of his own proper estate, without declaring that his executors should have any action of relief against Smithfield for retention of his legacy of 10,000 merks, whereby he did constitute himself only debtor to Dickson; and notwithstanding thereof, did liberate Sir James of all sums of money due to him, which being the result of an action of relief, did necessarily include the same, and the whole effect thereof; which reasons did all militate against Haytoun, because he did acknowledge his name was but borrowed to the assignation for the behoof of Mr Andrew Hay his brother, who was the executor, &c. to Archibald Hay, and so liable to satisfy all the legacies; the inventory of the defunct's testament and estate being more than sufficient to do the same. No 12.

Fol. Dic. v. 1. *p.* 342. *Gosford, MS. No* 659. *p.* 387.

1678. *January* 23. CAMPBELL *against* NAPIER.

BEATRIX CAMPBELL having charged Napier of Wrights-houses upon an annuity due by him to her, there being several compensations and recompensations alleged, and also a general discharge; this was not found to extend to a sum for which the granter of the discharge was cautioner, and was charged, unless before the general discharge also he had made payment. No 13.

Fol. Dic. v. 1. *p.* 341. *Stair, v.* 2. *p.* 603.

1682. *March.* OLIPHANT *against* NEWTON.

A CREDITOR having given a general discharge to his debtor, for whom he was then cautioner, but not distressed, it was *contended*, That the general discharge did also cut off the relief of the cautioner, seeing the debtor was in effect bankrupt, and had sold his lands to pay his debts, which far exceeded the price, and yet here was no reservation of cautionry in the discharge. No 14.

THE LORDS found the general discharge did not extend to cautionry and relief, whereon the granter was not distressed the time of the discharge.

Fol. Dic. v. 1. *p.* 342. *Harcarse,* (DISCHARGES.) *No* 417. *p.* 112.

1695. *December* 12. WOOD *against* GORDON.

A GENERAL discharge being granted on the back of a bond, not only discharging that sum, but all preceding demands, the LORDS found that such a general clause could not extend to a bond of relief, unless it were proved, that it was *deductum in computo*, and expressly treated and communed upon at the time. No 15.

Fol. Dic. v. 1. *p.* 342. *Fountainhall.*

*** See this case, No 11. p. 3355.