

this assignation, the law will furnish no relief where they are liable *ex delicto* per l. 46. D. *de regulis juris*.

Fol. Dic. v. I. p. 122. Fountainball, MS.

1695. December 12.

WOOD against GORDON.

MERSINGTON reported Major Wood and the Laird of Spot against Mr William Gordon, advocate ; who being pursued for 1000 merks, propones compensation, that you Major Wood, by your bond of relief, was bound to free Mungo Wood, your uncle, and my father-in-law of an equivalent debt, and which Mungo being forced to pay, assigned to the said Mr William. *Objected, imo,* That he produced no assignation to the debt, but only a simple discharge, which could only extinguish the debt, but never produce an action or ground of compensation. *Answered,* Some creditors are so scrupulous, they will not grant an assignation, and to which they cannot be forced by law ; but a discharge to a cautioner operates the same effect *quoad* his relief, that an assignation would do, except as to a summary charge and present execution. THE LORDS repelled the objection in respect of the answer. The 2d defence was, that posterior to the bond of relief, he had obtained a general discharge from Mungo Wood, on the back of a bond for L. 340 Scots, not only discharging that particular sum, but also all preceding demands, which must necessarily comprehend this debt ; and that the Lords, in the case of Forbes against Gordon, *voce* GENERAL DISCHARGE, &c. had sustained such a general discharge to cut off all precedings. *Answered,* That these words, ' of all preceding demands,' could never extend to comprehend a bond of relief for a sum much greater than the particular sum discharged, especially seeing it was not after a stated count and reckoning (as that of Gordon's was,) and that it appeared there was a current trade and correspondence between the Major and his uncle, which might be the meaning why these words ' of prior demands,' were insert ; and in the case of Law and Baird, 16th and 22d November 1695, *voce* POSSESSORY JUDGMENT, the Lords would not allow a renunciation, though in most comprehensive terms, to go beyond the comprising therein narrated ; 14th February 1633, Haliburton against Hunter, *voce* GENERAL DISCHARGE and RENUNCIATION ; and 24th February 1636, Lawson against Ardkinlass, *IBIDEM*. THE LORDS repelled also the second defence, and found this general clause could not extend to a bond of relief, unless he could prove it was *deductum in computo*, and expressly treated and communed on at the time. As to the first point, the Romans allowed their cautioners, besides the *exceptio ordinis et discussionis*, likewise *beneficium actionum cedendarum* ; as to which our practice is not yet arrived at a full consistency.

Fol. Dic. v. I. p. 221. Fountainball, v. I. p. 687.

No 10.
furnish relief
betwixt the
correi, who
are liable *ex
delicto*.

No 11.
A discharge
to a cautioner
operates the
same effect,
quoad his re-
lief, that an
assignation
would do, ex-
cept as to a
summary
charge and
present exe-
cution.