

## TAYLOE v. VARDEN.

[2 Cranch, C. C. 37.]<sup>1</sup>

Circuit Court, District of Columbia. Dec. Term, 1811.

TRESPASS—POSSESSION NECESSARY TO  
MAINTAIN.

Possession in fact, or in law, is necessary to maintain trespass quare clausum fregit.

Upon a case stated, the question was whether Tayloe had such a possession as would authorize him to bring trespass. Varden, in 1806, took possession while the title to the freehold was in H. Lee, who never had any other seisin or possession than what was conveyed to him by the deed of bargain and sale from Pollock. Varden was in possession when Lee made the deed of bargain and sale to Tayloe, and continued in possession until this suit was brought. Tayloe never had entered, even if he had a right to enter.

THE COURT (FITZHUGH, Circuit Judge, absent) was clearly of opinion that, as Lee was out of possession when he made the deed of bargain and sale to Tayloe, the latter had not the possession, either in fact, or by construction of law; and therefore could not maintain an action of trespass.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]