ral discharge, there is an exception of an hundred pounds Sterling resting, and this discharge is only general, and hath no particular by which the generality might be limited; and as to Bryssie's declaration, it was after he was denuded, when neither his writ nor his oath could prejudge a singular successor. No 3.

THE LORDS sustained the general discharge for the years that Bryssie was heritor, and so debtor, but not for the years of his authors, which were only *debita fundi*.

Fol. Dic. v. 1. p. 340. Stair, v. 2. p. 632.

*** Fountainhall mentions the same case:

THE LORDS found, that a general discharge did not extend to cut off the payment of bygone feu-duties owing to a superior as *non cogitatum*.

Fountainhall, v. 1. p. 7.

1695. *November* 14. FORBES *against* GORDON.

No 4.
An old bond being pursued on by an assignee, the defender produced two general discharges, mentioning rents of lands, and subjoining a general clause of all accounts, &c. or any thing else between the parties, with the exception of a sum smaller than that pursued for. The Lords found these two discharges extended to the bond, though they did not mention it.

ARBRUCHEL reported Janet Forbes, relict of Patrick Gordon, against Charles Gordon of Blelack, for payment of 2000 merks contained in his father's bond to his brother Patrick, whereto she was constituted assignee by her said husband. The defences were, *1mo*, That the bond being in 1656, there were two general discharges past betwixt them subsequent thereto, the one in 1661, the other in 1663; which, though they at first mentioned only farms and rents of lands, yet had also a general clause of all counts and reckonings, borrowings and lendings, or any thing else betwixt them, with an exception of 350 merks resting to Patrick, the discharger; and he who was so cautious as to insert a reservation of that smaller debt, would much more have secured himself by mentioning the greater sum of 2000 merks, if it had been resting, so that *exceptio firmat regulam in casibus non exceptis*. And it being *objected*, That these discharges were intended no farther but allenarly to clear his mail and duty, as tenant, and that they were holograph, and so did not prove their date, it was *answered*, That such discharges, after count and reckoning, needed no witnesses, and there was *geminatio actuum* here; and the Lords had found so, 17th December 1680, between James Stuart and Agnew of Sheuchan, *voce* PROOF; and the defender's father was dead before the assignation now pursued on. The *2d* defence was on compensation, that Blelack was cautioner for the said Patrick, the cedent, in several debts, and had either paid, or was distressed. *Answered*, That did not meet the pursuer, who was assignee, unless the distress and payment had preceded her intimation. *Replied*, It was sufficient if the obligement of relief was prior to her assignation, though it was purified after, as had been oft found; viz. 11th Jan. 1627, Paton, No 50. p. 2601.; 23d Dec. 1635, Keith, *voce* PERSONAL AND REAL; 16th March 1639, Forsyth, No 116. p. 2650.; and lately, in

No 4. 1694, Ogilvie against Scot, *voce* HOMOLOGATION.——THE LORDS did not proceed give answer to this second defence, which at least would have founded a *jus retentionis* till he was relieved of his cautionries; because they were clear to determine the first point of the two general discharges, which they found very ample and comprehensive, and to extend even to this bond now pursued for; and therefore found the defence on the discharges relevant and proven; and assoilzied.

Fol. Dic. v. 1. *p.* 341. *Fountainhall, v.* 1. *p.* 677.

1696. *January* 15.

Sir DAVID CARNEGIE of Pittarrow *against* The EARL of SOUTHESK.

No. 5.
Against an action for payment of a considerable sum of debursements, the defence was laid on a decree-arbitral, ordaining the parties to discharge each other of all accounts, &c. Answered, the decree proceeded on special claims; and it was offered to be proved, that this article was neither *actum* nor *tractatum* at the time. The Lords sustained the defence.

THE LORDS advised the debate between Sir David Carnegie of Pittarrow and the Earl of Southesk, if Pittarrow's compensation was to be sustained on the bond to pay the third part of the expenses which he should depurse in reducing the decreet of Parliament, evicting from him the lands of Craig; and whereof he gave in a general account of 10,000 merks expended by his father, and L. 17,000 by himself. *Alleged*, Absolvitor; because both parties having entered into a submission of all their claims to Sir George Lockhart and Sir John Cunningham in 1681, whereon followed a decreet-arbitral, ordaining them to discharge one another of all counts and reckonings; and this behoved also to be included, especially seeing there was nothing excepted but their reliefs of cautionry. *Answered*, That decreet proceeded on special claims, whereof this article of the expense of the process of Craig was none; and if Harry Douglas, Sir G. Lockhart's servant and others were examined, it would appear this debt was neither *actum* nor *tractatum*, nor under consideration at the time.——THE LORDS thought it dangerous to loose decreets arbitral, and general discharges, on such expiscations, and that such eminent lawyers would not have inserted a general clause to operate nothing; therefore they found it sufficient to cut off all the depursements prior to the said decreet-arbitral, but that it did not strike off the bond itself; so the expenses wared out by Pittarrow on that plea since 1681 were yet entire, and might be claimed. The next question occurred, how his account should be proven, and if he was bound to give in a special condescendence of his expenses? Pittarrow obtruded the obligement, that his honest word and declaration was to be taken without any farther instruction or probation. Southesk *urged*, That did not impede why he should not be more special; and it was not enough to give in an exorbitant article of L. 17,000 in gross, without some more satisfying account.——THE LORDS ordained him to give in a more particular account, and to be as special in it as he could. Some moved he should in supplement depone anent the verity of his expenses; but it was thought the clause in the obligement exonered him from any further verification than