

No 3.

Some of the LORDS were of the opinion, That bonds of that nature should belong to the heirs of line, for these reasons, *1mo*, That the heir of line is general heir and successor *in universum jus, tam active quam passive*, and is liable to the *onus tutelæ*, and other burdens; and *penes quem onus, penes eundem emolumentum*; unless the benefit of succession be provided otherwise, either *provisi-one hominis*, in the case of tailzies, or *legis*; and there is no law settling upon the heir of conquest the right of succession as to heritable bonds, whereupon no infeftment has followed. And the law of the Majesty, (*Quon attach. c. 88.*) is only in the case of *terræ et tenementa et feuda*, as appears by the very words of the said ancient laws, and by Craig, and Skeen *de verborum significatione, in verbo conquestus*, and *verbo breve de morte antecessoris. 2do*, As bonds cannot be called heritage, so they cannot be esteemed to be conquest; heritage being properly lands, wherein a person succeeds as heir to his predecessor; and if the heir of conquest, who is now found to have right to such bonds, should decease, though the same would descend and belong to the heir of line, yet such bonds cannot be called heritage; and minors *qui non tenentur placitare de hæreditate paterna*, could not plead the same privilege in the case of heritable bonds.

3tio, Lands and *feuda* can only be said to be heritage, or to be conquest, when parties have a real right to the same by infeftment; but as to bonds, they do not settle *jus in re*, but at the most a *jus ad rem*.

4to, Comprisings, dispositions, and reversions, being more of the nature of conquest, especially reversions, which are real rights, and do militate, not only against the granters, but singular successors, do descend and pertain to the heir of line, and not to the heir of conquest. See No 6. *infra*.

Dirleton, No 295. p. 144.

* * * See this case by Gosford, *voce* SUCCESSION.

1676. July 21.

A. against B.

No 4.

THIS day the Lord Craigie reported a competition between an elder and a younger brother, as to the right of an heritable bond due to the middle brother, bearing a clause of infeftment, but no infeftments following; which the LORDS found to belong to the elder brother as heir of conquest.

Fol. Dic. v. 1. p. 375. Stair, v. 2. p. 456.

1675. February 23.

A. against B.

No 5.

A COMPRISING, on which no infeftment had followed, was found to belong to the elder brother.

Fol. Dic. v. 1. p. 375. Dirleton.

* * * See this case, No 3. p. 2448.