

No 8.

Certification being granted, but extract superseded till a day, and the defender dying *medio tempore*, the Lords refused to grant certification.

1629. *February 17.* E. of MARR *against* His VASSALS.

IN improbations, the LORDS will grant certification against a defender, and let incident run for another. *Item* if certification be granted, but the extracting superseded till a day, if *medio tempore* the defender die, the LORDS will not grant certification.

Fol. Dic. v. 1. p. 210. Kerse, MS. ff. 208.

1686. *January.* WILLIAM BURGH *against* SIR WILLIAM SHARP.

No 9.

A DECRET being stopt upon a bill given in by the defender, which was ordained to be seen and answered, and the defender having died before advising of bill and answers, the LORDS proceeded to advise then, and finding nothing alleged relevant to make any alteration of the terms of the decret, ordained the same to be extracted without transferring *passive*.

Fol. Dic. v. 1. p. 210. Harcarse, (DECREETS.) No 408. p. 109.

SECT. IV.

Where a Master or Tenant Die after Warning.

No 10.

A warning against a father who thereafter died, sustained as a ground of removing against the son, who was called in the removing, without necessity of using a new warning against the son.

1567. *February 20.* CRANSTON *against* BROWN.

ANENT the action pursued be Richard Cranston, fiar of the lands of Marveston, against James Brown, son and appearand heir of George Brown of Coalston, and other possessors of the said lands, it was *alleged* be the said pursuer, that the said defenders should remove frae the said lands, as they were lawfully warned therefrae, conform to the act of Parliament. It was *alleged* be the said possessors, That they sould not remove, notwithstanding the said warning, because the said James Brown was principal tenant to the said setter of the feu to the said pursuer, and they but sub-tenants to the said James, who deceased before the calling of the said matter, and sua the said sub-tenants should not be decerned to remove frae the said lands, while the said James's aires were called. It was *answered* be the pursuer, That the allegiance of the defender was not relevant, except they wald allege, that the said James had tacks or some other right of the said lands for terms to rin, and in possession thereof, be paying of mails and duties to the setter thereof to the said pursuer, before the setting of

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.

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

No 10.

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

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 heiritor 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 allegiance was repelled, seeing the liferenter and fiar concurring in the making of the warning, the survivor might pursue removing thereon.

Act. Lawtis.

Alt. Sandilands.

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

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.

1630. January 27. HUME *against* HUME.

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.

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

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

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-

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

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