

indorsed thereon. One of these, 5 (1), is, so far as material in this case, as follows. "If, within two years from the date of this contract, the assured, without a permit, engage in employment on a railway, this policy shall be void, and all payments thereon shall be forfeited to the company."

Mr. Smith was canvassed for this insurance by one A. B. Telfer. The application is dated the 6th May, 1898, is upon one of the blanks of the defendants, and is signed by Mr. Telfer as the soliciting agent. Mr. Telfer was in fact then agent of the defendants, under a contract dated the 25th March, 1898. The contract as between Telfer and the defendants was terminated on the 30th June, 1898.

The assured, C. F. Smith, did in fact, on or about the 25th September, 1899, enter the service of the Grand Trunk Railway Company as fireman. He continued in the employment of that railway company until his death, which occurred on the 20th July, 1911. At the time of his death, C. F. Smith was locomotive engineer, having been promoted to that position some years before. He was killed when upon duty. The defendants plead, in bar of the plaintiffs' right to recover, that the assured, without a permit from the defendants, did, within two years from the date of the policy, engage in employment on a railway, and that, therefore, the policy became void.

The defendants admit that, notwithstanding the alleged forfeiture of the policy, the premiums were regularly paid; and, without admitting any liability, the defendants bring into Court the amount of the premiums so paid for the years 1900 to 1911, inclusive, with interest thereon, which amount the defendants ask the plaintiffs to accept in full satisfaction of their claim. The plaintiffs, in reply, allege that the defendants had notice of the employment of the insured upon a railway; and, after such notice, the defendants, without objection, continued to accept from Zillah Smith and retain the premiums paid by her for the purpose of keeping the policy alive, and that, by so doing, the defendants waived any right to claim a forfeiture of the policy.

The question is, how far the defendants are affected by notice to A. B. Telfer, their former agent.

It is not certain when Telfer first had notice of the assured accepting employment on the railway—probably soon after 1899—but he admits that he knew of it in 1908, and knew that in subsequent years the insured continued in such employment.

The position of A. B. Telfer and his relation to the defendants was apparently no different, so far as the insured or the