

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.

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. No 7.

*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.

No 8. failed therein, they would decern the said heritable bond to be comprehended under the discharge.

*Fol. Dic. v. 1. p. 341. Haddington, MS. No 2414.*

1678. July 24. LAIRD of Ardblair against JAMES HUSBAND.

No 9.  
Found that a  
general dis-  
charge could  
not extend to  
an apprising.

ALLEGED against an apprising, *imo*, The appriser had given a general discharge. THE LORDS found it could not extend to the apprising. *2do*, He had got a bond just for the same sum in the comprising, which must be presumed in satisfaction. THE LORDS repelled this, unless they would positively offer to prove it was for the comprising.

*Fol. Dic. v. 1. p. 341. Fountainball, MS.*

1680. November 19. DALGARNO against The LAIRD of TOLQUHOUN.

No 10.

THE LORDS found a general discharge containing an exception of one particular, which confirms the generality in *casibus non exceptis*, could not extend to take away an obligation to procure a right to a comprising, because general discharges are never extended to heritable rights.

*Fol. Dic. v. 1. p. 341. Fountainball, MS.*

\* \* \* Stair reports the same case :

BEATRIX DALGARNO pursues the Laird of Tolquhoun for the annualrent of 1000 merks, which he was obliged to pay her yearly for her aliment, by a contract betwixt him and William Johnston. Tolquhoun suspends upon this reason, that his obligation is in a mutual contract betwixt him and the charger's husband, whereby he is obliged to dispone the lands of Balhosse, and to procure right to an apprising thereof, led at the instance of John Johnston, which being the mutual cause, and not performed, this obligation is *causa data non secuta*. The charger answered, That upon this minute Tolquhoun entered in possession, and therefore cannot refuse the annualrent of the 1000 merks, which was the price, for in so far the mutual cause is performed. *2do*, There is produced a general discharge by Tolquhoun, in which he acknowledges there were several transactions betwixt him and William Johnston, and that he had been his factor, and had intromitted with his girnels and farms, whereof he was satisfied, and discharges all debts, sums of money, bonds, obligations, clags, claims, and contracts, for whatsoever cause, with an exception of a particular obligation; which therefore being a general discharge, must exoner Johnston the charger's husband. It was replied, That ge.