

when the house is destroyed by tempest, that is waste. Dyer, C.J., further says, "It seems reasonable that if a little breach was in the bank or wall and the lessee does not repair it but suffers it to continue, then, after the violence of the sea breaks all the wall and surrounds the land, that that is waste; for that might be amended by the lessee at the commencement; but if it were suddenly done by violence of the water, then that might be pleaded in bar of the action. But he said it was a rare case, and asked the clerks if they had any precedents for such assignment, and they said they had not."

In Griffith's case in the same Term reported on p. 69, the waste assigned was that the lessee suffered the banks of the River Trent to be unrepaired whereby the water broke the banks and surrounded the land, and it was held by all the justices that that was waste, because the lessee might have kept the river within its banks, and it was unlike the sea which cannot be restrained.

The early cases collected in vol. 30 of the Am. & Eng. Enc. of Law (p. 260, note 2), shew very clearly that down to the time of the publication of Blackstone's commentaries, and for some time after, that there was no question at law that the word 'waste' in the Statutes of Marlbridge and Gloucester included permissive waste.

A dowress was liable for permissive waste, see 18 Edw. III. cas. 72, but we must remember that dowresses were liable for waste at common law, and therefore this case may not be strictly referable to the statute: see however, Doct. & Stud. 113, post.

It was not until after the publication of Blackstone's Commentaries that the Courts seem first to have begun to make inroads on the previously accepted construction of the Statutes of Gloucester and Marlbridge. Although, as we have seen, the earlier authorities clearly laid it down, that all lessees (other than tenants at will) were within the Statute of Marlbridge, and though they were equally unanimous that the waste referred to in that statute included both active and permissive waste, yet the Courts of law without denying that all lessees other than