

THE MORNING APPEAL

H. R. MIGHELS, LESSEE

SUNDAY, NOVEMBER 12

FOR PRESIDENT IN 1900

WILLIAM JENNINGS BRYAN,
Of Nebraska.

SUPREME COURT DECISION.

In the Supreme Court of the State of Nevada, (No. 1561.)

Alfred S. Price, as Administrator of the Estate of William E. Price, deceased, Appellant.

vs.
M. E. Ward, Respondent.

Appeal from the District Court of the State of Nevada, in and for Washoe County, Hon. B. Currier, Judge.

Torrerson & Summerfield,
F. H. Norcross,
A. E. Cheney, For Appellant.

For Respondent.

OPINION

By Massey, J.

The complaint in this action consists of two counts. By the first count, the Appellant as Administrator of the estate of William E. Price, deceased, appointed as such by the Probate Court of this State, seeks by a decree in equity, to have a deed absolute on its face to lands in the State of California, declared a mortgage, to redeem said lands from the same by setting off against the debt secured thereby damages in waste committed by the Respondent in possession thereof as mortgagee after the death of the intestate, the mortgagor, and for a judgment over for the balance of the damages after the satisfaction and discharge of the mortgage debt.

By the second count, the said Appellant seeks a judgment against the Respondent for damages in waste or trespass, committed by the Respondent after the death of the intestate, to the same lands in his possession under the deed, absolute on its face, but alleged to have been given as a mortgage. The specific acts complained of are cutting and selling the timber growing upon said lands. A demurrer to the complaint was interposed and sustained. The appeal is from the order sustaining the demurrer and the judgment rendered thereon.

Waste, as understood in law, is permanent or lasting injury done or permitted to be done, by the holder of a particular estate to the inheritance, or the prejudice of anyone who has an interest in the inheritance.

Duvall vs. Waters, 18 Am. Dec. (Md.), 350.

Dooley vs. Stringham, 4 Utah, 107.

Davenport vs. Magoon, 13 Oregon, 3.

Cooley on Torts p. 302.

28 Am. & Eng. Ency. of Law, 1st Ed. 862.

Waste and trespass are easily distinguished. Briefly stated, waste is the permanent or lasting injury to the estate by one who has not an absolute or unqualified title thereto; trespass is an injury to the estate or the usufruct thereof by one who is a stranger to the title.

Duvall vs. Waters, supra.

Lander vs. Hall, 69 Wis. 326.

High on Injunction, 3rd Ed., Sec. 659.

Our statutes have in no manner changed the definition of waste as above given. We have also been unable to find any provision of the statutes that in any manner changes the distinction made by the authorities above cited. The only change made by the statute in action for waste, if it can be called a change, is found in that provision giving a right of action to "any person aggrieved" for waste committed by a guardian tenant for life or years, joint tenant or tenant in common of real property.

Gen. Stats. Sec. 3274.

It will be observed that this section in no manner changes the rights of a mortgagor or mortgagee in such action as they existed at common law. At common law no person could maintain an action for waste but he who had the immediate es-

(Continued on Fourth Page.)

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