

## ELECTION—Continued.

- demand, and to avoid the clashing of jurisdiction which would result from a jury finding a verdict one way, and the Chancellor deciding another. *Bradford & Williams vs. Williams et al.*, 1.
2. The party put to his election, will be allowed a reasonable time to determine. This reasonable time seems now to be eight days. *Ib.*
  3. 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. *Ib.*
  4. If a plaintiff refuse to elect, his bill will be dismissed with costs. *Ib.*
  5. Any decisive act of the party with knowledge of the facts, such as asking to have a commission remanded on any ground, determines his election. *Ib.*
  6. One of several defendants, without the concurrence of the rest, has the right to compel an election. *Ib.*

See PRACTICE IN CHANCERY, 66.

## ENTRIES IN BOOKS.

See EVIDENCE, 5.

## EQUITABLE LIEN ON LANDS.

1. S., a trustee under a decree of the Court of Chancery, to invest certain trust moneys, agreed with D., the surety in his trustee's bond, to lend him \$12,000, of the trust funds to be secured by a mortgage upon D's lands; and some time in the year 1845, advanced \$6,000, part of said \$12,000 to D., and agreed to apply the other \$6,000, to the payment of a judgment against D. Afterwards in the same year, D. executed a mortgage upon the lands now held by the defendant, to secure the payment of the said \$12,000. S. failed to pay the judgment, and the mortgage was never recorded, nor reported to the Chancellor for his approval; but was subsequently, about the 1st of January, 1846, returned by S. to D., and by him destroyed. S., at or before this time, had received large sums of the trust money which he failed to invest and was subsequently removed from his office, and a new trustee appointed in his place. The lands were sold at sheriff's sale, and purchased by the defendant for \$500, subject to prior judgment liens, amounting nearly to their full value. The complainants, the *cestui que trusts* of the fund, then filed their bill, claiming an equitable lien on these lands, in the hands of the purchaser, by reason of the above agreement between S. and D. **HELD—**

That it is very clear the complainants cannot have relief, unless they can show themselves entitled to an equitable lien upon these lands, which, upon principles of equity, they may set up and maintain against the purchaser; and, that to do this, they must make out, by satisfactory proofs, a certain, distinct and consummated contract between S. and D. for such a lien. *Gill vs. McAttee*, 255.

2. The circumstances of this case coupled with the fact of the actual surrender and cancellation of the mortgage by the mortgagor, fail to show