

This is the first instance, since I have been here, in which the correctness of this peculiar species of injunction has been called in question; and as its origin and nature seem to have fallen into some degree of obscurity; it may be well to take a larger view of the subject than might otherwise be deemed necessary.

The terms *waste* and *trespass* are very often used to designate injuries to property of the identical same nature. The cutting of a timber tree, or the pulling down of a house, may be an act entirely lawful; or it may be an act of waste, or of trespass; and, that not because of any peculiarity in the act itself; but, because of the party, by whom it may have been done, having an absolute title, a limited estate, or no right whatever. The absolute owner of an estate in fee simple, without any incumbrance, or charge upon it, has an uncontrollable power to dispose of it as he may think proper; and can be, in no way, held accountable, as a waster or trespasser, for any thing he may do with the trees, houses, or soil of his lands. If he who does such an act has only a particular estate, as a tenancy for life or years, it is properly denominated *waste*; but, if he has no right whatever, it is then said to be a *trespass*. In general, when any permanent or lasting injury is done, by the holder of the particular estate, to the inheritance, or to the prejudice of any one who has an interest in the inheritance, it is properly called waste; as where timber trees are felled, or houses are destroyed by a tenant for life or years; or by a mortgagor or mortgagee in possession; or by a tenant in fee simple, where the State has reserved to itself an interest in the trees, &c. for the use of the public.(a)

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(a) Although in *England* the cutting of timber, by a tenant in fee simple, cannot be deemed waste; yet if the public has an interest in the forest trees, or they are reserved for public use, as for ship building, or the like, it is then held to be waste to fell such trees; and the tenant in fee simple, may be restrained from cutting them by injunction.—*Jacob L. Dict. verb. Waste.*—*Bishop of Winchester v. Wolgar*, 3 *Swan*. 493, note. By a clause in the colonial charter of Massachusetts; and, by several acts of parliament, all *white pine trees* of the diameter of twenty-four inches and upwards, of twelve inches from the ground, growing in Maine, New Hampshire, Rhode Island, Connecticut, New York, and New Jersey, were, under the colonial government, reserved to the use of the crown for masting the royal navy. This *white pine*, the ancient and majestic inhabitant of the North American forest, says Michaux, is still the loftiest and most valuable of their productions, and its summit is seen at an immense distance aspiring towards heaven, in some instances to the height of one hundred and eighty feet from the ground, and far above the heads of the surrounding trees. The felling of any of these white pines was prohibited by a