

*tral Canada L. & S. Co.* (1898), 29 Ont. 134, and by Teetzel, J., in *Monro v. Toronto Ry. Co.* (1904), 9 O.L.R. at p. 305, but as Teetzel, J., concurred in the judgment of *Morris v. Cairncross*, it may be taken that he, at all events, is now of the opinion that his previous opinion in *Monro v. Toronto Ry.* was erroneous.

Although it be, as we have endeavoured to shew, that all tenants for life and years in the absence of any contract or stipulation to the contrary, are liable for permissive waste, there is a distinction drawn in the cases as to the extent of that liability. It would appear from the judgment of the Court of Appeal (Cotton, Bowen and Fry, L.JJ.), *In re Courtier, Cole v. Courtier* (1886), 34 Ch.D. 136; 55 L.T. 547, that a tenant for life is not required to keep the premises in any better condition than they are in when he enters, and see Co. Lit. 53a (sed vide *Re Bradbook*, 56 L.T. 106); and in the case of tenants from year to year, or for a year, or half a year, the measure of repair required of them may be less than in the case of a tenant for years or for life. The statute, however, as we have said, makes no such distinction. Formerly, as we have seen, equity would ordinarily not decree merely an account in cases of waste, except in special circumstances, as in *Garth v. Cotton*, supra, and would give no relief at all in cases of permissive waste. The High Court being armed with all the powers of the former Courts of law and equity may, if it sees fit, direct the damages in an action for permissive waste to be ascertained by a master, as well as by a jury, but no doubt the same reasons which induced the Court of Chancery to refuse to interfere by mandatory injunction in cases of permissive waste, will still prevail in the High Court; see *Lawson v. Crawford*, ante p. 40. The Judicature Act has also had the effect of converting that inequitable form of waste which was formerly known by the strangely incongruous title of "equitable waste," into what is known by the equally incongruous term of "legal waste:" see s. 58(2).

To return to the inquiry with which we started, viz., whether a tenant for life, or years is liable in the absence of any contract or limitation to the contrary, for permissive waste, we