entitled to immediate possession, as a trespasser, and relying on his right, maintain trespass *qu. cl.* against him, merely because the right of the latter has been forcibly asserted, seems so extraordinary a proposition, that if not warranted by express words of the statutes, nothing but the clearest implication from their language could justify it, and as the removal of the tenant upon or after entry is but a part of the act of entry, and depends on the legality of the possession thereby gained, for its justification, the action for assault or for the removal of the tenant's goods, must stand or fall with the action of trespass *qu. cl.*

It is admitted, it should be remarked, in the first place, that, at common law, the lessor was liable to no action for forcible entry or expulsion of the tenant; but at most to an indictment for a breach of the peace, punishable only by fine or imprisonment.* But the ground taken is, that the express prohibition of such entry, with a penalty therefore, by the Statutes of Forcible Entry and Detainer, made the act civilly illegal and incapable of revesting the lessor with a lawful possession, and that for such entry or any assertion of possession based thereon, the lessor became liable like any mere stranger to the lessee.

The English statutes on this subject, from which, with some variations, all those in the United States have been derived, were, excepting only some supplementary enactments not material here, three in number; 5 Rich. II. c. 8; 8 Hen. VI. c. 9, and 21 Jac. I. c. 15. By the first, it was declared "That none from henceforth shall make any entry into lands or tenements but in case where entry is given by law; and, in such case, not with the strong hand, nor with multitude of people, but only in a peaceable and easy manner;" and fine and imprisonment were imposed upon conviction for such forcible entry. By the Stat. 8 Hen. VI. c. 9, forcible detainer, as well as forcible entry, was made criminal, an action of trespass or assize of novel disseisin on the statute with treble damages was given to the party disseised, and restitution on the finding of the force was also to be made to the party *disseised*, and as this term was held to imply a freehold, the right to have restitution was by the Stat. 21 Jac. I. c. 15, extended to tenants for years also.

It will be perceived, that while these statutes make a violent entry or detainer an offence, they also expressly specify the penalties incurred, and thereby exclude the idea of any implied liability, except the indictment at common law, and it has accordingly been held with increasing definiteness by the English courts that these statutes are special, subjecting the offender only to the penalties named therein, and do not affect the civil character of the act. But two decisions—one of them an extra-judicial Nisi Prius ruling, and the other a majority opinion—break the nearly uniform current of authority, and treat the lessor as a trespasser, and liable as such to his tenant at sufferance. Neither of them however—although they are the sole reliance of the American courts that have held the lessor to such a liability—sustain an action of trespass *qu. cl.*, but only of trespass for assault, and both were shaken and finally overruled by repeated decisions in the Courts of Exchequer, King's Bench, and Common Pleas.

For the doctrine seems early to have been established that the removal of the tenant by force, unless excessive, was not of itself the subject of a personal action, but depended on the title to the possession, and hence that *liberum tenementum* was a good plea to such a removal as well as to trespass *qu. cl.* Thus in *Taylor* v. *Cole*, 3 T. R. 292, in an action of trespass *qu. cl.* with a count for expulsion, a plea of justification of the entry under process was held a defence to both counts. The occupant yielded without forcible resistance to the expulsion, but it was held generally that expulsion was mere matter of aggravation to the trespass to the land, and was answered with this by a plea of title unless there was undue force and the plaintiff new assigned for an assault. The principle established by this case was, therefore, that a party regaining possession by title might assert that possession and expel the occupant with any proper amount of force. The sufficiency of title, as a justification, was again declared in *Argent* v. *Durrant*, 8 T. R. 403, where a lessor was held not liable for entering and pulling down a wall, while the tenant held over, and was carried still further in *Butcher* v. *Butcher*, 7 B. & C. 399, where a freeholder after entry was allowed to treat the party who persisted in remaining as a mere wrong-doer, and to maintain trespass *qu. cl.*, against him.

While these last two cases sustain the right to expel after a peaceable entry, they do not determine how much force in entering could be justified under color of title, or whether a violent entry, because criminal, was civilly illegal. But in *Taylor* v. *Cole*, *supra*, the principle that a legal possession can be acquired by an entry though made with such force as to be criminal under the Statutes of Forcible Entry and Detainer is very distinctly intimated by Lord Kenyon, who says, "It is true that persons having a right are not to assert that right by force; if any violence is used it becomes the subject of a criminal prosecution." And in *Taunton* v. *Costar*, 7 T. R. 431, the same eminent judge distinguished between the the penal consequences of a forcible entry and its civil effect still more clearly, saying, "Here is a tenant from year to year whose term expired. . . . . He now attempts to convert the lawful entry of his landlord into a trespass. If an action of trespass had been brought, it is clear the landlord could have justified under a plea of *liberum tenementum*. If, indeed, the landlord had entered with a strong hand to dispossess the tenant by force, he might have been indicted for a forcible en-

* Hawkins, Pl. Cr. B. 1, ch. 28, sec. 3; *Dustin* v. *Cowdry*, 23 Vt. 631, 635.