the fire, there was no contract. Can a mere agent, as it were, revive that contract by pretending to waive, after the fire, the necessity of the performance of something required to be done before the fire in order to preserve the contract itself intact?[1]

"But I feel satisfied that there is no evidence whatever of waiver in the present case. The only evidence on this point is that the agent wrote a letter after receiving plaintiff's statements of loss, complaining of their insufficiency and declining to submit them to the board, and this has been interpreted to be a waiver, a position, in my opinion, wholly untenable in law."[2]

The Queen's Bench (Court of Appeal) adopted, substantially, Judge Day's views, and, as before stated, granted a new trial.

§ 293. *Payment of premium.*

In a case before the Cour Impériale at Bordeaux, 16th June, 1864, *Bec* v. *Comp.* "*La France,*" the *prime* was *portable*, yet the company had the habit of seeking it. It was held: 1. The execution given to the policy thus made the premium *quérable* from *portable*. (This seems acquiesced in.) 2. Though the policy stipulated that the company's seeking premiums in arrear, and having been in the habit of seeking them at the domicile of assured, should not be held renunciation to the *déchéance* accomplished in favor of the assurer (owing to the assured not having paid promptly his premium. P. 412 Jour. du Palais of 1864. (This second holding bad, *semble.*)

An insurance for ten years, *prime* to be paid in advance yearly at the office, at the latest within fifteen days after due yearly, without necessity to demand (by company), and stipulation that the company taking at domicile of assured late any former premiums, should not be opposed as a renunciation to policy clause. The company had taken without any regard to exact delays the premiums of former years at the domicile of assured. This was held to be *derogation virtuelle* to the policy clause. The *prime* was so made *quérable.*[1]

In *Dill's* case the president and the secretary of the company were held authorized to waive condition, fixing a term of fourteen days for furnishing particulars.

In the *McGillivray* case[2] the insurance company struggled to get their agent held not entitled to waive condition as to prepayment of premium. The majority of the Court in Canada were against the company, but the Privy Council, *semble*, were in favor of the company. See its judgment in appeal. Yet Lord Eldon's principle is against the decision of the Privy Council.

Dalloz says (2nd part, p. 166 *Ib.*) that if it be stipulated that *mise en demeure* to pay it shall not be requisite, and that if it be in arrear the policy shall be in suspense; if a fire happen, the premium being past due, the insurer will be free. Citing Toull., tom. vi, p. 550.

In French jurisprudence it has often been held that the mode of execution given to policies by the companies can import renunciation by these to *déchéances* stipulated against the assured. 2nd Dalloz, p. 153, vol. of 1855. The clause that in default to pay the premium punctually the insurance shall be *ipso facto* vacated, is abrogated *de fait* if it be established that the insurance company during several years has accorded facilities to the insured to pay the premiums and has asked payment of premiums in arrear.[3] *Ib.* 2nd part Dalloz, p. 153

Premium to be paid in advance and cash. Insurance for several years being made, the premium stipulated to be paid within the eight first days of the year; this time past, there is no insurance, unless the insurer re-

[1] Was this so here? *Semble* no. I have said before that I do not think duty was upon the insured absolutely to give notice of subsequent insurance before the fire; for time was not mentioned for the notice.

[2] Act or conduct of the insurance company to be a waiver must be such as to warrant the insured that the company do not mean to insist upon a forfeiture. The insured must be misled for waiver to be seen:—*Phœnix Ins. Co.* v. *Stephenson* (Kentucky), "where "the insurance company, upon a claim and particu-"lars, writes that the claim is not properly made, "and that claim must be in accordance with policy, "to which insured is referred."

[1] 10 June, 1863, Cour. de Cassn., vol. of 1863; Journal du Palais.

[2] 9 L. C. Rep. 488.

[3] But if the act of incorporation order otherwise? 25 Barb. R., vol. of 1855, p. 5, *ante.*