

his subscribed declaration; though, if the Lords had any jealousy, they might also require his oath *ex officio*, especially if any of it was clandestinely done, and conveyed for corrupt and unavowed ends.

Fol. Dic. v. I. p. 341. Fountainball, v. I. p. 700.

No 5.

1705. June 29. TALBOT and his Factors *against* GUYDET.

I REPORTED Captain Maximilian Talbot, and Chappel and Christie his factors, against Major Baltizar Guydet. Talbot and his factors pursue the Major for payment of L. 400 Sterling, contained in his ticket. *Alleged, imo*, The ticket is null by the laws of Scotland, having neither the writer's name nor witnesses; it is true there is adjected to it these words, '*teste* John Perry supernumerary;' but as he is but one witness, so he has made affidavit, that he never subscribed any such paper, nor was present at any transactions betwixt them; and whereas it bears to be signed at Stockton in the bishopric of Durham, he declares he never was in that town in his life; likeas there is a testificate produced under the hand of one Henry Morton, servant and clerk to the said Mr Talbot, bearing, that he knew the Major never owed his master more than L. 50 Sterling; but, on the contrary, Talbot was offering to borrow from Guydet 3 or L. 400 of his debentures. *2do, Alleged*, Absolvitor; because he produced a general discharge from Talbot of all claims or demands. *Answered*, This writ being signed in England, was not to be regulated by the Scots municipal law, requiring the writer's name and witnesses; but was of the nature of bills of exchange, which were, by the law of nations, exeemed from any such solemnities; and such notes and precepts are become now the common known instruments of securities amongst persons of all ranks, though they be not merchants; and as to Perry's and Morton's declarations, they are most suspect, as officious and ultroneous, and so *prodiderunt testimonium*, and deserve no credit; and Perry, who emits the oath, seems to be a different man from the signer of the ticket, there being two of that name; neither is any regard to be had to the discharge produced, for it is only of L. 50 Sterling, and the general clause of all other demands subjoined thereto, can never extend to discharge and cut off an obligation of L. 400 Sterling; seeing, if that had been intended, it would have mentioned the greater sum, and not the lesser; as was found by the Lords between Haliburton and Hunter, No 25. p. 5042.; and by the analogy of law, and the act 62d, Parliament 1503, remissions are appointed to express the greatest crime, and will not comprehend any greater than that particularly specified therein; so, *a paritate rationis*, a discharge should mention the greatest sum, and not, after enumeration of lesser debts huddle up the greater in a mysterious generality, where it was neither *actum, tractatum, nor cogitatum*. *Replied*, As this ticket was not probative by the law of Scotland, so neither was it agree-

No 6.

A discharge was granted of a sum, and a general clause subjoined, discharging all other demands. Found, that the discharge comprehended a sum eight times greater than the sum expressly discharged, tho' the greater sum was not mentioned in it.

No 6. able to the English forms, where all such writs bear to be signed, sealed, and delivered in presence of the witnesses; and farther, are ordained to be wrote on stamped paper, under the pain of nullity, none of which is here; and as to the discharge, where debts are of a different kind, after mention of a special debt, a general clause subjoined will not comprehend other debts; but if they be *ejusdem speciei*, a general clause will cut off debts though greater, and not specially mentioned, as was expressly found Lawson *contra* Campbell, No 2. p. 5023., where the special sum narrated as discharged is only 360 merks, and yet the general clause subjoined is extended to cut off a 2000 merks bond not mentioned; and by such clauses men have always judged themselves secure.—
THE LORDS inclined to think this ticket was not of the nature of a bill of exchange, so as to plead its privileges; but superseded to determine that nullity; but took it by the discharge, and found it comprehended likewise this L. 400 Sterling ticket pursued for, though it only expressed a L. 50 Sterling bond *nominatim*; and *that* in respect of its general clause discharging all other demands betwixt them; but in regard it laboured under the same defect, objected against the ticket, viz. the want of writer's name and witnesses, they remitted to the Ordinary to hear them thereupon; and if they offered to supply it by proving it was holograph, or was homologated and acknowledged any other manner of way, then to consider the import of these allegeances.

THE LORDS found such a general clause does not extend to heterogeneous debts, Dalgardno *contra* Tolquhoun, No 10. p. 5030.

Fol. Dic. v. 1. p. 341. Fountainball, v. 2. p. 280.

* * Forbes reports the same case :

IN the action at the instance of Mr James Chappel and his factor, against Major Belchazar Guydet, for payment of L. 400 Sterling, contained in his ticket; it was *alleged* for the defender, that the ticket was extinguished and taken away by a subsequent discharge and receipt of L. 50 Sterling granted to him by the creditor, in full of all demands betwixt them.

Answered for the pursuer; The general clause of all demands is not to be extended to greater sums than the L. 50 specially mentioned in the discharge, which the parties are not supposed to have had under their consideration; but can only take effect as to sums of equal or inferior value.

Replied; The general clause in the discharge, of all demands, must comprehend the L. 400; because, *qui omne dicit, nihil excipit*, and there is nothing more ordinary in a discharge, than to subjoin to certain particular debts a general clause, of all that the granter can ask of the other party any manner of way; and, by such a clause, all debts whatsoever are understood to be discharged, though greater than those specially exprest, Lawson *contra* The Laird of Ardkinglass, No 2. p. 5023.

SECT. 2. GENERAL DISCHARGES AND RENUNCIATIONS. 5029

THE LORDS found the discharge, being in full of all demands, extended to the L. 400 ticket. The reason was, because both debts were of the same nature. No 6.

Forbes, p. 19.

1714. July 30. COLONEL ERSKINE *against* LADY MARY COCHRANE.

No 7.

PARTIES who had submitted their differences, concerning a certain estate, were decreed by decree-arbitral to grant general discharges of all actions or claims competent to each other. The general discharge was understood to extend no further than concerned the particulars of the said estate.

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

* * * See this case No 49. p. 649.

S E C T. II.

Whether General Discharges and Renunciations comprehend Heritable Debts.

1612. February 26. KER of Chipto *against* LAIRD of Mersington.

JAMES KER of Chipto pursued the Laird of Mersington, to pay to him an annual rent of nine bolls bear, of all the years since the year of God 1596, according to a bond made to him by Mersington, to infest him in nine bolls bear redeemable upon 300 merks. It was *alleged* by Mersington, That he should be asoizied, because in the year 1602 he had given to him an acquittance, written altogether with his own hand, granting the receipt of 1000 merks in complete payment of an obligation of 600 merks, written by Alexander Young; and of all sums, debts, reckonings, and counts, which he might crave of Mersington before the date thereof. It was *replied*, That the discharge of sums of money, counts and reckonings, would not comprehend an heritable bond, unless it had been expressly mentioned and discharged. THE LORDS, considering that the question was betwixt two gudebrothers, ordained the said James Ker to be examined *ex officio* upon the true cause of debts extending to 1000 merks owing and resting to him the time of the discharge; and declared, if he

No 8.

A general discharge of all sums of money, counts, and reckonings, presumed to comprehend an heritable bond.