

To whom Restitution shall be made. C H A P. CXXXII. v. 83.

P. R. 38. **T**his Restitution ought to be made to him that was put out, and to none other; for so are the words of the Statute.

Therefore if the Father be out by Force, and dieth, his Heir shall not have Restitution; yet here the Justices may imprison, and fine the offenders: For by such Forcible Entry they have broken the Peace. See *antea*, in the other Title of *Forcible Entry*.

Lamb. 156. Also, if after the death of the Father, a stranger abateth, or entrench into his Land by Force, before the Heir hath gotten Actual Possession indeed, the Heir shall not have Restitution, because he had but a possession in Law, descended upon him.

Fitz. 248. b. The Disseisee doth put the Disseisor out with Force, the Disseisor shall be restored: For the Right or Title is not commonly disputable or material; but by words of the Statute, he that is in such sort (*sc.* forcibly) put out, shall be restored.

Dyer 122. Yet it seemeth in this case, That upon Traverse tendred by the Disseisee, and his Right appearing, the Justice of peace may stay Restitution. See hereof after under this Title.

Br. Force 6. Also, if the Disseisor be restored again, yet the Disseisee may after re-enter peaceably, or have his Assize. *Fitz. Entry* 20.

Crom. 163. But if the Disseisee shall enter peaceably upon the Disseisor, and so they both shall abide and continue there together for divers days, and after the Disseisee doth put out the Disseisor with Force, and is thereof indicted. Here it seemeth the Disseisor shall not be restored; for the Disseisors possession was avoided in quiet manner at the first Entry of the Disseisee, and so the Disseisor had no possession in the Eye of Law when he was put out.

Crom. 262 & 164. If the Disseisee shall enter peaceably, the Disseisor and his Family being abroad, and after the Disseisee shall keep his possession with force, the Disseisor shall not be restored, by reason of the eign Title of the Disseisee, and for that he entred peaceably. See *antea*, in the other Title of *Forcible Entry*.

But here the Disseisee shall be imprisoned and fined for keeping his possession with force; for Forcible Keeping or Detaining, is as well prohibited as Forcible Entry.

Crom. 164. Fitz. h. And here note, That the being of a Mans Wife, Children or Servants, Possession. in the House, or upon the Land, do preserve his possession; but his Cattel being upon the Ground, &c. do not preserve his possession.

Alfize 418. Ilk. 140. Perk. 45. Also when two are in possession of an House, &c. and the one claimeth by one title, and the other by another title, here the Law shall adjudge him to be in possession, who hath the best right to the possession: So that if *A.* shall wrongfully enter upon *B.* and they both shall continue in the House, and after *B.* shall put out *A.* with Force; *A.* shall not be restored, for *A.* never gained any possession by his Entry.

Fitz. 249. Two Joynt-Tenants, or Tenants in Common, and one of them doth forcibly put the other out of his possession; he that is so expelled, may have an Action of Trespas of Forcible Entry against his Companion, upon the Statute of 8 H. 6. And thereupon he shall have a Writ of Restitution to restore him to his former Estate: But what the Justice of Peace can do herein, *Quere*, for that his entry and possession is lawful through the whole Land, in respect of his own moiety and state. See 8 E. 4. 8.

P. R. 36.