

No 10.

annul the diligence. And the true reason of all is, that *confusion* is not a proper *extinction*, but only a temporary *suspension*, while the debit and credit continues in the same person; for though the same person can support the legal characters, at the same time, both of creditor and debtor, so as to preserve the debt from an *ipso jure* extinction; yet because one cannot pay to or discharge himself, the debt must stand suspended as to execution, during the time the same man is both debtor and creditor. But whenever the *confusion* ceases, the debit and credit falling in different hands, the suspension ceases at the same time; the debt revives, and has its force as before the suspension. And to this purpose Lord Stair, in the forecited place, expresses himself, 'If by different successions,' says that noble author, 'the debtor and creditor should become distinct, the obligations would revive, as in many cases may occur; and so *confusion* is not an *absolute extinction*, but rather a *suspension* of obligations.'

'THE LORDS repelled the objection.'

*Fol. Dic. v. 1. p. 195. Rem. Dec. No 102. p. 196.*

1751. November 27. ROBERTSON of Urchany against JOHN DAVIDSON.

No 11.

A person purchased lands, on which his father had a wadset. Being heir to his father, the wadset became extinct *confusione*, and he was under no necessity to makeup titles to it.

ALEXANDER ROSS of Easterfearn, purchased a wadset upon the west quarter of Meikle Allan; and was infeft therein.

William Ross of Easterfearn, Alexander's son, purchased the irredeemable property of these lands, and was infeft; but made up no title to the wadset, in which he was apparent heir. He granted an heritable bond thereon to Captain David Ross his brother; to whom succeeded Alexander Ross, solicitor at law in London; and he assigned it to John Davidson, clerk to the Court of Justiciary.

Charles Robertson of Urchany, and others, led adjudications against Alexander, the son of William, as charged to enter heir to his grand-father; whereby they claimed to carry the wadset; whereas the heritable bond granted by William, could only affect the reservation, which was all that was in his person.

*Pleaded* for Mr Davidson; William Ross, who had a competent title to the property of the estate, and was apparent heir in the wadset, which was an incumbrance thereon, needed not to make up titles to the incumbrance; which, by coming into his person, became sopite. It is the common way of proprietors to rest upon one title, and neglect others which may belong to them; and if such accessory rights could be reared up by adjudications against their successors, to evict their estates from their disponees, it would shake the titles to very many estates. Agreeable to this doctrine was the decision 19th February 1710, Colonel Erskine against Sir George Hamilton, (*see* COMPETITION); and 15th February 1750, on the Duke of Gordon's claim for the estate of Lochiel, it was found, That the Duke having entered heir to his grand-father in the estate, needed not be served to his father, in the adjudications he had thereon, and on

that title had infeft Lochiel as his vassal, but had sufficient right to them by his apparenacy ; and so was Lochiel's superior, on which title he claimed his estate, *voce* FORFEITURE.

No 11.

*Pleaded* for Urchany ; There is no *ipso jure* extinguishing of feudal rights ; but they must be taken away in a proper manner. The Earl of Dundonald dispoſed lands to his son the Lord Cochran, and infeft him base ; and, on his death, dispoſed them to his grand-son, who was infeft ; and dispoſed them to the Marquis of Clydsdale, No 3. p. 1262. It was found, that the disposition only carried the superiority ; and the apparent heir, after his death, in the base infeftment, carried the property. And the like decision was given in the case of Menzies of Culterallers, and Dickson of Kilbucho. *See* HEIR APPARENT.

*Replied* ; In both these cases the infeftment was in the superiority, and the disponers were apparent heirs to the property ; but their onerous debts were sustained to affect the estate ; and the subsequent heirs, making complete titles to the property, were preferred only to their gratuitous disponees.

*Observed* ; That both superiority and property were irredeemable rights, and distinct ; but a wadset was redeemable, and considered as an incumbrance on the property.

THE LORDS repelled the objection made to the infeftment granted by William Ross of Easterfearn, to Captain David Ross ; and found, that the said William Ross having purchased the irredeemable right to the property of the west quarter of Meikle Allan, it was not necessary that he should make up a feudal title to the wadset of the said lands, that was in the person of Alexander Ross his father, and in which he was apparent heir ; and that these incumbrances could not be taken up by the creditors of the said William Ross, or of Alexander his son, as rights preferable to the property that was vested in William Ross.

Reporter, *Drummorc.* Act. *Lockhart.* Alt. *R. Craigie.* Clerk, *Gibson.*  
*Fol. Dic. v. 3. p. 162.* *D. Falconer, v. 2. No 235. p. 287.*

1757. December 1. GORDON against MAITLAND.

No 12.

A PERSON being creditor in several debts upon an entailed estate, the LORDS found, That the debts were not extinguished *confusione* ; but that, after his death, his heirs whatsoever could pursue for them against the succeeding heir of entail.

*Fol. Dic. v. 3. p. 162.*

\*.\* *See* The particulars of this case, *voce* TAILZIE.

Apparent heir, applying the rents for purchasing an adjudication, operates an extinction ; *see* PAYMENT.

*See* Glendinning against Nithsdale, *voce* PASSIVE TITLE. *See* APPENDIX.