

opinion in 22 E. (a) 4. 21. And it was said that it was adjudged between Vane and Studley, that where the lessor demanded rent of his lessee according to the condition of re-entry, and the lessee paid the rent to the lessor, and he received it, and put it in his purse, and afterwards looking it over again at the same time, he found amongst the money that he had received some counterfeit pieces, and thereupon he refused to carry away the money, but re-entered for the condition broken: and it was adjudged that the entry was not lawful; for when the lessor had accepted the money, it was at his peril, and after that allowance he shall not take exception to any part of it (x).

(x) Although such an acceptance may be good, to prevent the party accepting, from taking advantage of the condition, yet it may be doubted whether a payment in bad money can be taken to be a good payment to all intents.

FOLIAMB'S CASE.

Trin. 43 Eliz.

In the King's Bench.

A WRIT of Estreptment lies in an action of waste, as well at any time before judgment, as after and before execution. FOLIAMB
v.
BOWES.
Part V.—115 b.

The sheriff by this writ may resist them who would do waste; and, if necessary, may arrest them, or make a warrant to others to do it, or he may take the posse comitatus to help him.

IN an action of waste by Foliamb against Sir William Bowes and his wife, the plaintiff had an Estreptment directed to the Sheriff. And in this case two points were resolved.

1. That a writ of Estreptment lies in an action of waste (a), as well at any time before judgment, as after judgment and before execution; for without question he cannot recover damages for more than he has contained in his count, and he cannot assign any waste made after the writ purchased, for the words of the writ are *fecit vastum* in the preterperfect tense; and therefore he cannot assign waste made after the writ. (a) Cr. El. 393.
774. Mo. 622.
2 Inst. 204. 329.
12 R. 2. Estreptment 6.
Com. Dig.
Wast. B. 2.

2. Where the words of the writ are, *tibi præcipimus, quod ad messuagium præd' personaliter acceden', totaliter ordinari facias, quod vastum seu estreptamentum de eodem messuagio, contra formam statuti præd' non fiat, pendente placito prædict' indiscusso*: It was resolved, that the Sheriff by force of this writ might resist (b) them who would do waste. And if he otherwise could not, he (b) 2 Inst. 299.
329. 3 Bulet.
200. Hob. 85.

might imprison them, and make a warrant to others to do it, and if it be necessary, he might take the *posse comitatus* to help him. *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud.* And so a doubt in divers books, *scil.* 4 E. 3. 32. 21 E. 3. 3. 22 E. 3. 2. 6 H. 4. 1. b. 33 (a) H. 6. 6. a. Estrepem. 6. 14 (b) H. 7. 7. 8. & 16. F. N. B. (60) 66. Y. & 61. C. K. L. (d) 14 H. 7. 10. a. Br. Estrepe. 9. well resolved (A).

(A) The writ of estrepement has long since been superseded in practice, by the present mode of applying to a court of equity for an injunction to stay waste; *vid.* 3 Black. Com. 225.

OLAND'S CASE.

Hill. 44 Eliz.

In the King's Bench.

OLAND
v.
BURDWICK.
Part V.—116 a.

A FEME copyholder *durante viduitate*, sows the land and takes husband, the lord shall have the emblements: so also if she had leased, and the lessee had sowed.

If lessee at will determines the will, he shall not have the emblements.

* If lessor at will be outlawed, the lessee shall have the emblements, but if the lessee at will be outlawed, the king shall have them.*

If a lease be made during the coverture, and afterwards there is a divorce *causa præcontractus*, the husband shall have the emblements; but if a lease be made to one till he doth waste, and he sows the land, and then does waste, he shall not have the emblements. S. C. [Cro. Eliz. 460. Moort, 394. Goldsb. 189.]

(a) 1 Roll. 726.
Co. Lit. 55. b.
2 Bulstr. 213.
2 Inst. 81. Com.
Dig. Biens. c. 7.

IN trespass by Oland against Burdwick, which began in the King's Bench, Hil. 37 El. Rot. 924. on a special verdict, the case was such; a woman copyholder of certain land, *durante viduitate sua*, according to the custom of the manor, sowed the land, and before severance of the emblements took husband. And whether the husband or the lord of the manor should have the emblements was the question. And it was adjudged that the (a) lord should have the emblements; for although at the time of the sowing, the estate of the wife was uncertain, and although her estate determined by limitation, and not by condition, either in fact (as in case of re-entry) or in law (as forfeiture) yet because it determined by the act of the lessee herself, therefore the lord shall have the emblements, and not the