

to. The observations about tenants at will had clearly nothing to do with the case. Then the reporter adds in a note, "Although an action on the case may be maintained against a tenant for commissive or wilful waste, no action can be maintained for permissive waste only: *Gibson v. Wells*, 1 N.R. 291," which is a statement altogether unjustified by the case of *Gibson v. Wells*, which only decided that such an action would not lie against a tenant at will. But this note is useful as helping to show how the impression gained currency that an action for permissive waste would not lie against any tenants, whether for life or years (see also the Dig. of Eng. Cas. Law, vol. 14, p. 1847). But the argument that because tenants at will are not liable for permissive waste, therefore tenants for life and tenants for years are not liable, is obviously fallacious. These mistatements of the law were considered by Parke, B., who delivered the judgment of the Court of Exchequer in *Yellowly v. Gower*, 11 Ex. 274, and the ancient construction of the Statute of Marlbridge was approved. "We conceive that there is no doubt of the liability of tenants for terms of years, for they are clearly put on the same footing as tenants for life, both as to voluntary and permissive waste, by Lord Coke, 1 Inst. 53, *Harnet v. Mailand*, 16 M. & W. 257, though the degree of repairs required from a tenant from year to year by modern decisions is much limited: *Smith's Landlord and Tenant*, 195." This view was adopted by Kekewich, J., in *Davies v. Davies*, 38 Ch.D. 499.

*Jones v. Hill*, 1 Moore 100, is another case which has been cited as supporting the view that a tenant for years is not liable for permissive waste, but all that it actually decided is, that where there is an express covenant by a lessee to repair, there an action on the case for waste does not lie because "such a contract is a total waiver of tort." This, as the reporter notes, agrees with what is said in Hargrave and Butler's note 359, to Co. Lit. 54 (b), viz.: "But if lessee covenants to repair and doth not repair, waste will not lie, 29 E. 3, 43; 21 H. 6, 6; Dy. 198, Hal Moss." In *Martin v. Gilham*, 7 A. & E. 540, the plaintiff's declaration charged merely active waste against the defendant,