the decision in the case of Halkerton was given, he would have been of a different judgment. But Arniston said he did not now so much disapprove of that first decision as once he did. Arniston also thought as to the lands of Balgray and that there had been no express clause for consolidating the property with the superiority, and no procuratory for resigning *ad remanentiam*; that wherever a superior acquires the property, the presumption is, that it is in order to consolidate them and let them descend to the same heir. He was of the same opinion also as to the purchase of teinds, and even seemed to doubt, whether in any case teinds should go to an heir of conquest, because of their own nature they do not require infeftment.

HOMOLOGATION.

No. 1. 1744, July 20. LIDDLE *against* DICK.

AN heritable bond being granted for 10,600 merks, and sasine taken upon it; posterior creditors objected, That one of the witnesses in the bond was not designed. Answered, Homologation by an assignation to the maills and duties of the date of the bond, and relative thereto in all respects formal. Lord Kilkerran found the homologation not good to support the infeftment against the competing creditors; and we adhered, though we all agreed that it was a good homologation of the personal obligement against all mortals, and even of the heritable bond and infeftment against the granter.

HORNING.

No. 1. 1735, Feb. 1. A. *against* B.

LORD MILTON reported a bill of horning upon a decreet of scandal of the Commissaries against a wife for L.30 Scots, but assoilzieing the husband. The question was, Whether the horning should also go against the husband for his interest, and whether in point of form it would not be a nullity to charge a wife without charging her husband for his interest, in the same way as if it were an heritable debt of the wife's the husband behoved to be charged, or in the case of pupils and minors, the tutors and curators are charged for their interest, though not liable for the debt. We all agreed that neither denunciation nor caption should follow against the husband, and the President proposed that the horning should go against him, but qualified in that manner. Others thought the wife might be charged without charging the husband, so as both denunciation and caption might follow against her because the decreet was for a delict. I doubted that caption could follow against her during her marriage at any rate, because however it was originally a delict, now *devenit in alium usum*, it was become a civil debt, and diligence was issuing out of this Court for recovering it, though originally the Commissaries might as a part of the sentence have imprisoned her till payment. And I also

doubted that in form the wife can be charged with horning without charging the husband, for no process can go against a wife though for a subject purely heritable, or wherein he has no interest *jure mariti*, without calling the husband; and horning is a process, and so called in our law books, and so where the horning is for a debt of the wife purely heritable the husband is always charged for his interest. However, the Court ordered the letters of horning to be issued against the wife alone, and not against the husband even for his interest.

No. 2. 1742, Dec. 2. MURDOCH KING *against* JOHN HUNTER.

See Note of No. 35. *voce* ADJUDICATION.

No. 3. 1745, June 5. MARY HAY *against* STEWART of Kincarachie.

See Note of No. 6. *voce* ASSIGNATION.

No. 4. 1746, June 4. A. *against* B.

UPON a doubt suggested whether a horning executed in October or November 1744, and might have been denounced and registered within the year, but was not denounced till lately, might be now registrated upon the late act of Parliament; the Court were unanimous that it might, and ordered it to be marked as their opinion in the books of sederunt.

No. 5. 1747, Nov. 27. ANDREW RAMSAY *against* CHILDREN of HAY.

See Note of No. 8. *voce* ANNUALRENT.

HUSBAND AND WIFE.

No. 3. 1734, Feb. 8. ANDERSON LADY LOQUHARRET *against* WELSH.

THE Lords found the wife had no action for repeating her tocher on account of the divorce—unanimously except the President, who gave no opinion, but proposed a hearing, —and I now doubt of the judgment. *Vide* Balfour, Tit. MARRIAGE.

No. 4. 1735, Jan. 15. GEMMILL *against* CHRISTIAN YULE.

THE Lords found the *præpositura* by the wife's keeping a tavern while the husband lived in the family not relevant to enable her to sell or pledge the household furniture, unless the defender prove the wife's being in use to buy liquors for the house, and grant obligations with the husband's knowledge or approbation. They also found, that the tea-plate