

attain, in former as well as in later times, was first, to render the sale a matter of public notoriety, and secondly, to secure to the feudal Seigneur his *profits de fief*;—and it has therefore been contended, on the part of the appellant, that there is no cause for requiring in this case an actual entry. It is in evidence that the lands sold by Baldwin to the Appellant and to Pyke, were lots in a township, and at the period of the sale lay waste in the heart of an American forest. Admitting then that an actual entry was practicable, which may well be doubted, could it have answered any beneficial purpose? could it be necessary and required to render the transfer notorious by furnishing evidence to the vicinage of that change of property which the sale had effected, which is the first object of an actual entry? certainly not, because there was no vicinage—could it *then* be necessary and required for the only remaining object of an actual entry, the security of feudal profits? certainly not; for the lots sold were held in free and common soccage, so that there were no feudal burthens of any description to be secured, and *cessante ratione cessat et ipsa lex*.

This reasoning was lately urged and adopted in the Supreme Court of the United States of America, in the case of Green and Liler, which was cited at the bar by the counsel for the appellant.

The whole of that case well merits the most attentive consideration. But there is a part of the judgment (which was delivered by Mr. Justice Story) to which I must more particularly advert, as it is quite in point upon this part of the present case.

“If,” says this eminent Jurist, “an actual *pedis positio* was necessary to maintain this action *which we do not admit*, the doctrine would be inapplicable to the waste and vacant lands of our country.” The common law itself in many cases dispenses with such a rule; and the reason of the rule itself ceases when applied to a mere wilderness.

The object of the law in requiring actual seisin was to evince notoriety of title to the neighbourhood and the consequent burthen of feudal duties. In the simplicity of ancient times there was no means of ascer-