

ments, and settlements for said claims against the assured, or railroad company owning the line of road, shall be considered full proof of all claims under this policy. . . . It is understood and agreed that this company shall not in any event be liable under this policy for a greater sum than \$20,000 for loss or damage caused by any one fire . . . that this insurance company shall not be liable under this policy except upon claims upon which the insured's payment is \$5,000 or more, on account of loss by any one fire, and then this company shall be liable only for the amount of loss sustained in excess of \$5,000. . . ." Defendants were paid \$5,000 as the consideration for this policy.

On 11th May, 1902, plaintiffs paid to defendants a further sum of \$5,000 for a renewal of the policy for one year. No claim was made . . . under the above policy or the renewal for loss or damage sustained during the two years. On 11th May, 1903, in consideration of \$11,000 paid by plaintiffs, defendants issued a further policy to plaintiffs in terms similar to those contained in the first policy, except the difference in consideration, and that the period of liability was 3 years, and a further clause that "this is a binding insurance for full term of policy, neither party having the privilege of cancelling during currency of same."

On 11th May, 1903, and while the last mentioned policy was in full force and effect (if it be a good and valid contract of insurance), fire was communicated from one of plaintiffs' locomotives to certain property in the State of Maine whereby it was damaged, as was alleged by the owners thereof, to the extent of \$10,000 and upwards. The owners thereupon made claims upon plaintiffs for the amount of their loss, and after investigation and proof had been given to the satisfaction of plaintiffs that such loss and damage had been sustained, the claims were settled by the payment by plaintiffs to the claimants of \$9,698.94. Full particulars of the claim were delivered by plaintiffs to defendants, and payment demanded from defendants of \$4,698.94, being the amount in excess of \$5,000, as mentioned in the policy.

Defendants denied all liability, and alleged that they had no power under their charter to insure the property so destroyed or damaged or to indemnify plaintiffs in respect thereof.

Defendants were by letters patent, issued pursuant to the Ontario Insurance Act, R. S. O. 1897 ch. 203, and dated 30th September, 1899, created a body corporate and politic "for the transaction of such kind or kinds of insurance as may be authorized by the provincial license to be from time to time issued. . . ."