

This is not the case of the authority of an agent—collecting agent—to waive a forfeiture occasioned by breach of a condition. The forfeiture is waived by the defendants themselves, by their accepting premiums from year to year, after the occurrence of what they now rely on as permitting them to declare a forfeiture—premiums paid in good faith and received by the defendants without inquiry or objection. In 1900, the defendants increased their rates. Had C. F. Smith not been insured with the defendants until 1900, the annual premium would have been, as of twenty-one years of age, \$27.70. That increase of rate could not affect this contract, made in 1898. The defendants in 1898 were not issuing policies upon railway employees; but they were in 1900 and ever since, upon the terms of an annual addition of \$5 to the regular premium rate. The local agent did not, nor did the defendants, in any way notify the plaintiffs or C. F. Smith, or, so far as appears, any existing policy-holder, of any additional amount required for premium.

Upon all the facts, I do not think the cases cited by counsel for the defendants are in conflict with *Wing v. Harvey*. It cannot be said that the defendants intended to declare a forfeiture—when the time mentioned in the policy within which the assured could not take railway employment had expired. The most they could attempt to do would be to impose the additional charge of \$5 a year.

Wing v. Harvey is discussed in *Wells v. Independent Order of Foresters*, 17 O.R. at p. 326.

The claim seems to me a just and equitable one; and I am glad to find that the defendants—notwithstanding their pleading—admit by the letter of their actuary, put in upon the trial, that, upon the basis of a premium of \$23.35 plus \$5=\$28.35, the plaintiffs would be entitled to \$823.65.

In any event, in my opinion, the plaintiffs are entitled to that sum.

I would be sorry to find that the law is such as to prevent recovery of the whole claim by the claimant who has regularly paid all premiums, sometimes at personal inconvenience—relying upon ultimately getting the amount of the policy. The formal proof of claim was admitted on the 16th August, 1911. The plaintiffs are entitled to recover \$1,000, with interest at five per cent. per annum from the 16th August, 1911, with costs.