

What is meant by the words sometimes used by the endorsers of notes, "presentment and protest waived," we all know quite well. But their use is unfortunate, for it obscures just appreciation of the fact that there are two kinds of contracts which an endorser may make—one that he will pay if the maker do not, and the other that he will pay if the maker do not and if presentment and protest be made. The words "presentment and protest waived" are intended to indicate that the first of these contracts is the one intended, and they manifest that fact by saying that the holder of the note need not do that which would be necessary if the contract were of the kind that it is not. That is stupid and leads to misapprehension.

Confusion rather than misapprehension has been the result of the interjection of the word "waiver" into a section of the English Sale of Goods Act (a).

"Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated."

That extraordinary bungle was caused by the insertion of the word "waive" in the clause as drafted by Mr. Chalmers. The intention was to declare that a purchaser should have the option of insisting upon a condition as a condition, or of treating it as a warranty—for example, as applied to the sale of a horse with a condition of pedigree, that the purchaser might adhere to the condition and return the horse, or keep the horse and sue, as upon a warranty of pedigree. The statute, on the other hand, provides that the purchaser may either "waive" the condition—that is, I suppose, keep the horse, or treat the condition as a warranty, and in that case also keep the horse.

"WAIVER" AND ESTOPPEL.—Estoppel appears to me to have no relation to anything which might be called "waiver," but in the United States they are treated as almost interchangeable

(a) 56, 57 Vic., c. 71, s. 11.