1664. *June* 18. LORD LIE *against* WILLIAM VEITCH.

IN this case found that the testator's creditors are preferable in law to the creditors of the executor; even though William, who was creditor to the executor, had arrested the sum long before my Lord Lie, who was a creditor to the defunct; in respect the debt was not established in the executor's person by a decreet, and so was not execute. *Advocates' MS. folio* 52.

1664. *July* 1. TURNBULL *against* MINTO.

TURNBULL being his father's third son consents to a disposition made by his mother of a tenement of land belonging to her as heretrix to Minto: which tenement was resigned by the mother before this right in favours of her husband and his heirs. And this Turnbull craving reduction of the foresaid right, by his mother, to Minto, as heir to his father, as done by his mother, after she was denuded;

ANSWERED,—*Esto*, she had been denuded, yet this pursuer consenting to the right, any supervenient right that came in his person prejudges not him, and gives him no interest to quarrel the right to which he is consenting, since in law *jus superveniens venditori accrescit emptori.*

REPLY,—He having no right then standing in his person, and having two brothers living, who would ever exclude him and succeed first, he could not transact or transmit any right but what he had, since *nemo potest plus juris in alium transferre quam ipse habet*; especially considering there was no preceding onerous cause of the said consent: for which Craig was adduced, *Lib. 2. Dieg. ult. de conjunctis investituris.* Alleged farther, that his consent in law infers no warrandice, yet it prejudges the consenter, so that he can never evite that right to which he consented. Alleged the right made by the wife must be said to be done in contemplation of a contract of marriage, otherways it would be found to be *donatio inter virum et uxorem*, and so revocable, and revoked by this posterior right made by the wife who was heretrix; now, if a woman may revoke a right as a man may do, is doubted in law. This was debated, but not decided, and was to be heard *in præsentia.*

Act. Dinmuire. *Alt.* Birnie.

Advocates' MS. folio 52.

1664. *July* 20. PATRICK OLIPHANT *against* SIR JO. FLETCHER, the KING'S ADVOCATE.

SIR JO. FLETCHER, his Majesty's advocate, being accused by Mr. Patrick Oliphant, by permission from his Majesty, before the Secret Council, upon misdemeanours and deeds of prevarication committed by him the time of the late Parliament: which was an extraordinary case, founded upon no law written nor consuetude: