fendants accompanied with the force required by the law? There must be actual violence to the person, or such "words, circumstances, or actions as have a natural tendency to excite fear or apprehension of danger;" or by breaking open doors or windows, or other parts of a house, or throwing [16] out goods, etc. Acts of force or violence, or appearances tending to inspire a fear or apprehension of violent acts to the person, goods, houses, or enclosures, must exist, to make out the case. The great object of the law is to maintain the peace and harmony of society, and prevent bloodshed and breaches of the peace in contests for the possession of land, rather than resort to the law for the trial of titles, or to gain some advantage in such contests. This law removes all temptation to that course, by compelling a restoration of the possession thus unlawfully taken, without regard to the best title.

It is not the simple breaking the close of another which may constitute a trespass, and implies force in the law, which constitutes this case, but there must be something more real and tangible, as above described. In the case under consideration there was no force either to person or property; no doors to open, gates to unbolt, or fences to throw down; but all were open and unoccupied. There was no obstruction or impediment in the way of the defendants, and their entry was quiet and peaceable. This is a case very similar — certainly not stronger than that of Greer *v.* Wroe and Wife, 1 Sneed, 247.

In the finding of the jury for defendants, and the rulings and judgments of the court, we find no error, and therefore affirm.

JOHN D. LOWREY *v.* BENJAMIN H. BROWN.

Knoxville, September, 1855.

1. PLEADINGS — SIMILITER. The want of a *similiter* is cured by verdict. [Citing Meigs, 578, and 9 Yerg. 20.]

2. SAME — VERDICT. It is not essential that a verdict should be technically responsive to the issues joined; if in its sense and legal effect it be substantially so, it will suffice; as where the jury find "the issues joined for the plaintiff." [Citing 6 Humph. 45; 3 Humph. 84.]

FROM ROANE.

[17] This action of trespass *vi et armis* is from the circuit court of Roane county. At the March term, 1855, before Patterson, J., there was verdict and judgment for the plaintiff, Brown. The defendant appealed in error.

Maynard, for the plaintiff in error; *Lyon*, for the defendant.

HARRIS, J., delivered the opinion of the court.

This is an action of trespass with force and arms, for an assault and battery, brought by the defendant in error in the circuit court of Roane county. The declaration is in the usual form; to which the plaintiff in error pleaded:

1st. "Not guilty." Upon which plea issue was taken.

2d. He pleaded the statute of limitations of twelve months. To which there is replication, averring that he was guilty of the trespass and battery, [**18**] in the declaration mentioned, within twelve months before the bringing of this suit, and concludes to the country.

3d. He pleaded accord and satisfaction. The replication denies the averments of the plea, and concludes to the country.

4th. There is a special plea of a release of the cause of action, upon an averred legal and valid consideration. To this plea, also, there is replication, denying the allegations of the plea, and concludes to the country.

To these several replications there were no *similiters* put in, but the parties go to trial.

The jury found "the issues joined for the plaintiff." Upon which the court rendered judgment. There was a motion for a new trial entered and overruled, and an appeal by the defendant to this court.

To reverse this judgment two grounds have been relied on by the counsel for the plaintiff in error. First, that there were no "issues joined," for the want of *similiters;* and in the second place, the verdict is not responsive to the issues, or pleadings in the cause. There is nothing in the first objection, "The want of a *similiter* will be aided after verdict." Moseley *v.* Mathews, Meigs, 578–580; Smith *v.* Eubanks, 9 Yerg. 20–24. In support of the second objection, that the verdict is not responsive to the issue, we are referred to the case of Kirkpatrick *et al.* *v.* S. W. Railroad Bank, 6 Humph. 45. That case does not support the proposition. That was an [**19**] action of debt on simple contract. The defendant pleaded "*nil debet* and payment." The verdict of the jury was, "the defendants have not paid the debt in the declaration mentioned." This was no response to the issue upon the plea of "*nil debet*" — left that issue wholly undisposed of and undecided. The defendants might not have paid the debt because, from anything that appears in the verdict, they may never have owed it. So the court held in that case, and, beyond all doubt, correctly.

But in the same case the court say, "We do not think a technical response is necessary, but if its sense or legal effect makes a response to the pleadings, the court will sustain it and pronounce judgment upon it." Boon *v.* Planters' Bank, 3 Humph. 84. "But it has always been held that when there are several issues, they must all be found by the jury before judgment can be pronounced." Crutcher *v.* Williams, 4 Humph. 345.

In the case before us, the jury did pass upon the whole case, and found all "*the issues* joined for the plaintiff." This verdict, though perhaps not technically responsive to the issues, yet in its "sense and legal effect" it makes a response to the pleadings. There is no error in the judgment, and we affirm it.

MARTHA LUTTRELL *v.* G. M. HAZEN.

Knoxville, September, 1855.

1. PRINCIPAL AND AGENT—FOR WHAT KIND OF TORT THE FORMER IS LIABLE. When the agent or servant, acting in the business of his superior, commits a trespass upon another, the former is liable therefor. Thus, when the employer directs his servant to cut timber in a designated direction upon the employer's land, and the servant inadvertently cut timber upon the land of another, even without the knowledge or consent of the employer, the latter is liable to an action of trespass therefor. [Cited in Elmore *v.* Brooks, 6 Heisk. 49.]
2. TRESPASS VI ET ARMIS—WHAT IT IS. Any physical force unauthorized by law, against the person or the possession of another, however slight, without regard to the motive, is in itself essentially a trespass, and the *gist* of an action of trespass *vi et armis*. "The criterion of trespass is force directly applied."
3. PRACTICE—TRESPASS AND CASE—WHEN CONCURRENT REMEDIES—ACT OF 1850, CH. 141. Trespass and case are, by the act of 1850, ch. 141, rendered concurrent remedies only in cases where trespass will lie. The remedy by trespass is not enlarged—it cannot be substituted for case. [The distinction between the two actions is abolished by the Code, § 2747.]

FROM KNOX.

[20] This was an action of trespass *quare clausum fregit*, instituted before a justice of Knox county, and brought by appeal into the circuit court of said county. At the October term, 1854, before Alexander, J., there was verdict and judgment for defendant. The plaintiff appealed in error.

Welcker and *Maynard*, for the plaintiff; *Lyon* and *Temple*, for defendant.

[21] CARUTHERS, J., delivered the opinion of the court.

The defendant was summoned before a justice of the peace of Knox, "to answer the complaint of Martha Luttrell, of a plea of trespass on the case, for cutting timber on the land of said Martha, to her damage fifty dollars." The justice found the defendant guilty, but on appeal to the circuit court he succeeded, and the case is here by appeal in the nature of a writ of error.

All the facts in relation to the act of trespass are stated by witness Gardner, who says "that he cut some timber on the side of the hill towards Mrs. Luttrell's, from the paper-mill; he was there in the employment of defendant, Hazen, who pointed with his hand in the direction, and told witness to go there and cut the timber. Witness said to Hazen, 'I don't know where your lines are, and maybe I may go over