

real security was not diminished, though the sum secured was; that his security remained the same till the last shilling was paid, and that it was his real security which entitled him to draw, not the sum that was secured. THE LORDS accordingly found, That the adjudger, who had recovered the partial payment out of the debtor's separate funds, ought to be ranked for the whole sum in his adjudication *pari passu* with the other adjudgers, in order to recover payment of what remained due after the said partial payment. See APPENDIX.

*Fol. Dic. v. 2. p. 355-*

No 23.

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SECT. V.

Right in security is, in general, not broader than the real debt at the time of granting the security.

1699. January 25. JANET INGLIS *against* the Earl of MURRAY.

JANET INGLIS, relict of A. Charters, and the Representatives of John Macmorran, competing for the right of 5000 merks due by the Earl of Murray to umquhile Thomas Inglis, her brother, Janet claimed the same on this ground, that Isobel Macmorran, her mother, being melancholy and fatuous, there was a gift of curatory taken to her brother John Macmorran for managing her affairs, and she being provided to a jointure of 1800 merks, her name was in the life-rent of bonds for 28,300 merks, so there being 1700 merks behind to complete the stock of 30,000 merks, her son Thomas Inglis gave her a bond for paying her L. 68 Scots yearly as the annualrent of the said 1700 merks, to complete her jointure, and for her better security assigned her to as much of the principal sum of 5000 merks due to him by the Earl of Murray as would pay the by-gones of the L. 68 of deficiency, then amounting near to L. 1200 Scots; and there was likewise arrestment used by the curator in my Lord Murray's hands, and a decret to make forthcoming: And Janet having confirmed *executor ad omnia* to her mother, and pursued before the Commissaries of Edinburgh James and Bessie Macmorran's children to Bailie Macmorran the curator, and Dr Nisbet husband to the said Elspeth, the Commissaries found, by the said Thomas's assignation she had right not only to affect the Earl of Murray's sum with L. 1200, as the bygone rests of the annualrent of the 1700 merks due to her mother preceding her decease, but likewise with the annualrent of that sum ever since her death in 1678; and ordained John Macmorran the curator's representative to transmit as much of the Earl of Murray's sum as will extend

No 24-

Whether a creditor, in right of his security, can draw more than the sum secured?

No 12. thereto; because her mother being assigned in corroboration and further security to so much of that sum then bearing annualrent, she must have the annualrent effeiring thereto, as *accessorium* to her right. And further urged, that if her mother's curator had then uplifted the bygones, they would have been lent and become a principal sum; likeas, *ratione officii*, he as curator was bound once during the curatory to have gathered in her annualrents, and stocked them into a principal to bear annualrent *a finita curatela*, even as the law appointed with minors' money; *pecunie pupillares non debent esse otiosæ, sed fœnori exponendæ*; and the curators to ideots, or furious persons, are under the same obligation, seeing *pupilli et furiosi æquiparantur in jure quoad* their privileges. The Representatives of Macmorran, the curator, *answered*, They yielded preference to the said Janet *quoad* the bygones preceding her mother's death, that these would affect the Earl of Murray's sum; but the *usara usurarum* was unreasonable, *imo*, Because *anatocismus* is condemned by all laws; *2do*, If the curator had pursued Thomas Inglis for these bygones, he had a good defence, that as he was debtor, so he representing his mother, he became also creditor as to one half *proprio jure*, and to his sister Janet's half by virtue of her renunciation and acceptance of a tocher in satisfaction by her contract of marriage, and so *confusione tollebatur*; *3tio*, Tutors are bound to accumulate and stock their pupils' annualrents *in fine tutelæ*, but not a curator; *4to*, Law does not admit extension of such exorbitant privileges, so as to argue from minors' curators to those of furious persons, seeing *leges exorbitantes a jure communi non sunt extendendæ de persona in personam, nec de casu in casum*. THE LORDS abstracted from the obligation to employ as curator, but found Janet Inglis had right to the annualrent of the L. 1200 of bygones due to her mother, and that from her decease to this present, in regard her mother and her curator were assigned to the Earl of Murray's sum bearing annualrent for her security, and so the annualrent followed as a necessary consequent.

*Fol. Dic. v. 2. p. 355. Fountainhall, v. 2. p. 37.*

1750. June 13.

Lady KINLOCH against DEMPSTER

No 25.

A PERSON granted an heritable bond on his estate for a certain sum. The creditor at the same time gave a back-bond, acknowledging that he had only advanced a part of the sum for which the debtor had given his bond, but that he bound himself to pay up the rest on demand; and when the whole sum should be advanced, the back-bond should be discharged; but if the whole sum should never be advanced, the heritable bond should be restricted to the sum really advanced. The granter of the heritable bond had constituted an annuity to his wife upon the estate, in which she was infest subsequent to the creditor's infestment on his heritable bond, but prior to his paying up the whole of the sum in terms of the back-bond. In a competition between them, the LORDS