The case of *Miller* v. *Brooklyn Life Ins. Co.*[1] may also be referred to, as to the powers of agents and the validity of a policy delivered, acknowledging payment of premium though none has been paid.

In England, where a policy admits receipt of the premium, it is held that this is conclusive as between the insurers and the insured. So strongly is this held that an action at law for such a premium (as remaining unpaid) cannot probably lie.[2] In Quebec it certainly would lie.

In Louisiana, a company defendant denied liability, saying that the premium mentioned in its policy had not been received by its agent, and that the agent had no power to grant a policy "till actual payment to him of the premium." Held, that by the acknowledgment in its policy of the receipt of the premium the company was estopped from so denying liability; neither error, fraud, nor duress being pleaded.[3]

In the case of *Newcastle F. Ins. Co.* v. *McMorran*,[4] we see the insurers arguing that notwithstanding such condition—that the insurance takes effect only on payment of premium—there had been insurance from the moment of their local agent debiting himself towards them with the premium, and their argument was held good. The agent had given credit to the insured and was not paid for nearly five months, though before the loss. He had, however, regularly debited himself towards the head office with an amount equal to the premium. Lord Eldon said: "Suppose the fire had burst out the day *before* the money was paid to the agent, could the company say, 'Though the 'premium has been paid us by our agent, 'and we own the receipt of the money, yet 'as *you* did not pay *the agent* we are not 'bound'?"

§ 48. *Powers of some companies controlled by their charters.*

If the Act incorporating a company order its policies to be in a particular form containing such a condition about premium, the insurers cannot validly agree to give time, and before actual receipt of premium deliver a policy that shall bind the corporation. But even in this case, if an agent of the corporation have delivered a policy, given time to the insured in which to pay the premium, and have debited himself with the amount of it in the books of the corporation, to its profit, and some time pass, that policy ought to bind the insurers, for the premium is, so, paid to them. The passage quoted above from Lord Eldon's judgment supports this.

§ 49. *Waiver in France of condition requiring actual payment of premium.*

In France, if a company have the habit of sending round to collect premiums past due at the domiciles of the insured, this habit is held waiver of the policy clause ordaining that in default by the insured to pay his premiums punctually, at the office of the insurers, the insured shall forfeit all benefit of the policy.[5]

§ 50. *Default to pay premium—Notice required.*

A clause that default to pay premium shall be fatal only after a *mise en demeure* is to be understood as a *mise en demeure extra judiciaire*. A mere invitation, by letter missive, to pay does not involve forfeiture of the insurance, though the premium be not paid. This was so decided by the Cour Impériale of Paris, in February, 1844.

But a threat and notice to hold policy vacant is different.

In a case in the Journal du Palais of 1872, p. 268, premiums were payable within fifteen days, at the office of the company, yet it was decided that if the company send for them, year after year, not observing even the exact dates of their falling due, it will be held to have waived the clause of *déchéance* for case of non-payment punctually; and though a clause of the policy stipulate that such demanding or going for premiums shall not be held a waiver of the other clause stipulating *déchéance* in case of non-payment punctually.[6]

[1] American Law Review, vol. 5, p. 729.

[2] 1 Campb. 534, note.

[3] La. Annual R. A. D. 1885, p. 737. See Flanders, on Fire Insurance, p. 167.

[4] 3 Dow 255.

[5] Cour de Cassation, June, 1845. Massé, Dr. Comm. Tom. 4, No. 386.

[6] Cour de Cassation, 31 Jany., 1872. This last is a new clause in France. The editors, in a note, say that the Court on the last question went too far; and so it did. Scotch policies use such reserve in order to claim forfeiture.