

a tenant overholding under a lease which expired in 1829, and the plaintiff's claim was for damages for permissive waste since that date. It is therefore clear that the defendant was really a tenant at sufferance and therefore not within the Statute of Marlbridge. This case therefore is no authority for the proposition that a tenant from year to year is not liable for permissive waste.

Another nisi prius decision of Gibbs, C.J., in *Horsefall v. Mather*, Holt N.P. 7, seems equally unsatisfactory and inconclusive. The action was in assumpsit and the declaration stated that in consideration that the defendant had become and was tenant to the plaintiff of a certain messuage he undertook to keep the same in good and tenantable repair; to uphold and support, and to deliver the same to the plaintiff at the expiration of his term in the condition in which he received it. The evidence was that the tenement was in good repair when the defendant entered, but upon quitting possession he had damaged the ceiling, walls and other parts of the house by removing shelves and fixtures, and had not left the house in good tenantable condition. The action, it will be observed, was not on the case for waste, but in assumpsit on an implied promise to keep in repair, and the chief justice said: "I am of opinion that the plaintiff is not entitled to recover. He has laid his ground too broadly. The defendant is answerable to some extent but not to the extent stated in the declaration. Can it be contended that a tenant at will is answerable if premises are burned down—would he be bound to rebuild if they became ruinous by any other accident? And yet if bound to repair generally he might be called upon to this extent. He is bound to use the premises in a husband-like manner; the law implies this duty and no more. I am sure it has always been holden that a tenant from year to year is not liable to general repairs." This is the whole of the judgment as reported and all that it really decides is that in an action of assumpsit if the plaintiff asked too much, he could not get even what he was entitled to. The liability for permissive waste under the Statute of Marlbridge is not even referred