

decide for or against its authority, it would seem to be the better course to regard it (especially in this country) as not the law. It is very incisively criticized by Mr. Bewes, at pp. 216-219 in his *Law of Waste* (1894) . . .

In the 1st ed. of *Pollock on Torts* (Christmas, 1886), the author wrote thus: "As to permissive waste, i.e., suffering the tenement to lose its value or go to ruin for want of necessary repair, a tenant for life or years is liable therefor if an express duty to repair is imposed upon him by the instrument creating his estate: otherwise it is doubtful:" p. 286. In the 2nd ed. (Easter, 1890), the text is left unchanged (p. 301), and there is no reference to the *Davies* case, decided in February, 1888. In the 3rd ed. (August, 1892), at p. 307, the last sentence quoted above is altered thus—"otherwise he is not," and *Re Cartwright* (1889), 41 Ch. D. 532, is cited. The changed text is so continued in the 4th ed., at p. 313 (1895); also in the 5th ed. (1897) at p. 327, and in the 6th ed. (1901), at p. 338. In the last ed. (1904), p. 346, with the same text is added this note to *Re Cartwright*—"The correctness of this decision is disputed by Mr. C. B. Labatt, in 37 C. L. J. 533."

The modern doctrine as to non-liability of tenants for years and for life appears to proceed upon two grounds: first, a revulsion from the exposition by Coke of the Statutes of Gloucester and Marlbridge that the words "do make waste" include permissive as well as voluntary or commissive waste; and second, the prevalence of the equitable doctrine since the Judicature legislation by which the non-interference of equity in cases of permissive waste is adopted as the better principle by Courts of law: *Zimmerman v. O'Reilly*, 14 Gr. 646, and *Barnes v. Dowling* (1881), 44 L. T. N. S. 809.

In the last edition of *Theobald on Wills* it is stated as the result of the modern cases that a tenant for life, whether legal or equitable, of freeholds or leaseholds, is not liable to remaindermen for permissive waste; p. 465 (5th ed.) . . .

There is an interesting discussion in *Farwell on Powers*, 2nd ed., pp. 635-637, bearing against the doctrine in *Yellowly v. Gower*, 11 Ex. 274 (which was followed in *Davies v. Davies*, 38 Ch. D. 499). To the same effect Lord St. Leonards in *Sugden on Powers*, 8th ed., pp. 789, 790.

In the last ed. of *Fawcett's Landlord and Tenant* (1905), p. 352, it is said: "At present the illogical result appears