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The Solicitor-General's speech in the baccarat scandal case may, by tricks of voice and gesture, have been impressive, but it was weak in point of logic. He wished apparently to make the jury believe that his client had been in doubtful company, and that the statements of these people were not to be accepted without some reserve. But he could not disparage the defendants without equally discrediting his own client, their associate, and thus making it less surprising that he should have been detected in cheating at cards. The strong point of the evidence against the plaintiff was his own signature to the paper by which, in consideration not of being publicly dishonored, he pledged himself never to touch cards again, and afterwards left the house without confronting his accusers. This reminds us of the famous case of Henry Ward Beecher, who irretrievably committed himself by his own letters. Solicitor-General Clarke could only pretend that his client signed to save the Prince of Wales from annoyance. This explanation is not consistent with the statements of the witnesses, and it is still more opposed to the course pursued by the plaintiff and his counsel during the trial.

Time dealt gently last year with the bench of this Province, there being no change by death either in the Court of Queen's Bench or Superior Court. The year 1891 is more tragic. First the sudden death of the Chief Justice of the Queen's Bench. This has been followed, a few days later (June 9), by the sudden death of Sir Andrew Stuart, ex Chief Justice of the Superior Court. The deceased was born in the city of Quebec in 1813. His father, the late Andrew Stuart, was at one time Solicitor-General of Lower Canada. The ex-Chief Justice studied law with the late Sir James Stuart, Bart., and was called to the bar in 1834. In 1854 he was appointed Q. C. Five years later he was appointed an assistant judge of the Superior Court, and on the 6th June, 1860, a puisne judge of the same Court. In 1885, on the retirement of Chief Justice Meredith from the bench, Judge Stuart was appointed Chief Justice, a position which he resigned towards the close of 1889, when he was succeeded by the present Chief Justice, Sir F. G. Johnson. Chief Justice Stuart was knighted in 1887.

So much has been said, and well said, in Parliament, in the columns of the daily press, and elsewhere, with regard to the life and character of the late Sir John A. Macdonald, that any further reference to the subject at present would be superfluous. The chorus of laudation may seem a trifle exaggerated a generation hence, and time must be left to do its part in sifting the false from the true. The late Premier, however, was indisputably the most remarkable figure that has appeared in Canada since the cession. Part of this prominence may be due, as in the case of Gladstone and Bismarck, to the great length of his public service. Forty-seven years in Parliament, almost always in office taking the leading part in founding the Confederation, a quarter of a century ago; premier ever since with one intermission of less than five years; dying in office after having been premier for the last thirteen years continuously; these are facts almost without precedent in any country as applicable to a single individual. Sir John's early practice at the bar was somewhat more important than that of William Pitt, but it sinks into equal insignificance in the light of his splendid after career. As an authority on constitutional questions he was perhaps excelled by one at least of his contemporaries. His strong point was his adroitness in the management of men, and it may fairly be added, his devotion to the best interests of his country.

BILLS OF EXCHANGE ACT.

On the second reading (June 2) of the Bill to amend the Bills of Exchange Act, 1890, which was printed in a previous issue, Mr Abbott said:—

This is a Bill partly to remedy two or three verbal defects in the former bill, and partly

to make two distinct enactments. The verbal defects arose in consequence of the alteration of the provision with regard to bills payable at sight. As the measure was originally drafted, bills payable at sight were made payable on demand, if I recollect right—that is to say, there were no days of grace. But in that portion of the measure where these bills came to be dealt with, it was so arranged that they should have three days' grace, differing from the English system.

Hon. Mr. Scott—The old law being continued?

Hon. Mr. Abbott—Yes; differing from the English system, in which days of grace on sight bills have been abolished; but in two or three paragraphs, where bills at sight are casually alluded to, the necessary erasures did not take place, and part of the Act reads as if bills at sight had three days' grace and part as if they had not. The object of this provision is to set that right by making several verbal corrections.

Hon. Mr. Scott—That is, bills at sight will have the three days' grace?

Hon. Mr. Abbott—Yes. The Act provides that, but in some of the details it is ignored, because the provisions have been copied from the English Act. There is a difference of opinion as to cheques bearing a forged endorsement. A cheque bearing a forged endorsement, with, perhaps, half a dozen subsequent endorsers, every one of whom is responsible for that endorsement, passes into a banking-house, and the only remedy under the law, as it stood, that the bank could have, would be its recourse against the person who deposited the cheque with the bank. Obviously, as the law provides that subsequent endorsers make themselves responsible for the genuineness of previous signatures, or, in other words, provides that they shall not be permitted to deny the genuineness of previous signatures, there is an injustice in that, because the person who happened to pay in the cheque may be worthless, while his immediately preceding endorser may be perfectly solvent, and the bank unable to recover back the amount of money which it has paid, or for which it has given credit, from the last endorser but one, the last endorser being insolvent. If the cheque were in the hands of a *bond fide* holder, or what they call a holder in due course, this holder in due course would have a right against all the previous endorsers up to the first endorser; but because the bank pays the cheque it was construed by those who examined the former Bill to have none of the rights of a holder in due course; it was held that the bank could not proceed against anyone but the last endorser, the person who paid it over; whereas, if it was a bill in due course there would have been recourse against every one on the bill subsequent to the first endorser. In other words, a bank paying a cheque has not the same rights as to the parties on the cheque if it be wrong as a person who receives the cheque and does not pay it, which seems an absurdity.

Hon. Mr. Scott—Is that a decision of a court?

Hon. Mr. Abbott—No; but it is the opinion of eminent lawyers in Montreal and Toronto, and in the Maritime Provinces also. There seems to be a sort of consensus on the part of the bar that that is the case, because the House will find the definition of a holder in due course does not comprise the party on whom the cheque is drawn and who pays it, because the moment the cheque is paid it is extinguished, as the law stood, and he has no recourse, except to go to the man who got the money, and say to him: "You have got the money wrongfully, and must give it back." I hope there will be no difficulty on the part of the House in giving the bank the legal remedy which the law affords to everyone else.

Hon. Mr. Scott—There has been no test case yet, and the courts would probably hold that the bank would have the same recourse as others.

Hon. Mr. Abbott—There has been no test case yet, but there is no difference of opinion among the leading members of the bar. Those lawyers who have the best reputations in the Dominion have been consulted about it. The other substantive alteration which this Bill makes is to reinsert in the Act a clause which was in the original draft, but which was left out. It is to be found in the previous law, and it was so in the Code.

There was a similar clause in the Lower Canada Code—simply to make the common law of England apply upon a point where it is not inconsistent with the provisions of the Bill. I did not think last session, when the Act was passed, that that clause was necessary, and others were of the same opinion; but it seems to have caused a certain amount of doubt and uneasiness that there is no system of law to be referred to in the event of a dispute as to the construction of the statute, and it is considered important that this could be got in.

Hon. Mr. Power—I presume there will be no objection to the reading of the Bill, but I do not suppose by reading a Bill the second time the House commits itself to accepting the proposed amendment to section 24, and I take the opportunity now to call the attention of the hon. leader of the House to the fact that this amendment to section 24 is, it strikes me, inconsistent with the portion of section 24 which remains in force. Section 24 of the Act begins as follows:—

"Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative," &c.

Now, you propose by the amendment before the House to practically repeal that, because the signature is made operative to a certain extent.

Hon. Mr. Abbott—No; my hon. friend is mistaken. That is not the intention at all.

Hon. Mr. Power—If there were no drawers' names on the bill or acceptor's name on the bill it would not be good for anything, from the fact that a number of gentlemen have put their names on paper which was not signed or accepted. It would not make them liable, but you propose by this legislation to make all the endorsers liable.

Hon. Mr. Abbott—No. Under the existing law, if a bill in which the earlier signature is forged came into the hands of a *bonâ fide* holder, and on which three or four of the names were genuine, he would have an action against the endorser. It has been held that in the case of a cheque, the person who pays it does not become the holder, and therefore he would have a remedy against the last endorser who held the cheque. The object is to give the same action against the whole of the endorsers that the holder in due course would have—to give to the bank the same power as a holder in due course.

Hon. Mr. Kaulbach—Would it be against the bearer who transfers? Would you have an action against the bearer of the note—against the drawee?

Hon. Mr. Abbott—The drawee, if he pays a cheque under this Bill as it stands without being amended, would have a remedy against the previous *bonâ fide* endorsers, whose signatures were prior to that of the forged signatures; whereas, a person who held a bill as a holder in due course would have a remedy against all those endorsers; and it is simply giving the bank the same remedy as the holder in due course. The subsequent clause in the Bill simply makes the common law of England a universal referee in case of our failure to comprehend any of the clauses of the statutes.

Hon. Mr. Scott—There is a little confusion in the words "or to the bearer thereof." I quite agree with giving to the payee the rights of any of the endorsers subsequent to the forgery, but the words "or to the bearer thereof" in the second line make the proposition somewhat confusing. If he pays it to "the bearer thereof," it does not follow that he has the right to charge the maker of the cheque.

Hon. Mr. Abbott—If the cheque is endorsed in blank it may be presented by anybody, but the liability of the endorser still remains; but if a cheque is presented in blank by a person who is not an endorser, and he gets the money, the bank, as the law stands, would have a right of remedy against that man to get back the money. What we intend to do is to give to the bank, in addition to its remedy against the bearer, its remedy against the endorsers, who are legally liable under the Act to the *bonâ fide* holder.

The motion was agreed to, and the Bill was read the second time.

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER XIV.

OF WAIVER.

(Continued from page 184.)

§ 286. *Waiver by parol.*

In the following case it was held that the general officer of the company might waive by parol the condition that waiver must be endorsed on the policy. The company's secretary asked the insured to wait till the company got estimates for rebuilding. The insured delayed sending in his proofs in consequence. This was held waiver by the company.

Incumbrances to be notified in writing. One existed not notified, but the mortgagee afterwards insured his interest through the same person, agent for two companies; then the first insured renewed his insurance, paying renewal premium to the same person agent. All the policies and receipts were countersigned by that person, agent for two different companies. This was held sufficient to authorize the jury to find that the first insurers had knowledge of the incumbrance.[1]

§ 287. *Question whether there has been waiver, how regarded.*

Waiver is sometimes held to be a mixed question of law and fact. § 137 p. 275, Hilliard on New Trials.

Whether there is evidence to establish a waiver by the president of an insurance company of preliminary proof of loss under a policy is a question of law. *Ib.*

Hilliard on New Trials says that waiver is a question of law. It is very often so, at any rate.[2]

§ 288. *Silence not always a waiver.*

In *Mason* v. *Andes Insurance Co.*[3] it was held that if an insurance company, after a fire, get informal proofs, and ask for others in consequence, and again informal ones are delivered and the company is silent, the company, being sued, is not considered to have waived right to proper proofs—proper certificate of Justice of the Peace, etc. But otherwise it might be held, were it to go into correspondence with the assured on other subjects, as if contemplating to pay. So, in *Langel* v. *Mutual Insurance Co. of Prescott*,[1] it was held that mere silence of the insurance company, after particulars of loss handed in that are quite informal, is *not* fatal to nor a waiver by the company. But if the company go into a debate by writing on other grounds that are bad, perhaps it would be held a waiver. The same principle was affirmed in the case of *McMasters et al.* v. *The Westchester Co. Mutual Insurance Co.*,[2] where, after loss by fire of the property insured, the insured refused to pay, placing his refusal not upon defects in the preliminary proofs, but on a change of interest or ownership in the property. On the trial the insurer was not allowed to object to the preliminary proofs, it being held that he had waived the right to object to them. Upon the same principle it would appear that the insurer cannot go into denial of fulfilment of any other warranty.

§ 289. *The general principle.*

Waiver is as fairly to be admitted in insurance as in other contracts; yet corporation law is to be observed. It is elementary that "la condition est réputée accomplie quand celui à qui elle profite y renonce volontairement."[3] Of course, there lies the question always, What is such renunciation and who has power to make it?—just as fairly as where a default of accomplishment comes from the act of him who is to profit by non-accomplishment.[4]

Waiver can hardly be without the knowledge of the party alleged to have waived breach of covenant by his adverse party.[5]

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[1] Supreme Court, Pennsylvania, January, 1877, *State Ins. Co.* v. *Todd*, 21 Alb. L. J. 225.

[2] *Semble* the Court of Queen's Bench held it to be for the Court to say whether proof had been made of a waiver. *W. Ass. Co.* v. *Atwell* (*post*). But, perhaps, it meant to say that the jury had pronounced *without sufficient proofs*.

[3] 23 U. C. Com. Pleas, A. D. 1873.

[1] 17 U. C. Q. B. Rep. 524.

[2] 25 Wendell.

[3] De Savigny, vol. iii, p. 144.

[4] This is a kind of *dol*, and not to lead to profit.

[5] *Hunter* v. *Daniel*, Chancery, A. D. 1845, vol. iii, N. Y. Legal Observer. But see vol. ii N. Y. Legal Observer, A. D. 1843, p. 17. Forfeiture of a lease may be waived by the acceptance of rent subsequently accruing.

§ 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 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

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

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

[2] *Whyte* v. *Western Ass. Co.*, Privy Council, March, 1875.

[3] *Ib.*

[4] 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.

[1] *Brink et al.* v. *Hanover F. Ins. Co.* (New York, February, (8810), Alb. L. J., A. D. 1880, p. 296.

[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.

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.*

ceive it late. His merely sending or asking for it from the insured not to hurt him. He is free so long as the premium is not paid.

Premium stipulated *portable* may be held to have been changed into *quérable*, where, *e.g.*, the company has time after time sent to collect renewal premiums after *échéances*. Cassn. 1863, 10 June; 1868, 5 May; and so even though premium to be paid within a fixed delay *à peine de déchéance*.

Some late French policies make the insured renounce in advance to the exception of *quérabilité* as to premiums. This shows that that exception had or has fastened itself.

Usage may make premiums stated *portables*, in policy, *quérables*.

§ 294. *Effect of adjustment of loss.*

Adjustment the same as in marine insurance is not practised in fire. Adjustment on the policy is what takes place in marine insurance. In fire insurance adjusting or fixing the amount of the loss is not a waiver of right (till actual payment) by insurers to oppose their freedom owing to conditions violated. The insurer need not before actual payment allege fraud, even; particularly when, at stating loss, they were ignorant of the condition having been violated.[1] But *after* payment (*semble*) the insurer can only get back, or *répéter*, for fraud.[2]

Where, after informal preliminary proofs, part payment is made by the insurers, such payment has been held a waiver of other or more formal proofs.[3]

Any formal defect in preliminary proof may be supplied, *whenever* objection to pay a loss is put upon that ground.[4]

Says Angell (end of § 244): Churchwarden's certificate *actio non* till production of. Action brought, can it afterwards be supplied? Before action, perhaps so.

§ 294. *Waiver by President.*

The verbal consent of the president cannot be a waiver where there is a by-law requiring the consent to be in writing. The president is a mere agent, with limited power, and cannot waive by-laws so, and could not bind an incorporation or company with by-laws so.[1]

The president of an insurance company, as such, cannot waive preliminary proofs.[2]

§ 295. *Waiver by Secretary.*

Waiver by parol by a secretary cannot be proved to bar prescription of action, or to make out that the time within which the action had to be brought was extended.[3]

Where a policy is under seal, the rights of the company under it cannot be waived, even by a writing of a secretary, unless formally authorized.[4]

The directors cannot waive by parol the performance of conditions precedent contained in a sealed policy; still less can a mere managing director and secretary.[5]

§ 296. *Miscellaneous observations.*

Some policies say that no condition shall be held waived unless "the waiver be clearly expressed in writing, signed by the company's secretary or agent, and delivered to the assured or his agent."

The judge of the County Court, in 1856, in the case of *Ward* v. *The British Industry Life Ass. Co.*, held that the fact of agents of a company (who had power to negotiate policies) taking premiums from the assured after default, was waiver of objection by the company, but the Court of Common Pleas reversed the judgment, on the ground that the agent had no authority to waive the rule by which the policy was forfeited by default to pay premium in four weeks.

In *Brady* v. *The Western Ins. Co.*[6] the con-

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[1] *Shepherd* v. *Chewter*, 1 Camp., and *Herbert* v. *Champion*, 1 Camp. 134.

[2] In *Matthews* v. *Genl. M. I. Co.*, vol. ix of 1854, La. R., is a case of adjustment set aside made in ignorance by insurer of fraud by insured.

[3] 14 Barbour R. 206.

[4] 25 Wend. 383; 16 Barbour, 255.

[1] 6 Gray R.; *Hale* v. *M. M. F. Ins. Co.*, *Ib.*

[2] Angell, end of § 458.

[3] *Lampkin* v. *Western Ass. Co.*, 13 U. C. Q. B. Rep. See "Proof." In this case the policy was under seal.

[4] *Ib.*, p. 242.

[5] *Scott* v. *Niagara Dist. Ins. Co.*, 25 U. C. Q. B. Rep., A. D. 1867. *Lampkin* v. *West. Ass. Co.* re-affirmed. See *Dill's* case *ante*, where the Court in Quebec held that the president and secretary of a company could by parol extend the fourteen days allowed for filing particulars.

[6] 17 U. C. Com. Pl. Rep.

dition was that the action was to be brought within six months after the damage occurring. A fire happened; the insured filed his claim, and it was agreed between plaintiff and defendant's agent D. that he should not prosecute until S. returned from England, and that till then the limitation should be suspended. D. had effected the insurance and received the premiums. After the six months a tender was made to the plaintiff by the defendants, but of less than he asked. It was held that there had been waiver, and the plaintiff's right to sue was affirmed. The policy in this case was by the agent, not under seal, but the agent's authority was signed by two directors and had the seal of the company. The plaintiff was wrong to say anything in his declaration of the six months' limitation. He ought to have left that to the defendants to plead.

In *Pim* v. *Reid*[1] the action was on a policy not by deed. The Court held that particulars might be waived.

Objections to preliminary proofs may be waived by the company objecting on other grounds.[2]

Conditions precedent may be waived by the conduct of the party entitled to ask for performance.[3]

The principle that waiver of preliminary proofs may be made by conduct leading the insured into the belief that the insurers did not require further evidence of loss, and thereby keeping the insured from making fuller proof, was sanctioned in the case of *Graves* v. *Wash. Mar. Ins. Co.*[4]

Waiver of conditions precedent may, of course, be made expressly, but may be caused also by implication; as where the party entitled to exact performance hinders or impedes the other, or refuses something, so as to render it idle for the other to fulfil the condition.[1]

Time as of the essence of a contract is waived by a protracted treaty.[2]

As acceptance of rent after a forfeiture is a waiver of forfeiture,[3] so taking a new premium may sometimes be a waiver of any previous forfeiture.

It was ruled in 49 Maine, 200, that misrepresentations in obtaining a policy are waived by a renewal of the policy with knowledge of the risk. [4]

Notice is given and proofs made. A particular objection is then made by the insurers. This alone being objected, they make waiver of other objections to notice or proofs (as in case in 1 Camp.). Defect in proofs ought to be opposed at once. Angell, § 244. Part payment of loss is a waiver of objection to proofs previously made. *Ib.*, § 242.

No act is a waiver unless it be shown to have been done with knowledge that the forfeiture existed which is alleged waived.[5]

GENERAL NOTES.

At the old Bailey it was customary to sentence the whole of the prisoners found guilty at the sessions at one time. It fell to Baron Graham's lot to perform this duty, and he accordingly went over the list with due solemnity, but omitted one person brought up for sentence—Mr. John Jones.—The judge was on the point of finishing the sentences when the officer reminded his Lordship of this omission. Whereupon the judge said gravely, 'Oh! I am sure I beg Mr. Jones's pardon,' and then sentenced him to transportation for life.

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[1] 6 M. & G.

[2] 2 Phillimore on Insurance, 1803, 1813. Suppose this case: "We have received your proofs. You must make oath of (so and so)." Surely if this be the conduct of the insurers, other objections to proofs will be in vain.

[3] 43 Barbour, 366. See Cond. R. La., vol. iii, p. 750, for condition precedent waived. That, and p. 742, are applicable to cases of insurance. See also *Rawle* v. *Fennessey*. 6 La. R. N. S., p. 204.

[4] 12 Allen's Rep.

[1] Benjamin on Sale, p. 422. *Hotham* v. *L. Ins. Co.* cited. Also *Russell* v. *Bandiera*, 13 C. B. N. S.

[2] 19 Vesey, Jr., 220.

[3] *Amsby* v. *Woodward*, 6 B. & C. For example, where, after sub-letting contrary to the stipulations of the lease, the original lessor has received rent from the sub-lessee.

[4] Monthly Law Reporter, 1863-4, p. 466.

[5] 2 Am. L. Cases, 522. *Semble*, the knowledge may be express or implied. See also *Chapman* v. *Lancashire Ins. Co.*, L. C. Jurist.