

more enlarged, and better accommodated to the circumstances of a new and growing country. 4 *Kent's Com.*, 76.

In discussing the remedies now resorted to for waste, he says, the ancient remedy by writ of estrapement, and writ of waste, at common law, are essentially obsolete, and the modern practice in this country as well as in England, is to have recourse to the prompt and efficacious remedy by an injunction bill, to stop the commission of waste, *when the injury would be irreparable*, or by a special action on the case, in the nature of waste, to recover damages. 4 *Kent's Com.*, 77, 78.

But, notwithstanding this remark, which was made, not with reference to a mere stranger or trespasser, but as applicable to cases in which there was privity of title, I am of opinion, that the court will interfere much more readily in the latter, than in the former case, and, that it is only in the case of a mere trespass by a stranger, or person claiming adversely, that this court will withhold its arm, unless the trespass be productive of irreparable mischief or ruin ; or to prevent a multiplicity of suits, or where the interposition of the court is required by some very special circumstances. Such is the language of the Court of Appeals in *Amelung vs. Seekamp*, and the distinction between the case of a stranger entering upon land as a trespasser, and were this is privity of title, is clearly recognised by Chancellor Kent himself, in *Livingston vs. Livingston*, 6 *Johns. Ch. Rep.*, 497.

The counsel for the plaintiff insists, that, in the case of waste, it is not necessary to show irreparable injury or destruction to the estate, to entitle him to the remedy by injunction ; and it may be, that such is the rule, where there is privity of title, as between tenants for life or years, and the revisioner ; but, I am clearly of opinion, that, as between strangers, or parties claiming adversely, there is no such distinction between trespass and waste, and that in both, under such circumstances, the injury must be shown to be irreparable, before this court will grant an injunction.

Waste in timber, consists in cutting down, lopping, topping, or doing any act whereby it may be brought to decay, *Coke*