

Warning proceeding upon a Precept of Clere constat, is no sufficient Title of Removing in any case, tho' the Precept of Clere constat preceded the Warning 20 January 1625 Elphinston contra Guthrie 18 July 1626 Wallace contra Tenants. Rights equivalent to Infeftment, as a Relect's Service and Kenning to her Terce is a good Title to her, and a Husband's Courtesy after his Wife's Death a Title to him in a Removing without any Seisin or Solemnity, Craig Ffid. s. d. Spotswood Oratt. Tit. Removing and Tit. Terce Stair Ffid. A principal Feudsmen being in Possession, may warn his Subtenants by his own Precept, remove and eject them by Order of Law, albeit he cannot do so before he attain Possession by his Feud Craig Ffid. s. d. in fin. & s. g. Spotswood Oratt. Tit. Removing. A Feud for a few Years containing an express Power to put in and put out Tenants, or a Feud for Life or for at least 19 Years which implies such a Power, is a sufficient Title to remove, either upon the Setter's Right, or upon a possessory Judgement in the Setter or Feudsmen Craig Ffid. Stair Ffid. Apprisings since the Year 1665 or Adjudications with a Charge against the Superior are in the Lord's Opinion (Ffid.) sufficient Titles to remove. Because such a Charge against the Superior is ^{held} equivalent to Infeftment during the Legal. Tho' Sir George McKenzie (Just. Lib. 2. Tit. 12. s. 6.) holds that none can pursue a Removing without being infeft on the old Decisions find so vid. infra pag. 173, 174. A Seisin of the naked Superiority of Lands is a sufficient Title to produce a Removing from the Property of the Lands against Tenants or any who cannot allege an heritable Right of Property, or some other Right that may maintain them in Possession on the 19. Novemb. 1624 S. Lagg contra his Tenants. But a Feud of a Vassal's Liferent Excheat or other Casualty of Superiority requiring Declaration to complete it is not effectual to remove Tenants, until it be declared. For tho' a Superior is not obliged to show a Title to his Vassal, unless he claim him; yet Process is not sustained at the Instance of the Superior's Donatory of Liferent Excheat till the Superior's Seisin be produced. So so it is in all cases, where the Superior or Vassal is a singular Successor, and the Vassal hath Ground to doubt his Superior's Right Craig Lib. 2. Tit. 9. s. 9. Vers. Aliquando et non dominis Stair Lib. 2. Tit. 9. s. 4.

A Tenant in a Process of Removing will not be allowed to make an Defence requiring a Term to prove it, till he find Surety for the violent Profits in case he succumb Act 217. Car. 14. s. 6. For discouraging litigious Persons to withhold Possession from the true Owner. Juratory Caution or an Oath that the Defender cannot find Caution, is not received, but he must either find sufficient Caution, or he will be decreed to remove 17 June 1630 Hume contra Hume. Tho' where the Party is very poor, such

such Caution is received as he can find so July 1630 Bennet contra Porteous. But he may propose Objections against the active Title or other Defences instantly verified that occasion no Delay, without finding Caution Stair Ffid. & Lib. 4. Tit. 26. s. 3. Violent Profits, so called because they arise from the violent attaining or retaining Possession, are the Double of the Rent of a Tenement within Burgh by the Burgher Custom. Hope may. Pratt. Tit. Marks and Duties Stair Lib. 2. Tit. 9. s. 44. Lib. 4. Tit. 29. s. 3. If the House Mail paid were not for within the Gift Rent Stair Lib. 5. Tit. 17. s. 16. Vers. There is a Constitution. But violent Profits of Lands in the Country, are the greatest Profits the Pursuer could have made of them Stair Lib. 5. Tit. 9. s. 27. Lib. 2. Tit. 9. s. 44. Lib. 4. Tit. 27. s. 2 & 3. When Persons are injured by the violent taking away and withholding their Livestock the Quantities and Terms are ordinarily allowed in Actions of Spuilzie to be proved by the Pursuer's Oath in Litema. But other Proof of the violent Profits of Lands is to be produced, and the Pursuer's Oath taken only in Supplement thereto. The Subject is which Profit is what the Land could bear and the increase of the best Industry could amount to; what cattle they could feed and what Profit might arise from fattening them, or from the calves or Milk of Cows, and the Wool Lammes or Milk of Ewes? But the Law Stair (Lib. 4. Tit. 29. s. 3.) thinks it a more reasonable and summary Way to give one injured by Violence in his Country Lands his Oath in Litema, as well as the Double of a Spuilzie of Moveables; so he is to depend upon what he judges to be the true and constant Rent of the Land: And to give him the Double thereof for the violent Profits of such Lands, as well as the Double of House Mails goes for the violent Profits of Prædia urbana. But of which violent Profits of Country Lands, he in one Place (Lib. 5. Tit. 9. s. 27) would have the Expence of Seed and Labour to be deducted. And in another Place (Lib. 4. Tit. 29. s. 2.) allows Nothing for the violent Possessor's Expence of Labour.

The Exceptions competent in a Process of Removing are 1. That the Defender was not warned in the Terms of Law. But Removing was sustained against a Son after his Father's Death, upon a Warning used against the Father tho' dead before the Summons of Removing was raised 26 January 1630 Hume contra Hume. And Removing will be sustained against Subtenants and Cottiers, and those of the principal Tenant's Family, without any other Warning than what was made to himself 16 July 1674 E. Argyle contra M. Draughton Stair Lib. 2. Tit. 9. s. 43. But a Subtenant cannot be removed upon a warning