

RIGHT OF A LANDLORD TO REGAIN POSSESSION BY FORCE.

anxieties; they are posts of honour, because they are posts of battle and of danger!"

Our task is now done. Imperfectly as our work has been executed, we hope, nevertheless, that this mere outline that we have been able to lay before our readers may induce them to read a book, which apart from its own merit, and this is considerable, has an interest we venture to think very far beyond the limits of the profession to which it is more especially addressed.—*Law Times*.

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"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 the 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 entitled to immediate possession, as a trespasser, and relying on his right, maintain trespass *qu. cl.* against him, merely because the right of the latter has been forcibly asserted, seems so extraordinary a proposition, that if not warranted by express words of the statutes, nothing but the clearest implication from their language could justify it, and as the removal of the tenant upon or after entry is but a part of the act of entry, and depends on the legality of the possession thereby gained, for its justification, the action for assault or for the removal of the tenant's goods, must stand or fall with the action of trespass *qu. cl.*

It is admitted, it should be remarked, in the first place, that, at common law, the lessor was liable to no action for forcible entry or expulsion of the tenant; but at most to an indictment for a breach of the peace, punishable only by fine or imprisonment.† But the ground taken is, that the express prohibition of such entry, with a penalty therefore, by the Statutes of Forcible Entry and Detainer, made the act civilly illegal and incapable of revesting the lessor with a lawful possession, and that for such entry or any assertion of possession based thereon, the lessor became liable like any mere stranger to the lessee.

The English statutes on this subject, from which, with some variations, all those in the United States have been derived, were, excepting only some supplementary enactments not material here, three in number; 5 Rich. II. c. 8; 8 Hen. VI. c. 9, and 21 Jac. I. c. 15. By the first, it was declared "That none from henceforth shall make any entry into lands or tenements but in case where entry is given by law; and, in such case, not with the strong hand, nor with multitude of people, but only in a peaceable and easy manner;" and fine and imprisonment were imposed upon conviction for such forcible entry. By the Stat. 8 Hen. VI. c. 9, forcible detainer, as well as forcible entry, was made criminal, an action of trespass or assize of novel disseisin on the statute with treble damages was given to the party disseised, and restitution on the finding of the force was also to be made to the party *disseised*, and as this term was held to imply a freehold, the right to have restitution was by the Stat. 21 Jac. I. c. 15, extended to tenants for years also.

It will be perceived, that while these statutes make a violent entry or detainer an offence, they also expressly specify the penalties incurred, and thereby exclude the idea of any implied liability, except the indictment at common law, and it has accordingly been held with increasing definiteness by the English

* Of Vermont, Connecticut, New York, and Wisconsin.

† Hawkins, Pl. Cr. B. 1, ch. 28, sec. 3; *Dustin v. Country*, 23 Vt. 631, 635.