

*Bird v Holbrook (1828) → Indirect Intentional Injury*

**Facts:** P (young boy) was chasing a hen, the hen went over a fence and the P followed the hen over - behind the fence was the D's garden who took great pride in it - D had set up a spring loaded gun to deter anyone who wanted to ruin his garden, which P triggered and consequently was injured by it.

**Held:** D is liable and the P succeeded and recovered damages because use of a gun could not be regarded as being within the landowner's privilege to take reasonable measures to eject or deter trespassers.

The possessor of land may evict a trespasser if the force used is reasonably necessary to achieve that purpose. The same rule applies to those who act to protect their goods or themselves from physical attack. –pg 30 text

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McPhail v Persons unknown

**Facts:** Squatters moved into the premises that they believed to be unattended, but the premises were locked and secured. When the landlord realised what happened he asked the squatters to move out. They asked for some more time, until they find another place to live in.

**Held:**

- The court assessed the situation and held that since it was possible for the landlord to obtain self-remedy (that is, eject the squatters with the use of reasonable in the circumstances force), he should not be worse off if he came to court to obtain the official order. Thus, the court did not grant the extension on a policy basis.
- Lord Denning distinguished between rights of tenant and squatter. A squatter is a trespasser (unlawful), a tenant is a possessor (lawful). An owner is entitled to turn out a trespasser using force (*Browne v Dawson (1840)* – remedy of self help which the court would like to deter), but may use no more force than is reasonably necessary (*Hemmings v Stoke Poges Golf Club [1920]* ).
- **Note:** "It is different with a tenant who holds over after his term has come to an end or after he has been given notice to quit. His possession was lawful in its inception. Even after the tenancy is determined, he still has possession. If he remains in possession and in occupation, there is a high authority for saying that the owner is not entitled to take the law into his own hands and remove the tenant by force."