

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

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a bond that he was not entitled to take payment of, especially when he could not know but it might be intimated; *2do*, The general discharge does not import payment of the bond, without which the debtor must be liable to the assignee, though the bond *de facto* were assigned. See APPENDIX.

Fol. Dic. v. 1. p. 343.

SECT. VII.

If presumed to comprehend debts in which the granter is a substitute only.

1633. February 14.

HALIBURTON *against* HUNTER.

No 25.

Found that a discharge granted of a special sum contracted for tocher to the granter's sister, though containing a general clause discharging him of "all sums whatsoever which she might ask or crave of him, wherein he was obliged to her, either in her own name, or in any other person's name, for her behoof," did not extend to a sum, which by a clause in the said contract, belonged to her, as surviving another sister, whose tocher was therein declared to accresce to her, it not being expressly discharged.

By contract betwixt Mr William Hunter on the one part, and Janet Finlason, his mother, on the other part, the said Mr William is obliged to pay to Margaret Hunter his sister, the sum of 3000 merks, and to the rest of his sisters mentioned in the said contract, to ilk one of them a particular sum, at a term appointed for that effect; and, in case of any of their deceases before the term, the sum contracted to her who so died, to accresce to the rest of the sisters surviving, equally amongst them, and that in satisfaction of all sums which they might crave by decease of umquhile David Hunter their father, or which they might crave from the said Mr William, as heir or executor to him. The said Margaret Hunter being married to Alexander Haliburton, pursues the said Mr William for that part of the sum which was contracted, to be paid by Mr William to Barbara Hunter, who was deceased before the term of payment, and which thereby accresces to the sisters survivors, according to that proportion thereof which falls to her and her said husband. And the said Mr William *alleging*, That the said Margaret and her said spouse had no action therefor, in respect that they had, by their discharge, granted the receipt of the sum wherein Mr William obliged himself to the said Margaret for her tocher; in the which discharge, they had not only exonered him of that sum, but likewise had discharged him of all sums whatsoever, which they might seek of the said Mr William, wherein he was obliged to the said Margaret, either in her own name, or in any other person's name to her behoof; which he *alleged* ought to comprehend and extend to this sum, now acclaimed; seeing it was claimed as pertaining to her by her sister's decease; and that he was obliged to pay it to the rest of the sisters surviving, she being one of the survivors, and craved *eo nomine*, which was alike as if her name had been specially expressed;