

S E C T. VI.

General Discharge, if presumed to comprehend debts *ab ante* assigned.

1713. November 24.

PATRICK ALEXANDER, Younger of Crossclays, *against* ANDREW AGNEW OF Scheughan.

MR PATRICK MAXWELL, in February 1702, having granted bond to Andrew Agnew of Scheughan for L. 318, as the price of 14 oxen bought from him for the use of Sir William Maxwell of Monrieth; this bond, Andrew Agnew, in March thereafter, assigned to Alexander Agnew his son, who transferred it to Patrick Alexander of Crossclays. Andrew Agnew, the original cedent, having, 5th February 1713, before intimation of the assignation to his son, granted a discharge to Sir William and Mr Patrick Maxwells bearing receipt of complete payment of all bonds, tickets, accompts, nols prices, or others preceding the date thereof, Patrick Alexander pursued Andrew Agnew to pay the debt upon this ground, that his granting the discharge aforesaid, was a contravention of the warrandice in the assignation to his son, the pursuer's author.

*Answered* for the defender; Such a general discharge cannot comprehend a debt assigned by him a twelvemonth before, though never intimated, to subject him to contravention of the warrandice in the assignation, Blair of Balgillo *contra* Denhead, No 63. p. 940; seeing, at the granting of the discharge, he was fully denuded of the debt assigned *quoad* his part, and was not bound to know but the assignation was intimated; and, if the assignee sustain any prejudice through his so long neglect of intimation, *sibi imputet, non enim est damnum quod quis sua culpa sentit.*

THE LORDS found, that the general discharge by Scheughan, the defender, to Sir William and Mr Patrick Maxwells, bearing payment, did include the bond, and that therefore the warrandice was incurred.

*Fol. Dic. v. 1. p. 343. Forbes, MS. p. 4.*

No 23.  
The Lords found warrandice in the assignation to a bond incurred by the creditor granting a general discharge to the debtor, bearing receipt and payment of all bonds, &c. a year after delivery of the assignation, but before it was intimated.

1736. February 14.

LADY LOGAN *against* AFFLECK of Edingham.

A GENERAL discharge of all debts, sums of money, goods and gear whatsoever, bearing 'onerous causes and weighty considerations;' and containing absolute warrandice, was found not to comprehend a bond assigned *ab ante*, though not intimated; *imo*, Because the granter could not be presumed to be discharging

No 24.