

S E C T. IV.

Whether General Discharges comprehend rights of reversion ;
back-tacks ; actions of improbation.

1546. July 31.

KEIR *against* MARJORIBANKS.

No 16.

A discharge of a contract, discharging sums of money, with this general clause, 'and all other points,' &c. was found not to extend to a reversion contained in the contract, though there was no other point to which the clause could refer.

THE Laird of Keir discharged all the soumes of money containit in the contract made betwixt him and Mr Thomas Marjoribanks, and grantit him weil paid thereof, except ane certain soume, and also dischargit the said Mr Thomas of the remanent points of the said contract, and sua it was that there was no other points in it that Mr Thomas aught to do to him, but the giving of ane reversion of the lands contained in the contract, as the said contract mair fully proports. The Laird raisit summons upon Mr Thomas for not fulfilling of the contract, viz. in the points of the reversion.—He *allegit*, Was dischargit by the Laird's acquittance, as fulfilled *quia illa clausula qualis* one of the remanent points should not be supersedit ; and it behovit to be comprehendit, because there was no other in the contract concerning Mr Thomas, as said is.—It was *allegit*, That the reversion was of greater avail than the points specially dischargit, viz. the soumes of money, because the reversion was an heritable right of the lands, and sua it could not come under a general clause.—It was *allegit* for Mr Thomas, That albeit it were of greater avail nor the points speciallic dischargit, nevertheless in this case it should be comprehendit here, because 'ubi clausula generalis, non potest operari nisi quoad majora express. et quum illa tantum restant tunc comprehendit illa, ut per Joannem Monachum, in Cap. In quali de re Jud. et per Silium, et alios Cap. Sedes extra de restitutione ; sed in casu nostro nullum restabat punctum contract. per Thomam implend. preter commissionem reversionis ; et ex qua acquittantia erat ; dictusque Dominus Keir fatebatur se plane solutum de omnibus pecuniarum summis in contractu contentis, et de eadem in omnibus aliis punctis contract. pefat. exoneravit Mr Thomam ; igitur per generalem illam clausulam exoneravit ipsum etiam de danda reversione ; et ulterius dicebat Mr Thomas, quod reversio longe erat minoris valoris quam summæ pecuniarum de quibus erat exoneratus, et ideo deberet illud punctum tanquam minus expressum videri, per clausulam generalem remiss. In omnibus non obstan. major pars dominorum interlocuti sunt clausulam predict, non comprehendere reversionis donationem, et quod oportebat specialiter et in specie eadem remitti, et judicio meo male judicat. et contra jura ; et in hac questione omnes erant equaliter divisi, et Dominus Cancellarius votum suum tulit Domino Keir.'