subject of conveyances, it makes no difference whether the mistake is in regard to a statutory or common law requisite, or whether the parties failed to make the instrument in the form they intended. *Beardsley* v. *Knight* (1838), 10 Vt. 185, 33 Am. Dec. 193; *Kennard* v. *George* (1863), 44 N. H. 440. It has been held that where the intention of the parties to a deed was to grant an estate by entireties to husband and wife, as grantees, but the estate was granted to the wife alone, although it was a mistake of law, equity granted reformation. *Corrigan* v. *Tiernay* (1890), 100 Mo. 276, 13 S. W. 401. See also *Brown* v. *Dow* (1894), 79 Hun. (N. Y.) 44, 29 N. Y. S. 652. And where a covenant was omitted from a deed, through mutual ignorance or inadvertence of the parties, equity reformed the instrument so as to conform to the original agreement. *Uihlein* v. *Matthews* (1904), 93 App. Div. 57, 86 N. Y. S. 924. And a mistake of the draftsman of a deed which caused it not to express the real intention of the parties has been held grounds for reformation. *Nutall* v. *Nutall* (1904), 26 Ky. Law Rep. 671, 82 S. W. 377.

Equity will reform a written instrument when by mistake it does not contain the true agreement of the parties, yet it will do so only when the mistake is plain and the proof is full and satisfactory. *Jackson* v. *Magbee* (1885), 21 Fla. 622; *Trout* v. *Goodman* (1849), 7 Ga. 383. And the burden of proof is upon the party seeking the reformation of the instrument. *Potter* v. *Frank* (Me. 1909), 76 Atl. 489.

INSURANCE—PROOF OF LOSS—WAIVER BY AGENT IN DISREGARD OF STIPULATION IN POLICY.—The plaintiff held three fire insurance policies in the defendant company, each containing stipulations that proof of loss should be furnished within a specified time after the destruction by fire, of the property insured, and that there could be no waiver of any condition in the policy except by writing indorsed on or attached to the policy. Following the destruction by fire of the property insured the defendant requested the state fire marshall to investigate "the origin and circumstance of the fire", which investigation was not completed until after the time specified for furnishing the proof of loss had expired. The plaintiff furnished no proof of loss, claiming the investigation of the fire marshall at the instigation of the defendant to be a waiver of the stipulation requiring it. The plaintiff brought an action to recover on the policies. *Held,* judgment for the plaintiff. *Ohio Farmers' Ins. Co.* v. *Cochran* (Ohio 1922), 135 N. E. 537.

It is a general and well settled rule of law that a principal is liable for the acts and conduct of his agent performed in the apparent scope of the latter's authority, and in the case of insurance agents this rule is not superseded by any stipulation in the policy that no agent can waive a condition except by writing indorsed on or attached to the policy. *Southern States Fire Ins. Co.* v. *Vann* (1915), 69 Fla. 549, 68 So. 647, L. R. A. 1916B, 1189. Neither silence nor investigation on the part of the insurer following the destruction of the property insured will alone constitute a waiver of a stipulation that proof of loss must be furnished within a certain time as a condition precedent to a recovery on the policy. *Central City Ins. Co.* v. *Oates* (1889), 86 Ala. 558, 6 So. 83, 11 Am. St. Rep. 67; *Beatty* v. *Lycoming County Mutual Ins. Co.* (1870), 66 Pa. St. 9, 5 Am.

Rep. 318; *Ray* v. *Fidelity-Phenix Fire Co.* (1914), 187 Ala. 91, 65 So. 536. But any conduct on the part of the insurer which induces or necessitates delay or failure to furnish proof of loss within a specified time will constitute a waiver of such delay or failure. *American Ins. Co.* v. *Dannehower* (1909), 89 Ark. 111, 115 S. W. 950; *Brown* v. *Firemen's Ins. Co. of Newark, N. J.* (Neb. 1921), 184 N. W. 88.

Stipulations requiring proof of loss are for the insurer's benefit, tending to prevent the perpetration of fraud by the insured. It is well settled that any condition for the insurer's benefit may be waived by the insurer. *East Side Garage* v. *New Brunswick Fire Ins. Co.* (1921), 198 App. Div. 408, 190 N. Y. S. 634; *Virginia F. & M. Ins. Co.* v. *Richmond Mica Co.* (1904), 102 Va. 429, 46 S. E. 463, 102 Am. St. Rep. 846.

Non-waiver stipulations, by the better rule, do not apply to conditions to be performed subsequent to the destruction of the property insured. *Morgenstern* v. *Insurance Co. of North America of Philadelphia* (1911), 89 Neb. 459, 131 N. W. 969; *Twin City Fire Ins. Co.* v. *Stockmen's Nat'l Bank* (1919), 261 Fed. 470.

And it is held that a stipulation prohibiting waiver at all or stating that it may be done in a certain manner only may be waived by the insurer or its authorized agent by their acts and conduct. *Phenix Ins. Co.* v. *Hart* (1894), 149 Ill. 513, 36 N. E. 990; *Bush* v. *Hartford Fire Ins. Co.* (1909), 222 Pa. 419, 71 Atl. 916; *Continental Ins. Co.* v. *Bair* (1917), 65 Ind. App. 502, 116 N. E. 752; *Hanover Fire Ins. Co.* v. *Dallavo* (1921), 274 Fed. 258. And it has been held that if the insurer and the insured enter into a non-waiver agreement while the former investigates the loss by fire, the stipulations that proof of loss must be furnished within a specified time are waived. *German-American Ins. Co.* v. *Shepherd* (Ind. 1920), 126 N. E. 447.

TELEGRAPHS AND TELEPHONES—DEATH MESSAGE HELD NOT TO SHOW MENTAL ANGUISH WOULD RESULT FROM NONDELIVERY.—The plaintiff's daughter sent a telegram announcing the death of another daughter of the plaintiff, addressing said telegram to a brother of the plaintiff. The plaintiff was not named in the telegram and the fact that she was to be notified was not mentioned to the agent of the company, the brother of the plaintiff (uncle of the sender) being the only person designated to receive the telegram. The plaintiff brought action for damages for mental anguish alleged to have been caused by negligent failure of the company to deliver the telegram. The telegraph company defended on the grounds that neither the character of the telegram itself, nor extrinsic information available were such that the mental anguish of the plaintiff ought to have been anticipated as a result of nondelivery. *Held,* the defendant is not liable. *Haffey* v. *Western Union Telegraph Co.* (Ky. 1922), 240 S. W. 374.

The general trend of decisions since *So Relle* v. *The Western Union Telegraph Co.* (1881), 55 Tex. 308, 40 Am. Rep. 805, denies the right of recovery for mental anguish in the so-called telegraph cases. *Summerfield* v. *Western Union Telegraph Co.* (1894), 87 Wis. 1, 57 N. W. 973, 41 Am. St. Rep. 17; *Chapman* v. *Western Union Telegraph Co.* (1892), 88 Ga. 763, 15 S. E. 901, 17 L. R. A. 430, 30 Am. St. Rep. 183; *Tyler* v. *Western Union Telegraph Co.* (1893), 54 Fed. 634. The reason for this seems obvious, since at common law there can be no recovery for mental suffering un-