

## GENERAL DISCHARGES AND RENUNCIATIONS.

### S E C T. I.

#### General clauses in Discharges presumed to comprehend Personal Debts.

1613. July 3. LADY BALMACHEWN *against* ALEXANDER WADDELL.

**I**N an action betwixt the Lady Balmachewn and Alexander Waddell, there being an exception proponed upon an unlawful discharge contained in a decree arbitral which discharged the Lady, it was found by the LORDS, that the said general discharge was as valid as if there had been a special discharge ; and so it behoved to exoner the Lady of Balmachewn her son, who was also called in the spuilzie ; but it was to be considered whether the action of spuilzie was intended before or after the said general discharge.

*Fol. Dic. v. 1. p. 341. Kerse, MS. fol. 58.*

**No 1.**  
A general discharge in a decree arbitral, found to comprehend a process of spuilzie.

1636. February 24. LAWSON *against* L. ARDKINLASS.

**ONE** Lawson, as executor to his goodsire, pursuing the Laird of Ardkinlass for payment of 2000 merks, contained in a bond, made by the defender's father thereon, who producing a discharge granted by the donatar to the pursuer's goodsire's escheat, who was the creditor foresaid of this sum, without consent of this same pursuer, and subscribed by him, bearing, that they had discharged this same defender of this sum of 300 merks, and other 360 merks contained in two bonds, wherein the pursuer's goodsire was cautioner for the Laird of Ardkinlass, and which he had paid as cautioner for him, in the which discharge the said donatar, and the pursuer, besides the discharge of these two special sums,

**No 2.**  
A general clause, discharging all action for payment of any debt or sum of money resting by contract, bond, decret, or otherwise, though subjoined to a discharge of small sums mentioned

No 2.  
*nominatim*,  
 will be sufficient to defend against any process on a prior obligation, though for a larger sum than those mentioned in the discharge.

by a general clause therein contained of this under-written tenor, had also discharged the defender of all action they had competent against him, for payment of any debts or sums of money resting to the pursuer's goodsire, by the defender's father, by contract, decret, bond, or otherwise whatsoever, or paid by him for the said Laird of Ardkinlass, at any time preceding their deceases; in respect of the which discharge, bearing the said general clause, granted by this pursuer long after the date of this bond, now pursued for, the defender *alleged* absolutor, and the pursuer *replying*, that the general clause contained in this discharge, which is subjoined, but accessory to the two particulars expressly discharged, cannot extend to this sum now acclaimed, seeing the same is far greater than the sums particularly discharged; and it is not probable, that it was then intended, that this sum of 2000 merks should have been discharged under the general clause, there being two less sums mentioned *specifice*, and this greater sum never being mentioned, so that the discharge cannot be esteemed to meet this, but this must be esteemed as *non cogitatum*; for if it had been treated on, or thought it should meet the same, it could not have been conceived to discharge 600 merks in two bonds, and to have omitted a far greater sum; this reply was not respected, and the exception was found relevant, and proven; for the general clause foresaid was found ought to extend to this greater sum, albeit the special sums discharged were less.

Act. Hart.

Alt. ———

Fol. Dic. v. I. p. 340. Durie, p. 797.

1678. July 13. PRESTONGRANGE against RICHARD WAIRD.

No 3.  
 A general discharge granted to a vassal, though referring to a special account, was presumed to include the feu-duties for which he was personally liable, tho' not mentioned in the account; but not the feu-duties of years before the vassal's right, for which no action lay, but a pointing of the ground.

PRESTONGRANGE pursues Richard Waird his vassal for the feu-duty of Dolphington, for thirty-nine years preceding the summons; the defender *alleged* absolutor from 1656, and preceding, because he produces a general discharge by the pursuer to Bryssie, then heritor, of all debts, sums of money, and others whatsoever, that he could lay to Bryssie's charge, for any cause or occasion preceding any manner of way. The pursuer *answered*, That this general discharge had a special account of the same date, and could be extended no further than to writs of that nature, which are contained in the account, and at most to personal debts, but not to feu-duties, which are *debita realia*. Likeas Bryssie, by a declaration produced, declares, 'That the feu-duties were neither paid nor considered in that discharge,' but whatever might be pretended for the years Bryssie was heritor, because he might have been personally overtaken and pursued for these years, yet as to former years which were in his author's time, though the ground might have been pointed therefor, yet it could not be said in any way that Bryssie was debtor therein. It was *replied*, That the petty account produced is only about an hundred pounds Scots, whereas, in this gene-