

cases. According to current forms of pleading, an insurance company, when sued for a loss, defends itself by alleging: (1) the clause in the policy providing that the contract shall be void upon the happening of a certain event, and (2) the occurrence of the event; and the plaintiff replies "waiver" of the clause. But that is clearly wrong. The policy does not, upon breach of the conditions, become *ipso facto* void. It is voidable only at the election of the company, and therefore, for valid defence, there must be three allegations: (1) the clause in the policy providing that, upon the happening of a certain event, the company should have a *right to elect* to continue, or to terminate, the contract; (2) the occurrence of the event; and (3) that thereupon the company elected to terminate. Without this last allegation, the plea is obviously insufficient. If the policy read in the way it is construed, no one would think of omitting, from the insurer's defence, the allegation of the fact of election. And to such a plea, "waiver," as a reply is, of course, quite inapplicable.

That all appears to be very clear, but I venture to say that no one here has ever seen a defence with the three allegations in it. And the change from "waiver" to election is not a mere matter of the form of pleading. It extends to three more important results:—

(1) **ONUS OF PROOF.**—The onus of proof will be changed. Heretofore the burden of proving "waiver" lay heavily upon the insured. Now the insurer must prove election to cancel. For if there be no such election, the contract remains in force.

(2) **PROOF OF AGENCY.**—Heretofore the insurer had to prove the authority of the person who is alleged to have "waived" the condition. Many a righteous case has failed because of that requirement. Henceforth, the onus is on the company to establish that the official who is alleged to have made the election had authority sufficient for that purpose.

(3) **SILENCE-STRATEGY.**—Silence-strategy will be no longer available to the companies. At present some Courts say that