fectly satisfactory; three of the judges were against the judgment.

Magistrate certifying acquaintance. This being required, there may be immorality on the part of the magistrate certifying from considerations of humanity alone; he having no acquaintance, but being the nearest, is appealed to, and the policy being explained to him, he is told that necessity is on him to certify, else an innocent man may lose a just claim.

Information suddenly collected after the fire has been, by judgment in the States, declared sufficient, and thus the devil is whipped round the post.

In *Turley* v. *N. Am. F. I. Co.*,[1] the defendants quibbled a good deal, and the court struggled to defeat them. Defendants objected to the certificate, because of the magistrate's not being absolutely the one "most contiguous;" they argued that the place of his residence, rather than of his business, was to be considered, and that a mathematical precision was to be observed in calculating the contiguities. They had several times after objecting to the certificate refused to return it, or even to show it, to the insured. The court did not deny the obligation to recognise the strict rule of the English cases, but held that the conduct of the insurers necessitated an exception, that as to the magistrate's not being the one most contiguous to the place of the fire, the magistrate here was contiguous enough, and that they would not hold the insured to a mathematical precision; also that nearness of the place of business rather than of the residence of the magistrate might control.[2]

Where the two nearest magistrates refuse to certify, and the certificate of the next nearest one is obtained, it is insufficient.[3]

Cannot there be waiver of certificate? I should say so, if the company made an adjustment, or entered into an arbitration, and afterwards refused to pay, or give a note *say*, but, later, refuse to pay. Certainly, if time for giving it (as if one calendar month be fixed) be used up in negotiations of that kind the insured ought to be protected.[1]

Shaw says that though the strict rule of the English cases, cited by Ellis in regard to the necessity of the precise certificate, and preliminary proofs, required by the conditions, has been recognized and approved in America,[2] its severity has been much mitigated by the now well settled doctrine, that all objections to the preliminary proofs are waived, except those which are taken at the the time the proofs are received, and that if the insurers accept them without pointing out their deficiencies, or refuse to pay the loss on some other ground, they cannot subsequently allege that the proofs were insufficient, or not rendered within the required time.[3] But *Scott* v. *Phœnix Ins. Co.* is against. If the nearest magistrate be concerned directly or indirectly, even as a creditor of the insured, the magistrate next nearest will be sufficient.[4]

(Will he? then literal fulfilment need not be, nor literal interpretation.)

If the magistrate's certificate do not state that he is not concerned in the loss, will it be bad? See *post* "Proceedings on policies." *Lounsbury* v. *Protection Ins. Co.*, *post*. *Semble no.*—Argument from *Mann et al.* v. *West. Ass. Co.*, 17 Q. B. R. U. Ca.

§ 246. *Duty of insurers as to defects in notice.*

Where the notice of loss is defective, the insurance company must inform the insured and ask for more formal proofs, or there is waiver.[5]

By the failure of insurers to object to defective notice, the right to urge the objection is often waived. It is not so waived where the notice is given late in time, but where the forms of proof are not exactly right, and the defect could be remedied easily.[6] It is the duty of the insurers to point out defects in the forms of proof.[7] 38 Vict. c. 65, Ontario,

[1] 25 Wendell.

[2] Was the above a good judgment? I doubt it. Contiguous enough, illegal. Chancellor's foot.

[3] *Leadbetter* v. *Ætna Ins. Co.*, 13 Maine.

[1] See further under waiver *post*.

[2] See *Leadbetter* v. *Ætna Ins. Co.*, 13 Maine.

[3] *Heath* v. *Franklin. F. Ins Co.*, 1 Cushing 257; *Ætna Ins. Co*, v. *Tyler*, 16 Wend. 385; *Turley* v. *North Am. Fire Ins. Co.*, 25 Wend. 375.

[4] So held in Tennessee, 5 Sneed's R.

[5] Steadily held so in Maine. *Patterson* v. *Triumph Ins. Co.*, 64 Maine R.

[6] Flanders, p. 567.

[7] *Ib.* 598.