the latter be void (its invalidity, however, not appearing on its face). Second insurance here was stipulated to be null if other insurance existing, not notified. The agreement making null the second policy was for the benefit only of second insurers, and it was and is competent for second insurers to waive it. *Carpenter* v. *The Providence Washington Insurance Company*, 16 Peters, approved.

37 Maine and 23 Pickering are against such holding that second insurance is null, and that, a second valid insurance not being, first is valid. So held in Massachusetts too, See Flanders.

In the case of *Western Assurance Co.*, appellants, and *Atwell*, respondent,[1] on the 18th of June A insured his stock in trade with the Western Assurance Company, and paid premium. On the 28th the policy was sent to him, dated that day, but insuring from the 18th June for a year. It contained the condition at head of this section. Between the 18th and 28th June A effected other insurance with another company, but gave no notice to the Western Assurance Company. A fire afterwards destroyed the stock insured. A gave notice of loss and made claim. The agent of the Western Assurance Company complained that the particulars of the loss were not satisfactory, &c., but he said nothing about the want of notice of the second insurance. In a suit by A the Western Assurance Company pleaded that their policy had, before the fire, ceased to have effect, owing to plaintiff's failure to give them notice of such other insurance. A replied that the defendants were aware of such other insurance, and had waived formal compliance with the condition requiring notice; that the conduct of the defendants' agent in not complaining of such want of notice, but only of other things, amounted to such waiver.

The case was tried in the Superior Court, Montreal, before a jury, who found for the plaintiff, the judge leaving to them to determine whether there had been a waiver by defendants of their right to urge want of notice, and the jury finding that there had been, "without doubt, by the conduct of the defendants subsequently to the fire." A motion for new trial was made by defendants and refused (Day, J. diss.), but this judgment was reversed by the Queen's Bench which considered that the jury had been misdirected, and that there had been no proof of the waiver alleged, and that the jury ought to have been charged to find a verdict for defendants. It granted the motion for a new trial.

In *Pacaud* v. *The Monarch Ins. Co.*[1] P took from the Monarch Insurance Company a policy having condition prohibiting new insurance without notice, under pain of nullity of the policy. A prior insurance had been effected with another company, of which notice was taken by the Monarch Insurance Company. Afterwards P substituted for this earlier insurance two others in other companies without notice to the Monarch Insurance Company, but to the knowledge of their agent. In a suit by P, the Superior Court, Montreal, held that this did not invalidate the policy granted by the Monarch Insurance Company, and that the substitution of two policies for one formerly subsisting, the total insured being the same amount all the time, was not a new or double insurance within the meaning of the parties. Neither the record nor the report shows whether there was a time at which the insured was merely under the insurance of the Monarch, the other having died.

Had such been the condition of forfeiture, it ought to have worked; for in such case the later insurances would have been new, and the Monarch might have been kept ignorant of them, and one of its objects so defeated.

An insurance company may sometimes rescind and cancel their policies, if they observe new insurances, and not like to see them.

In *Blake* v. *Exc. Mutual Ins. Co. of Philadelphia*[2] there were two clauses in the policy, one reading: "Other insurance permitted

[1] 2 L. C. Jurist. This case was disregarded by the Privy Council and by the Queen's Bench in the case of *Chapman*.

[1] 1 L. C. Jurist.

[2] 12 Gray's Rep. 266, A.D. 1858.