

and it must be confessed that the forms of the feudal right make a good deal of difficulty in this case, which in my apprehension can only be solved upon this principle, That a man having several rights in his person, and choosing to make up a title to any one of them, is thereby presumed to renounce and repudiate the rest ; as if in this case, for example, he had renounced and discharged the wadset, or used an order of redemption against himself, which was hinted from the bench ; but to this effect, not to be used by any creditor or taken up by any heir, but not to be so extinguished as that they could not be used to defend the right upon which the title is made up against any prior or preferable right.

N.B. The Lords, in this case, had no occasion to determine the question of the succession dividing and the principal right going to one heir and the incumbrances to another ; but it is believed, if the case were happening, the Lords would find that the heir to the principal right upon which the titles were made up would carry all. (Vide *Gray against Smith*, 8th November 1751.)

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1751. *November 26.* DOUGLAS of DORNOCK *against* SIR ROBERT DICKSON.

[Kilk. No. 6, *Heritable and Moveable.*]

IN this case it was the opinion of my Lord President and some others of the Lords, that a charge upon an heritable bond conceived after the new fashion, did not make the debt moveable so as to go to executors ; and the reason of the difference betwixt the old and the new heritable bonds is, that a charge upon an old infettment of annualrent did resolve the heritable right *pro tempore*, till it was passed from, because a man could not have both the annualrent-right and the price of it ; but it is otherwise in the modern heritable bonds, which being only a security for money, not a purchase of annualrent-right, a charge upon them does not alter their nature. But the other Lords put their opinion in this case upon specialties.

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1751. *December 4.* CREDITORS of CASTLESOMERVILLE.

[Kaimes, No. 127.]

THE Lords in this case found that a *plurispetitia* in an adjudication, or adjudging the lands for more than was truly due, provided it was not done *fraudulenter vel dolose*, did not annul the adjudication *in totum*, but only reduced it to a security for principal sum and annualrents ; and this was agreed to by the other party, so that it came to be a question of fact whether the *plurispetitia* in this case was fraudulent, or proceeded from ignorance or mistake.