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.