hath possessed 7 years after the Pursuers Possession Stair Lib. 4. Tit. 26 §. 30. Vers. Seventhly, 'Tis true that any having Right by Infeftment may remove a naked Possessor; but not a Possessor infeft, tho his Infeftment be posterior to the Pursuers, unless he the Pursuer instruct a Progress from the Sovereign, or from a common Author to the Pursuer and Defender whose Right neither Party can quarrel; or at least instruct a Right perfected by Prescription, or fortified by a possessory Judgement; And even then the Defender will exclude him by a possessory Judgement, tho' the Defenders Possession be posterior to his; for any Man may infeft another Stair Ibid. §. 15. 2. The Defender may plead against Removing upon a preferable Right by Virtue whereof he attained Possession: But if the Possession followed not upon the Defenders Right but upon the Pursuers, the Defender must restore the Possession, and be left to pursue upon his own Right as Accords Stair Lib. 2. Tit. 9. §. 43. Vers. The Exception against Removing upon the Defenders, As one entering Possession upon a temporary Right, cannot after Redemption defend himself upon another Right against a Removing at the instance of him or his Successors from whom he had Possession 22 Novemb. 1677. Stewart contra D. Hamilton. 3. The Exception pro indiviso that is, the Defender cannot be decerned to remove from the Pursuer's Part of such Lands, because he bruicks the same pro indiviso with other Parts thereof to which the Pursuer had no Right, and he cannot know the Pursuers Part to remove therefrom; takes place not only in solemn Removing but also in the Action to find Caution for Mails and Duties, or to remove 6 Decemb. 1623. contra Carmichael Stair Ibid. But it is not a relevant Plea against removing from any Subject, whereof there are easily divisible Profits as a Coalpit or Fishing Spots Wood Pratt. Tit. Coalheughs Stair Ibid. & Lib. 4. Tit. 26. §. 30. Vers. Sixthly. Nor is it sufficient to maintain a Widow in Possession by her Tierce of a House tho' an indivisible Tenement, against the Heir, who was preferred to the Possession for his two Thirds, he paying to her a Third of the Rent: Because majus trahit minus, the Person having the greatest Interest carries the natural Possession, and is liable to the Heir of the lesser Interest for his Share. But if the Heir do not chuse to dwell in the House himself, the Lady Tierce is preferable to the Possession, she paying as much Rent as any other Tenant, and finding Security for the two Parts 26 January 1665 Logan contra Galbraith Stair Lib. 2. Tit. 9. §. 43. Vers. The Exception pro indiviso Lib. 4. Tit. 26. §. 30 Vers

Upon 1. Nov. 1628 Sir Thomas Hamilton and Commissioners of the Possession of Holyrood House against a Notary and Witnesses and Tenants Instruments Witnessing an 2. March 1637 Scott contra Simpson.

Vers. Sixthly. Again, Possession of a Tenement pro indiviso by several Tenants having different Houses, would not be sustained to hinder a Removing of any of these Tenants. And one possessing by a Right coming in pari passu with another greater Right (as is frequent in the Case of Apprisings within Year and Day of one another) must cede and give Way to the Haver of the more considerable Interest. Stair Ibid. §. By the Canon Law, a Student or Scholar cannot even after his Term is expired be removed to make Way for another unless by his Consent Arg. c. 5. X. de local. conduct. 7. A Tenant's voluntary Obedience to a Warning, by freely removing himself his Family Subtenants and Cottars, and leaving the Land void and rid at the Term, and offering the Possession to the (Pursuer) is relevant to absolvie the Tenant from subsequent Mails and Duties, without Necessity of a written Renunciation 2 March 1637 Heath contra Simpson 30 January 1624 Greentaw contra Hampton. But a Tenants actual removing conform to a Warning is not sufficient without renouncing, or offering the void Possession, that the Owner may enter 25 July 1758 Bruce contra Sinclair Stair Lib. 2. Tit. 9. §. 43. Vers. The last Exception against Removing Lib. 4. Tit. 26. §. 30. in fin. For otherwise, if upon a Tenants removing clandestinely another intrude in his Vice and usurp point the Warning, the Tenant removed is liable tanquam possessor. Seeing the User of the Warning may pass from and not insist in it: And Tenants actual removing without giving over and offering the void Possession, doth not secure the Master from another's Intrusion, and enforces in the Vice, who may put him to a new Action. [illegible] Lands would to remove [illegible] the Tenant having in obedience to the Warning, removed and left the Lands bounded [illegible] was found not liable to the [illegible] years 7. If the Warning was orderly, and the Tenant hath no colourable Title to maintain his Possession longer, he will be decerned to remove himself Wife Bairns Tenants and Servants and to pay to the Pursuer violent Profits of the Land from the Warning till he give Obedience Stair Lib. 2. Tit. 9. §. 43. in fin. A Decreet of Removing against a Relict to remove herself Bairns &c. was found not to extend as a sufficient Warrant to remove her Children in Familia who were not called in the Process 19 Feb. 1663 Scot contra E. Glume. The Pursuer is also ordained to get Possession of the Land itself, and sometimes (as against a violent Possessor) to get Possession of the Corns growing thereon Hope Maj. Pratt. Tit. Spurlie Elliot contra E. Buccleugh, Yea even of Hay of that Crop tho' separated from the Ground and stacked by the Person removed Hope Ibid. Balmuir contra Williamson. But where the Defender in a Removing hath a probable Ground to keep Possession, he is decerned to remove only without being liable to violent Profits Stair Lib. 2. Tit. 9. §. 45. Lib. 4. Tit. 26. §. 17. For the Lords modify these violent Profits in so far as they exceed the ordinary Profits 18 July 1674. E. Argile contra Menaught.

Action for violent Profits is mostly raised after Decreet of Removing is obtained: wherein that Decreet is both a sufficient Title and Proof against the Parties removed. But it may be also carried on with the Process of Removing Stair Lib. 4. Tit. 29. §. 1. A Summons for violent Profits runs thus