

SECT. VI.

Action of Relief among CORREL.

1630. February 11. GUTHRIE against GUTHRIE.

No. 17.

Curators have relief of each other.

FRANCIS GUTHRIE, after his minority, pursuing the heir of one of his two curators, for payment of a sum of the pursuer's, intromitted with by the said curators, conform to an acquittance subscribed by them both, upon their receipt, the heir of the curator being convened, alleged, That she ought only to be convened for that one half wherein her father, as the one of the two curators, should be found obliged; for they being conjunct in the office, the other ought to be answerable for the other equal half. This allegiance was repelled; for the Lords found each of the two curators liable *in solidum* to the minor for the whole, and the minor might lawfully pursue any of them, at his pleasure, for all; but found, that each one of the said two curators should relieve others of the equal half; and that, amongst themselves, the curator distressed might seek payment of the half from the other; and, consequently, a curator taking assignation from the pursuer, who was his minor, after majority, to the whole debt, and thereby seeking payment of the whole, from the other curator, it was found, that the pursuit could not be sustained for the whole, albeit it was pursued in the minor's own name, seeing his name was borrowed, to the behoof of the other curator.

Fol. Dic. v. 2. p. 379. Duxie, p. 491.

1665. January 12. KINCAID against LECKIE.

No. 18.

IN an action pursued at the instance of ——— Kincaid against the Lairds of Leckie and Boquchan, it was found, That where, in a bond bearing annual-rent, the principal debtor was only obliged to pay the annual-rent (and not the cautioner) during the not payment of the said principal sum; yet one of the cautioners being distressed, and the other cautioners being obliged to relieve him *pro rata* of all cost, skaith, and damage, they are liable to the cautioner who was distressed for payment of annual-rent, since his distress and payment; and also found, that the cautioner, being assignee, may seek payment of the hail sum, except his own proportion, just as the principal creditor might do, though the cautioners be obliged to relieve others *pro rata* only.

Gilmour, No. 124. p. 91.