

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.