No. 3. 1737, July 28. CREDITORS of DOUGLAS *against* ISOBEL STEWART.

THIS faculty to burden was expressed in the plainest and most express terms possible, so as to make any personal deed in pursuance of that faculty however latent to be a real burden on the estate. But the Lords thought that such clauses were repugnant and contrary to law, and therefore they found that this was not such an encumbrance as could entitle the purchaser to retain any part of the price.

No. 4. 1739, Jan. 2, 7. ALEX. ANDERSON *against* WILLIAM ANDERSON.

ANDERSON disponed his estate to his son William reserving power to burden him with 4000 merks for a portion to his son Alexander payable after his own death or Alexander's marriage, which should first happen. Alexander was married in 1728. In 1730 the father granted the bond payable at his son's death with annualrent thereafter. In 1737 he altered and granted a new bond bearing annualrent from 1728. The Lords found that the father could not burden his son William with annualrent *retro* before the date of the bond, and 7th January 1739 adhered, and refused a bill without answers.

No. 5. 1739, Nov. 14. CUNNINGHAM *against* CREDITORS of BALQUHAN.

THE Lords agreed that Miss Cunningham upon her personal bond in exercise of the faculty had no real right upon the subject, and was not preferable to the real creditors of the son; but they found her preferable to his personal creditors who had done no diligence (no more than she had) to affect the estate; which to me appeared a very new and odd decision, that in competition of creditors merely personal for the price of the lands, none of whom had any real right in the lands, or used diligence for affecting the same, should yet be preferable one of them to the rest, since the law knows no privileged debts upon lands other than what are real. Arniston put his opinion upon this, that the reserved faculty was an implied prohibition to the son to contract debt in prejudice of the faculty, and the President seemed to carry the observation farther, to be a sort of inhibition to the lieges to lend to the son in prejudice of the faculty; but Arniston would not carry it so far. But I own the whole went far beyond the reach of my poor understanding.—11th December Adhered seven to six.—*Vide* 21st June 1737, the case of Dr Ogilvie's Creditors, (No. 1.)

FALSA DEMONSTRATIO.

No. 1. 1736, July 3. WALKINGSHAW *against* HIS MAJESTY'S ADVOCATE.

THE Lords adhered to the Lord Newhall's interlocutor, which finds that there is no misnomer in the act of attainder of John Walkingshaw. Dun differed, and Royston doubted, but the rest were unanimous.