the same in feu, immediately before the said warning; and because the said defender would not qualify that exception, as is above written, therefore the LORDS repelled the same, and thought it was not necessary to summon the said James, and for the cause foresaid. No 10.

Fol. Dic, v. 1. *p.* 210.* *Maitland, MS. p.* 183.

1629. *November* 27. JOHN RAMSAY *against* HUME.

No 11.
An heir, after he is retoured and infeft, may pursue a removing upon a warning given by his predecessor, though his predecessor survived the term.

IN a removing pursued by John Ramsay, upon a warning made by the pursuer and Lo. Ramsay, who was liferenter of the lands, whereof this pursuer was then fiar; it was *alleged*, That no process could be upon the said warning, because it was made by the liferenter, the time of his liferent standing, the heritor now pursuing having no right then to warn; and now the liferenter being dead, to whom the interest to prosecute that warning belonged, this pursuer therefore cannot seek removing thereon. This allegeance was repelled, seeing the liferenter and fiar concurring in the making of the warning, the surviver might pursue removing thereon.

Act. *Lawtie.* Alt. *Sandilands.*

Fol. Dic. v. 1. *p.* 210. *Durie, p.* 470.

1630. *January* 27. HUME *against* HUME.

No 12.
Found in conformity with No 10. *supra.*

IN a removing, the father who was warned, being dead before that summons was raised upon that warning, and his son being summoned to remove by the summons which was raised upon that warning against the rest of the possessors, who were warned also with his father; the LORDS found no necessity to warn the son of new again to remove at another Whitsunday; but sustained process against him, upon the warning made to his umquhile father, his son being cited in this summons with the rest of the defenders, who were warned when his father was warned, albeit the son was not warned.

Fol. Dic. v. 1. *p.* 210. *Durie, p.* 486.

1637. *July* 28. E. of HADDINGTON *against* His TENANTS.

No 13.
Found in conformity with Ramsay against Hume, *supra.*

THE E. of Haddington pursuing removing against his tenants, as heir retoured to his father, and infeft so as heir to him upon a warning, made at his father's instance, before Whitsunday last, and after which warning, and some few days after the term foresaid, the umquhile Earl, maker of this warning died; and it being *alleged*, That no process could be sustained at the pursuer's in-

* This case is called by mistake in the Fol. Dic. Home against Kennedy.

No 13. stance upon that warning, only executed at his umquhile father's instance, which became extinct by his decease; and this pursuer could not be heard to do any legal deed thereupon by removing, unto the time a new warning was executed lawfully at his own instance: And also *alleged*, That the pursuer's retour and sasine were both after the term, before which the warning was made; so that albeit the warning had been at his own instance, yet the same cannot be sustained, he neither being then, nor yet at the term, nor before it, either retoured heir or seased, far less can it be sustained to maintain the warning at his instance, which was executed by the defunct.——The Lords repelled both these allegeances, and found, That the heir might prosecute the warning, and intent action thereupon, which was used by his deceased predecessor, albeit nothing had been further prosecute thereupon by the defunct before his decease, and which the Lords found the heir might competently do, as well where the defunct dies before the term to which the warning was made, as when he dies after the term; neither was it respected, that the gross profits of the first year after the warning, might be claimed by the executors of the defunct who survived the term, and that the heir could not have right thereto: And also, the Lords repelled the other allegeance; for they found that the retour and sasine, albeit both after the term, gave the pursuer sufficient title and interest to pursue this removing, against a party who had no right to the land himself, and that the retour and sasine should be drawn back; but I find a scruple in this decision, and for the back-drawing of the retour and sasine, I conceive not how they can be drawn back to give the pursuer right to a personal act as warning, which then he could not make or do, the defunct who then had the only right being living for the time.

Act. *Advocatus et Stuart.* Alt. *Craig et Gilmore.* Clerk, *Scot.*

Fol. Dic. v. 1. *p.* 210. *Durie, p.* 855.

SECT. V.

Judicial Deeds, after the Judges death or removal.

1627. *March* 9. Stuart *against* Fleming.

No 14.

In an action betwixt Stuart and Fleming, the Lords found, That after the decease of the judge and clerk, the intrant and succeeding clerk might extract an act out of the books of that jurisdiction, which was registrate therein of before, and that there needed no transumpt or warrant to add force thereto, as in