

vassals being joined made up the alienation of the greatest part of the feu without the superior's consent, and so recognosces; *item*, found that confirmations of base infeftments, though in the usurper's time, saved from recognition.

*Act.* Nisbet, Wedderburne. *Alt.* Wallace, Dinmuire. I. P. D.  
*Advocates' MS. folio 53.*

1665. *February 22.* WILLIAM YEAMAN *against* PATRICK OLIPHANT.

The Lords found in a declarator of the expiration of a comprising by intromission, &c. where a compriser has two titles in his person, and has entered in possession of the lands by virtue of the comprising then standing in his person, that he cannot ascribe his possession to any supervenient right or title he should thereafter acquire, posterior to his comprising and possession thereon.

In this same cause also, betwixt Wm. Yeaman and Mr. Patrick Oliphant, found that though parricide was a special kind of murder under trust; yet that the act of Parliament defined another punishment therefore nor treason, which was the forfeiture of the heirs of the parricide *in recta linea*, and giving the estate to the nearest collateral.

It was also found that the punishment of contumacy for a crime, wherein if the defender had compeared, he would have been forfeited, could infer no other punishment but allenary the confiscation of the pannel's moveables, being only charged with horning to appear to find caution to underly the law. The large Information of this I have.

*Act.* Lockart, M'Keinzie, and Dinmuire. *Alt.* Cunyghame and Maxwell.  
*Advocates' MS. folio 53.*

1665. *February 22.* SHAW'S *against* MR. SHAW'S EXECUTRIX.

MR. SHAW, a Scotsman, upon death-bed, being intimate with one Mrs. Lewis, at London, where he died; and she being a chaste young woman, takes advantage of his condition, and asked him if he would leave her executrix; and he, being in that estate that he would have answered *affirmative* to any thing she had propounded to him, said he was content; and this being spoken before witnesses, she proves the same before the prerogative court of Canterburie, which has the force of a testament by the English law, being that the civil law calls a nuncupative testament. She claiming right to his moveables in Scotland, by virtue of this testament, the nearest of kin, they compear and take a dative; and then debating anent the preference, the Lords found that her nuncupative testament was not a valid title in Scotland to claim his moveables here, as the executor dative could not prejudice her with the nuncupative testament as to the moveables in England; and so preferred the nearest of kin to the Scots estate, he being a Scotsman, and Mrs. Lewis to the English moveables.

*Act.* Mackeinzie. *Alt.* Cunyghame. In P. D.  
*Advocates' MS. folio 54.*