No 8.

nation of *separata tenementa*, the rights thereof being established and carried down in the same manner as lands by charter and sasine. Indeed, before the Reformation, they were not *in commercio*, and so could not be deemed to fall under the statute; but thereafter, when they became commercial, of course they behoved to be comprehended under the old law.

As to the specialty arising from the particular circumstances of the case, it was *answered*; The succession settled by law is not to be varied and over-ruled by so slight presumptions of the intention of the purchaser, where with certainty it cannot be affirmed what his intentions were, touching his succession, failing issue of his own body. By neglecting to make any substitution to these, it is presumable, he left the succession to be governed by the rules of law; and it is of no import that the 'heirs whatsoever,' mentioned in the right of the teinds, were to answer to courts, &c. seeing these could be performed by the heir of conquest, if he succeeded to the teinds, as well as by the successor in the lands; and, if both could perform the services according to the tenor of their several rights, no necessary consequence can be drawn from the reference in the disposition to the precept; that tending to no other purpose than to ascertain the services by the heir and successors in the right to the teinds.

Replied for the Heir of Line; It is not to the purpose that teinds are called *tenementa* or *feuda*, since these are none of the *tenementa* denoted in the statute. Were it necessary, it could easily be shewn that teinds are in no legal sense *tenementa*; as a disposition of lands, or of lands and tenements, was never supposed to comprehend teinds; and, if they do not fall under a general description of lands and tenements at this day, How is it possible to maintain it could be otherwise, when they were the peculiar property of churchmen?

As to the argument drawn from the extension of the law of death-bed, it does not apply, because that law is extremely useful to the nation; therefore, when the subjects of succession came to multiply, the Court justly extended the same; but there is no advantage by extending the succession of an heir of conquest. Besides, if the argument proves any thing, it proves too much; for, according to that reasoning, tacks or bonds, (secluding executors) which have been adjudged to the heir of line, ought to go to the heir of conquest; since the law of death-bed militates against conveyances of these *in lecto*.

THE LORDS found that the succession to the teinds devolved upon the heir of line, and not the heir of conquest.

C. Home, No 44. *p.* 78.

1738. *December.* 8. The CREDITORS of MENZIES *against* MENZIES.

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A BOND containing an obligation to infeft, though no infeftment had followed upon it, found to belong to the heir of conquest, and not to the heir of line.

Kilkerran, (HERITAGE and CONQUEST.) *No* 1. *p.* 251.

*** This case is reported by C. Home, No 81. p. 5519.