

No 8. failed therein, they would decern the said heritable bond to be comprehended under the discharge.

Fol. Dic. v. 1. p. 341. Haddington, MS. No 2414.

1678. July 24. LAIRD of Ardblair against JAMES HUSBAND.

No 9.
Found that a
general dis-
charge could
not extend to
an apprising.

ALLEGED against an apprising, *imo*, The appriser had given a general discharge. THE LORDS found it could not extend to the apprising. *2do*, He had got a bond just for the same sum in the comprising, which must be presumed in satisfaction. THE LORDS repelled this, unless they would positively offer to prove it was for the comprising.

Fol. Dic. v. 1. p. 341. Fountainball, MS.

1680. November 19. DALGARNO against The LAIRD of TOLQUHOUN.

No 10.

THE LORDS found a general discharge containing an exception of one particular, which confirms the generality in *casibus non exceptis*, could not extend to take away an obligation to procure a right to a comprising, because general discharges are never extended to heritable rights.

Fol. Dic. v. 1. p. 341. Fountainball, MS.

* * * Stair reports the same case :

BEATRIX DALGARNO pursues the Laird of Tolquhoun for the annualrent of 1000 merks, which he was obliged to pay her yearly for her aliment, by a contract betwixt him and William Johnston. Tolquhoun suspends upon this reason, that his obligation is in a mutual contract betwixt him and the charger's husband, whereby he is obliged to dispone the lands of Balhosse, and to procure right to an apprising thereof, led at the instance of John Johnston, which being the mutual cause, and not performed, this obligation is *causa data non secuta*. The charger answered, That upon this minute Tolquhoun entered in possession, and therefore cannot refuse the annualrent of the 1000 merks, which was the price, for in so far the mutual cause is performed. *2do*, There is produced a general discharge by Tolquhoun, in which he acknowledges there were several transactions betwixt him and William Johnston, and that he had been his factor, and had intromitted with his girnels and farms, whereof he was satisfied, and discharges all debts, sums of money, bonds, obligations, clags, claims, and contracts, for whatsoever cause, with an exception of a particular obligation; which therefore being a general discharge, must exoner Johnston the charger's husband. It was replied, That ge.

neral discharges are never extended to particulars of greater value in specie than those exprest; and, therefore, bonds, debts, and obligations being exprest, it could never be extended to the warrandice of heritable rights, nor to the obligations to dispone heritable rights, such as the obligations in this contract; and the exception is only of bonds for sums of money, which is a different species from dispositions of lands, and of greater importance; and though this discharge would be sufficient to take away a bond of money of the greatest sum, being in specie exprest, yet it cannot extend to an obligation to dispone lands, or any obligation of warrandice, though the particular interest were of less moment, yet the species of land or warrandice are of greater import.

No 10.

THE LORDS found, that this general discharge did not extend to this obligation, 'to dispone lands, or to procure dispositions thereof;' but found Tolquhoun liable to pay annualrent so long as he was not legally put from his possession.

Stair, v. 2. p. 802.

1716. June 27. CHARLES MITCHELL against SINCLAIR of Quendall.

SINCLAIR of Quendall being debtor to William Donaldson skipper in Dundee, after horning registrate, he adjudges his lands, and assigns the debt and diligence to Charles Mitchell; but, the assignation not being intimated, Quendall and Donaldson, (betwixt whom there were several other dealings,) posterior thereto, count and clear, and grant a mutual general discharge to each other, of all that either of them could ask by bond, tickets, decreets, bills, count-books, &c. for any cause whatsoever preceding the date of the discharge, and contains an obligation upon either party to deliver up such obligatory bonds, tacks, &c. as either of them had. Thereafter, in an action of mails and duties at Charles Mitchell's instance, compearance is made for Quendall, who alleged no process on the said adjudication, in respect of the cedent's foresaid discharge, which, though posterior to the pursuer's assignation, yet was prior to any intimation thereof to Quendall the debtor, who was at that time *in optima fide* to pay Donaldson, and receive his discharge, which must be good against the pursuer, who is his assignee.

No 11.

Found that a general discharge of all debts and decreets, did not extend to a decreet of adjudication, where there was no instruction or document, that the debt contained in the adjudication was communed upon, or accounted for at granting the general discharge.

Replied for the pursuer; That the discharge being only general upon the narrative of fitting and closing accounts, &c. can never be extended to the adjudication; because, 1st, The discharge relates only to moveable debts, personal obligations, and decreets, as by the said narrative appears; whereas the adjudication is a real right, and of a quite different nature; and, as such rights are not usually extinguished by general discharges no ways referring thereto, so it is not to be presumed that Quendall would rest satisfied with such a general discharge, without mentioning this debt for which he stood registered at the horn, and his lands adjudged, which the Lords found, *Dalgarno* against the Laird of Tolquhoun, No 10. p. 5030. 2^{do}, A general discharge is never presumed to