant for a directed verdict was denied and the case submitted to the jury to determine the question of waiver of the forfeiture clause of the policy by the action of the local agent and the secretary of the company.

This ruling was reversed on appeal, the Supreme Court saying:

> "We cannot concur in the view of the court that the promised extension of time by the secretary and the local agent, if proved, was a waiver of the forfeiture clause. While it is well settled that conditions in the policy which are to be performed after a loss has occurred may be waived by an officer or agent of the company, it is equally well settled, we think that no such power exists with relation to the conditions and provisions in the policy which relate to the formation and continuance of the contract of insurance and are essential to the binding force of the contract while it is running."

Citing

> *Carson* v. *Jersey City Ins. Co.*, 43 L. 300;
> *Dimick* v. *Metropolitan Ins. Co.*, 69 L. 398.

The same rule is set forth in the case of *Wheeler* v. *U. S. Casualty Co.*, 71 L. 398, where the court said:

> "There is another insuperable objection to the first count. It refers to the copy of the policy annexed to the declaration and made part thereof. The policy provides that 'no condition or provision shall be waived or al-

tered by anyone unless by written consent of an officer of the company at the home office.' The term for which the policy was to run is one of these 'conditions and provisions which relate to the formation and continuance' of the contract to be performed after the loss has occurred. It is only to the latter class of cases that such provision has been held to be inapplicable.'' (Snyder *v.* Insurance Co., 30 Vr. 544.)

It is, therefore, respectfully submitted that the policy of insurance in question was cancelled prior to the time of the accident and that the trial court did not err in directing a verdict for the defendant-appellee.

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