

when caused by the act of God or the King's enemies." The Court further thought that the tenant by using the house for an obnoxious purpose, and by introducing armed men into it without the consent of the landlord, had diverted it to a different and more dangerous use than its occupancy as a dwelling, and as between himself and the plaintiff became responsible for the consequences.

**Exile.**—The word "exile" here used has a larger meaning than waste and is something of a more enormous nature, such as spoiling and selling houses, prostrating and extirpating trees in an orchard, or avenue, or about a house, and the like, which drive or have a tendency to drive the inhabitants away. The words "anything belonging &c." comprehend according to Lord Coke lands and meadows belonging to the farm. But it is clear that waste may be committed as well in gardens, orchards, timber trees, parks, fishponds, and other subjects of property as in houses and lands, Co. Litt. 53 a. In *Duvall v. Waters*, 1 Bl. 580, the Chancellor observed that a man has a right to secure himself a property in even his amusements, and that an injunction would lie to stay waste in peculiarities about an estate, which a multitude of associated recollections had rendered precious to their owner, but for which a jury might not give one cent beyond their value.

**Special license.**—The special license <sup>14</sup> mentioned in the Act ought to be by a deed, for all waste tends to the disinheritation of the lessor, and therefore no man can claim to be dispunishable of waste without deed, 2 Inst. 146; *Bowles' case*, 11 Rep. 79, and accordingly, the words "without impeachment of waste" are usually inserted in deeds where such liberty of waste is meant to be allowed. In *Doe v. Ferrand*, 6 Eng. L. & Eq. 404, a lease under a power to make leases (under which no lessee was to be authorized to commit waste,) contained a covenant by the lessee not to plough up any of the pasture land, except for the purpose of carrying out a system of allotment which had been commenced by the tenant for life, who made the lease and was dispunishable for waste, and which system was admitted to be waste; and it was insisted that this exception amounted to a special license under the Statute to commit waste and that the lease was therefore void.

54 But the Court thought otherwise and that if any implication \*could be drawn from the exception, it was only that during the life-time of the tenant for life, the lessee was to be permitted to carry out the allotment system so far as she had power to permit it. And the Court seems to have gone further, and to have been of opinion that such an exception in the covenant not to commit waste, if it amounted to an implied license to commit waste, was not a special license had by writing of covenant within the meaning of the Statute. See, however, *Gibson v. Doeg*, 2 Hurl. & N. 615, where it was held that the user of premises in an altered state for more than twenty years, with the knowledge of the lessor, was evidence from which the jury might presume a license.

**What is waste.**—None of the Statutes of waste introduce any new kind of waste, which therefore remains as at common law. And it may be as-

<sup>14</sup>This term is commonly expressed by the phrase "without impeachment of waste." *Woodhouse v. Walker*, 5 Q. B. D. 404.