

suffers his house to fall down, that an action should lie against him, for he is not bound to repair it."

It may therefore be considered to have been early and well settled that the expression of "lessees for years" does not include lessees at will. Tenants at sufferance are also not included because they are in by wrong. Both tenants at will, and tenants at sufferance are, however, liable in trespass for any injuries they may do to the premises whilst in their occupation.

But as regards lessees who are within the statute Lord Coke appears to have had no doubt that the words of both the Statutes of Marlbridge and Gloucester included both active and permissive waste. Speaking of the Statute of Marlbridge he says: "To do or make waste, in legal understanding in this place includes as well permissive waste, which is waste by reason of omission or not doing, as for want of reparation, as waste by reason of commission, as to cut down timber trees, or prostrate houses, or the like: and the same word hath the Statute of Gloucester, c. 5, *que aver fait waste*, and yet is understood as well of passive as active waste." 2 Inst. 145, and see per Serjt. Salkeld arguendo in *Hammond v. Webb*, 10 Mod. 282.

There are two old cases in Moore's King's Bench Reports which shew that the judges of the time of Elizabeth understood the statutes to cover permissive waste. In an anonymous case, Trin. T. 6, Eliz. at p. 62, we find the waste assigned was in respect of a marsh for that the lessee suffered a wall of the sea adjoining the marsh to be ruinous, by reason of which, by the flow and reflow of the sea the land was surrounded." Carus, J., said: "This assignment of waste is not good ('n'est bone') for the overflowing of the sea does not constitute waste, for the sea cannot be confined within any limit; it is like assigning waste in a house which was destroyed by tempest. Harper (whether a judge or counsel is not clear) suggests if the wind divide the thatch of the house in a small part (peel) the lessee is held bound to restore it, which Dyer, C.J., conceded; and if he suffer that to continue and does not repair it, then at last