

containing these words: "If this action could be maintained a lessor might declare in case for not occupying in a husband-like manner which cannot be. The facts alleged are permissive waste, and an action on the case does not lie against a tenant for permissive waste: *Countess of Shrewsbury's Case*, 5 Co. 13." The case cited is the same case as *Countess of Salop v. Crompton*, above referred to, which, as we have seen, was the case of a tenant at will, and had therefore no application to the case in hand, unless it was also a case of a tenancy at will, which does not appear, and while the statement may be true that an action would not lie for not occupying in a husband-like manner, if it only resulted in injury to the tenant himself, still it would seem to be actionable if it resulted in injury to the inheritance, in the same manner as active waste of a like nature: See per Gibb, C.J., in *Horsefall v. Mather*, supra, Co. Lit. 536; *Simmons v. Norton*, 5 M. & P. 645, 7 Bing. 640; *Wetherell v. Howells*, 1 Camp. 227; or converting land to other uses as, e.g., into a cemetery: *Cregan v. Cullen*, 16 Ir. Ch. 339; *Hunt v. Browne*, Sau. & Sc. 178.

In the case of *Woodhouse v. Walker* (1880), 5 Q.B.D. 404, 42 L.T. 770, an action against a deceased tenant for life's personal representative for permissive waste suffered by the tenant for life in her lifetime, was held to be maintainable. In that case the land had been devised by a testator to his wife "during her life, she keeping the same in repair." It is submitted that the words "she keeping the same in repair," was merely a statement of the duty which the statute imposed on her. Her estate could only be liable on the supposition that she herself if living would be also liable. Formerly the right of action in respect of waste whether active or permissive would be subject to the exception in case of active waste hereafter mentioned have died with the tenant for life, but now under R.S.O. c. 129, s. 11 (see Impl. St. 3 & 4 W. 4, c. 42, s. 2), such actions may be brought against the representatives of a deceased wrongdoer (see notes to *Greene v. Cole*, 2 Saunders 251), but even before the statute last referred to, where the wrongdoer's estate had benefited by the waste, his estate might have been made liable