

writers we find that this refusal to grant relief in equity against permissive waste, has come to be treated by some judges and writers as though Courts of Equity had decided that tenants for life and tenants for years are not liable for permissive waste. That some common law judges have taken this view of equity is apparent from the case of *Barnes v. Dowling*, 44 L.T. N.S. 809, where Lopes, J., who delivered the judgment of the Court said: "The legal liability of a tenant for life for waste may be doubtful, but authority is strong to shew there is no liability for permissive waste in equity." This statement is perfectly true, but the inference which the learned judge seems to draw from it, viz., that Courts of Equity held that tenants for life are not legally liable for permissive waste; it is submitted, for the reasons above given, is quite erroneous.

But if common law lawyers have failed to appreciate equity decisions and practice respecting permissive waste, some equity lawyers seem to have equally failed to grasp the true effect of the decisions at law on the subject. In *Powys v. Blgrave*, 4 D. M. & G. 448, we find a Lord Chancellor, referring to the liability of a tenant for life for permissive waste, saying: "But then it is argued, independently of the trust, that it is the duty of a tenant for life to repair, *equitas sequitur legem*. But even legal liability now is very doubtful, *Gibson v. Wells*; *Herne v. Benbow*," neither of which cases it may be observed cast any doubt whatever on the legal liability of tenants for life for permissive waste. *Gibson v. Wells* has been already referred to and as we have shewn was the case of a tenant at will, and therefore had no bearing on the case of a tenant for life; and the facts of *Herne v. Benbow*, 4 Taunt. 764, were as follows: The plaintiff sued a defendant, a tenant under a lease containing no covenant for repair, in tort, for permissive waste, the defendant suffered judgment by default and on an assessment of damages before the under sheriff, the jury were directed to allow such sum as would put the premises in tenantable repair. The jury rejected that rule and gave small damages. An application was then made on behalf of the plaintiff for a new assessment of damages which was refused. The judgment