

RIGHT OF A LANDLORD TO REGAIN POSSESSION BY FORCE.

the tenant. The court distinguish *Dustin v. Cowdrey* on the ground that the act here was not within the Statutes of Forcible Entry. But this was not so. Breaking violently into a dwelling-house is as indictable as force to the person. *Rez v. Bathurst*, 3 Burr. 1701 and 1702. We must therefore regard this decision as a return to the earlier doctrines held by this court. In Illinois, however, in the cases of *Page v. Depuy*, 40 Ill. 506, *Reeder v. Purdy*, 41 Ill. 279, the court considering the English authority equally balanced and the American cases conflicting, adopt the conclusions of *Dustin v. Cowdrey*, which they consider established by incontrovertible arguments. As these cases rest therefore mainly on authority, we leave them to stand or fall with the cases on which they rely. It is merely to be remarked, that the court is consistent in its view of the effect of the statute, and consider that any violent entry, even after the tenant has abandoned the premises, is equally within the prohibition of the statute, and subjects the landlord to an action of trespass, a conclusion which no other court has ventured to adopt, and which is distinctly repudiated even by those which have sustained the action of trespass in other cases, but which is, nevertheless, the logical result of implying from the statute a liability not therein expressed; the absurdity of the conclusion not lying in the means by which it is reached, but in the doctrine from which it is drawn.

In Missouri, the true distinction is drawn, and it is held that whatever remedy the ousted tenant may have by the statutory process of restitution, he cannot maintain trespass against the landlord. *Krevet v. Meyer*, 24 Mo. 107; *Fuhr v. Dean*, 26 Mo. 116.

In Massachusetts, notwithstanding some general dicta or decisions not duly limited, the law is clearly in accordance with the English law, and an action lies by the tenant neither for a forcible entry nor for forcible expulsion if no unnecessary force is used. The early case of *Simpson v. Henry*, 11 Pick. 379, in which the dictum of Judge Wilde occurs, which he quoted at the beginning of this article, was trespass for assault. The plaintiff was beaten with a pitchfork by the landlord while the latter was effecting an entry; and the language used by the court so far from announcing the doctrine, sought to be derived from it, of the general unlawfulness of force, was immediately preceded by the statement, that the defence claimed was "the right not only of breaking open the house and entering therein with force and violence, but also of committing an assault with a dangerous weapon." The whole simply means that as improper force was used, trespass for assault lay. That trespass *qu. cl.* did not lie, was held in the same case in 13 Pick. 36. In *Miner v. Stevens*, 1 Cush. 482, 485, the same judge cites the English and New York cases, which held that possession could be regained by force, and that no action lay, and declares this to be

the law of Massachusetts. In *Meador v. Stone*, 7 Met. 147, an action of trespass *qu. cl.* was held not maintainable by a tenant at sufferance against his lessor. The same decision was made in *Curtis v. Galvin*, 1 Allen 215, where the tenant was forcibly removed, and in *Moore v. Mason*, 1b. 406, where the entry was forcible. In *Commonwealth v. Haley*, on indictment against the landlord for assault on the tenant with a hatchet, the court held, that the landlord, if resisted in taking possession, must desist, and did not limit this proposition as they should, to the case of a criminal proceeding; but in *Mugford v. Richardson*, 6 Allen, 76, an action of tort in the nature of trespass was held not to lie against a landlord, who, after taking peaceable possession of part of the premises, overcame with force the tenant's resistance to his repossession of the remainder. The same law was laid down in *Winter v. Stevens*, 9 Allen, 526, 530, where the circumstances where even stronger, entry being made by the owner accompanied by five men and the tenant being ejected with force. The general doctrine that expulsion was mere aggravation in trespass *qu. cl.*, and answered by plea of title, was declared in *Merriam v. Willis*, 10 Allen, 118, and the right to expel with necessary force affirmed in *Pratt v. Farrar*, 1b. 519, 521, and decided in *Morrill v. De la Granja*, 99 Mass. 383. Clearly, therefore, no civil action is maintainable in Massachusetts by inference from the general prohibition of the statute.

It will have been apparent from the cases cited in this discussion and the principle upon which they have gone, that no such distinction exists as has sometimes been intimated, restricting the right to expel to cases where the entry has been peaceable. No such distinction has ever been decided to obtain, but the doubt has arisen from the language of the courts; as, for instance, in *Mugford v. Richardson*, *supra*, where it is said, "the landlord being in peaceable possession had the right to use force," &c., whence the inference has been suggested that such peaceable possession was a condition precedent to the right to expel. But it has been clearly established from the cases, that the possession gained by force is as legal as if gained peaceably and equally efficient to revest title, the criminal liability in no way affecting the efficacy of the entry civilly.

A doubt might also arise from a hasty perusal even of some of the cases which authorise a forcible repossession by the lessor, from the terms employed by the courts to describe the amount of force permissible. Thus in *Winter v. Stevens*, 9 Allen, 526, 530, it is said that a tenant at sufferance may be ejected "by force if reasonable and without a breach of the peace, and not disproportionate to the exigency." But any force applied to a person against his will is an assault and a breach of the peace. The exception intended is merely excessive force. The language of Parke, B., above