

place, upon the lease itself. By it, the lands demised are to be used only for mooring purposes and for the purpose of obtaining reasonable access to the club house property by the construction of wharves or other proper approaches thereto. This provision is found in the lessees' covenant.

It is argued, on the one hand, that this in effect permits anything to be done to the demised premises which looks to the use of them for mooring purposes. On the other hand, it is argued that this does not confer any right upon the tenants; they take the premises as demised, and covenant to use in the manner set forth and in no other way.

I think the latter is the true construction of the lease. It is of moment that this is a lessees' covenant, and to that extent is a restriction upon the effect of the general demise.

The rights of the parties would then depend upon the effect of the demise itself. Upon a demise of a water lot, has the tenant the right to take and remove sand?

The tenant answers affirmatively, relying upon the decision of a Divisional Court in *Lewis v. Godson*, 15 O.R. 252, where it was held that a tenant who, for the purpose of clearing land and rendering it more fit for cultivation, collects the stones therefrom, has the property in the stones, and the landlord has no interest in them and is liable for their value if he takes and disposes of them.

A very careful consideration of this case convinces me that it throws little light upon the problem here presented. . . . The case does not determine that a tenant has the right to take and remove the body of the soil itself, which is what is being done here.

The law of waste, as applied to the case of landlord and tenant, has greatly developed. Originally the utmost strictness prevailed, and the tenant's right to interfere in any way with the condition of the demised land was kept within the narrowest possible bounds. In *Termes de la Ley*, for example, it is said: "Waste is where a tenant for term of years pulls down the house or cut down timber or suffers the house willingly to fall or digs the ground." The modern view is best exemplified by the decision of the Lords in *Hyman v. Rose*, [1912] A.C. 623, where the decision of the Court of Appeal, [1911] 2 K.B. 234, was reversed and the dissenting opinion of Buckley, L.J., was adopted as a correct exposition of the law. . . . In the Court of Appeal, Buckley, L.J., had placed the matter upon what appears to be an entirely satisfactory basis. What was being done to the de-