

LAW STUDENTS' DEPARTMENT.

By statute the remedy by distress is given in certain special cases, for the recovery of duties and penalties imposed by Act of Parliament.

At Common Law goods and cattle distrained were merely held as a pledge or security for satisfaction of the debt or damages due; and this is still the law with regard to cattle taken *damage feasant*; but goods distrained for rent may now under the provisions of several statutes (2 W. & M. c. 5; 8 Anne, c. 14; 4 Geo. II. c. 28; 11 Geo. II. c. 19), be sold and the proceeds applied in satisfaction of the rent and charges. And goods taken under statutory powers of distress for recovery of duties and penalties may in general be sold. (See 3 Steph. Comm. Book 5 V. ch. 1.)

Q.—6. Under what circumstances will an action lie in respect of injury sustained through an act done in the exercise of statutory powers?

A.—An action will not lie if the act was authorised by the statutory powers and has not been done negligently. But an action will lie—(1.) Where the injury has been caused by negligence in the exercise of the statutory powers; (2.) Where the act done was beyond the scope of the statutory powers; (3.) Where the statute which gave the powers also created a special duty as to the manner in which they were to be exercised, and the act done is a breach of such duty; unless the statute has annexed to the breach of the duty a special penalty recoverable by the party injured, in which case, as a particular remedy is given by the statute, an action for damages will not lie.

Q.—7. In what cases will a plaintiff be compelled to give security for costs?

A.—(1.) Where he is permanently resident abroad. (2.) Where he brings an action for the recovery of land after he has been unsuccessful in a prior action for the same against the same defendant. (3.) Where the action is brought by a limited joint stock company and there is reason to believe that if the defendant is successful the assets of the company will be insufficient to pay his costs. (4.) Where the plaintiff in an action of tort, brought in the High Court, has no visible means of paying the defendant's cost in the action if he fail, and the action is not fit to be brought in the High Court; the plaintiff, in this case, being compelled to give security for costs, or to have the action remitted to the County Court. (5.) Where the plaintiff brings an appeal, and the Court of Appeal orders him to give security for the cost of the appeal. (Prentice, 99, 112, 213, 217; Foulkes' Action at Law, 107—110.)

Q.—9. What is the writ of habeas corpus ad subjiciendum? When will it be granted, and what is the procedure thereupon.

A.—The writ of *habeas corpus ad subjiciendum* is the writ which issues in case of illegal imprisonment or detention, for the purpose of effecting the deliverance of the person so imprisoned or detained. It is directed to the person who has the other in his custody, and commands him to produce the body of the person detained, with the true statement of the time of his caption and the cause of his detention. It lies to any part of the Queen's dominions not having a Court with authority to issue such writ and enforce its execution. (See 25 Vict. c. 20.) The writ is obtained by motion to a Superior Court or application to a Judge, supported by affidavits of the facts, and will be granted on sufficient ground for its issue being shown. The return to the writ is made by producing the person detained, and setting forth the grounds and proceedings upon which he is in custody. If the return presents a sufficient justification of the prisoner's detention, he is remanded to his former custody; if insufficient he is discharged.

The remedy by *habeas corpus* for illegal detention existed at Common Law; and was improved and extended by the Habeas Corpus Act, 31 C. II. c. 2, in cases of commitments on criminal charges, and by 56 Geo. III. c. 100, in other cases of detention of the person. The latter statute contains important provisions, enabling the Court to examine into the truth of the facts stated in the return to the writ. (Broom, C. L. 5th ed. 245—247; Steph. Comm. Book V. c. 12.)

Q.—10. Under what circumstances can goods which have been stolen, and sold by the thief be recovered by the owner from an innocent person.

A.—If the goods be sold by the thief otherwise than in market overt, the owner can recover them from any person into whose possession they have passed, even though he be an innocent purchaser.

Prior to the statute 7 & 8 Geo. IV. c. 29, goods sold by a thief in market overt could never be recovered by the owner of an innocent purchaser; except in the case of a stolen horse which might be recovered, unless it had been exposed in the market prior to the sale for an hour between ten in the morning and sunset, and certain particulars respecting it had been taken down by the bookkeeper; and, even then it might be reclaimed within six months on tender of the price paid for it in market overt (2 & 3 P. & M. c. 7; 31 Eliz. c. 12). And this is still the law as to the effect of a sale