

tenants at will are within the statute, nevertheless decided that while some lessees are liable for permissive waste causing consequential damage, others are not, thereby apparently leading to the inference that though the statute makes no distinction between lessees who are within its scope, it must be construed as if it did; which does not seem to be a very satisfactory conclusion.

Thus, although the earlier authorities, as we have shewn, had held that tenants from year to year were within the Statute of Marlbridge, yet later nisi prius decisions have been given which, it has been assumed, establish that though liable for active, they are not liable for permissive waste: *Anworth v. Johnson*, 5 C. & P. 241; *Toriano v. Young*, 6 C. & P. 12; *Leach v. Thomas*, 7 C. & P. 327; *Horsefall v. Mather*, Holt 7. If that is really the effect of these decisions, they seem to be a clear judicial departure from the ancient interpretation of the statute: see Co. Lit. 52(b), *et seq.*, and 54(b); and inasmuch as it is only by virtue of the statute that such tenants are liable for active waste, and the statute, it is conceded, applies to both active and permissive waste, it becomes hard to reconcile these judicial departures with sound reason. In *Anworth v. Johnson*, Lord Tenterden, C.J., said that a tenant from year to year is only bound to keep the house wind and water tight, and in *Leach v. Thomas*, a similar rule was laid down by Patteson, J. It appeared by Lord Tenterden's charge, however, that the greater part of what was claimed by the plaintiff in *Anworth v. Johnson* consisted of new materials where the old were actually worn out. So that that case cannot be considered very conclusive, because ordinary wear and tear is not waste at all; furthermore, a neglect to keep the demised premises wind and water tight, would, if damage resulted, be permissive waste for which, according to the dicta of Tenterden, C.J. and Patteson, J., the tenant would be liable. It may, therefore, be doubted whether either case has the effect attributed to it. *Toriano v. Young* is still less conclusive, for though the defendant was treated by the Court as though he were a tenant from year to year, he was in reality