precise form is given by Fitzherbert, (2 Nat. Brev. 248 F.) and is founded only on the statute. In *Davison* v. *Wilson*, *supra*, the attempt was made to bring the action of trespass *qu. cl.* under the statute, by adding to the declaration in trespass in common form, that the entry and expulsion were "with the strong hand and against the form of the statute;" bnt even these words were held insufficient. It has moreover been uniformly held that the statutory action can only be maintained by one who has a freehold, the action only being given on disseisin; *Rex* v. *Domry*, 1 Ld. Ray. 610; *Cole* v. *Eagle*, 8 B. & C. 409; and does not lie against one who has a freehold and right of immediate entry; Year Book 9 Hen. VIII. fo. 19, pl. 12; 15 Hen. VII. fo. 17, A, pl. 12. And it need hardly be added that the restitution directed by the statutes of 8 Hen. VI. c. 9, s. 3; 21 Jac. I. c. 15, to freeholders and tenants for years, can only be made when and to those to whom it is directed by those statutes, and cannot be waived and replaced by an action of trespass. The restitution moreover is the fruit of a criminal proceeding.

The American cases therefore, which have based an action of trespass, whether *qu. cl. fregit*, for assault, or *de bonis asportatis*, on the supposed authority of the English law, wholly fail of support; and can only be sustained, if at all, on some distinct authority given by the terms of their local statutes. It will suffice if, instead of specially reviewing these enactments, we examine such authorizing clauses, when relied on by the courts to sustain the action in question. Except so far as qualified by such enactments, the doctrine that possession obtained by force is a lawful one, seems as clear on principle as we have seen it to be on authority. The tenant who, after his own possessory right is determined, seeks to hold his lessor as a trespasser for entering upon him with force, must in establishing his own possessory title disclose its defective character as against the title relied on by the lessor in entering; for the common law action of trespass is an assertion of the 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. 335; *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 *Yale* 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*, 25 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

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