

The law, in this particular, had, in some measure, no doubt, been altered by the statute 20th Geo. II. C. 20. but though this enactment had gone the length of obliging the superior to receive purchasers in place of his former vassals, it had no where declared or appointed that a composition should be paid on that account; and although it were admitted that a composition was exigible from a purchaser, it did not follow that such right could be extended to affect the Crown's donatar; it being a general rule in practice, that no composition of this nature had been in use to be exacted from donatars of any description, whether by forfeiture, *ultimus heres*, or bastardy.

If it had been intended that subject superiors, who did not choose to sell their superiorities, should be entitled to a year's rent upon receiving the Commissioners appointed by the Crown, the statute 25th Geo. II. C. 41. would have declared so in express terms, and have made provision for payment of the money. Nothing of this kind had been done; on the contrary, the clam made, in the present instance, was not only inconsistent with the whole system of the vesting and annexing acts, but was adverse to the spirit and language of the statute founded on.

The Court was much divided upon this question. Several Judges of high authority were of opinion, that, according to the enactment 1690, C. 33. the Crown could take the estate merely *tantum et tale* as it had been vested in the traitor; and as the purchaser or donatar of the traitor must have paid the composition, the Crown's donatar could be in no better situation. The majority, however, were of opinion, that no composition was due; and an interlocutor was pronounced—repelling the reasons of suspension, and finding the letters orderly proceeded; to which, upon advising a petition and answers, the Court adhered.

Lord Ordinary, *Kames*.
Clerk, *Gibson*.

For the Duke of Gordon, *Lockhart*, *Macquhen*.
For the Crown, *Adv. Montgomery*, *Sol. H. Dundas*.

R. H.

Fac. Coll. No. 121, p. 356

1777. July 4. MACKENZIE against SIR HECTOR MACKENZIE.

The Lords found, that a superior of entailed lands was obliged to enter the heir of entail, who in this case was likewise the heir of the former investiture and lineal successor in the lands, on receiving a *duplicando* of the feu-duty, and was not entitled to demand from him a year's rent or other composition; reserving to the superior, and his successors in the superiority, any right which they may have to a year's rent or other composition on the entry of any future heir of tailzie, not an heir of investiture prior to the tailzie. See APPENDIX

Fol. Dic. v. 4. p. 314.