

SECT. XI.

Violent Profits.

No 132.

In ordinary removing, the defender is bound to find caution for violent profits, but not in extraordinary removing, unless so stipulated.

1682. February 28. DOUGLAS *against* IDINGTON.

IN a suspension, Douglas *contra* Idington, of charges upon a decret, finding a back-tack contained in a contract of wadset of the lands of Clettie to be expired, and that Idington had good right to enter to the possession of the lands, whereupon Douglas being charged to remove, he suspends upon obedience, that he has already removed, and is content that the charger enter without danger of ejection, or any other action; and the charger *alleging*, That he ought to find caution to desist under a pain, as is usual in ordinary actions of removing;—the LORDS found no necessity to find caution, and that the suspender could not be compelled thereto, seeing this was not an ordinary action of removing, but proceeded upon a contract, which the party had satisfied, by this offer of obedience, without danger to the charger to enter, and that in the contract he had not taken the party obliged to find caution for his removing.

Clerk, Hay.

Fol. Dic. v. 2. p. 339. Durie, p. 351.

No 133.

1683. December 18. JOHNSTON *against* DOUGLAS.

FOUND, That if a tenant within burgh duly warned to remove, sit above forty days after Whitsunday, he is liable for the rent; although it was *alleged*, That the landlord had not got the house set to another, and so had no real prejudice by the tenant's sitting beyond the ordinary time, and the tenant was willing to satisfy him for the time he possessed after the legal term of removal. In this process, it appeared, that by the custom of burghs, tenants of brew-houses, &c. kilns and barns relative thereto, should remove within twenty-four or forty-eight hours after the term.

Harcarse, (REMOVING.) No 838. p. 240.

* * * Fountainhall reports this case :

1683. December 18.—ROBERT DOUGLAS in Leith, having obtained a decret of removing against Patrick Johnston, he suspended, alleging he had obeyed, in so far as he had removed within twenty days after Whitsunday last. *Answered*, Though that latitude may be received in houses, yet this being a brew-