

*The writ of estrepement is certainly a preventive remedy, and so far it is analogous to a writ of prohibition, by which a **574** tenant in dower, or by the courtesy might be prevented from doing waste. But it is more; it is also a remedial and corrective remedy, because, the holder of land may not only be prevented from doing waste; but if he should do any notwithstanding the prohibition, the plaintiff may recover damages for such waste, even up to the time when possession shall be delivered to him. This writ has some other peculiar traits of character. It can never be brought into action independently and alone; it must always be associated with another as its leader; to which it acts as an auxiliary, whose fortunes it must follow, and to whose final fate it must submit. If it emanates, as it may, at the same time and together with its chief, from the Chancery office, it is then called an original; but if it be awarded by the Court, in which the action is depending, as it may, it is then called a judicial writ of estrepement. This writ, as its very name distinctly imports, is always intended to stay waste. It is no where spoken of as a means by which a mere trespass may be prevented; in all its modifications, it is continually treated as a remedy against waste. *F. N. B.* 139; 2 *Inst.* 328; 3 *Blac. Com.* 225; *Jacob. L. Dic. verb Estrepement*. But in a writ of right, and in all the other actions, except a writ of waste, to which an estrepement is called in as an auxiliary, there is not any privity of title whatever between the parties to the suit; all such privity being expressly disavowed. The plaintiff asserts, and calls for the vindication of his absolute title against an unqualified wrong-doer, who he complains of as a disseisor, ejector, or trespasser. And, therefore, in all such cases, the injury which it is the office of the writ of estrepement to prevent, is not properly waste, found on privity of title, as between a reversioner and a particular tenant; but literally a trespass, in the Chancery acceptance of that term; and not a mere abusive use of that which a lawful holder had a right to enjoy.

Where the title and the rights of the parties are admitted, there can be no mistake; and therefore, there should be no confusion or misapplication of these terms waste and trespass. But, in the English authorities, there is not the same distinctness, in the application of them, to any such injuries to the inheritance, where the rights of the parties are disputed and put in litigation. If the party asserts his title to an estate, by an action at law, such acts, with *reference to a presumption in favor of the validity of **575** his title pending the suit, are said to be waste; but if he asks in a Court of Chancery, to have the doing of such acts prevented by an injunction, they are denominated trespasses. *Eden Inj.* 136; *Mitchell v. Dors*, 6 *Ves.* 147; *Crockford v. Alexander*, 15 *Ves.* 138; *Mogg v. Mogg*, *Dick.* 670. This difference in characterizing the same injurious acts, when proposed to be prohibited by