1810.

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law has long ceased to exist in *England*, under which *actual* abatements, intrusions or disseisins, could take place, so in this state no such law *ever existed*. We therefore cannot be subject to any provisions or consequences which might arise or result from such law. What then is the situation of the citizens of this state? When a person seized of land dies, as there is no act to be done by a lord, or any body else, to give seisin or investiture; and as no person by a tortious entry can, through the consent or connivance of a lord, or any other person, obtain a *freehold de facto*, the consequence follows, of course, that the heir or devisee immediately becomes tenant of the freehold, not only *de jure* but *de facto*. He has not only seisin and possession in law, but in fact; for whoever has the right is considered in law to be in possession according to his title, until there has been a wrongful possession against him for twenty years. So is the law as to alienees of lands under any other mode of alienation. Hence it follows, that no actual entry is requisite to enable an heir or devisee, or any alienee, to punish a wrong doer for injuries done to the real estate, as the law considers them in actual possession according to their title, and as the wrong doer cannot, by his tortious act, acquire to himself a *freehold de facto*. Hence also, whoever has title may *devise*, and may convey by bargain and sale, by lease and release, &c. his lands, and is considered in possession for that purpose, although a wrong doer has entered upon those lands, unless such wrong doer has had adverse possession for twenty years, and so far only as he has had such adverse possession. A citizen of this state may *elect* to consider himself out of possession, for the purpose of bringing an action of ejectment, as in *Great Britain*, a person may elect to consider himself disseised for the sake of the remedy, but this doth not cause him to be *actually* out of possession. Wherever a person here can bring ejectment, he can bring trespass, at his option. Nay, he can bring both at the same time; for if *A* enters upon the land of *B*, takes possession of it, and cuts down trees, or cultivates the ground, *B* may bring trespass to recover damages for the cutting or cultivation; and he may also at the same time prosecute ejectment with a view of *dispossessing A*; and after judgment in ejectment *B* may bring an action for mesne profits, arising *subsequent to the writ of trespass*.