for his entry without regard to force. What was said about force, was therefore extra-judicial; and whatever its weight, must, as there was no forcible entry at all, be referred to the count for expulsion. The decision amounts therefore, so far as our inquiry is concerned, only to a *dictum*, that, after a peaceable entry, the landlord is liable in trespass for assault, if he uses actual though moderate force to remove the tenant. But this would overrule *Butcher* v. *Butcher*, *supra*, which, it may be remarked, was not adverted to in this case, where a legal possession, once regained, left the occupant who persisted in remaining, liable to be treated as a mere trespasser.

When, therefore, the question next arose, the ground was taken, that the entry was not complete until possession was wholly regained, and hence, that, if the landlord after a peaceable entry used force to expel, his original entry became by relation forcible, and he was liable in trespass for assault, although not in trespass *qu. cl.* This anomalous doctrine was set forth in *Newton* v. *Harland*, 1 M. & G. 644, the second and only other English case which restricted the landlord's right to regain possession by force. The action was trespass for assault merely, and not trespass *qu. cl.* The lessor had entered quietly on the determination of the tenant's right of possession, and expelled him with moderate force. He pleaded lawful possession, *molliter manus*, on which issue on the above facts, Parke, B., directed a verdict for the defendant. A new trial was granted in the Common Pleas, Tindal, C. J., thinking that the facts had not been fully brought out, and expressing a doubt if the lessor could assert his right with force. On the second trial, Alderson, B., ruled that a lessor could expel a tenant holding over, if he "used no unnecessary violence," and a second verdict was found for the defendant. On the case again coming before the Court of Common Pleas, Tindal, C. J., held that there were two questions involved; first upon the right of the lessor to expel, after acquiring by entry peaceful possession; upon which he gave no opinion, and which in fact had already been decided by *Taylor* v. *Cole* and *Butcher* v. *Butcher*, *supra;* and second on the character of the possession acquired by the lessor by an entry with force to the person of the tenant, which he considered this to be. Such a possession he held to be unlawful, because gained by a criminal act. Erskine and Bosanquet, JJ., concurred. It was admitted, however, that the landlord could, after a peaceable entry, if the tenant remained in possession, maintain trespass against the latter; and also that, even for a forcible entry, the tenant could not have trespass *qu. cl.* against the landlord, for want of title; p. 667. How this liability of the tenant to be treated as a trespasser after the landlord's entry could be reconciled with the immunity claimed for him from expulsion with force, such as might be applied to any trespasser, was not explained. Coltman, J., dissented, holding that the right of the lessor to re-enter, even if force was used, was well established by the cases cited *supra*, and that having by his entry revested himself with a legal possession, his tenant at sufferance became a trespasser, and was liable to expulsion like any "mere wrong-doer."

This case, it will be seen, gives no countenance to an action of trespass *qu. cl.* This was expressly declared by Erskine, J. *ubi supra*. In so far as Lord Lyndhurst's *dictum* in *Hillary* v. *Gay* has been regarded as supporting such an action, it is here directly repudiated. But the doctrine maintained is, that force to the person of the tenant in possession is not justified by entry under title, because by relation such an entry is affected by the violence which followed it, and is illegal and void. And yet after such entry the tenant has not rightful possession enough to sue his lessor in trespass *qu. cl.*, for his entry, although he could have maintained that action against a stranger. The lessor's entry is, therefore, at once unlawful and yet not actionable, an injury to the tenant for which he nevertheless cannot sue. How it can be at the same time unlawful and justifiable is not attempted to be explained.

Nor does this anomalous doctrine derive mere weight of authority from this case. The opinions of the three judges who decided it are quite balanced by the judgments of the dissenting judge, and of Barons Parke and Alderson. For the rulings of these latter judges at Nisi Prius in this case were not hasty enunciations, abandoned when controverted by a higher court, by were reasserted by them, with distinct emphasis, in the next case which arose —*Harvey* v. *Brydges*, 14 M. & W. 437—Parke, B., laying down the law in the broadest manner in these words: "Where a breach of the peace has been committed by a freeholder, who, in order to get possession of his land, assaults a person wrongfully holding possession of it against his will, although the freeholder may be responsible to the public in the shape of an indictment for a forcible entry, he is not liable to the other party. I cannot see how it is possible to doubt, that it is a perfectly good justification, that the plaintiff was in possession of the land against the will of the defendant, who was owner, and entered upon it accordingly, even though in so doing a breach of the peace was committed." Alderson, B., added, "may a freeholder lawfully enter on his own premises with any degree of force? I have still the misfortune to retain the same opinion that I expressed in *Newton* v. *Harland*." A plea of *liberum tenementum* was accordingly held a good answer both to trespass *qu. cl.*, and for expulsion also. The amount of force did not appear; but even if there were no actual force, and these statements of law went beyond the facts of the case before the court, they must now be considered conclusive, as the language of Parke, B., has been adopted in terms as a controlling authority in a late and parallel case where actual