

Lady Challo contra Halyburton. Because Removing being at a peremptory Term, the Master of the Ground could not enter his new Tenants without removing the former Possessors precisely at the Term Stair Lib. 4. Tit. 47. §. 35. Tit. 26. §. 12. & 13. Lib. 2. Tit. 9. §. 49. At which Time, if the Ground was not void and rid, the intrant Tenant being disappointed and debarred from seeing the Possessor, might protest to be free whereby the Land would be void. Since the Term of Removing falls in the Vacation, Warning may be made in the Beginning of January that the Removing may be discussed before the End of February, and so be effectual at the Term. The Tenor of a Summons of Removing upon a preceding Warning runs thus. Our will is and we charge you that ye lawfully summon B. Tenant or Possessor of &c. to compare &c. answer at the Instance of A. as having Right to input and output Tenants in the said Lands by Virtue of &c. (Here the Pursuer's Title is to be made) That is to say, the said Defender to hear and see himself debarred by Decree of our said Lords. to put and remove himself his Family, Tenants and others forth and from the said Lands &c. and to offer void possession thereof, that the Pursuer may enter thereunto bruised and enjoy the same conform to his Right and that at the Term of &c. conform to a Warning made to the said B. 40 Days before the said Term for that effect conform to the Act of Parliament made ancient Warning and Removing Tenants Laws and daily Practick of this our Realm &c. according to Justice &c. The Defender must be cited upon Six Days if within Scotland and Sixty Days if forth thereof. Tho' Tutors and Curators of a Minor need not to be warned with them to remove, they must be cited in the Summons of Removing 12 July 1628 Bennet contra Turnbull Spotwood Pratt. Tit. Tutors and Curators.

The Defender in a Process of Removing cannot quarrel the Pursuer's Title, if the former had his Possession from the latter: unless he be debarred to acknowledge another Craig Lib. 2. Tit. 9. §. 9. Vers. Competit Stair Lib. 2. Tit. 9. §. 45. Lib. 4. Tit. 26. §. 8. Yea a Man having set a Feud of his Land to one to begin at the expiring of a former Feud set by him to another, Process of Removing after expiring of the first Feud was sustained at the Instance of the posterior Feudsmen against the first who pleaded that the Seller had no Right to the Lands, in respect he had entered to Possession by a Feud from him, which Possession he ought to render back to the Feudsmen as come in Place of the Seller 18 June 1629 Dumbar contra Turner. But receiving Mails and Duties from the Defender is not a sufficient Title, if he derived not his Possession from the Pursuer. Because if the Defender desert his Possession unborrantly, he will be liable for the Rent, as Dolo desiens possidere, qui pro possessore habetur Stair

Stair Lib. 2. Tit. 9. §. 45. Lib. 4. Tit. 26. §. 8. A personal or incomplete Right containing an express Obligation to remove or to put the Receiver in Possession, or a Deed implying such an Obligation as a Disposition without Infeudment, is a good Title to remove the Grantor or his Heirs Stair Tit. A Seisin of Property or Esferent, is a sufficient Title to remove one who instructs not a better Right but it must be of a Date anterior to the Warning and the Term; except where an Heir sues a Removing whose Actour before and Seisin after the Warning is sufficient Rad. Pratt. 9 Feb. 1650 E. Kinghorn contra Smith not 20 January 1625 Elphinstoun contra Guthrie 10 July 1626 Wallace contra Tenants 14 Decemb. 1626 Calderwood contra Smith Craig Feud Lib. 2. Tit. 9. §. 9. Vers. competit. Stair Tit. For albeit an apparent Heir hath no Title to remove till he be infeft because he may renounce to be Heir, and so the Tenant would be liable as if he had continued to possess: Yet after he is infeft this is not to be feared, and in such a Possessory Action and Continuation of the Predecessor's Possession, the Tenant cannot be in Doubt or Hazard to remove, as he may be in other Cases where a Third Party may have Intensions to the Rent and to Possession. Upon Removing from Land at the Instance of an Heir upon a Warning made by his Predecessor is sustained against one having no Right Craig Tit. Vers. Preterea non solam. Albeit the Pursuer was returned to be infeft after the Term, for his Actour and Seisin were drawn back 28 July 1637 E. Radington contra his Tenants. But this drawing back is entitle the Heir to a personal Act as Warning which he could not use his Predecessor being alive, as presere chalking to the Lord Juris who observes the Case. Again, Removing was sustained to a Feud after the Esferent's Death upon a Warning made by both jointly; albeit the Esferent had the sole Right then to warn 27 Novemb. 1627 Romsey contra Kume. But it was not sustained upon a Warning made by the Feud before the Esferent's Death 3 June 1669 Agnew contra Tenants of Dronlaw. Tho' Infeudment be the best Title of Removing; yet Infeudment upon a Precept of Clore constat is not sufficient unless either the Heir's Predecessor was in Possession, ~~or~~ or the Superior himself, a Precept of Clore constat being only the Grantor's Assent. And for the same Reason, Infeudment upon a Person's own Resignation is insufficient without Possession Stair Tit. Besides that such Infeudments except in the King's Property pass of Course in the Exchequer. And Seisin posterior to Warning