

WAIVER.*

The subject of my address has been announced as "Waiver," but that is only my little joke, for there is no such thing as "waiver"—I mean as a distinct legal concept—and that is what I want to say.

About 12 years ago, after I had finished my work on Estoppel, I set myself to study Waiver, but very soon I ascertained that there was not enough "waiver" to write a book about. I first sketched what I had to do as follows:—

Waiver is entangled with estoppel, election, and contract; and the first step towards separation will be taken when it is observed that it is principally in the law of insurance that waiver and estoppel become involved; in the law of landlord and tenant that waiver and election seem to blend; and in the law of contracts that waiver is confounded with agreement. Closely studying waiver in these three departments, comparing and contrasting it there, with estoppel, election, and contract, will enable us to see what there is in it that is special and peculiar to itself. And let our procedure be to assign to these three departments such cases as properly belong to them, and, examining the rest, see what we can make of them.

Proceeding on these lines, the result arrived at was that nearly all cases of supposed "waiver" could very easily be placed in one or other of the three departments above mentioned. Some had to be assigned to release (in one sense a part of contract), leaving only a few stragglers of negligible character. "Waiver" evidently was an empty category, and modification of the title of the book had become necessary.

REAL "WAIVER."—This general statement must be qualified by the admission that, in the older law, may be found one case of "waife" and one of "waive."

* The following paper by John S. Ewart, K.C., of Ottawa was read by him at the Annual Meeting of the Ontario Bar Association held in Toronto in February last.