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,

No 27. Whether, *post tantum temporis*, it was competent for the pursuers to insist on this ground of reduction, as there had been a process of ranking in dependence fifty years before, in which all the decrees of preference had been pronounced on the ground of the disposition 1688 being a valid deed? THE LORDS found, That the disposition granted by Sir Archibald Cockburn to his son, for security and relief of all engagements the son had come under for the father, and which especially declared, That all bonds wherein they stood jointly bound were proper debts of the father, which disposition was followed by infeftment, was a valid and legal security to the son on the estate disponed for his relief of all debts wherein he stood bound with his father preceding the date of the disposition, notwithstanding the particular debts were not specified; and that the son was thereupon preferable to all the creditors of the father, whose rights were not made real by infeftment before the date of the son's infeftment, and that to the extent of the said debts for which the infeftment for security and relief was granted; and in respect that the proper creditors of the father did not allege that the estate conveyed by the father to the son exceeded in value the debts for relief of which the son was infeft, found, That they could not draw any part of the price of that estate; and, lastly, found, That an inquiry into the situation of the circumstances of the father, at the date of the disposition made by him to his son in 1688, was not competent *post tantum temporis*.

Fol. Dic. v. 4. p. 241.

*** This case is No 49. p. 10220. *voce* PERSONAL AND REAL.

1794. *December* 12.

The TRUSTEES for the CREDITORS of JOHN BROUGH *against* The HEIRS of ROBERT SELBY.

No 28.

An heritable security in relief granted to a cautioner in a cash-account, found not to cover sums drawn out at the date of the infeftment, where, in consequence of future operations by the principal debtor, these sums were repaid, and another balance afterwards

ROBERT SELBY, on the 17th June 1783, became joint obligant with John Brough, in a cash-account with Sir William Forbes and Company, to the extent of L. 500 Sterling, to be kept in the name of Brough.

Selby being only cautioner for Brough, he, of the same date, got from him a bond of relief, containing a disposition in security of some heritable property, on which he was immediately infeft.

Previously to Brough's obtaining this cash-credit, he had an account-current with Sir William Forbes and Company, on which, at the date of the bond granted by Mr Selby and him, he owed a balance of L. 402: 16s. for which Mr Selby, by joining in the new security, became liable; but Brough having paid in various sums to his cash-account, between the 17th June 1783 and the 6th August following, this balance was wholly extinguished, and a small one created in his favour.