

any such storage warehouse for such storage, or for any charges for carting or insurance contracted by the owner to be paid to him therefor, and shall have the right, without the process of law, to retain the same until the amount of such indebtedness is discharged.

Property to be sold at public auction if charges are not paid in one year.

Notice of sale to be published, &c.

Proceeds, how applied.

**10. SEC. 2.** That all property held on storage, for which the bill for storage or such other charges has not been paid for one year, may, in whole or in part, be exposed by said proprietor for sale at public auction, upon a notice of said sale being first published for the space of two weeks in some newspaper circulating in the city or township in which such goods are stored, and also after five days' notice of said sale, set up in five of the most public places in said city or township, and after mailing, if their addresses can be ascertained, to the owners of said goods, or to anyone known by said proprietor to claim or to appear to have any mortgage or lien on or bill of sale for such goods, notice of such sale two weeks before the day of sale; and the proceeds of said sale shall be applied to the payment of such lien and the expenses of such sale; and no more of such goods shall be sold, if they are of such a nature as to be easily separated or divided, than shall be necessary, as near as may be, to pay such lien and expenses, and the balance, if any, shall be paid over to the owner of such goods when the goods shall be taken away or settled for in full.

## Waste.

1. Guardian not to make or suffer waste.
2. Tenant not to make or suffer waste.
3. Who liable to action of waste.
4. Proceedings on default.

5. Proceedings between parceners, &c.
6. Heir may have action.
7. Tenant who lets estate liable to an action for waste.
8. Action not to lie for damage by fire, &c.

Rev. 208.

R. S. 122.

A guardian not to suffer or make waste of the inheritance of his ward.

If guardian suffer or make waste, the ward shall recover treble damages.

Tenant shall not commit or suffer waste.

### Act for the prevention of waste.

Passed March 17, 1795.

**1.** That no guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, or of those things that he hath or may have in his custody; but shall safely keep the same inheritance to the use of the said heir, and keep and sustain the houses, gardens and other things pertaining to the same lands, by and with the issues and profits thereof, and shall deliver the same to his ward, when he comes to his full age, in as good order and condition at least as such guardian received the same, and shall answer to such heir for the residue of such issues and profits of the same inheritance by a lawful account, saving to the guardian his reasonable charges and expenses; and if any guardian shall make or suffer any waste, sale or destruction, of the inheritance of his ward, he shall lose the same custody, and shall recompense the ward thrice as much as the damages shall be assessed at by the jury.

**2.** That no tenant for life or years, or for any other term, shall, during the term, make or suffer any waste, sale or destruction of houses, gardens, orchards, lands or woods, or anything belonging to the tenements demised, without special license in writing, making mention that he may do it. (a)

(a) An action on the case in the nature of waste, will lie against a tenant for years, for permissive waste. *Moore* ad. *Townshend*, 4 *Vr.* 284, 305. So, tenants at will are also liable. *Fremson v. Headley*, 4 *Vr.* 523, 536. Also, tenants for life, as a widow after dower assigned. *Havlenbeck v. Cronkright*, 8 *C. E. Gr.* 407. Neither a husband nor his lessees may commit waste upon lands in which he has only an estate by the curtesy. *Porch v. Fries*, 3 *C. E. Gr.* 204. Heirs-at-law, being entitled to the reversion, have such privity of estate as will enable them to call the life tenant and his lessees to account for wood and timber cut, as well during the life as after the death of the infant *Id.* Whether an estate be an estate tail, or a contingent fee, the power of the devisee over it is precisely the same; he has no power to commit waste to destroy the inheritance. *Wallington v. Taylor*, *Scr.* 314. An action on the case in the nature of waste, is an action founded on the act for the prevention of waste, which is substantially the same as the

statutes of Marlbridge and Gloucester, and may be maintained, although the act complained of might be the subject of an action for the breach of an express covenant contained in the instrument of demise, or of a promise implied by law. *Moore* ad. *Townshend*, 4 *Vr.* 284. On application of the widow, rules may be granted to stay waste by cutting and removing timber from lands in which she claims dower. *Harker v. Christy*, 2 *South.* \*717. The rule in chancery that a complainant must set out his title, does not apply to applications at law for rules to stay waste. *Den v. Kinney*, 2 *South.* \*552. As owners of the reversion, infants are entitled to an action for an injury of a permanent nature amounting to waste. *Jackson v. Todd*, 1 *Dutch.* 121; case reversed, 2 *Dutch.* 525. It is not necessary in a verdict of guilty to describe by metes and bounds the place wasted; a general designation of it is sufficient. *Morehouse v. Colwell*, 2 *Zab.* 521.

3. That any person may have a writ of waste out of chancery against him or her, who holdeth by curtesy, or otherwise, for term of life, or for term of years, or other term, or a woman in dower, as well as against guardians; and whoever shall be convicted of waste shall lose the thing or place wasted, and shall recompense thrice as much as the damages shall be assessed at by the jury.

Action of waste given against tenant by curtesy, in dower, for life or years.

4. That, in all actions of waste, if the defendant come not at the return of the original writ, he shall be attached, and if he come not at the return of the attachment, he shall be distrained, and if he come not after the distress, or if he come, and afterwards make default, the sheriff shall be commanded that in his proper person, he take with him twelve good and lawful men of his county, and go to the place wasted, and inquire of the waste done, and return an inquest, and after the inquest returned, the plaintiff shall have judgment to recover the place wasted, and treble the damages found by the inquest.

Proceedings in waste, where the defendant does not appear, or makes default.

5. That when two or more, do or shall hold any lands, tenements, hereditaments, houses, woods, or other such thing, in common, as parceners, tenants in common, or joint tenants, wherein none knows his or her several part, and some or one of them do waste, an action shall lie by a writ of waste; and when it shall come unto judgment, the defendant shall choose either to take his or her part in a place certain, by the sheriff and a jury to be assigned, or else to give such security as the court shall allow and deem sufficient, not to commit any further waste, and to take nothing from thenceforth in the same lands, tenements, hereditaments, houses, woods, or other such thing, but as his or her partners will take; and if he or she choose to take his or her part in a place certain, the same shall be assigned to him or her in the part wasted, as it was before he or she committed the waste; but if the defendant shall not choose to take his or her part in a place certain, or if the waste exceed his or her proportion, the plaintiff shall recover against such defendant such damages as shall be found by the jury or inquest.

Proceedings in waste between parceners, tenants in common and joint tenants.

6. That every heir, in whose ward soever he or she be, and whether he or she be in ward or not, and as well within age as of full age, shall have his or her recovery, by a writ of waste, for waste and destruction made in houses, lands or tenements of his or her inheritance, as well in the time of his or her ancestor or ancestors, as at any other time after the inheritance descended or come to him or her, and shall be answered unto for the same, and shall recover the houses, lands or tenements wasted, and treble damages as aforesaid.

An heir may bring an action for waste committed during the life of his ancestor.

7. That where any tenant for term of life, or for another's life, or for term of years, or any other term, hath or shall let or grant his or her estate, in the lands and tenements demised to or held by him or her, to any person or persons, and shall still continue to occupy the same lands and tenements, or to take the profits thereof, and shall commit or suffer waste and destruction in the same lands and tenements, to the disinheritance of him, her or them, in the reversion, he, she or they, to whom the reversion doth or shall appertain, may, in such case, have and maintain a writ of waste against the said tenant for term of life, or of another's life, or for term of years, or other term, and recover against him or her the place wasted, and his, her or their treble damages for the waste done, if the said tenant was punishable of or for waste before he or she leased or granted over his or her estate as aforesaid, but not otherwise.

A tenant who lets or grants his estate to another shall, if he take the profits, be liable to an action for waste.

8. That no action, suit or process whatsoever shall be had, maintained or prosecuted against any person, in whose house or chamber any fire shall accidentally begin, or any recompense be made by such person for any damage suffered or occasioned thereby; *provided*, that nothing in this section shall extend to defeat or make void any contract or agreement made or to be made between landlord and tenant. (a)

No action to be brought against a person in whose house a fire shall accidentally begin.

(a) See *Read v. Penna. R. R. Co.*, 15 Vr. 282. *Door v. Harkness*, 20 Vr. 574.