

found, That the creditor in the heritable bond was preferable for the sum paid by him prior to the Lady's infertment, but that she was preferable to him as to what he had paid posterior to her infertment; 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.

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.

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.

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 infertment, 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,

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A creditor entitled to retain his expenses out of a debt assigned to him in security.

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