

FACULTY.

1737. *June 21.*

MARION TURNBULL, Relict of Dr OGILVIE, *against* MARGARET OGILVIE:

FACULTY reserved to burden an estate being exercised by a mere personal deed, not made real by infestment or diligence during the granter's life, cannot compete with an infestment granted by the son, whose right was burdened with the faculty before the personal deed was made real; but the party so infest consenting to a disposition of the same lands, with the burden *de novo* of that faculty, is thereby debarred from competing with that personal deed. (See DICT. No. 20. p. 4125.)

No. 1.

1737. *June 28.* BORTHWICK *against* TRADES MAIDEN HOSPITAL.

FACULTY reserved in a disposition of a house by a wife and her husband, to the wife with consent of the husband to burden the right with what sums she should think fit to any person by a writ under her hand at any time of her life;—the Lords thought, that faculty could only be exercised without the husband's consent, and therefore not at all after his death; *2do*, That a faculty to burden did not give a power to alienate the subject; and therefore the wife having after the husband's death gratuitously disposed the house, the Lords preferred the first disposition. The papers are well written on the general point of faculties and limitations, and whether *majori inest minus aut e'contra?** (See DICT. No. 7. p. 4095.)

No. 2.

1737. *July 28.*

CREDITORS of DOUGLAS of Scotsraig, *against* ISOBEL STEWART.

FACULTY to burden conceived in the most plain and express terms, so as to make any personal deed in exercise of that faculty, however latent, to

No. 3.

* It has been already mentioned in a former note by the Editor, that several volumes of Lord Elchies's Session papers were given in to the Advocates' Library along with his MSS.