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11-1931

## Landlord and Tenant-Peaceable Reentry

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### Recommended Citation

(1931) "Landlord and Tenant-Peaceable Reentry," *Indiana Law Journal*: Vol. 7 : Iss. 2 , Article 7.

Available at: <https://www.repository.law.indiana.edu/ilj/vol7/iss2/7>

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LANDLORD AND TENANT—PEACEABLE REENTRY—On October 26, 1926, plaintiff and defendant, Jessewein, entered into a written contract whereby defendant Jessewein sold to plaintiff all the sand and gravel that plaintiff might remove from defendant Jessewein's land; the contract was for a period of two years with an option for a third year. Plaintiff agreed to pay 12½ per yard for the gravel, payment to be made before the 15th of every month. Pursuant to the contract plaintiff removed gravel until January 1, 1927, but has removed none since that date. On January 1, 1927, plaintiff owed defendant for 465 yards of gravel. He failed to pay on demand, and on February 10, 1928, defendant served plaintiff with the statutory notice to pay or quit the premises. Plaintiff failed to pay at the expiration of the ten days, and defendant took peaceable possession of the premises. On October 26, 1928, plaintiff attempted to exercise his option for a third year, and now attempts to enjoin defendant Jessewein and defendant Snyder, to whom Jessewein has sold the gravel, from entering on the premises, and from removing sand and gravel therefrom. *Held*, the law is with the defendants. *Calef v. Jessewein*, Appellate Court of Indiana, June 4, 1931, 176 N. E. 632.

The lease was terminated at the expiration of the ten days notice, given in accordance with Sec. 9543, Burns Annotated Statutes, 1926. *Templer v. Muncie Lodge*, 50 Ind. App. 324, 97 N. E. 546 (1912). By the common law the owner of real estate entitled to its possession, could oust the possessor by force, and without the aid of legal procedure. 4 *Black Com.* 418. *Hammond Saving & Trust Co. v. Boney*, 61 Ind. App. 295 (1915). The English rule, since 1920 (*Hennings v. Stoke Pogues Golf Club* (1920), 1 K. B. 720, and the minority rule in this country is that the landlord may expel the tenant, who has no right to possession, by force and without process, providing the landlord uses no more force than is reasonably necessary. Cases collected in 36 C. J. 600 and 45 A. L. R. 313. But the majority rule, and the doctrine to which Indiana adheres, is that the owner of land who is wrongfully kept out of possession by another, may gain possession by peaceable means; but if the owner cannot gain possession peaceably, he must seek the aid of legal procedure. *Scott v. Willis*, 122 Ind. 1 (1889). *Hammond Savings & Trust Co. v. Boney*, *supra*. Cases cited in 45 A. L. R. 316. Peaceable possession is possession obtained without force or show of violence. *Scott v. Willis*, *supra*. The majority rule is that after a peaceable re-entry the landlord may protect his possession by such force as is reasonably necessary. *Mugford v. Richardson*, 6 Allen 76. *Gillespie v. Beecher*, 85 Mich 347, 48 N. W. 561. And cases cited in 45 A. L. R. 317, and in 16 R. C. L. 700. Although the latter point does not seem to have been before the Indiana Courts, to be consistent they would have to adopt the same rule. To recognize the landlord's right of peaceable re-entry, and yet to pro-

hibit him from effecting a complete possession or from maintaining his possession, would be equivalent to rendering nugatory his right of peaceful re-possession. Although the Indiana Courts have apparently not decided the point, the great weight of authority is that regardless of the fact that the landlord made a peaceable re-entry, he is liable in damages if, by his negligence, the tenant's chattels are damaged, or if by the use of excessive force the tenant or the members of his family are injured. See collection of cases in 45 A. L. R. 326; 36 C. J. 601; 16 R. C. L. 1180.

R. O. E.