person; and the same was the law with regard to administrators, though there are some dicta to the contrary; but now by the Code, Art. 93, sec. 105,[11] (1798, ch. 101, sub-ch. 8, sec. 5), executors and administrators are liable to be sued in any action (except actions of slander, and actions for injuries done to the person,) which might have been maintained against the deceased, and it is provided in Art. 2, sec. 1,[12] that an action of waste shall not abate by the death of either or any of the parties thereto.

It seems from Co. Litt. 546, that no action of waste, but only account or trespass in the nature of waste, lay against a guardian in socage. By the Act of 1729, ch. 24, sec. 9, re-enacted in the Code, Art. 93, sec. 194,[13] it is provided that the Orphans Court, on being informed of any waste done by a guardian on any orphan's estate, shall summon the guardian, and on its appearing that the information is true, order the Sheriff with all possible speed to summon a jury on the place wasted to inquire into the waste, which being returned to the Court, they are required to oblige the guardian to give security for double the damages assessed by the jury, and *in case of refusal to commit him to prison until he comply.*

Suffering waste.—All such persons as are prohibited from *making* are also prohibited from *suffering* waste, it being determined that the act extends so far, although the word *faciant* in the original may imply active waste. The tenant therefore, by construction of *law, must answer **53** for any waste done by a stranger, even though the tenant be a *feme covert* or infant. It is presumed in law that the tenant may withstand it, and *qui non obstat quod obstare potest facere videtur.* The tenant in such case has his remedy over against the trespasser, 2 Inst. 145, 146; Attersol v. Stevens, 1 Taunt. 183. Even where a stranger disseises the lessee and commits waste, or where the lessee under-lets and the under lessee commits waste, waste lies against the lessee, Bac. Abr. Waste, H. And if one of two joint-tenants for life or years commit waste both are responsible as to the place wasted, though treble damages could only be recovered under the Statute of Gloucester against the one guilty of the waste, Co. Litt. 54 a; 2 Inst. 302. This liability of the tenant for waste done by strangers was fully discussed and recognized in White v. Wagner, 4 H. & J. 473. There the landlord brought an action on the case in the nature of waste against the tenant. It appeared that a mob had attacked and considerably injured the house, which had been used by the tenant for receiving and distributing an obnoxious newspaper. It further appeared that the tenant in anticipation of the attack had introduced a number of armed men into the house to defend it. The Court likened the situation of the tenant to that of an innkeeper or carrier, &c., and said: "As the property of the landlord is placed in the tenant's possession, who has the legal power to prevent all waste from being done to it, and to recover for it when committed, as in most instances it would be impossible for the landlord to ascertain in time or come at the wrong-doer, it appears to have been the policy of the law to cast the liability on the part of the tenant for all waste committed on the property, except

[11] Code 1911, Art. 93, sec. 104 (as now amended).
[12] Code 1911, Art. 75, sec. 25.
[13] Code 1911, Art. 93, sec. 195.