

case can be produced in which a right has been effectively relinquished save by contract, estoppel, or release. And "waiver" appears to be effective only because, being sufficiently loosely defined, it sometimes assumes the garb of one of these and sometimes that of another. "Waiver" is said to have close relations with election also, because, when you choose one thing, you are said to "waive" your right to the other—a right that you never had.

USEFULNESS OF THE WORD "WAIVER."—Notwithstanding what has been said, "waiver" is a serviceable word, and no sweeping condemnation of it is intended. But observe that it is used in three different ways:—

(1) It occurs frequently in general literature and conversation, and, there, its use is entirely unobjectionable. No one would think of disapproving Cowper's line, "She rather waives than will dispute her right." But if we are told that, as a matter of law, she had waived it, our informant might well be asked whether he meant that she had executed a release; and, if not, what had she done?

(2) Technical use of the word as descriptive of a legal situation is indefensible.

(3) Introduction of it into legal discussion, for any purposes, is misleading, and is subversive of general appreciation of correct principle. For lucidity, we must define our terms and use them accurately.

"WAIVER" AND SUCTION.—"Waiver" bears the same relation to scientific law as the word *suction* bears to physics. For although *suction* is a useful word in general conversation, it describes no natural force. And when men tell you that something happened through suction, the word, although possibly conveying the intended idea, must be translated into atmospheric pressure, muscular action, or some other well-known force, before any argument can be based upon it. It is not itself a category. Neither is "waiver."

"WAIVER" AND ELECTION.—The substitution of "waiver" for election has produced very notable disaster in insurance