On the 25th April, 1916, the plaintiff sent the defendants a cheque for $80.04, which was refused and returned.

Condition 5 of the policy provided: "This policy shall not take effect until the first premium hereon shall have been actually paid . . . If any subsequent premium be not paid when due, then this policy shall cease, subject to the values and privileges hereinafter described, except that a grace of 31 days, during which time this policy remains in full force, will be allowed for the payment of any premium after the first, provided that with the payment of such premium interest at the rate of 6 per cent. per annum is also paid thereon for the days of grace taken. . . ."

Condition 14: "Within five years after default in payment of premium . . . this policy . . . may be reinstated upon evidence of insurability satisfactory to the company and by payment of arrears of premiums with interest. . . ."

At the time the insurance was effected, the plaintiff was a commercial traveller; he had since become a soldier, and was about to go or had gone abroad upon active service.

The defendants were willing to continue the insurance, but only upon condition of notification as to military service and payment of an extra premium.

Condition 7 declared that the policy contained no restriction regarding service in the army in time of war.

The plaintiff, before action, furnished proof of good health, tendered the overdue premium with interest, and offered to furnish any further proof of "insurability" required.

The action was tried without a jury at London.

E. W. M. Flock, for the plaintiff.

H. S. White, for the defendants.

Lennox, J., in a written judgment, set out the facts, and said that "proof of insurability" in condition 14 meant that the insured at the time of application for reinstatement was a proper risk for insurance upon the basis of the original contract, and the condition of the health of the insured was the only matter to which it could, in this case at all events, have reference. The proof was to be "satisfactory to the company;" but that did not permit the company to be arbitrary or unreasonable.

The policy ceased on the 21st March, 1916 (condition 5), "subject to the . . . privileges hereinafter described." One of the "privileges" was that provided by condition 14, and under that the plaintiff was entitled to reinstatement.

Judgment for the plaintiff accordingly, with costs.