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; *pecuniæ pupillares non debent esse otiosæ, sed fœnori exponendæ*; and the curators to ideots, or furious persons, are under the same obligation, seeing *pupulli 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, 1*mo*, Because *anatocismus* is condemned by all laws; 2*do*, 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 acceptation of a tocher in satisfaction by her contract of marriage, and so *confusione tollebatur*; 3*tio*, Tutors are bound to accumulate and stock their pupils' annualrents *in fine tutelæ*, but not a curator; 4*to*, 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 infeft subsequent to the creditor's infeftment 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

found, That the creditor in the heritable bond was preferable for the sum paid by him prior to the Lady's infeftment, but that she was preferable to him as to what he had paid posterior to her infeftment; because a security in relief can be no broader than the debt existing at the time when it was granted. In this case great weight was also laid on the clause of act 1696, concerning debts contracted after the date of the sasine; and, as reported by Lord Kames, it appears that the judgment went upon both grounds. No 25.

Fol. Dic. v. 4. p. 240. Rem. Dec. Falconer.

*** This case is No 104. p. 10290. *voce* PERSONAL AND REAL.

1752. *July* 10. M'KECHNY *against* CLARK.

No 26.
A creditor entitled to retain his expenses out of a debt assigned to him in security.

THIS case itself is long and perplexed, and nothing further to be observed from it, than that where one has an assignation to a debt in security of a debt due to him, the assignee in security will be entitled to retain out of the debt assigned in security, all expenses he may be put to in recovering it, whether these expenses be occasioned by the litigiousness of the person himself, who is debtor in it, or by third parties competing for the debt so assigned.

Fol. Dic. v. 4. p. 242. Kilkerran, (RIGHT IN SECURITY.) *No 1. p. 498.*

1762. *February* 26. Competition CREDITORS of LANGTOWN.

No 27.

IN October 1688, Sir Archibald Cockburn of Langtown granted to his son Sir Archibald, junior, a disposition of certain lands, for security of all debts for which he and his son were mutually bound. The estate did not come to a sale till 1757, when a competition arose between those who were singly creditors of the father, and the creditors to whom the father and son were jointly bound. The proper creditors of the father brought a reduction of the disposition 1688, in which the first question was, Whether the disposition from the father to the son, which was only for relief of debts contracted, without mentioning any particular debt, with the charter and sasine following thereon, was effectual to vest any real right in the son? On which it was *contended*, That if a deed granted in security of sums jointly contracted to a number of creditors, whose names do not appear on any record, can be made real by infeftment, no discharge or renunciation whatever can afford sufficient security against a number of claims, all of which are concealed, and most of which there is no possible way to discover. The second question was, Whether, supposing the father to have been insolvent at the date of the disposition, that deed, not being a disposition *omnium bonorum*, was reducible as *in fraudem creditorum?* Thirdly,