

contract," and it "cannot terminate a contract." A contract may be rescinded; but that rescission is a new contract,—a contract of rescission. A Waiver is a unilateral act of one of the parties to a contract; and does not require the act or consent of the other.

The author quotes the following clause from a Pennsylvania decision: "The doctrine of Waiver seems applicable properly speaking only during the currency of the contract After a policy is forfeited, I see not how it could be renewed or revived except by an express agreement of the insurers." This is his comment on the quotation, which will serve as an example of his method: "The court appears to mean that an insurer can 'waive' a condition prior to forfeiture, but that after forfeiture, he can do nothing—there must be a new contract. If it meant that, prior to default, the condition may be 'waived', the reply is that a condition cannot be got rid of by 'waiver,' but by new contract, by release, or by estoppel only. If it means that, after default, 'waiver' cannot revive the contract, the answer is that default has not affected the contract. But if it means only, that after *termination* of the contract, 'waiver' cannot re-establish it, we may agree."

The eight chapters on Insurance are probably the most practical part of the book; and of greatest interest to practitioners. It is pointed out that the average policy, when its terms are violated, is voidable at the option of the company, although it declares that on the happening of the conduct forbidden it shall be "void." The "person insured does not 'forfeit' his policy. He gives the company a right to terminate it, a right which may never be exercised, and very probably never will be—unless a loss happens. There is therefore no 'forfeiture' of the policy, and consequently no 'waiver' of forfeiture. The contract is not void, but voidable only. It continues until the company elects to terminate it. Election once made is irreversible. And lapse of time, without election to terminate, is evidence of election to continue."

Now, as a corollary to this view, the author states that when the insurer company pleads that by a default the policy has been "forfeited," and asks (as it were) the insured to prove a "waiver" of the forfeiture, if he can, the insured should refuse to accept the issue, and put it up to the company to show whether it ever elected to terminate the policy, and if it did, how, when and by whom. Consequently the company's plea ought not to be forfeiture; and the insured's reply ought not to be 'waiver.' On the contrary," says our author, "the company, if it would succeed, must plead default, and election, consequent upon the