

§ 290. *Objections to preliminary proofs to be stated promptly.*

When preliminary proofs are furnished, the insurance company ought to state objections promptly, so that the proofs can be made more regular, else waiver may be held.¹

If proofs be sent in within the thirty days, and the insurance company say they are not liable for the loss (while it is still possible for the insured to send in more proofs), the company may be seen to be not relying on insufficiency of the proofs, but on other defence on the merits.² But after the thirty days, the company saying that they are not liable for the loss, waive nothing. If proofs be sent in within thirty days, and a letter from the insured, asking whether they are satisfactory, remain unanswered, the question whether the not answering would be a waiver by the company of more particular proof is one which the Judicial Committee did not determine, but they seemed disposed to think so. But after the thirty days, merely not answering will not be a waiver.³

§ 291. *Waiver of stipulation as to time.*

The stipulation that proofs are to be made in a certain time is a condition in favor of the insurer which he may waive.⁴ If waived once, the insurer cannot retract. A company receives proofs late, keeps them, writes to the insured about the loss, examines the insured, and then refuses to pay owing to fraud by the insured. At the trial default to prove in the limited time cannot be urged. An insurance company may refuse point blank to pay, and urge, when sued, what it likes, but if before suit

¹ *Jones v. Mechanics' Fire Ins. Co.*, 13 Am. Rep. 412 (a New Jersey case of 1872).

² *Priest v. Citizens' Insurance Co.*, 3 Allen, the Court states the distinction between waivers in matters of substance and of form.

³ *Whyte v. Western Ass. Co.*, Privy Council, March, 1875.

⁴ *Ib.*

⁵ This may serve in Lower Canada even, in certain cases—e.g., resolution of sale, etc., etc. Vendor and purchaser, agreement to be null unless instalments are punctually paid. Acceptance of an instalment of purchase money, not due unless on the supposition of a contract continuing, is a waiver of right to rescind.

it resists, for a stated reason, it must afterwards be kept to this.¹

§ 292. *Waiver of condition regarding double insurance.*

In *Atwell v. Western Assurance Co.*² upon the defendants' motion for new trial, in the Superior Court, Montreal, Day, J., said: "The whole issue in this case is narrowed down to the question of whether or not there has been a waiver on the part of the defendants of the condition, endorsed on the policy, regarding double insurance. The policy not only requires that notice shall be given of all other insurances, but that such notice shall be endorsed on the policy or otherwise acknowledged by the company in writing,³ otherwise that the contract shall be null, and the pretension of plaintiff is that this condition has been waived by the acts of the defendants' own agent *subsequently* to the fire. There are two points which present themselves in the discussion of the subject: first, as to the power of the agent to waive such condition, and, secondly, as to the fact of whether or not there has been any waiver whatever proved. Can it be said that the insurance agent, who is merely empowered to insure, is by necessary intendment also empowered to waive all or any of the conditions of the policy after it has been completed? I hold not. He is only empowered to insure according to the conditions of the policy, and although he has power also to adjust claims,⁴ he undoubtedly has no power to alter the conditions essential ingredients in the contract. One can understand that preliminary proofs of loss may be readily waived, and that there is an incidental power in every insurance agent to make such a waiver,⁵ but this has nothing to do with a condition such as the one involved in the present discussion. Here, at the time of

¹ *Brink et al. v. Hanover F. Ins. Co.* (New York, February, (8810), Alb. L. J., A. D. 1880, p. 236.

² L. C. Jurist, p. 278.

³ I do not see that the policy required more than notice; the double insurance here was subsequent insurance. A, however, had not given notice.

⁴ Query, if he have power to adjust, which I hold he has not.

⁵ Has he; and is not that waiving condition? I think he has not power so. If he may waive one condition, he may waive another.