

able for the purpose. This line of defence may, however, even in England, be set up by way of set-off in mitigation of damages, so that in a case of reasonable dealing by the tenant he may escape with nominal damages: see *Rennel v. Wither*, Manning's Digest of N. P. cases, cited in *Bewes on Waste*, pp. 50 and 53.

In England consideration is extended to ecclesiastical bodies, tenants for life, who are allowed not only to fell timber and dig stone to repair, but may sell such produce in order to expend the money in repairs: *Knight v. Morley*, Amb. 176; *Wither v. Winchester*, 3 Meriv. 427. . . .

A like relaxation of the strict rule obtains in the United States, and the authorities of that country, so much alike in its territorial conditions to our own, may well be regarded by Canadian Courts, as was done in *Drake v. Wigle*, 24 C. P. 405.

I am content to adopt the language of Mr. Justice Story as found in *Loomis v. Willows*, 5 Mason U. S. R. at p. 15: "If the cutting down of the timber was without any intention of repairs, but for sale generally, the act itself would doubtless be waste; and if so it would not be purged or its character changed by a subsequent application of its proceeds to repairs. But if the cutting down and sale were originally for the purpose of repairs, and the sale was an economical mode of making the repairs and the most for the benefit of all concerned, and the proceeds were bona fide applied for that purpose in pursuance of the original intention, it does not appear to me possible that such a cutting down and sale can be waste. It would be repugnant to the principles of common sense that the tenant should be obliged to make the repairs in the way most expensive and injurious to the estate." See *Miller v. Shields*, 5 Md. 71.

In this case the life tenant is the testator's widow, and the remaindermen are distant relatives. They complain of former cutting, but at so remote a period that I think it disadvantageous for all parties to entertain the complaint in that regard: *Bogot v. Bagot*, 32 Beav. 519.

The present complaint arises out of a transaction whereby proper lumber and shingles were to be obtained from a dealer, who was to take an adequate quantity of timber off the place in exchange, that on the place being unsuitable for the repairs needed. This was afterwards varied so that a sufficient amount of timber was to be sold to pay for the stuff required in repairing, but all connected with the one busi-