

equity rested; and thereupon gave notice of a motion to dissolve.

BLAND, C., 1st October, 1827.—The motion to dissolve the injunction standing ready for hearing, the solicitors of the parties were heard and the proceedings read and considered.

It has been urged, in support of this motion, that this was not merely and properly a case of waste, but an injunction, in restraint of trespass, granted at the instance of a plaintiff who claimed title; which title had been directly and positively denied by the defendants. And that according to the well established law of this Court, as deduced from the English authorities, no such injunction could be granted or continued where the title of the plaintiff, as in this instance, was admitted to be in dispute, or was altogether denied by the defendant in his answer. This objection is certainly well founded upon the principles of the English law; but it is otherwise according to the law of Maryland.

571 *This is the first instance, since I have been here, in which the correctness of this peculiar species of injunction has been called in question; and as its origin and nature seem to have fallen into some degree of obscurity; it may be well to take a larger view of the subject than might otherwise be deemed necessary.

The terms waste and trespass are very often used to designate injuries to property of the identical same nature. The cutting of a timber tree, or the pulling down of a house, may be an act entirely lawful; or it may be an act of waste, or of trespass; and, that not because of any peculiarity of the act itself; but, because of the party, by whom it may have been done, having an absolute title, a limited estate, or no right whatever. The absolute owner of an estate in fee simple, without any incumbrance, or charge upon it, has an uncontrollable power to dispose of it as he may think proper; and can be, in no way held accountable, as a waster or trespasser, for any thing he may do with the trees, houses, or soil of his lands. If he who does such an act has only a particular estate, as a tenancy for life or years, it is properly denominated waste; but, if he has no right whatever, it is then said to be a trespass. In general, 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; as where timber trees are felled, or houses are destroyed by a tenant for life or years, or by a mortgagor or mortgagee in possession; or by a tenant in fee simple, where the State has reserved to itself an interest in the trees, &c. for the use of the public. (*f*)

(*f*) Although in England the cutting of timber, by a tenant in fee simple, cannot be deemed waste; yet if the public has an interest in the forest trees,