

Warning served against himself, unless the principal Tenant be also warned, altho' his Leas be expired Spotswood v. Pratt. Tit. Removing. Because the principal Factor is understood to possess per lacum relocationem till he be warned, and the Subtenant could not intervertere Possessionem domini sui eo inscio. 2. The Order of Warning must be impugned as either informal or prescribed, Removing not being ~~within~~ ^{within} three Years Act 22. Jan. 6. J. 6. Which are annuities, to be annulled not from the Date of the Warning, but from the Term to which it was made 6 Feb. 1629 Lady Northwick contra Scot Stair J. 1. 1. 1. 2. Because none can be understood in more for not pursuing before they are obliged to do it. The Process of Removing may be sustained before the Term, if after the Warning, to take Effect precisely at the Term. 3. Removing may be ~~excused~~ ^{excused} by the Pursuer's Deeds as is a personal Obligation not to remove, or a Deed importing such an Obligation ~~viz~~ a Disposition or Obligation to infect, Which are sufficient against him, tho' not against singular Successors Stair J. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. Vers. Fifthly. Nay a Promise not to remove was found probable by Witnesses, to save the Person the Promise was made to from Removing for a Year after the Promise, But such a Promise was not sustained to maintain Possession longer than a Year, unless it was accepted, and be proved scriptum vel juramento of the Promiser 20. March 1629 L. Affleck contra Matthie. 2. Removing is excluded by a Renunciation of or departing from the Warning or Acceptance directly, or tacitly by Deeds importing as much, as the taking a Grabum from the Tenant Craig Feud Lib. 2. Tit. 10. 9. 10. Vers. Si in Applicationibus or a Heretick of the deceased Tenant, taking Rent before Hand, or for Terms after the Warning, requiring or accepting Services or Obedience expressly due by the Leas for such after Terms, by the User of the Warning or one having his Special Order, but not by his Factor or Grievance in his Absence without such an Order. Nor was a Warning understood to be passed from by the User of the ~~Warning~~ ^{Warning} accepting accusations presented not mentioned in the Leas; these being considered as gratias 20. March 1629 L. Affleck contra Matthie 5. March 1629 L. See younger contra Spotswood Craig Feud Lib. 2. Tit. 9. 9. 10. Vers. Frequenter. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. Vers. Dominus. Stair Lib. 2. Tit. 9. 9. 43. Lib. 4. Tit. 26. 8. 10. Vers. Fourthly. 4. A Tenant may defend himself against Removing upon the Interest of his Master a third Party not called, to whom he is Tenant by Payment of Mails and Duties before the Warning

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By alleging that his Master who hath a Right ^{sufficient} to defend the Possession is not called 12. Novemb. 1634. Mudie contra Lightlow and the Town of Montrose. Which dilatory Defence must be instantly verified, by producing at least Discharges of the Rent bearing the Master's Title, which the Tenant is not obliged to dispute, nor supposed to have. But if other distinct Defences be sustained relevant to be proved in lawning, this also will be admitted to prove Stair Lib. 4. Tit. 26. Pr. 2. That his Master is neither warned nor cited; Which being an Exception not merely dilatory, are conclusive of the instance by such a Summons, as the former bottom'd upon the Omission to cite the Master but exceptive of any removing at the Term to which the Warning was executed; the Tenant will get a Day to prove it. And tho' he may be put to say, what his Master's Right is or that it is valid; he need not dispute the particular Deeds of it, or a Competition thereon with another Spotswood v. Pratt. Tit. Removing. Stair Lib. 2. Tit. 9. 9. 43. Vers. The Exceptions of removing on the Interest of another Lib. 4. Tit. 26. 8. 10. Vers. Secondly. Craig Feud. Lib. 2. Tit. 9. 8. 10. Vers. Et et alia exceptio. Nam tho' this Defence hath been found closed by replying upon the Defenders having acknowledged the Pursuer for his Master, or by taking a Right from him and paying him Rent, or by alleging that the Defenders Master's Right was reduced at the instance of the Pursuer or his Author; Yet a Tenant is not obliged to dispute the Right of his Master not cited; nor ought he to be removed upon instituting a Question of the Master's Right instantly; but Warrant may be granted to cite the Master incidenter Craig Feud. Spotswood v. Pratt. Stair Feud. 5. The Defender may except against Removing upon his own Right either with Respect to the Land in Question, or to any other Land possessed by him with it pro indiviso Craig Feud. Vers. alia autem sunt. With Respect to the Land in Question he may found 1. Upon a possessory Judgement by a habile Title and 7 Years Possession in him his Predecessors and Authors. Which is a good Defence against Removing, and will not be taken off ^{by alleging} that the Possession was clandestine or had a vicious Entry, but by alleging Interruption. And if the Pursuer found not upon a possessory Judgement in himself his Predecessors or Authors, less than 7 Years Possession will serve for an Exception to the Defender, till his Right be reduced, or the Pursuers declared. Yet the Pursuers Possession 7 Years by a competent Title, tho' not immediately preceding the Warning sufficeth to remove the Defender in Possessio; unless he hath

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