plaintiff's individual possessory right, and not an action for a public wrong; whereas, as against a stranger, mere possession being sufficient, no title subordinate to the defendant's is in any way disclosed in the action. And this was the ground generally taken by the American courts, when the point actually arose for decision, and an action of trespass was with great unanimity of authority held not to lie. Thus in Pennyslvania, *Overdeer* v. *Lewis*, 1 W. & S. 90; South Carolina, *Johnson* v. *Hannahan*, 1 Strob.313; Kentucky, *Tribble* v. *Frame*, 7 J. J. Marsh. 599; North Carolina, *Walton* v. *File*, 1 Dev. & B. 567; ank in New York in repeated decisons: *Wilde* v. *Cantillon*, 1 Johns. Cas. 123; *Hyatt* v. *Wood*, 4 Johns. 150; *Ives* v. *Ives*, 13 Johns. 235; *Jackson* v. *Morse*, 16 Johns. 197; justifying the emphatic language of Nelson, C. J., in *Jackson* v. *Farmer*, 9 Wend. 201: "Statutes of Forcible Entry and Detainer punish criminally the force, and in some cases make restitution, but so far as civil remedy goes there is none whatever." And these earlier cases have been reaffirmed by recent adjudications: *Livingstone* v. *Tanner*, 14 N. Y. 646; *People* v. *Field*, 52 Barb. 198, 211. So in Vermont, in *Beecher* v. *Parmele*, 9 Vt. 352, Redfield, J., says, "it is now well settled that an intruder, in quiet possession of land, may be forcibly expelled by the owner, so far as the land is concerned. If the owner is guilty of a breach of the peace and trespass on the person of the intruder, he is liable for that, *but his possession is lawful*;" and actions of trespass were accordingly held not to lie in *Yule* v. *Seely*. 15 Vt. 221; *Hodgeden* v. *Hubbard*, 18 Vt. 504.

In a few States some cases have lately departed from this rule and held trespass *qu. cl.* maintainable; but they will be found to rest almost without exception, on the supposed authority of the English law as set forth in the long since exploded cases of *Newton* v. *Harland* and *Hillary* v. *Gay*; though, as will be remembered, no such action was countenanced even by these decisions, and their authority for trespass for assault has, as we have seen, been wholly overruled. *Moore* v. *Boyd*, 24 Maine, 242, and *Brock* v. *Berry*, 31 Maine, 293, frequently but erroneously cited as sustaining this action, do not apply, for in both the tenancy was at will, and the tenant's possessory right had not terminated, and in the latter case, had the tenant been at sufferance, as he was mistakenly called by the counsel, the facts presented exactly the case of *Meader* v. *Stone*, 7 Met. 147; *Mugford* v. *Richardson*, 6 Allen, 76; *Argent* v. *Durrant*, 8 T. Q. 403, where no action was held to lie. In *Larkin* v. *Avery*, 23 Conn. 304, the landlord, having a right of re-entry, entered in the tenant's absence and resisted with force his attempt to repossess himself of the premises, and was held liable in trespass for assault. A clearer case could hardly be put of the landlord's right to use force, as a legal possession had been gained, and force was only employed to defend it; and this point has so been held wherever the case has arisen elsewhere; *Todd* v. *Jackson*, 2 Dutch 525; *Mussey* v. *Scott*, 32 Vt. 82; *Davis* v. *Burrell*, 10 C. B. 821. *Hilbourne* v. *Fogg*, 99 Mass. 11; even by courts which have denied the right of forcible re-entry. The court distinguish the case before them from trespass *qu. cl.*, and seem to think that trespass for assault is supported by the Massachusetts law in *Sampson* v. *Henry*, 11 Pick. 379, being misled by Judge Wilde's *dictum* above cited, that being a case of excessive force, but mainly rely on the exploded doctrine of *Newton* v. *Harland*, which they conceived to be the English law.

In *Dustry* v. *Cowdrey*, 23 Vt. 631, the court which had repeatedly enunciated a different doctrine,* altered their opinion, moved thereto, we presume, by the then recent decisions of *Newton* v. *Harland* and *Hillary* v. *Gay*, and sustained an action of trespass *qu. cl.* As this decision was a very elaborate effort to support this action, including all the grounds which have been urged in its support, and has since been followed as a leading case by the court of another State, it claims a more extended examination. The facts simply were, that the plaintiff, a tenant at will, had agreed at the inception of his tenancy to "leave at a certain day, and that if he did not the defendants might put him out in any way they chose." The day fixed for his quitting passed, and on his refusal then to go the defendants entered peaceably and dismantled the premises, and after a further refusal on his part to go, removed him and his family, but gently and with no more than neeessary force. It would seem as if the agreement on the tenant's part for his ejection was an ample warrant for his removal with due and proper force. This point has been expressly so held in England, and in all the American courts where it has arisen, and such removal has been held justifiable under a plea of leave and license and no breach of the statute: *Feltham* v. *Cartwright*, 7 Scott, 695; *Kavanagh* v. *Gudge*, 7 M. & G. 316; *Fifty Assoc.* v. *Howland*, 5 Cush. 214; *Page* v. *Dopey*, 40 Ill. 506. But the point was neither taken by counsel nor noticed by the court. Having overlooked a ground decisive of the case in favour of the defendant, the court then proceed to pronounce judgment for the plaintiffs, placing their decision mainly on the ground, supposed to be conclusively established by *Newton* v. *Harland* and *Hillary* v. *Gay*, that a legal possession could not be gained by a prohibited act. After a full statement of these two cases, they say, p. 644, "This is the latest declaration of the courts of Westminster Hall upon this subject. . . . . We have no disposition to add any thing in regard to the true construction of law as derived from the decisions of the courts of Westminster Hall, and we think the decisions of

* *Beecher* v. *Parmele*, 9 Vt. 352, and other cases, *supra*.