

possession and not the title which is material; and no restitution is made in the meantime until the truth of the plea be tried, Bac. Abr. tit. Forcible Entry, G. And restitution will also be stayed upon the defendant tendering a traverse of the force, until it be tried. A *certiorari*, too, stays restitution by the justices, but the Superior Court will in such a case award restitution at its discretion, R. v. Marrow, *supra*.

If a conviction, &c., is quashed, the Court is obliged to award re-restitution to the defendant as a consequence of their action, without inquiring into the legal or equitable claims of the parties, R. v. Wilson, 3 A. & E. 817; and the same is the rule where restitution has been illegally awarded or executed, or the defendant traversing the force gets a verdict.

**Damages.**—That part of the Stat. of H. 6, which gives treble damages, applies only to persons having a freehold, for the remedy is given against the *disseisor*, Cole v. Eagle, 8 B. & C. 409. In cases where the action lies, treble damages are recovered as well for the mesne occupation as for the first entry, and treble costs are also recoverable, Co. Litt. 257 a. By the Code, Art. 75, sec. 61,<sup>12</sup> a bond is required on the issue of a *certiorari* to remove proceedings in forcible entry and detainer, and upon restitution being awarded to the prosecutor, he is entitled to costs, see Isaac v. Clarke, 9 G. & J. 107, where it was also held, that an appeal would not lie to the Court of Appeals from the rulings of a County Court in such a proceeding removed into it by *certiorari*, though a writ of error, perhaps, might be maintained.<sup>13</sup>

In Pfeltz v. Pfeltz, 14 Md. 376, a testator devised lands to his widow during her widowhood, or until his youngest child should attain twenty-one years, for the support of herself and children, and in the event of her marriage, or on the youngest child attaining twenty-one years, he devised that she should sell the lands and divide the proceeds, after deducting her dower interest, equally amongst the children. The widow and infant children filed their bill, alleged that the defendant had *violently \*and* **190** *unlawfully entered on the lands*, taking the products and depriving them of their means of subsistence, &c., and that he was insolvent, and the bill prayed that he might be decreed to surrender the lands, and account, and that a receiver might be appointed, &c. But the Court held, that as the bill did not show that the defendant was committing irreparable damage, the remedy of the complainant was complete at law, either by ejectment, trespass, or proceedings under the Statutes of forcible entry, and that as the legal estate was in the widow, who was *sui juris*, the case as to the infant co-complainants was not within Drury v. Conner, 1 H. & G. 220, and other cases of that class.<sup>14</sup>

<sup>12</sup> Code 1911, Art. 75, sec. 57.

<sup>13</sup> But see Roth v. State, 89 Md. 527; Judefind v. State, 78 Md. 510.

<sup>14</sup> See note 3 to 13 Edw. 1, St. 1, c. 14.