

in *Baughner v. Crane*, 27 Md. 36, and see *Hiss v. McCabe*, 45 Md. 81; *Gallagher v. Shipley*, 24 Md. 118. And in like manner it was held in *Childs v. Smith*, 1 Md. Ch. Dec. 483, that a dowress would be restrained by injunction from committing waste.

Waste by unpaid vendor—By mortgagor in possession—By heir of deceased debtor.—It seems from *Lynch v. Colegate*, 2 H. & J. 34, that an unpaid vendor may enjoin the vendee from cutting and selling timber and other trees, and otherwise damaging the land, though he have taken a surety for the purchase money, but the surety it seems will, under some circumstances, be thereby discharged, and *e converso* a complainant seeking a specific performance will be entitled to stay waste by injunction if his title is admitted. And in *Harness v. C. & O. Canal Co.* 1 Md. Ch. Dec. 248, the Chancellor held that where a canal company neglected to pay for land condemned for their use, the Court would protect the property from injury by cutting, &c. till the money was paid. So it has been repeatedly decided, that a mortgagee may enjoin a mortgagor in possession from committing waste or destruction of the mortgaged property, either before or after default made by the mortgagor, *Clagett v. Salmon*, 5 G. & J. 314; *Murdock's case*, 2 Bl. 401; *Brown v. Stewart*, 1 Md. Ch. Dec. 87; *Parsons v. Hughes*, 12 Md. 1; *State v. N. C. R. W. Co.* 18 Md. 193. And a creditor, seeking to sell the real estate of a deceased debtor, for the payment of his debt, may obtain an injunction against waste or wasteful cultivation of the lands by the widow or heirs of the deceased, on shewing that it is necessary for his protection from loss, or that there is a certainty or strong probability that the real and personal estate of the deceased will be insufficient for the payment of his debts, *Warfield v. Owens*, 4 Gill, 364; and see *Duvall v. Waters supra*. For a decree on such a creditor's bill virtually puts the property in the possession of the Court, and places it under its immediate protection and control for the benefit of all; so that until a sale can be effected the estate may be immediately protected from injury and loss, and therefore in such a case waste may be stayed, though it may be proper to allege the insufficiency otherwise of the real estate to pay the debts, *Tessier v. Wyse*, 3 Bl. 26, and see a MS. case of *Clark v. Clark*, cited in *Duvall v. Waters supra*, where on the application of the trustee for sale in a partition suit one of the heirs was stayed from committing waste. And so any person, interested in the proceeds of sale under a decree, may before the ratification thereof stay waste by a purchaser let into possession, *Wagner v. Cohen*, 6 Gill, 100.

Distinction between waste and trespass.—In *Duvall v. Waters supra*, Chancellor Bland assumed it to be the settled course of the Court, that a plaintiff, putting his title in issue in equity or stating that he has *actually* brought an action at law to try the right, may have an injunction to stay waste pending the proceeding in equity or the suit at law, and that the injunction will not be dissolved on the coming in of an answer denying the plaintiff's right; and he cites several cases decided in Chancery before his time where an injunction was granted, as where the defendant was averred to be committing great waste pending a proceeding to vacate a patent of lands, and where waste was stayed pending an ejectionment and the like.