

a tenant from year to year, and the evidence only established a case of permissive waste, and Lord Denman, C.J., said: "It would be confounding things which are different, to say that a charge of voluntary waste is a charge of permissive waste." The plaintiff therefore failed to recover, not because the defendant was not liable for permissive waste, but because the evidence failed to support the waste charged. Properly considered therefore, none of these cases can really be accounted as effectively overruling the ancient interpretation put upon the Statutes of Marlbridge and Gloucester.

There is a passage in *Doctor and Student* (Muchall's ed.), p. 113, which may here be noted as confirmatory of the ancient view, where it is said: "It hath been used as an ancient maxim of the law, that tenant by the curtesy and tenant in dower should take the land with this charge, that is to say, that they should do no waste themselves, nor suffer none to be done, and when an action of waste was given after against a tenant for term of life, then he was taken to be in the same case, as to the point of waste, as tenant by the curtesy and tenant in dower was, that is to say that he shall do no waste, nor suffer none to be done; for there is another maxim in the law of England, that all cases like unto other cases shall be judged after the same law as other cases be, and sith no reason of diversity can be assigned why the tenant for life after an action of waste was given against him, should have any more favour in the law than the tenant by the curtesy, or tenant in dower should, therefore, he is put under the same maxim as they be, that is to say, that he shall do no waste, nor suffer none to be done." *Doctor and Student*, it may be remarked, was first published in 1518.

The question of the liability of tenants for life and years for permissive waste seems to have been further confused by the erroneous supposition that Courts of Equity had held that they were not liable for permissive waste, a misconception which plainly arises from a misunderstanding of the attitude of Courts of Equity on the subject. The jurisdiction of Courts of Equity in regard to waste was a concurrent jurisdiction with