

But if it be the election of the company that is the important factor, then the company *has* something to communicate, something of great importance to the assured, and something of which he can have no knowledge unless it is communicated to him by the company.

The effect, then, of the change from "waiver" to election is that silence-strategy will be as obsolete as flint-muskets, and that the law last quoted will be upheld, rather than that which supports the contrary view. If the company want to cancel the policy, it must so elect. It cannot have a live-policy for premium-catching and a dead one for loss-dodging (a).

FORFEITURE.—Misuse of the word "forfeiture" must share with "waiver" the blame for the general misconception. By breach of the condition, the assured is said to have forfeited his policy; and, in order to recover on it, he is required to shew that the forfeiture has been "waived." But the breach has not affected the policy in the very slightest. It has supplied merely an occasion for cancelling it. And as there has been no forfeiture, there can be no "waiver" of it.

Follow forfeiture and "waiver" a little further.

(1) Sometimes forfeiture of an estate ensues *ipso facto* upon the happening of an act—the estate terminates or reverts. That is what I call *real forfeiture*, and to it "waiver" can have no application. Restoration cannot be accomplished by "waiver."

(2) When a lessor or an insurance company has, upon the breach of some condition, a right to cancel an existing relationship, and exercises that right, you may, if you will, speak of the lease or policy as having been forfeited; but, if you do, I insist upon your supplying the word forfeiture with descriptive adjectives, and calling it a *completed elective forfeiture*, in order to distinguish it from real forfeiture. To that, too, "waiver" is inapplicable. Restoration cannot be accomplished by "waiver."

(3) From cases in which there is a right to elect to cancel, but in which no election has been made, I plead for the extrusion

---

(a) *Mutchmor v. New Zealand, etc.*, 1901, 64 Pac. 814; 39 Or. 342; *Panniz, etc. v. Lansing*, 1884, 15 Neb. 497.