

dition was that the action was to be brought within six months after the damage occurring. A fire happened; the insured filed his claim, and it was agreed between plaintiff and defendant's agent D. that he should not prosecute until S. returned from England, and that till then the limitation should be suspended. D. had effected the insurance and received the premiums. After the six months a tender was made to the plaintiff by the defendants, but of less than he asked. It was held that there had been waiver, and the plaintiff's right to sue was affirmed. The policy in this case was by the agent, not under seal, but the agent's authority was signed by two directors and had the seal of the company. The plaintiff was wrong to say anything in his declaration of the six months' limitation. He ought to have left that to the defendants to plead.

In *Pim v. Reid*¹ the action was on a policy not by deed. The Court held that particulars might be waived.

Objections to preliminary proofs may be waived by the company objecting on other grounds.²

Conditions precedent may be waived by the conduct of the party entitled to ask for performance.³

The principle that waiver of preliminary proofs may be made by conduct leading the insured into the belief that the insurers did not require further evidence of loss, and thereby keeping the insured from making fuller proof, was sanctioned in the case of *Graves v. Wash. Mar. Ins. Co.*⁴

Waiver of conditions precedent may, of course, be made expressly, but may be caused also by implication; as where the party entitled to exact performance hinders or impedes the other, or refuses something, so as

¹ 6 M. & G.

² 2 Phillimore on Insurance, 1803, 1813. Suppose this case: "We have received your proofs. You must make oath of (so and so)." Surely if this be the conduct of the insurers, other objections to proofs will be in vain.

³ 43 Barbour, 366. See Cond. R. La., vol. iii, p. 750, for condition precedent waived. That, and p. 742, are applicable to cases of insurance. See also *Rawle v. Fennessey*, 6 La. R. N. S., p. 204.

⁴ 12 Allen's Rep.

to render it idle for the other to fulfil the condition.¹

Time as of the essence of a contract is waived by a protracted treaty.²

As acceptance of rent after a forfeiture is a waiver of forfeiture,³ so taking a new premium may sometimes be a waiver of any previous forfeiture.

It was ruled in 49 Maine, 200, that misrepresentations in obtaining a policy are waived by a renewal of the policy with knowledge of the risk.⁴

Notice is given and proofs made. A particular objection is then made by the insurers. This alone being objected, they make waiver of other objections to notice or proofs (as in case in 1 Camp.). Defect in proofs ought to be opposed at once. Angell, § 244. Part payment of loss is a waiver of objection to proofs previously made. *Ib.*, § 242.

No act is a waiver unless it be shown to have been done with knowledge that the forfeiture existed which is alleged waived.⁵

GENERAL NOTES.

At the old Bailey it was customary to sentence the whole of the prisoners found guilty at the sessions at one time. It fell to Baron Graham's lot to perform this duty, and he accordingly went over the list with due solemnity, but omitted one person brought up for sentence—Mr. John Jones.—The judge was on the point of finishing the sentences when the officer reminded his Lordship of this omission. Whereupon the judge said gravely, 'Oh! I am sure I beg Mr. Jones's pardon,' and then sentenced him to transportation for life.

¹ Benjamin on Sale, p. 422. *Hotham v. L. Ins. Co.* cited. Also *Russell v. Bandiera*, 13 C. B. N. S.

² 19 Vesey, Jr., 220.

³ *Amby v. Woodward*, 6 B. & C. For example, where, after sub-letting contrary to the stipulations of the lease, the original lessor has received rent from the sub-lessee.

⁴ Monthly Law Reporter, 1863-4, p. 466.

⁵ 2 Am. L. Cases, 522. *Semble*, the knowledge may be express or implied. See also *Chapman v. Lancashire Ins. Co.*, L. C. Jurist.