

POSSESSION UNDER FORCIBLE ENTRY.

Until quite recently it was a moot point in the law relating to possession of land whether a possession, which was in fact rightful as being held under a good title to the ownership and possession of the land, but which had been acquired by forcibly entering and turning out the person in occupation, was a lawful possession for all civil (as distinct from criminal) purposes. The reason for the doubt was that under the Statutes of Forcible Entry the acquisition of possession by force on the part of a person entitled to enter is an indictable offence. The weight of judicial authority was in favour of the position that a possession, gained by force and in such a way that the person so entering could be indicted and punished criminally, did not amount to lawful possession for all purposes so far as civil rights and liabilities were concerned. The leading case on the subject was *Newton v. Harland* (1 Man. & Gr. 644), in which, as long ago as 1840, the majority of the Court of Common Pleas held that an assault committed by a landlord on his tenant cannot be justified if the possession in defence of which the assault is committed has been obtained by means of a forcible entry. In the recent case of *Hemmings v. Stoke Poges Golf Club* (*ante*, page 197) the Court of Appeal definitely disapproved of this view and overruled cases decided on its authority, holding that the owner of a dwelling-house (entitled to re-enter) was not liable in civil damages for a technical assault committed in course of entering forcibly and turning out the person in occupation.

Of the Statutes of Forcible Entry and Detainer—5 Ric. 2, ch. 7; 15 Ric. 2, ch. 2; 8 Hen. 6, ch. 9; 31 Eliz. ch. 11; 21 Jac. 1, ch. 11—the most important is the first, enacted in 1381; the last three relate to restitution of premises forcibly entered and held. The 5 Ric. 2, ch. 7, enacts that “none from henceforth make any entry into any lands and tenements but in case where entry is given by the law, and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner; and if any man from henceforth do to the contrary and thereof be duly convict he shall be punished by imprisonment.” Forcible entry, even by an owner entitled to enter, on any land or tenement is thus made a criminal