heritable debts even during the marriage he might deduct them out of the faculty. But the Court thought, that as *bona* are counted only *deductis debitis*, the meaning of parties could be none other than that the wife was to give her husband all her estate with the burdens affecting it, or in other words all her free estate, but not the above reserved faculty, and that she could not be thought to mean to give away all her estate, and keep the debts a burden upon herself after giving away the fund of their payment, and that therefore though this was no passive title against the husband, which cannot be while the original debtor is alive, and does not make the husband liable universally for his wife's debts, yet he must be liable *in valorem* of the subjects conveyed and his intromissions with them, both to the wife's debts and reserved faculty, whether any tocher should remain to him or not, since he is presumed to have taken his hazard of that; whereas where a disposition is special of particular subjects there is no place for any deduction, and however prior creditors might reduce it *quoad excessum*, yet the husband or his heirs would have relief against the wife, even her alimentary provision if she survived, or out of her reserved faculty, notwithstanding that the husband should still have a competent to tocher remaining. And Arniston himself owned, that if the subjects here reconveyed exceeded a competent tocher, Parkhill would be liable for the debts without relief out of the reserved faculty. The other point anent the 3000 merks was remitted to the Ordinary to hear the objections against Parkhill's confirmation; but all agreed that if it was sustained, the concourse or compensation must operate from its date.

No. 4. 1745, June 5. SIR LAURENCE MERCER *against* SCOTLAND.

ADAM MERCER disponed his whole estate heritable and moveable to his wife in liferent, and the children to be procreate of his body in fee, which failing to his sister Elizabeth and the children of her body in fee, and not only burdened the disposition, but all persons who should take any benefit by the disposition should be liable to all his debts. He dying without children, Andrew Scotland, the son of Elizabeth, served heir of provision in this deed, and was pursued by a creditor of his uncle's. His defence was, that his service was erroneous and unnecessary, for he needed only a cognition that there were no children, and that his mother Elizabeth was failed. 2dly, As to the burdening clause, that it cannot go beyond the value of the subject. Minto found him liable universally,—and 11th December last we adhered. But 23d January last we altered and found him liable only *in valorem* of the subjects disponed,—and this day we adhered. *Pro* were Drummore, Haining, Strichen, Arniston, Murkle, and Tinwald. *Con.* were Justice-Clerk, Minto, Dun, Balmerino, *et ego*, and the President, but it came not to his vote.

No. 5. 1744, Dec. 7. WALKER *against* WALKER.

ROBERT WALKER disponed his effects to William Walker in 1707 extending to 1800 merks, and in case of William's death without children, ordered him to pay to several persons certain sums of money without saying further. Mary and Janet Walker were two of them, and died before William, and they having left children, the question was, Whether a substitution to them was implied? and we found that it was, agreeably to the decision mentioned, Innes against Innes, I think, in 1670, but especially 21st November 1738, T. Montrose against Robertsons, (No. 3. *voce* WARRANDICE.)