

representation of the fact, by the trustee appointed to make sale of the lands for the purpose of effecting a partition, he was restrained by injunction.^(w) When the bill is for an injunction to stay further waste, and waste has been already committed, the court to prevent a double suit, will decree an account and satisfaction for what is past, and not oblige the plaintiff to bring an action at law as well as a bill in equity; but such decree for the past is only given as an incident to the injunction, to obtain which the plaintiff was under a necessity of coming into chancery: and, consequently, it may be regarded as a general rule, to which there are few exceptions, that when no injunction is, or can be asked for or granted, a bill to have an account of past waste, and nothing more, cannot be sustained, the proper remedy being at law.^(x)

It appears, that the *English* Court of Chancery had steadily confined itself in granting relief against waste, to those cases only where there was some subsisting privity of title or contract between the parties, until about the year 1785; since which time it has gone one step further, and granted injunctions against strangers to stay trespass, in strong cases of destruction or irreparable mischief; or where the irreparable mischief might be completely effected before any trial could be had as to the controverted right. But, at that point, it seems to have come to a stand; not, however, without expressing a regret, that its jurisdiction had not been extended so far as to protect real estate from waste and injury pending a controversy about the title. I have seen no reason to doubt, that the powers of this court in granting injunctions have been always considered as in all respects co-extensive with those of the chancery court of *England*.^(y)

It appears to be even yet the fixed rule of the Court of Chancery of *England*, that the granting of an injunction to stay waste must depend, either upon the fact of there being a privity of title or contract acknowledged by the answer; or an unquestionable legal or equitable title in the plaintiff; as where a purchaser files a bill for specific performance of his contract, suggesting, that the defendant was proceeding to cut timber, &c., an injunction may be

^(w) *Clarke v. Clarke*, MS., 24th January, 1822.—^(x) *Jesus College v. Bloom*, 3 Atk. 262; *Eden. Inj.* 146.—^(y) *Pillsworth v. Hopton*, 6 Ves. 51; *Mitchell v. Dors*, 6 Ves. 147; *Hanson v. Gardiner*, 7 Ves. 305; *Smith v. Collyer*, 8 Ves. 89, *Courthope v. Mapplesden*, 10 Ves. 290; *Crockford v. Alexander*, 15 Ves. 138; *Norway v. Rowe*, 19 Ves. 147; *Jones v. Jones*, 3 Meriv. 173.