

1706. July 24. WEMYSS and WHITE *against* MURRAY.

No 21.

A WOMAN having made a disposition *omnium bonorum* to her husband, and at her death left her wearing clothes to her aunt, who took decret against the husband for the same, and thereafter granted a discharge to him, narrating the decret, and containing a general clause of all she could ask or crave from him; the LORDS found, that the discharge concerned the decret only, and did not cut off the granter from a claim of an annuity contained in an obligation granted to her by the defunct, antecedent to the marriage.

*Fal. Dic. v. 1. p. 342. Forbes.*

\* \* See this case, No 42. p. 912.

1716. July 26. AGNES DUNDAS *against* CHRISTIAN DUNDAS.

No 22.

THE deceased George Dundas being obliged, by contract of marriage, to dispone to the said Agnes, his second wife, among other things, certain parts of the water-passage upon Forth, with the emoluments thereof in liferent, she pursues Christian Dundas her step-daughter, as representing her father, for implement; and Christian having founded her defence on a general discharge, where, after narrating that she had received payment from the said Christian of the mournings, funerals, alimending the family till the next term, &c. and specially of the bygone annualrents of a sum provided to the said step-mother in-liferent, there is subjoined the common clause of a general discharge, excepting only the said yearly annualrent in time coming.

It was *replied* for the pursuer; That a general clause in a discharge, subjoined to an enumeration of particulars, could not be extended to discharge things of greater import than those expressed, especially an obligation to dispone a real right, as was found Dalgarno *against* Tolquhoun, No 10. p. 5030.

*Duplied* for the defender; That undoubtedly such a general clause, subjoined to a receipt of particulars, may be extended to discharge particulars of much greater import than those enumerated, when both are of one kind, as was found Lawson *against* Ardkinglass, No 2. p. 5023.; and Chapel *against* Guydet, No 6. p. 5027.; and that they are of the same nature here, appears from this, that though the liferent of the water-passage is to be completed by infestment, yet it being but a liferent right, as well as the other liferent of a sum, whereof the bygoners are expressly discharged, they are of the same nature; so that the present case differeth from that of Dalgarno, since there, there was only narrated a compting in relation to one subject, viz. victual intromitted with by the receiver of the general discharge; whereas here there are many particulars premised, and one of them a liferent-right granted to the pursuer, &c.

In a contract of marriage, the husband became bound to infest his wife in a water-passage upon Forth, with the emoluments, &c. as a part of her jointure. After his death, she pursued his heir for implement. The Lords sustained his defence on a general discharge granted by the relict, unless she would prove by the defender's oath, that, at granting the discharge, it was understood that the water-passage should be reserved.