

valid and the decision of the Chancellor was affirmed, but upon grounds entirely different from those on which the original decision was based.

The law on this point may, therefore, appear to be in Ontario in the same illogical condition in which it also appears to be in England, *viz.*, that tenants for life are not liable for permissive waste, but tenants for years are: see Fawcett's *Landlord and Tenant* (1905), p. 352; that is, so far as judicial decisions are concerned.

But it is submitted that since the consolidation and revision of the Imperial Statutes in R.S.O. (1897) vol. 3, the liability of lessees for life, and years, for voluntary or permissive waste in Ontario is reasonably plain, and the only doubt there can be is in regard to that class of tenants for life (other than tenants by curtesy, and dowresses,) who are not in the position of lessees.

In order to arrive at a proper conclusion as to their liability, it is necessary to bear in mind that waste is an active or passive injury to a tenement by a person rightfully in possession, wherein it differs from trespass, which is a tortious act done by a stranger. Secondly, that according to ancient writers, the only persons who were liable for waste at common law were tenants by curtesy, tenants in dower, and guardians in chivalry; and the reason for this, as stated by Coke, and generally accepted, was because tenants of this kind held by virtue of estates created by law, and the law, for the protection of the remainderman and infant heir, annexed the obligation that such tenants should not be guilty of waste: whereas in the case of tenants for life or years, their estates were created by the owner of the fee who might have provided against the commission of waste by the tenant: Co. Lit. 54a, 300; Co. Inst. 145.

Some doubt was cast on this by Reeves, in his *History of English Law*, upon the presumed authority of Bracton: 1 Reeves' His. 386, who thought that all tenants for life were liable at common law for waste; but Chief Baron Comyn, whose opinion alone was said by Lord Kenyon to be an authority, declares in his *Digest* that "By the common law, waste did not lie against