

defendant, the Force is excused: But the Force used in an Entry into Lands or Tenements, is the material matter, and punishable, although the Entry might have been lawful.

Also, if there be an attempt made to disseise me of my Land, or to disturb me of my High-way, or to turn an ancient Water-course from my Mill, I may lawfully use Force to resist it. See *tit. Surety for the Peace, cap. 72.*

A Keeper doth enter and chase upon my Land, pretending this to be within his Purliew, where it is not. If I command my Servants to beat him off my Ground, this seemeth justifiable in the defence of my possession, against such uniawful Claim. Yet *quere.*

Where Forcible Detainer of Possession is lawful. C H A P. CXXVIII. Vide 79.

THE Statute of 8 H. 6. concludeth thus, Provided that such as keep their possession by Force, after that they or their Ancestors, or they whose Estate they have in such Lands, &c. have continued their possession in the same three years or more, shall not be indamaged by force of that Statute.

And by force of this Statute and Proviso, every Heir, and every Feoffee, may justifie to keep their Houses and Possessions by force, in that case themselves, or their Ancestors, or their Feoffors, or they whose Estate they have, have been in peaceable possession thereof by the space of three years, or more. *Gr. 187.*

Yet this Proviso must (as it seemeth) be thus construed, *scilicet* That where a Man is seised (of a lawful estate or possession) of an House or Lands, and he or his Ancestors, or they whose Estate he hath therein, have continued the possession of the same peaceably by the space of three whole years together without interruption, (and his Estate nor ended) there he may hold and keep such possession with force, against all others; yea, it seemeth, if he shall hire strangers to aid him, to keep such possession, or shall have his company in Armor, he is not punishable by these Statutes: But he may not resist the Justices of Peace that shall come to view this.

And if he shall be indicted for such his forcible holding (after three years, such quiet possession) he may plead such his lawful and peaceable possession, by the space of three years next before such Indictment, and thereby he shall avoid both the Imprisonment and Fine; and also shall debar the other party of his restitution. Neither may the Justices of Peace remove him from his possession, though it be found by the Inquisition taken before them that he held that House or Land by force, after three years lawful and peaceable possession, as aforesaid.

But here it seemeth, that these four diversities are to be observed:

First, Where the party in possession did enter peaceably, and where forcibly. For if a Man enter forcibly, and after continue his possession peaceably by the space of three years without interruption, yet (it seemeth) he shall not be aided by these Statutes.

Secondly, Where the party in possession hath continued his three years possession peaceably, and where by force.

For if after a lawful and peaceable entry, a Man shall continue or hold his possession by force, This is a Forcible Holding or Detainer, and punishable by the Statute of 8 H. 6. And three years of such possession shall not aid him, as it seemeth.

Thirdly,

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1. 82.
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11. 82.
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7. 39.
11. 81.
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11 H. 6.
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R. Force
6.
22 & 29
See the
Statute of
31 El. 11.
4. 28.
3. 17.
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6 & 7 E. 6.
22 H. 6. 8.
Lamb. 66.
R. Ref.
12.
R. Force
22 & 29.

S. 7.
S. 21