occupation. And in Hamilton v. Conine *supra*, it was held that one tenant in common could not maintain an action of assumpsit against his co-tenants, to recover for services as auctioneer and broker in selling the common property, and for money laid out by him in advertising it for sale. Joint owners of houses or mills are compelled, however, to contribute to necessary repairs, see Co. Litt. 200 b., Bowles' case, 11 Rep. 82 b. And if one of several tenants in common has been in personal occupation of part of the property, he will not be allowed, in a suit by another tenant in common for partition and an account of rents, for substantial repairs and lasting improvements made by him on any part of the property, unless he is charged with an occupation rent, McLaughlin v. Barnum, 31 Md. 425; Teas-
52 dale v. Sanderson, 33 Beav. 534. And the modern English *doctrine seems to be that if one equitable tenant in common is excluded by his co-tenants, the Court on satisfactory evidence of the exclusion will appoint a receiver over the whole estate, Sandford v. Ballard, *ibid.* 401; and see S. C. 30 Beav. 109; Tyson v. Fairclough, 2 Sim. & Stu. 143; and the like is the rule here, unless such tenants give bond, Barnum v. Barnum, Apl. term 1868 of the Court of Appeals, Opinions unreported.

From Sturton v. Richardson *supra* it seems that each of several tenants in common may have a separate action of account under the Statute. The heir of one tenant in common may also maintain an action under the Statute against his co-tenant for rent that accrued during his father's life, the Statutes of apportionment not applying to such a case, Beer v. Beer, 12 Q. B. 60.

Sec. 2. Waste—Who are included in Statute.—Fermors in this Statute comprehend all who hold by lease for life or lives or for years with or without deed, and whether rent be reserved or not, 2 Inst. 145.[9] Assignees of such tenants are included in the Statutes against waste, Sanders v. Norwood, Cro. Eliz. 683, and tenant from year to year, Co. Litt. 54 b., or any less time, as half a year, or twenty weeks, 2 Inst. 302. A tenant at will in the strict sense of the term is not punishable for permissive waste,[10] for on account of the uncertainty of his estate he is not bound to repair, although a general action of trespass will lie against him for voluntary waste, Countess of Salop v. Crompton, Cro. Eliz. 777, 784. But a tenant holding over after the determination of his tenancy, by notice to quit or otherwise, is liable to an action on the case in the nature of waste for any waste done by him during his possession, Burchell v. Hornsby, 1 Camp. 360. In Rawlings v. Carroll, 1 Bl. 76, the defendant in a suit for specific performance being unable to make a good title and enjoined from collecting the purchase money, the complainant was ordered to account for waste beyond what was proper in the use of the land, and in Rawlings v. Stewart, *ibid.* 22, a mortgagee in possession was charged with waste and made to account for it. Executors are of course liable for waste done by themselves, and if it be done by one executor alone, waste lies against him without naming his companion, 2 Inst. 302. Formerly no action could be brought against an executor for waste committed by his testator, it being a tort that died with the

[9] Woodhouse v. Walker, 5 Q. B. D. 404.

[10] As to permissive waste generally see note to 6 E. 1 c. 5.