

of the word forfeiture. It is absolutely inapplicable and most mischievously misleading. If you insist upon using the word, put it in the phrase *potential elective forfeiture*, and shew that you at least know what you mean.

WAIVER AND ELECTION.—"Waiver" sometimes produces confusion by pretending to be the reverse of election. For example, Mr. Bishop opens a chapter in his book on Contracts with the words:—

The law, in all its departments, is constantly presenting to the choice of people its different paths, so that a person who has elected one has waived another. The doctrines of election and waiver, therefore, belong together (a).

If you had a choice between a horse and a mule, and you chose the horse, you would not say that you "waived" the mule. For you did not. You had an election between two animals, and, electing to take one, you could do nothing with reference to the other—not even waive it.

You do not "waive" a right to appeal by acting upon the judgment—as is often said (b). You elect whether to accept the judgment, or to appeal from it. If you chose to appeal, would you say that you had "waived" your acceptance of the judgment? It is customary to declare that, where goods are tortiously taken and sold, the owner may "waive" the tort and sustain an action in assumpsit for money had and received; but nobody would think of saying that the owner might "waive" his action in assumpsit and bring an action in trespass. The owner had a right to elect; he makes his election; he gives up—he "waives" nothing.

"WAIVER" AND CONTRACT.—Having, as I hope, helped to separate election from "waiver," let me try to disentangle contract from the same evil association.

(a) Ed. 1907, p. 326. And see *Warren v. Crane*, 1883, 15 N.W. 463; 50 Mich. 300; *United Firemen s. etc. v. Thomas*, 1897, 82 Fed. 406; 27 C.C.A. 42; *Supreme Lodge, etc. v. Quinn*, 1901, 29 So. 826; 78 Miss. 525; *Gable v. U.S. Life*, 1901, 111 Fed. 19; 49 C.C.A. 216

(b) *Videau v. Westover*, 1397, 29 Ont. R. 6, note.