of Richard than it was declared to be by Fitzherbert on the statute of Henry, on which this author was expressly commenting. This is clear from the case which is cited by Lord Hale from the Year Books, decided the year after the passage of the statute of Henry, which held expressly, that if the entry of the defendant was with title, no action lay: "but for the force the party entering shall make fine to the king." The decision is exactly given in Lord Hale's note; it runs, "On n'aura action quand il est ouste ove fortmain par un autre, ou entre fuit congeable [justifiable]; per ceo quod pur le fortmain le party convict fera fine au Roy. . . Et purceo quod le breve reherce le statut . . et pur ceo qu'il ne dit ubi ingressus non datur per legem, le breve a batist; car si le entre fuit congealable sur le plaintiff, il n'ad cause d'action:" The careful reader will be somewhat surprised to find that Lord Hale's note is quoted by the court: "He shall not maintain it by the statute Rich. II. *but may by the statute of* Henry VI.," thus converting a decision from the Year Book, expressly denying the action, into a statute authorising it, by the deliberate insertion of the words italicized, not one of which is to be found in the author cited. In any tribunal less respectable than the court of Vermont, this might be called by even a "severer name" than "blundering." It may be added, that the law laid down in the case from the 9 Hen. VI. is reaffirmed in 15 Hen. VI. fo. 17, pl. 12.

The general ground on which this case proceeded, that the entry by force being prohibited could confer no legal possession, must be considered as overruled in Vermont by the later case of *Mussey* v. *Scott*, 32 Vt. 82, where the landlord having a right of eutry, violently broke into the premises during the temporary absence of the tenant, and was nevertheless held to have acquired a lawful possesion thereby, which he might defend by force against 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. *Rex* 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 *Sampson* 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 had held that possession could be regained by force, and that no action lay, and declares this to be the law of Massachusetts. In *Meader* 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*, *Ib.*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