

to be contrary to the principles of the common law, as recaption has always been regarded as something essentially different in its nature from, and not merely alternative to, the judicial remedies available. Thus: "If the owner retakes his goods from a trespasser, he will still have trespass for the taking." "If . . . the demandant releaseth to the tenant all manner of actions realls yet this shall not take the demandant from his entrie but the demandant may well enter notwithstanding such release." "If a man by wrong take away my goods, if I release to him all actions personalls yet I may by the law take my goods out of his possession."

Where the property has left the hands of the wrongful taker, the right of recaption would still, so it seems, hold good. There is, however, but one modern case in which the point has arisen.

In *Blades v. Higgs*, the facts of the case were as follows: A number of rabbits, snared by poachers on the land of the Marquis of Exeter, had been sold and consigned to the plaintiff, a game dealer, who called for them at Stamford station. While he was taking them away, the defendants claimed them as belonging to their master, the Marquis of Exeter; and upon his refusing to give them up they used the necessary force to obtain possession of them. The plaintiff brought an action for assault and battery and for the loss of his goods. He demurred to the defendant's third plea, which stated that they gently laid their hands upon the plaintiff to obtain the return of the goods belonging to their master. The demurrer was dismissed in the common pleas, where Erle, C.J., said:

"If the defendants had actual possession of the chattels and the plaintiff took them against their will, it is not disputed that the defendants might justify using the force sufficient to defend their rights and retake the chattel. And we think there is no substantial distinction between that case and the present. For if the defendants were the owners of the chattels and entitled to the possession of them, and the plaintiff wrongfully detained them from them after request, the defendants in law would have the possession and the plaintiff's wrongful detention