

"Waife," translatable into "waiver," was when a pursued thief "waived" or threw away the stolen goods. And "waive" was an outlawed woman—

left out or forsaken of the law, and not an outlaw as a man is; for women are not sworn in Lutes to the King nor to the law as men are, who therefore are within the law, whereas women are not, and for that cause they cannot be said outlawed, in so much as they never were within it. (a).

These are the only sorts of "waiver" or "waive" that I know of; and that is all that I am able to say about them.

DISTRIBUTION OF "WAIVER."—All else that is usually spoken of as "waiver" is, in my judgment, referable to one or other of the well-defined and well-understood departments of the law, Election, Estoppel, Contract, Release. "Waiver" is, in itself, not a department. No one has been able to give it satisfactory definition, or to assign to it explanatory principles. The word is used indefinitely as a cover for vague, uncertain thought.

In enunciating new doctrine of such apparently fundamental character, I cannot restrain a feeling of hesitation and doubt, but I take comfort and courage from varying features of the existing situation: (1) Nobody has yet thought that he knew enough about "waiver" to attempt its exposition in a book. (2) Although many Judges and text-writers have indicated views as to some of the elements of "waiver," there is not only no consensus of opinion, but there is the widest diversity and conflict. (3) Nobody appears to know whether "waiver" is unilateral or bilateral; whether it is the same as election, estoppel, contract, release, or some or one of them; and nobody seems to care.

DEFINITION OF "WAIVER."—The usual definition of "waiver" is "an intentional relinquishment of a known right," but no

(a) *Termes de Ley*, ed. 1642, p. 285; quoted in Stroud's *Jud. Dic.* 2207. *Waifs* are *bona wariat.*: Stephen's *Com.*, 16th ed., vol. II, 653. And see *Fozley v. Annesley*, 1509, Cro. Eliz. 694; 5 Rep. 109, where the word is spelled *ward*.