FACULTY.

1737. *June* 21.
MARION TURNBULL, Relict of Dr OGILVIE, *against* MARGARET OGILVIE.

No. 1.

FACULTY reserved to burden an estate being exercised by a mere personal deed, not made real by infeftment or diligence during the granter's life, cannot compete with an infeftment granted by the son, whose right was burdened with the faculty before the personal deed was made real; but the party so infeft 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.)

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

No. 2.

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 disponed 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.)

1737. *July* 28.
CREDITORS of DOUGLAS of Scotscraig, *against* ISOBEL STEWART.

No. 3.

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

* 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.

No. 3. become a real burden, is repugnant to law, and such latent deed will be no real burden, nor the possibility of such a deed, such an incumbrance as can entitle a purchaser to retain any part of the price.

1739. *Jan.* 2, 11.

ALEXANDER ANDERSON *against* WILLIAM ANDERSON.

No. 4. ONE 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 married in 1728, the father in 1730 granted a bond for 4000 merks to his son Alexander, payable at his own death, with annualrent thereafter, but reserving power to alter; and in 1737 he did alter, and granted a new bond, bearing annualrent from 1728; but the Lords found, that the father could not burden his son William with annualrents, *retro* before the date of the bond. (See DICT. No. 23. p. 4132.)

1739. *November* 14.

MISS HELEN CUNNINGHAM *against* CREDITORS of BALQUHAN.

No. 5. CUNNINGHAM of Balquhan having, in virtue of a reserved faculty in the disposition of his estate to his son, (to burden it with 10,000 merks with annualrent after his death, which was repeated in the procuratory and precept, and engrossed in the son's sasine,) by his second contract of marriage provided that sum to the issue, and assigned them to the faculty; and thereafter, by a new deed, having specially assigned the faculty to the only daughter of that marriage;—the son contracted many debts, some real, some personal; and after his death, the said daughter his sister consanguinean brought the estate to a sale as apparent heir; and then craved to be preferred upon the price for the said 10,000 merks. The Lords all agreed that this 10,000 merks was not a real burden, and that therefore the son's real creditors were all preferable; and yet they found her preferable to all his personal creditors, who had done no diligence to affect the estate. (See DICT. No. 24. p. 4133.)

See RIGHT ON SECURITY.

See NOTES.