

dated the 16th day of May, 1898. At that time Charles F. Smith was a farmer. The policy contained a condition that if within two years from the date of the contract, the insured should, without a permit, engage in employment on a railway the policy should be void and all payments made thereon should be forfeited to the company. The assured did within the period of two years engage in employment on a railway by becoming a fireman upon a locomotive engine, in which employment he continued, and in which he finally lost his life in an accident on July 20th, 1911. There was no evidence that a permit had ever been given, or even asked for to enable the assured to become a railway employee. But the premiums having been paid after the change until the death it was contended by the plaintiff that under the circumstances the defendants should be held to have waived the condition. To this contention Britton, J., acceded and gave judgment for the full amount. I am with deference unable to agree with that conclusion.

The terms of the contract are very clear, and easily understood. What the defendant stipulated for was not merely notice of a change of employment but that for such change a permit should be required. The condition is a perfectly reasonable one. The premium for the one risk naturally differed from that of the other. It is even doubtful on the evidence if at the time the risk was undertaken or the employment changed a locomotive fireman would have been able to obtain from the defendant a policy on any terms.

The change of employment having admittedly taken place without a permit, in breach of the condition, the onus was clearly upon the plaintiff to establish by satisfactory evidence a case against the company of either waiver or estoppel. And the very first step towards making out such a case would necessarily be proof of notice to or knowledge by the company, for without such notice or knowledge there could be neither the one nor the other.

There was no such proof nor indeed any serious attempt made to prove notice to or knowledge by the company as a company. And the negative of any such notice or knowledge at any time prior to the death of the assured was clearly established by the uncontradicted testimony of the general manager Mr. Marshall. What was proved and all that was proved by the plaintiff was that Mr. Telfer, the defendants' local agent at Sarnia, who obtained the risk in