ed to Sir Peter and his heirs or assignees, could not have been affected for his debts; seeing there is no law that declares such acquisition should become *ipso facto* extinguished; especially if a conveyance, and not a discharge, was taken thereto; but when it is considered, that the right in question is a proper wadset, and not an heritable bond or adjudication, the argument is still stronger; as these are extinguishable by possession, which a proper wadset is not; nor is there the least foundation for presuming that the wadset was paid out of the rents of the estate. 2*do*, It may be true, that, when a person who is debtor acquires a right, it will, in some instances, be extinguished *confusione*; yet, in others, the confusion does only operate a temporary suspension of the effect of their right, *e. g.* if two separate estates are sprung from the same subject, and happen both to centre in one person, this does not itself *eo ipso* sopite the two estates, so as they may not descend thereafter to different heirs, or that one may and the other may not be affectable for the debts of the heir for the time being; nor does it make any difference, that Sir Peter did not take the conveyance in the name of a trustee; seeing it would have belonged to him just as much in that shape, as in the way it was taken; and consequently equally liable to be affected. No 9.

THE LORDS found, that the wadset was affectable by the Creditors to the extent of 27,090 merks.

Fol. Dic. v. 1. *p.* 201. *C. Home, No* 9. *p.* 26.

1736. *July* 6. EDGAR *against* JOHNSTON *alias* MAXWELL.

No 10.
A right may be completed upon any one of two titles competent.

AN estate being disponed to an eldest son in his contract of marriage, and to the heirs-male of his body, which failing, to the heirs-female of his body, the said eldest son, after the father's decease, neglecting to infeft himself upon the disposition in the contract, made up his titles as heir of the investiture; again, after his decease, his son made up his title also as heir of the investiture, and thereupon made a gratuitous conveyance of the estate. The heirs-male of the marriage having failed in him, the heir-female was served heir of provision in general upon the contract of marriage, and thereupon claimed the estate upon this *medium*, that the gratuitous disponee can be in no better situation than the heir general, or the heir of investiture, who would be bound by the deed of his predecessor, granter of the disposition, in the contract of marriage. It was *answered*, That the disposition being in favour of the apparent heir, was absorbed by his making up titles to the estate as heir general; and it would be an useless form to oblige him to infeft himself over again, upon the disposition in the contract, or to oblige his son to serve heir of provision to him in general, in order to carry the provision in the contract, which would not make the estate more amply theirs than it was by their making up titles as heirs of the investiture.—— THE LORDS repelled the allegeance, that the right of the contract of marriage

No 10. was not established in the person of the heir, in respect of the answer, that the real right of the estate was established in this person.

Fol. Dic. v. 1. *p.* 200.

*** Kilkerran reports the same case:

THE estate of Elshieshiells, which, by the investitures, stood provided to heirs male, was, in the year 1684, disponed by John Johnston of Elshieshiells, in his son Alexander's contract of marriage, to Alexander and the heirs-male of that marriage; which failing, to his heir-male of any other marriage; which failing, to the heir-female of that marriage; and there being no provision in this contract, that Alexander the son should only enjoy the estate by virtue of that title, he, upon his father's death, made up his titles by special service to his father as heir-male, and was thereupon infeft.

It happened that Alexander had only a daughter of that marriage, mother to Theodore Edgar; but having married a second time, he had two sons of this last marriage, the eldest whereof made up his titles to the estate by special service as heir-male to his father; and on his decease, without issue, the second son made up his titles by service as heir-male to his brother, and being infeft, disponed the estate *gratuitously* to James Maxwell, younger of Barncleugh, his brother-uterine.

Upon the death of the said second son, also without issue, Theodore Edgar, grandchild to Alexander, by his daughter of his first marriage, purchased brieves for serving himself heir of provision to his grandfather Alexander, by his foresaid first contract of marriage, in order to set up a claim to the estate; which the said James Maxwell having opposed, upon report of the assessors the LORDS found, 'That the son of the second marriage might gratuitously alter the destination in the contract of marriage; and repelled the objection, that the right to the provision in the contract of marriage had not been established in the person of Alexander Johnston; in respect of the answer, that the real right to the estate was established in the said Alexander's person.'

Where one has it in his power to make up his right to an estate by either of two titles, *v. g.* upon the destination in his contract of marriage, or upon the ancient investitures of the estate, and is under no restraint which of the two he shall chuse; if he chuse to make up his titles on the one, *v. g.* upon the ancient investitures, and conveys away the estate, as in this case, no subsequent heir can take up the estate upon the provision in the contract of marriage, and thereupon quarrel that conveyance.

Kilkerran, (CONSOLIDATION) *No* 1. *p.* 148.

See APPENDIX.