this rule, apply only to cases where a condition *precedent* has not been performed. The principle of those cases is that there never was in fact any agreement at all between the parties. If it can be shown that there was a complete agreement between the parties verbal evidence of any condition subsequent is not admissible.

In *Abrey* v. *Crux* the condition alleged in the plea was a condition subsequent. The plea did not allege that the bill was not in fact completely drawn and issued; on the contrary, it admitted that there had been a complete bill on which the acceptor had become liable, but it set up an agreement that the defendant, the drawer (without whom the bill would have been an incomplete instrument), should not be liable unless the plaintiff performed a certain condition. This agreement contradicted the terms of the bill, and therefore could not be proved by verbal evidence.

Although the decision of *Abrey* v. *Crux* merely follows former authorities, the case is remarkable on account of the observations of Willes, J., who seems to have been dissatisfied with the application of the ordinary rules of evidence in a case like this. His objection to their application was apparently that such rules might cause great hardship. This is so no doubt, and the same may be said of almost all rules of evidence, which may sometimes, and probably occasionally do actually obstruct rather than facilitate the object of all evidence —viz., the discovery of the truth. It has, however, been considered that incalculably greater inconvieuce would follow if there were no rules to guide the admission of evidence, and the occasional evil is more than compensated for by the general advantage that is secured by the adoption of such rules.

These remarks apply as much to the case of *Abrey* v. *Crux* as to any other case. Willes, J., says, "Great injustice might have arisen if the plaintiff had wilfully destroyed these securities before the bill had become due. He could even then have enforced the bill against the defendant, who would have had no remedy at law." Although any opinion expressed by Willes, J., is deserving of the greatest respect, we cannot help doubting whether he is quite right in this instance. It has been held that if a creditor has securities in his possession, and loses them or gives them up to the debtor, the surety will, to the extent of such securities, be discharged (W. & H. L. C., 832, 2nd ed., and cases there collected). We should think, therefore, that if a creditor wilfully destroyed securities, *a fortiori* the surety would be *pro tanto* discharged; and that such facts would, if properly stated in an equitable plea, be a good defence to an action like *Abrey* v. *Crux*.

It is clear also that there was no great hardship in fact in *Abrey* v. *Crux*. The defendant, the surety, on paying the amount of the bill, would become entitled to the securities in the plaintiff's hands, and his plea admitted that he only had a defence to the action to the extent of the value of those securities. It seems, therefore, that there is no peculiar hardship in cases like *Abrey* v. *Crux*, and that there is no reason why the rules of evidence, which are salutary in other cases, should be relaxed in these; and we, therefore, think that the decision in fact given is more satisfactory than one in accordance with the views expressed by Willes, J., would have been.—*Solicitors' Journal.*

## RIGHT OF A LANDLORD TO REGAIN POSSESSION BY FORCE.

"The law," says Mr. Justice Wilde, in *Sampson* v. *Henry*, 11 Pick. 379, 387, "does not allow any one to break the peace, and forcibly to redress his private wrong. He may make use of force to defend his lawful possession; but, being dispossessed, he has no right to recover possession by force and by a breach of the peace." A similar declaration was made by Lord Lyndhurst at Nisi Prius, in the case of *Hillary* v. *Gay*, 6 C. & P. 284 In neither case was so broad a proposition called for by the facts at issue; yet the doctrine thus advanced has been repeated without qualification by courts and text-writers, and applied in cases, or made the foundation for liabilities to which its application was warranted neither by authority nor on principle.

The subject we propose to consider is, how far a landlord, who regains by force the possession of the demised premises, after the possessory right of the tenant therein has determined, can be held subject therefor to any other liabilities than those which the Statutes of Forcible Entry and Detainer have expressly annexed to his act; and, secondly, what is nature and extent of these express liabilities.

By the Statutes of Forcible Entry and Detainer, whether in England or the United States, but three penalties are anywhere expressly imposed; first, fine or imprisonment; secondly, restitution upon a conviction, or, when the force is found upon inquisition or otherwise by a justice or a jury, in some localities purely a criminal, and in others also a civil, consequence of the act; and, thirdly, a special action on the statute with treble damages, which is given by the English statute, and by those of a few of the United States.* But, by implication from the statutes, the employment of force by the landlord in regaining possession has also been held to render him liable in trespass for assault, or for removal of the tenant's goods, and in a few instances also to an action of trespass *qu. cl.* We propose to proceed in our inquiry in the inverse order to this enumeration, and to inquire, first, how far an action of trespass at common law is warranted by the authorities, and then what is the extent and application of the statutory penalties proper.

That a tenant whose right to possession is determined either by the expiry of his term, by forfeiture, or by notice to quit, and who is therefore a tenant at sufferance, and himself a wrong-doer, may yet treat his lessor, who is

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