

mand,—and to avoid the clashing of jurisdiction, which would result from a jury finding a verdict one way and the Chancellor deciding another.

The party put to his election will be allowed a reasonable time to determine. This reasonable time seems now to be eight days.

The rule as to electing cannot be evaded by mingling other grounds of complaint in the action at law with that which is comprehended in the bill in equity, where the real, substantial ground of complaint is the same in both courts.

If plaintiff refuses to elect, his bill will be dismissed with costs.

Any decisive act of the party, with knowledge of his rights and of the facts, such as, asking to have a commission remanded upon any ground, determines his election.

One of several defendants, without the concurrence of the rest, has the right to compel an election.

THE CHANCELLOR :

This case is brought before the court upon applications on the part of the complainants and the defendants.

The complainants, who seek to vacate a decree for fraud, passed by this court in the year 1846, upon the allegation that it was obtained by collusion on the part of George H. Williams, and his mother, Elizabeth B. Williams, ask to have produced the books and papers of George Williams, the husband of said Elizabeth B., for the purpose of being used against the wife, upon the statement, that these books and papers contain evidence of the imputed fraud.

George Williams has been declared an insolvent debtor, and the books and papers in question are said to be in the hands of George H. Williams, as his trustee in insolvency.

The application is resisted upon several grounds, and among others, upon the settled rule that husband and wife cannot be witnesses for or against each other. The rule itself is not, nor could it be disputed, and although its indiscriminate application may involve an occasional failure of justice, there is no principle more firmly established. The reason for the exclusion is founded partly on their identity of interest, and partly on a principle of public policy, for the sake of preventing discord in families; a policy of which no invasion will be permitted, even after a divorce; the confidence which subsisted during coverture being held sacred, though the tie is sundered.

1 *Philips' Ev.*, 64, 66.—*Gresley's Ev.*, 342.—2 *Kent's Com.*, 178, 179, and the notes.