

“ Also after the Indictment of Force found, if a Traverse be tendred, §. 5.
 “ or whatsoever shall be alledged for the stay of Restitution, it ought to Pardon.
 “ be in Writing (and not verbal only,) for upon the Traverse. &c. a
 “ *Venire facias* must be awarded, a Jury returned, the Issue tried, a Ver-
 “ dict found and a Judgment given, and Costs and Damages awarded:
 “ And they must have a Record, which must be in writing, to do all this,
 “ and not a Verbal Plea, *Vid.* 14 H. 8. 16. *Fitz.* And all this must be
 “ done at the same Session, if it be desired; or else Restitution is to be
 “ granted. *Semble auxi que Pardon le Roy* will discharge the Forcible
 “ Entry or Detainer, and bar Restitution.

Yelver-
ton, p. 99.

“ And in the Case of *Fawcet*, H. 4 *Jac.* the Forcible Entry was par-
 “ doned by a Parliament Pardon; and the Court was of opinion, Resti-
 “ tution could not be granted; For by the Pardon, the strength of the
 “ Indictment is gone, but there is a Remedy for the party by Suit, where
 “ he may be sure of the effect of it; And Justice *Williams* said, That
 “ *Thynne* being indicted for an Entry by Force, upon the Lands of the
 “ Lord *Stafford*, got the Kings Pardon, and pleaded it in Bar of Restitu-
 “ tion; and it was adjudged a good Plea.

Restitution where it shall be granted. C H A P. CXXIV.

“ IT is generally held and maintained as the Law, and Course of the § 1.
 “ Court of *Kings Bench*, that Restitution is a thing in the discretion
 “ of the Court; and they will grant it, or deny it, as the Justice and
 “ Reason of the Case shall require: And therefore they will grant it or-
 “ dinarily in these Cases.

“ 1. If the Indictment removed, be for any cause appearing in the
 “ Body of it, or caption qualified.

“ 2. If a *Cert.* hath issued, and the same be not allowed, or proceed-
 “ ings stayed thereupon; but Restitution be granted after the allowance
 “ or tender of it.

“ 3. If any indirect course be used to avoid the effect of a *Cert.* as I
 “ remember this Case hapned. One *P.* having made a Forcible Entry up-
 “ on *L.* of Lands in *W.* And being threatned with an Inquiry of a Force,
 “ he employed one *C.* his Attorney to procure a *Certiorari*, and gave the
 “ names of those that were most likely to be indicted: Which one *R.* the
 “ Attorney of *L.* suspecting, by pretending himself to be the Attorney of
 “ *P.* spake to the Clerk in the *Crown Office*, understood the names of these
 “ for whom the *Certiorari* was intended to be made, and procured an In-
 “ quiry by the Justices in the Country, and such to be indicted as the
 “ *Certiorari* was not for. So when the *Certiorari* came, it was insignificant;
 “ and *L.* was restored. But this matter appearing in the *Kings Bench*, H.
 “ 1658. Restitution was awarded.

“ 4. If the Justices below shall misbehave themselves. and shall not al-
 “ low the Plea of three years Possession well pleaded.

“ But Restitution being as I said, a thing Discretionall; the Equity and
 “ Reason of the Case doth often incline the Court, not to grant it
 “ where they may do it, especially if the Party in Possession shall offer to
 “ appear, and go to speedy trial of the Right; and so I have often ob-
 “ served it to be done.