243, see Soulsby v. Neving *supra*, and Ryal v. Rich, 10 East, 48. Indeed it would seen that the double value is no payment as between landlord and tenant, but is given as a penalty.

But it has been well settled since Wright v. Smith, 5 Esp. 203, and see Soulsby v. Neving *supra*, that the Statute, speaking of a *wilful* holding, does not apply where the defendant holds over, not *contumaciously*, but under a *bona fide* belief that he has a right to do so. To render him liable his holding must be with a consciousness on his part that he has no right to retain possession, and plainly wrongful and without colour of title. This doctrine was fully affirmed in Swinfen v. Bacon, 6 Hurl. & N. 184; S. C. in error, 6 Hurl. & N. 846. But if one of two joint tenants, who does not occupy, says on receiving notice to quit that "he has nothing to do with the land," it will not overcome the presumption of wilfulness, Hirst v. Horn, 6 M. & W. 393.

II. III. IV. **Ejectment between landlord and tenant.**—This section [8] is said by Lord Mansfield, Goodright v. Cator, Doug. 477, to be very confused and intended to provide a remedy in cases of vacant possession though other matters are thrown in. It seems from Doe v. Davis, 7 East, 363, that it is not restricted to cases of ejectment, brought after half a year's rent is due where the landlord has a right to re-enter and no sufficient distress is found on the premises, but extends to all cases where six months' rent is in arrear and the landlord has a right of re-entry. However, Doe v. Wandlass, 7 T. R. 117, is to the contrary; and, independent of the Statute, ejectment cannot be maintained for non-payment of the rent, unless it has been demanded in proper time and with all the
712 formalities required *by the common law, an account of which will be found in the notes to Duppa v. Mayo, 1 Wms. Saund, 286 b *in notis*.[9] The Statute, too, only operates where the right of re-entry is absolute and the lease thereby forfeited, and not where it is only *quousque;* as in Doe v. Bowditch, 8 Q. B. 973, where a lease, though inartificially drawn, was construed to provide that, on non-payment of the reserved rent, &c. the landlord might enter and hold the premises till the arrears were paid, and it was held that a formal demand of rent was not dispensed with, for the right of re-entry under the Statute must be one by which the lease is avoided. However, the condition would have enabled the lessor to maintain ejectment at common law, on observing the necessary formalities, and to hold till the arrears were paid, whereupon the lessee might re-enter, Co. Litt. 203 a. And it must appear, too, that the lessor had a right of re-entry in respect of the non-payment of half a year's rent at the time of serving the declaration, Doe *d.* Dixon v. Roe, 7 C. B. 134.

The service of the declaration in ejectment is substituted for the niceties of demand of rent and entry required at common law, see Matthews v. Ward, 10 G. & J. 443;[10] Doe v. Shawcross, 3 B. & C. 752, and the effect

[8] Section 2 of the Statute was in substance re-enacted in Maryland by the Act of 1872, ch. 346, (Code 1911, Art. 75, sec. 73).

[9] See Prout v. Roby, 15 Wall. 471; Adams on Ejectment, 161.

[10] Campbell v. Shipley, 41 Md. 81. In this case the lease was for ninety-nine years renewable forever and it was held to be within the Statute. The lease gave a right of re-entry if the rent should be in arrear for one