No 9.
whom failing, to the heirs of tailzie. The heirs of the entailer's body failed; and a more remote heir of tailzie succeeded, to both the estate and the bond. The bond remained a distinct and subsisting debt upon the estate.

The heirs male of the entailer's body having failed, the succession, both of the entailed estate and of the bond, devolved upon Alexander Irvine of Murthill, who was accordingly served heir of tailzie to the said estate, but did not expede any service to the said bond of provision. After his decease, his son and apparent heir granted a bond for L. 10,000 Sterling to a trustee, who thereupon charged him to enter heir of provision to Charles, in order to make up a title by adjudication to the L. 80,000 bond; and having thus established the bond in his person, he again charged the apparent heir of tailzie in the estate of Drum, and obtained an adjudication against the estate for the said debt of L. 80,000. In a process at the trustee's instance against the heirs of entail, concluding that the bond of L. 80,000 Scots was a subsisting debt, and did effectually burden the entailed estate of Drum; the LORDS found, That the heir male of Murthill being served heir to the estate of Drum, his service did not state him in the right to the L. 80,000 bond, so as to operate a confusion in his person; and that this Drum being charged to enter heir in special to Charles, and adjudication having thereon followed, did not operate a confusion of debtor and creditor in this Drum's person; and therefore found, that the said bond of provision is not extinguished, but is still a subsisting debt upon the estate of Drum. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 196.

1728. *January* 27.

JOHN MURRAY *against* NEILSON of Chapel, and LANIRK of Ladylands.

No 10.
An apparent heir, liable *passive* upon behaviour, having purchased an apprising upon his predecessor's estate, while the legal was current, and conveyed the same to a singular successor; the same was found effectual in a competition, and not extinguished *confusione* in the apparent heir's person.

IN a competition betwixt these parties, about the lands of Conheath, Neilson and Lanirk's titles, being apprisings deduced against the lands of Conheath, bought in by Elizabeth Maxwell the apparent heir, and conveyed from her to these purchasers; it was *objected* against the apprisings, That they were extinct *confusione*, being bought in by the apparent heir, during the legal, after she had behaved as heir, liable thereby to all her predecessor's debts, and to these apprisings among the rest; whereby there came to be a *confusion* of debit and credit in her person.

To which it was *answered*, That apprisings were never thus understood to be extinguished; witness the noted case of an apparent heir, possessing by virtue of an adjudication led upon his own bond, which was never understood to be an extinction, though a stronger case than that in dispute. *See* Lord Stair, *l.* 1. *t. ult.* § 9. *in med.* And though such a possession, since the act of sederunt 1662, did infer a passive title, nevertheless the adjudication was a good title, whereupon to possess the estate, and even to dispose upon it by sale, which could never be quarrelled by a succeeding heir. And indeed the same thing continues to be law still, even after the act 1695; for that law only makes the heir possessing upon such a diligence *passive* liable to the debts, but does not

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 anthor, '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 make up 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