

FACULTY TO BURDEN.

YOUNGER CHILDREN OF M'LEAN OF FORLOISH *against* THEIR ELDER BROTHER.

WHERE a person, who has a faculty to burden, dies, without exercising that faculty, the faculty is at an end—no action lies upon it at the instance of any person, who, had it been exercised, would have been interested in it. In giving this decision, the case of *Græme against Laird of Morphie*, mentioned in the Dictionary, Vol. I. p. 291, was held to be an erroneous decision.

1765. February 28. PRINGLE OF CRICHTON *against* PRINGLES.

A FACULTY to burden at any time during life, may be exercised on death-bed. The later cases to this purpose are 16th January 1740, *M'Kean against Russell*, observed by Clerk Home; and 11 New Coll., *Buchanan against Buchanan*, August 1758; also 1 New Coll., 12th February 1755, *Lady Forbes and her Daughters against Lord Forbes*; and still later, 28th February 1765, in the case of *Pringle of Crichton*, reversed on an appeal. Mark Pringle, anno 1748, disposed the estate of Crichton to his eldest son John, reserving his own life-tenant, a power to alter at any time in his lifetime, with the burden of all his debts, gifts, &c. owing at the time of his decease. On this disposition, charter and infeftment were expedite. In the year 1758 Mark Pringle executed a new disposition also in favour of John, but with a small variation in the substitution. After all this, he exercised the faculty of burdening,—partly by a codicil to his will, which he executed *in liege poustie*, partly by an heritable bond which he executed on deathbed. After Mark's death, John brought a reduction of these, of the codicil, as a deed of a testamentary nature, and were therefore to be held as done on death-bed—of the bond, as actually done on deathbed. Further, he denied that he had accepted of the disposition and infeftment 1748; and, as the same was revoked by the settlement 1758, which also he never had accepted of, therefore he, being *alioqui successurus*, was entitled to take the estate as heir of the former investitures, and could not be precluded, by the settlements 1748 or 1758, or faculties therein contained, from challenging the deathbed deeds. The Lords (28th February 1765,) sustained the reasons of reduction, both of the heritable bond and codicil. But this decree, on an appeal to the House of Lords, was reversed, (January 1767.)

See the above, 4 New Coll., p. 207.