

some of the wood. Upon this action being begun, Perrin left the place and gave up possession.

There was ample ground for Perrin's taking possession in the plaintiff's default in the matter of interest. The mortgage contained the short form covenant "that on default the mortgagee shall have quiet possession of the said lands."

The lands being vacant, Perrin was able to enter peaceably and without resorting to the issue of a writ. The plaintiff alleged that Perrin entered the house forcibly, the doors being locked.

But the question whether an entry is forcible or not in no way affects the relative position of the mortgagor and mortgagee as to the possession of the mortgaged premises. Once in, whether peaceably or otherwise, he is in possession as against the mortgagor for all civil purposes, and the mortgagor's remedy is under the Statutes of Forcible Entry, 5 Ric. II., st. 1, ch. 18, and 15 Ric. II., ch. 2 (Criminal Code, secs. 102, 103): Halsbury's Laws of England, vol. 21, p. 193.

Being then lawfully in possession, did Perrin commit any act for which he could be made liable to the plaintiff in this action? The cutting of timber by a mortgagee in possession might be an act of waste, restrainable by injunction and for which the mortgagee might be accountable in damages: *Falconbridge on Mortgages*, p. 595. But a mortgagee may, in certain circumstances, cut timber without committing waste: *Brethour v. Brooke* (1893), 23 O.R. 658. According to the plaintiff, the timber cut comprised about 4 or 5 cords, worth in all between \$20 and \$30. In the circumstances, the cutting did not exceed a proper exercise of the mortgagee's right to take the profit from the mortgaged premises, for which of course he must account to the mortgagor.

A mortgagee who takes possession may find difficulty in voluntarily giving it up: *In re Prytherch* (1889), 42 Ch. D. 590, 599. But here the mortgagor demanded repossession, so that the mortgagee's liability to account to the mortgagor in respect thereof should be limited to the actual period of occupation.

*Action dismissed with costs.*