

or certifie the Presentment into the *Kings Bench*, and so to refer the further proceeding to them, &c. See here after.

4. He may plead the insufficiency of the Indictment. See *Paulo antea*.

5. He may plead the insufficiency of any of the Jurors, *sc.* for not having forty shillings Freehold Land *per annum*, and must not be Ancient Demesn or Copihold, but Charter Lands. And in this case Mr. Marrow is of opinion, That the party shall have no Restitution. Yet Mr. Lambert and Mr. Crompton seem to be of the contrary opinion. *Lamb. 155. Crompt. 165. Ideo quare.*

And it seemeth (by the opinion of Mr. Lambert,) That the Justices of peace ought not to stay Restitution, save only, either by alledging three years quiet possession, or by removing the Record and Presentment into the *Kings Bench* by a *Certiorari*, *Lamb. 165.*

35 H. 11.

For the First, there shall be no Restitution awarded (upon any Indictment of Forcible Entry, or holding with Force) where the party indicted hath been in quiet possession by the space of three whole years together next before the day of such Indictment found, If his Estate be not ended; and this the party indicted may alledge to stay the Restitution, and the Restitution upon this shall be staid by the Justice of peace, until it be tried, if the other party will deny or traverse the same. And if the same allegation be tryed and found against the party indicted, then shall he pay such Costs and Damages to the other party, as shall be assessed by the Justices before whom the same shall be tried; the said Costs and Damages to be recovered and levied notwithstanding by the course of the Common Law. *31 Eliz. 11.*

Three year Possession.

Crompt. 164. P.R. 37.

Also if a Man who hath made Forcible Entry or Detainer, be in doubt that he shall be indicted thereof before the Justices of peace, (upon the Statute of 8. H. 6.) and that thereupon Restitution will be awarded against him, he may have a Writ of *Certiorari* out of the *Kings Bench* ready, and when the Bill of Indictment is found, he may presently deliver it to the Justice of Peace or Court. And this is *Superfedeas* to them for to stay the Restitution; for that upon this Writ, the said Indictment shall be removed from them into the *Kings Bench*.

§. 3. Certiorari.

And although the Indictment be found after the *Teste* of the *Certiorari*, it is not material, for they be both the *Kings Courts*, &c.

6 H. 7. 16.

But if a *Certiorari* cometh to the Justice to remove an Indictment of Forcible Entry taken before the Justice of peace in the Country, and the party will not sue to remove it, but suffereth it to lie still, the Justice of peace may proceed to grant Restitution, notwithstanding the Writ, as *Hobart* the Kings Attorney said in 6. H. 7. But *Keble* held opinion against him; and it seemeth rather, that the Justice of peace ought *Ex Officio*, to send the Indictment away, because they are commanded so by the Writ. And this Writ is a *Superfedeas* of it self to the Justices of peace, to stay their proceedings: And if they shall proceed after, it is erroneous. *Br. Judges 17.*

Crompt. 162.

After Restitution made by the Justice of peace, if the other party doth remove the Indictment by a *Certiorari* of a more eigh date, than is the Indictment, the Justice of the *Kings Bench* may award Restitution back again: For upon the matter, the Justice of peace had no power to make Restitution, for that the *Certiorari* hath relation from the date thereof.

Ibid.

After Restitution granted from the Sessions, and delivered to the Sheriff, the other party having a *Certiorari*, delivereth it also unto the Sheriff after the Sessions; the Sheriff shall not surcease thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were delivered to any Justice