which omitted to state the interest of the party possessed of the premises in dispute.

Restitution.—With regard to restitution, it is held that the *same* justices, but no other, can award it. This restitution they are bound to give if the facts are found, but they cannot meddle with the possession of lands without a jury.[9] Where the proceedings are removed by *certiorari*, [10] the Court above, on the principle that whenever an inferior jurisdiction is created, the superior jurisdiction may put it in execution, can also award restitution, see Lord Proprietary v. Brown *supra*. We have no indictments before justices of the peace, all such proceedings being taken in the County Courts, and these, it is supposed, have the power of judges of assize in England to refuse, in their discretion, restitution after an indictment found by the grand jury, R. v. Harland *supra*. This is said to be the only instance in the law, in which the possession is transferred from a man *ex parte*, and the disposition of the Courts is now to give the defendant an opportunity to defend himself and his possession before exercising their powers in this respect.

189 *Restitution can only be made of corporeal hereditaments, and not of rents and the like, for a man cannot be put out of incorporeal hereditaments, except at his election, Co. Litt. 323, a. b. and with them it is only necessary to remove the force. So too it is only to be made to him who was put out of actual possession, and consequently not to one only seised in law, as to an heir on whom a stranger abates before entry, nor to an heir on an indictment finding a forcible entry on the ancestor; see, however, R. v. Morrow, Cas. temp. Hardw. 174; nor where the person using force has possession by operation of law, as if a disseisee enters and afterwards by force ousts his disseisor, for the possession revested in the disseissee by his entry, and so of a lessor entering by force on the lessee for a forfeiture, Com. Dig. Forcible Entry, D. 7. And restitution was refused in the first instance to the lessee in Newton v. Harland *supra*, see R. v. Harland *supra*, but R. v. Toslin, 2 Salk. 587, seems to the contrary.

A bar, however, to restitution is three years quiet possession of the defendant, see Stat. 31 Eliz. c. 11 *infra*.[11]. Such possession must, however, have continued three whole years, without interruption, before the indictment, 1 Hawk. P. C. 289. And so in the case mentioned above, a man holding under a defeasible title lands to which another has a right of entry, though he have been never so long in possession, cannot justify a detainer at any time within three years after a claim made by him having such right. The three years possession must be of a continuing estate, for the Acts do not apply where the estate is determined, as in case of a tenant for years, Baron Snigge v. Shirton *supra;* and of a lawful estate, for a disseisor cannot justify against the disseisee having a right of entry, though he may justify against him if his right of entry be lost by laches, or against a stranger. Such possession is to be pleaded in bar, but the plea need not show under what title or of what estate it was, for it is the

[9] But see note 6 *supra*.

[10] See Roth v. State, 89 Md. 524.

[11] Carter v. Woolfork, 71 Md. 289.