

the firm's nominees as proposed. This may be law, but it does not appear to be satisfactory, inasmuch as it enables the fraudulent firm to participate in the damages recovered from one of its members in respect of its fraud.

LANDLORD AND TENANT—COVENANT TO REPAIR—WASTE—RIGHT TO DAMAGES FOR WASTE—UNASSIGNABILITY OF RIGHT—IMPLIED COVENANT BY TENANT NOT TO COMMIT WASTE.

Defries v. Milne (1913) 1 Ch. 98. In this case the plaintiff was trustee of a lease for a company and the company as the beneficial tenant of the premises agreed to sell the plant and machinery and tenant's fixtures on the demised premises, and for the purpose of enabling the purchaser to remove the property purchased by him, he was authorized by the company to occupy the premises for a specified period upon condition (*inter alia*) that he was not to do anything which if done by the lessee would be a breach of the covenants and conditions contained in the lease (which contained the usual covenants by the lessee to repair). It was also provided that the purchaser was to make good to the satisfaction of the lessor all damage done in removing fixtures. Whilst in possession the purchaser did certain acts alleged to constitute waste. Upon the purchaser going out of possession on 29 September, 1911, the plaintiff was let into possession and by deed dated November 6, 1911, the company's interest was released to the plaintiff together with the benefit of the agreement with the purchaser and full power to enforce the obligation under that agreement. This was an action by the plaintiff as transferee of this company's right against the purchaser, to recover damages for waste alleged to have been committed by him. Warrington, J., who tried the action, held that, assuming that a claim for damages for waste was assignable, upon the true construction of the assignment, it was not in fact assigned, and with this the Court of Appeal (Cozens-Hardy, M.R. and Farwell and Hamilton, L.J.J.) agreed. They also held that such a claim is not assignable; and they dissented from the dictum of Lord Eshe, M.R., in *Witham v. Kershaw* (1885), 16 Q.B.D. 613, 616, that "There is an implied covenant on the part of the tenant not to commit waste." There is an interesting comment on this case in 34 L.T. Jour. 354.

INJUNCTION—EASEMENT—RIGHT OF WAY—ALTERATION OF USER—INCREASE OF BURDEN.

White v. Grand Hotel (1913) 1 Ch. 113. This was an action to restrict the user by the defendants, of a right of way. The