

properly and regularly dissolved according to the course of this Court.

After which the suit was regularly revived by bill; and the case was referred to arbitrators, who returned an award, upon which, on the 6th of August, 1832, a final decree was passed, which closed the case.

### DUVALL v. WATERS.

INJUNCTION TO STAY WASTE.—SALE UNDER FIERI FACIAS.—FRAUDULENT CONVEYANCE.

The distinction between waste and trespass as regards the proceeding by injunction. The preventive and corrective common law remedy for waste.

The writ of estrepement to prevent waste associated with an action to try the right.

Waste is the abuse, or destructive use, of property by him who has not an absolute, unqualified title, while trespass, in general, is an injury or use of property by one who has no right whatever.

When any permanent or lasting injury is done by the holder of the particular estate to the inheritance, or to the prejudice of any one who has an interest in the inheritance, it is properly called waste.

An injunction to stay waste may be granted in a variety of cases in which an action of waste will not lie. And the Court will, in many cases, exercise a conservative power over property, because of there being no mode of obtaining adequate relief at law. (a)

In England, if the injunction bill states and admits, that the defendant asserts and relies upon what he alleges to be a valid adverse title in himself, the plaintiff thereby states himself out of Court; or if the defendant in his answer positively denies the plaintiff's title, the injunction will be refused, or, having been granted, will, on the coming in of such an answer, be dissolved.

But in Maryland, if the plaintiff, by his bill for an injunction, can and does put the title in issue here; or, if he states, that he has actually brought an action at law to try the right, he may have an injunction to stay waste, pending the suit here, or the action at law; and, such injunction will not be dissolved on the coming in of an answer which denies the plaintiff's right. If however, after he has filed such a bill here to try the right, he wishes to obtain an injunction to stay waste, he should apply for it by petition in the same case, and not by a separate bill. (b)

An injunction to stay waste, pending a suit, does not restrain the defendant from cultivating, or making any of the ordinary uses of the land.

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(a) Cited in *State v. Railway*, 18 Md. 213. Cf. *Hill v. Bowie*, post, 593; *Murdock's Case*, 2 Bland, 461. As to injunctions to restrain trespass, see *Amelung v. Seekamp*, 9 G. & J. 468.

(b) Cited in *Irwin v. Dixon*, 9 Howard, 29.