

against the request of the defendants would be the same violation of the right of property as a taking of the chattels out of the actual possession of the owner. It has been decided that the owner of land entitled to the possession may enter thereon and use force sufficient to remove a wrongdoer therefrom. In respect of land as well as of chattels, the wrongdoers have argued that they ought to be allowed to keep what they are wrongfully holding, and that the owner cannot use force to defend his property, but must bring his action lest the peace should be endangered if force was justified. But in respect of land that argument has been overruled in *Harvey v. Brydges*. Parke, B., says: "where a breach of the peace is committed by a freeholder who, in order to get possession of his land, assaults a person wrongfully holding possession of it against his will, although the freeholder may be responsible to the public in the shape of an indictment for a forcible entry, he is not liable to the other party. I cannot see how it is possible to doubt that it is a perfectly good justification to say that the plaintiff was in possession of the land against the will of the defendant, who was owner, and that he entered upon it accordingly; even if in so doing a breach of the peace was committed." In our opinion all that is so said of the right of property in land applies in principle to a right of property in a chattel and supports the present justification. If the owner was compellable by law to seek redress by action for a violation of his right of property, the remedy would be often worse than the mischief, and the law would aggravate the injury instead of redressing it."

Sir F. Pollock points out that the decision in this case is contrary to the common law of the thirteenth century.

Closely connected with the question of recaption is that of the right to go on to the land of another person to regain possession of one's lost chattels.

Where the land is that of the wrongdoer or of a third party who knew of, and assented to, the act of the wrongdoer, the dispossessed owner may, it seems, enter and even use force in so doing. "If a man takes my goods and carry them into his own