

In general *waste* is the abuse, or destructive use of property by him who has not an absolute unqualified title. And in general *trespass* is an injury, or use, without authority, of the property of another, by one who has no right whatever.

At common law, if the owner of the inheritance had good reason to believe, that a tenant in dower, or by the courtesy, or a guardian designed to commit waste, he might, before any waste was done, have a *prohibition* directed to the sheriff, commanding him to prevent it from being done; and in execution of this writ of *prohibition*, the sheriff might, if necessary, call to his aid the *posse comitatus*. This writ was extended, by a statute passed in the year 1267, to tenants for life and for years: and afterwards, in 1285, it was taken away, and another form of writ given in its place; but when the court of chancery first granted injunctions, it seems to have taken its jurisdiction from this writ of *prohibition* of waste. (b)

After waste had been actually committed, the ancient corrective remedy, in a court of common law, was by a writ of waste, for the recovery of the place wasted and treble damages, as a compensation for the injury done to the inheritance. (c) There were, however, several cases to which the writ of waste did not extend; and as to such cases, the party was left without any remedy at common law. The action of waste could only have been brought by him who had the immediate reversion or remainder, to the disinheritance of whom the waste was always alleged to have been committed; and therefore, if a lease had been made to A for life or years, remainder to B for life; and A committed waste, the action could not be brought by him, in reversion or remainder, so long as

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heavy penalty, made recoverable in the colonial courts of Vice Admiralty, without a trial by jury. The claims of right to these trees, and the execution of the laws for their preservation, produced much irritation among the colonists; insomuch so, that the controversies respecting them, in those colonies to which the statutory prohibition of felling them extended, may be considered as some among the minor causes of the revolution.—9 *Anne*, c. 17; 8 *Geo.* 1, c. 12; 2 *Geo.* 2, c. 35; 1 *Chal. Opin. Em. Law*, 111, 116, 119, 137; 2 *Hutch. His. Mass.* 225; 2 *Belk. N. Hamp.* 28, 89, 123; *Michaux's Sylva*, art. *White Pine*.—Since the revolution Congress have deemed it expedient to make similar reservations of the *Live Oak*, and *Red Cedar*, growing on the public lands, for the use of the navy.—1st *March*, 1817, ch. 22; 2d *March*, 1831, ch. 65.

(b) *Co. Litt.* 53; 2 *Inst.* 299, 339; 52 *Hen.* 3, c. 23; 13 *Edw.* 1, c. 14; *Kilt. Rep.* 209, 212; *Jefferson v. Bishop of Durham*, 1 *Bos. & Pul.* 108, 121; *Goodeson v. Gallatin*, *Dick.* 455.—(c) *Co. Litt.* 53; 2 *Inst.* 300.