

*Grundy*, 82 L.T. 769, Bigham, J., observes that no lawful act requires to be defended by any just cause or excuse—it carries its just cause or excuse with it.

At first sight these views appear to be inconsistent with Sir William Erle's theory. But they are not really so. An act may be lawful or unlawful, according to circumstances. For instance a trespasser may be ejected. The force necessary to do so may or may not constitute an assault, and this will depend on whether sufficient notice was given before it was applied. If done under proper conditions then the act is lawful. But its lawfulness involves the possession of an excuse sufficient in law. It is rightful because of the excuse and not *per se*. Hence, an act lawful in that sense needs no justification. And because, in that sense, it carries its own just cause or excuse with it, it is a lawful act; and so the words of Bigham, J., apply. But the justification which an act, lawful *sub modo*, carries with it must be capable of ascertainment and definition, and so the process of determining whether it is lawful requires an analysis of the right asserted.

It may safely be said that in order to adjudge an act to be a proper exercise of a legal right, evidence must be given which satisfies the Court that it is within the definition of Sir William Erle and is an exercise of the actor's own legal right and not merely an obstruction and so intended.

From this discussion may be gathered this axiom that the lawfulness of the acts done in the professed exercise of a legal right must in all cases be judged by the possession or absence of an actual legal right. In the one case interference causing injury gives no cause of action, and in the other it does.

Now lawfulness does not import absence or intention to injure, nor does it depend upon it. Hence malice or improper motive are not important, and when acts are scrutinized the purpose is, not to discover the underlying mental resolve, but rather the position of the actor so as to determine whether what he has done is consistent with and supports the position which he asserts to belong to him. To illustrate: The circumstances under which resolutions were passed by a sliding scale committee of the miners were considered, and the views of the executive committee were examined, in order to see whether what was done was really the executive committee's action, and not in fact that of the sliding