

house, it cannot excuse him; because by the constant custom of Edinburgh and Leith, persons remove from them the very next day after the term; and there is this good reason for it, because such houses, breweries, ovens, &c. have a daily and weekly profit resulting and arising from the use of them, which is not in other habitations, (what if they set out chambers?) and whereof he to whom they are set is deprived, and therefore this damage should be repaired. "THE LORDS, on Forret's report, found him liable for the mail till Whitsunday next, in regard he did not remove immediately after the term, but kept it twenty days.

No 133.

*Fountainhall, v. I. p. 251.*

1687. *June.* Sir GEORGE ST CLARE *against* JOHN GRANT.

A DEFENCE upon seven years possession being proponed in a process of removing;

The pursuer *alleged*, That the defender could not be heard to propone defences, till once he find caution for the violent profits.

*Answered* for the defender; The act 39th, Parl. 6th, Queen Mary, appoints the defender in a removing to find caution where he impugns the executions of the warning without producing any right in his own person. But here the defender produces his infestment, and the possession is *facti*, which must abide probation.

THE LORDS found the defender ought to find caution where the defence is not instantly verified, unless the pursuer have something to prove, when the defender's taking the same term to prove his allegiance does not delay the pursuer.

*Harcarse, (REMOVING.) No 845. p. 241.*

1783. *November 21.*

MORTON & Co. *against* JAMES COLQUHOUN and GEORGE MACFARLANE.

COLQUHOUN and Macfarlane having become cautioners to Morton and Company "for the violent profits" for which a tacksman might be found liable in consequence of his refusal to remove, were sued for reparation of the damage done to certain subjects of the tack; in opposition to which claim, they *contended*, That though by the above-mentioned terms of their obligation, they were indeed bound to the extent of the highest profits which could arise out of the subjects set, yet their obligation did not include the repairing of such damage.

No 135.  
Caution for violent profits comprehends reparation of damage done to the subjects let.