

ATTORNEY'S COSTS—RIGHT OF LANDLORD TO REGAIN POSSESSION BY FORCE.

ney agrees for a certain sum of money to conduct a suit to termination, or to perform some other business of a professional nature, and where a tariff of fees is unknown, though there the fees come out of the plaintiff.

It is provided that such sum as may be agreed upon between the attorney and his client, shall not be liable to taxation, except in some peculiar cases referred to in the Act; and there are other provisions as to deduction being made from the sum in case the agreement has not been completed or performed by the attorney, either in consequence of his death or otherwise; but it is not proposed to effect in any way the present system as to the recovery of costs from, or payable to the client by any other person. An attorney may take security from his client for his future fees, charges, and disbursements to be ascertained by taxation or otherwise. In determining the amount of remuneration to an attorney for his service, the taxing officer is to have regard not only to the length of documents prepared, or the time occupied, but also to the skill, labour, and responsibility involved.

Speaking of the Act, the *Solicitor's Journal* remarks with much truth, "that the present system affords a temptation to multiply technicalities, simply because much real work is remunerated on quite an inadequate scale."

If this remuneration is inadequate in England, how much the more here, especially when our tariff was made years ago, when the expense of living was half what it is now.

The following gentlemen were, during last term, admitted to practice as attorneys, in addition to those whose names we mentioned last month, viz.:

Messrs. Frederick C. Martin, Toronto; Fred. W. Johnston, Toronto; and A. S. Wink, Dundas.

A Bill has been introduced into the English Parliament "with respect to the revesting of Mortgaged Estates in Mortgagors," which proposes to do by a statutory form of receipt what we have for many years done by means of the certificate of discharge under our Registry Acts.

SELECTIONS.

RIGHT OF LANDLORD TO REGAIN POSSESSION BY FORCE.

(Continued from page 124.)

It is apparent therefore, as the clear result of English authority, that an entry by force by the landlord, or his forcible expulsion of the tenant, are illegal only to the extent of the penalties expressly annexed to the act by the statute, and no further, and that no color of authority exists for holding the possession so gained generally unlawful, or for founding thereon any common-law action by inference from the statutory prohibition. Still less can the special *qui tam* action of trespass be transmuted into a general action of trespass. The precise form is given by Fitzherbert, (2 Nat. Brev. 248 F.) and is founded only on the statute. In *Davison v. Wilson*, *supra*, the attempt was made to bring the action of trespass *qu. cl.* under the statute, by adding to the declaration in trespass in common form, that the entry and expulsion were "with the strong hand and against the form of the statute;" but even these words were held insufficient. It has moreover been uniformly held that the statutory action can only be maintained by one who has a freehold, the action only being given on disseisin; *Rea v. Domry*, 1 Ld. Ray. 610; *Cole v. Eagle*, 8 B. & C. 409; and does not lie against one who has a freehold and right of immediate entry; Year Book 9 Hen. VIII. fo. 19, pl. 12; 15 Hen. VII. fo. 17, A, pl. 12. And it need hardly be added that the restitution directed by the statutes of 8 Hen. VI. c. 9, s. 3; 21 Jac. I. c. 15, to freeholders and tenants for years, can only be made when and to those to whom it is directed by those statutes, and cannot be waived and replaced by an action of trespass. The restitution moreover is the fruit of a criminal proceeding.

The American cases therefore, which have based an action of trespass, whether *qu. cl.* *fregit*, for assault, or *de bonis asportatis*, on the supposed authority of the English law, wholly fail of support; and can only be sustained, if at all, on some distinct authority given by the terms of their local statutes. It will suffice if, instead of specially reviewing these enactments, we examine such authorizing clauses, when relied on by the courts to sustain the action in question. Except so far as qualified by such enactments, the doctrine that possession obtained by force is a lawful one, seems as clear on principle as we have seen it to be on authority. The tenant who, after his own possessory right is determined, seeks to hold his lessor as a trespasser for entering upon him with force, must in establishing his own possessory title disclose its defective character as against the title relied on by the lessor in entering; for the common law action of trespass is an assertion of the