

which it was held would not lie, since the defendant could not be in a worse situation by being tenant to the plaintiff of his moiety, than he would have been if no demise had been made; and the distinction was taken that here nothing like waste was committed, the defendant having only cut trees that were fit to be cut. It was held, however, that the plaintiff might in another form of action recover a moiety of the value of the trees. In general the same rule prevails in equity, but it has been holden, that if a tenant in common in possession be insolvent and cannot pay the others their share of the money produced by a sale, an injunction will be granted to stay waste, *Smallman v. Onion*, 3 Bro. C. C. 621. And where, as in *Martin v. Knowllys supra*, one tenant in common becomes tenant of the other moiety, the Court will restrain him from cutting timber or ploughing up meadow, on the special ground that by becoming tenant of a moiety he undertakes to treat the land as a tenant should, *Twort v. Twort*, 16 Ves. Jun., 130. And an injunction till answer or further order may be granted against destruction between tenants in common, as cutting saplings and timber trees or underwood at unreasonable times, but not against pure equitable waste, *Hale v. Thomas*, 7 Ves. Jun., 589, and see *Archer v. Lamb*, 2 Dr. & S. 428. The former cases are approved in *Duvall v. Waters*, 1 Bl. 569.<sup>1</sup>

The defendant has his election either to have his part in certain and to take the place wasted as part thereof, that is so much as belongs to his part, for the place wasted may be more than his portion, or else to find such surety as the Court shall deem good to take no more than belongs to his part, for so the word grant is construed, 2 Inst. 403. Provision is further made for partition between joint-tenants and tenants in common by Stat. 31 H. 8, c. 1, and 32 H. 8, c. 32, *q. v.*

<sup>1</sup> See *Susquehanna Co. v. St. Clair*, 113 Md. 667. It is not destructive waste for one tenant in common to mine, or to license another to mine, coal on the property held in common, where he does not appropriate more than his share of the proceeds. *Job v. Potton*, L. R. 20 Eq. 84.

#### CAP. XXIV.

A Writ of Nuisance of a House, &c. levied and aliened to another. A *Quod permittat* and *Juris utrum* for a Parson of a Church. In like Cases like Writs be grantable.

(3) And whensoever from henceforth it shall fortune in the Chancery, that in one case a Writ is found, and in like case falling under like Law,

Et quotienscumque decetero evenerit in cancellaria quod in uno casu reperitur breve & in consimili casu cadente sub eodem jure & simili indigente