

TRESPASS TO LAND

Trespass to land means interference with the possession of land without lawful justification. In trespass, the interference with the possession is direct and through some tangible object. If the interference is not direct but consequential, the wrong may be a nuisance. To throw stones from a ruinous chimney to fall upon those premises is the wrong of a nuisance. Similarly, planting a tree on another's land is a trespass but if a person plants a tree over his land and its roots or branches escape on the land of the neighbor, that will be a nuisance.

Trespass could be committed either by a person himself entering the land of another person or doing the same through some material object, e.g, throwing of stones on another person's land, driving nails into the wall , placing ladder against the wall or leaving debris upon the roof. Allowing cattle to stray on another person's land is also a trespass. It is, however, no trespass when there is no inference with the possession and the defendant has been merely deprived of certain facilities like gas and electricity.

It may be noted that the action for cattle trespass can be brought only by the occupier of land. Persons other than the occupier, such as his family members, guests or strangers on his land can sue under the science rule or for negligence and for cattle trespass. In *Cox V Burbidge*¹ the plaintiff a young child was kicked and injured by the defendant's horse that trespassed on the highway. This was a trespass only against the owner of the land over which the highway ran. The child was a mere user of the highway and it was held that towards him the defendant could not be made liable unless scienter or negligence could be proved.

Going beyond the purpose for which a person for which a person has entered certain premises or crossing the boundary where he has the authority to go amounts to trespass. Thus if a person who is allowed to sit in a drawing room enters the bedroom without any justification the entry into bedroom is a trespass. However if the area to which a person is lawfully invited and one which is the prohibited area has not been properly marked a person does not become a trespasser merely by his going beyond the area of invitation.

¹ 13 C. B. (N.S.) 430)

Trespass is a wrong against possession rather than ownership. Therefore, a person in actual possession can bring an action even though, against the true owner, his possession was wrongful. Trespass is possible not only on the surface of the land, it is equally possible by an intrusion on the subsoil. Taking minerals from out of the subsoil is an example of the same.

Trespass is actionable per se and the plaintiff need not prove any damage for an action of trespass. "every invasion of property, be it ever so minute, is a trespass²." Neither use of force nor showing any unlawful intention on the part of the defendant are required. Even an honest mistake on the part of the defendant may be no excuse and a person may be liable for the trespass when he enters upon the land of another person honestly believing it to be his own. Probably inevitable accident will be a good defence as it is there in case of trespass to persons on chattels.³

TRESPASS AB INITIO

When a person enters certain premises under the authority of some law and after having entered there, abuses that authority by committing some wrongful act there, he will be considered to be a trespasser ab initio to that property. Even though he had originally lawfully entered there, the law considers him to be a trespasser from the very beginning and presumes that he had gone there with that wrongful purpose in mind.

ENTRY WITH A LICENCE

Entering certain premises with the authority of the person in possession amounts to a license and the defendant cannot be made liable for trespass. Permitting a person to cut a tree on one's land or permitting a person by the cinema management to see a film are examples of license.

REMEDIES

1-RE ENTRY

If a person's possession has been disturbed by a trespasser, he has a right to use reasonable force to get trespass land vacated. A person, who being thus entitled to the immediate possession, uses reasonable force and regains the possession himself, cannot be sued for a trespass.

² ENTICK V. CARRINGTON, (1765) 19 St. Tr. 1030, 1066

³ HOLMES V. MATHER, (1875) L.R. 10 EX. 261

2-ACTION FOR EJECTMENT

Section 6, specific relief act, 1963 gives a speedy remedy to a person who has been dispossessed of immovable property otherwise than in due course of law. This is a speedy remedy where the person, who had been dispossessed of certain immovable property, without due course of law, can recover back the property without establishing any title.

3-ACTION FOR MESNE PROFITS

Apart from the right of recovery of land by getting the trespasser ejected, a person who has wrongfully dispossessed of his land may also claim compensation for the loss which he has suffered during the period of dispossession.

4-DISTRESS DAMAGE FEASANT

The right of distress damage feasant authorizes a person in possession of land to seize the trespassing cattle or other chattels and he can detain them until compensation has been paid to him for the damage done. The idea is to force the owner of the chattel to pay compensation and after the compensation has been paid, that chattel is to be returned.