

fireman upon a locomotive engine, in which employment he continued, and in which he finally lost his life in an accident on the 20th July, 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 plaintiffs 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 defendants 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 defendants 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 plaintiffs was, that Mr. Telfer, the defendants' local agent at Sarnia, who obtained the risk in the first instance, and who continued to forward the premiums until the death of the assured, had become aware of the change of employment. Exactly when he acquired this knowledge is not clear; but it is clear that it was long after the expiry of the two years within which the condition was operative.

Mr. Telfer's appointment as agent was in writing, which was produced at the trial. He was not a general agent, but agent only for the town of Sarnia and vicinity and such other territory as might be from time to time agreed upon. By the