

persons, upon paying a stipulated mine rent to the plaintiffs, and a road, the termini of which should be a mine and the furnace, would avail him nothing, so far as this right is concerned. Again, the rent to be paid by the defendant was to be nominal for two years and two months, after which a substantial rent was to be paid ; but, it was provided, that if within the two years and two months, the plaintiffs should make a rail or other road from their works at Lonaconing to the rail road of the Maryland Mining Company, then the same identical rent should become payable as would have become payable at the expiration of the said period of two years and two months, provided, the transportation on said road should be done by the plaintiff for the defendant at the rate mentioned in the agreement. It would seem, therefore, that the payment of this substantial rent was in the view of the parties connected with the enjoyment of the right to reach the road of the Maryland Mining Company, and by it to get to market.

There are, however, other provisions in the contract which are calculated to lead us to a different conclusion ; and, if required not to put a construction upon it, I would look carefully into its several stipulations, and endeavor to arrive at the intentions of the parties, to be collected from the entire instrument. But, I do not think the decision of this motion requires me now to expound this contract.

If the defendant was a mere stranger and trespasser, it has been conceded, indeed since the case of *Amelung vs. Seekamp* it could not be denied, the plaintiff would not be entitled to what has been called the strong and menacing hand of an injunction, unless he could show a case of great and irremediable mischief, which damages could not compensate. But, it is supposed, that as in this case, the relation of landlord and tenant exists ; that is, there is privity of title, that the court will, by injunction, stay the commission of any act, which, when committed, would be *waste* at common law, and that, cutting down timber is such waste. Chancellor Kent has said, and cites authority to prove, that the American doctrine on the subject of waste is somewhat varied from the English law, and is