

mised premises was not, in his opinion, waste, because no injury was being done to the reversion. . . . "It would be waste to make such alteration as to change the nature of the thing demised. . . . The Court, no doubt, looks jealously to see whether the acts done are such as to diminish the value of the reversion."

Applying this test to cases such as *Lewis v. Godson*, and the timber cases upon which it is founded, it is clear that the removal of stones and the clearing of timber from land leased for agricultural purposes cannot be regarded as waste. The purpose is contemplated by the lease; and the reversion is not injured, but improved. . . .

[Reference to *Tucker v. Linger*, 21 Ch. D. 18, 8 App. Cas. 508.]

That which is suggested as the test, namely, is there injury to the reversion or not? has long been recognised as the touchstone. The old cases are collected in *Doe dem. Grubb v. Burlington*, 5 B. & Ad. 507, which adopts the statement: "The law will not allow that to be waste which is not anyways prejudicial to the inheritance." . . . See cases collected in *Dashwood v. Magniac*, [1891] 3 Ch. 306.

Perhaps the most complete statement of the law is found in the judgment of Buckley, L.J., in *West Ham Central Charity Board v. East London Waterworks Co.*, [1900] 1 Ch. 624, where he states the test of injury to the reversion in practically the same words as in the later judgment which has the approval of the Lords.

In the case at bar it is established, I think, beyond peradventure, that what is proposed by the tenant will, in the circumstances which exist, be a most substantial injury to the reversion. Further, if it be material to the case, I do not think that the lease in any way contemplated any excavation. It contemplated a user of the water lots as they were at the time of the demise. If these were unsuitable for the purposes of the Club, that was the Club's misfortune. No right was given to take away the sand—something far more analogous to the opening of a new mine than to the prudent conduct of husbandry, and in no sense permissible under such a lease as that in question.

The plaintiffs are, therefore, entitled to the injunction sought, and to a reference as to damages, if the parties cannot agree upon an amount. If it is desired to avoid a reference, I am ready to hear any evidence necessary to enable the damages to be now assessed.