

administration, he had that equality in view, as well as to answer his own obligation. No. 39.

The Lords adhered.

*C. Home, No. 17. p. 39.*

1736. December 17. GREENOCK *against* GREENOCK.

No. 40.

A proprietor, who had his estate by inheritance, made a purchase of the teinds of his lands, and was infeft in the teinds by charter and sasine. After his death, the question occurred, Whether this subject should go to the heir of line, or of conquest? The Lords preferred the heir of line, who, in this case also, succeeded to the land-estate.

*Fol. Dic. v. 2. p. 401. C. Home.*

\* \* This case is No. 8. p. 5612. *voce* HERITAGE AND CONQUEST.

1740. January 8. DUKE of HAMILTON *against* EARL of SELKIRK.

No. 41.

The late Earl of Selkirk, superior of the lands of Balgray, having made a purchase of the property, but without completing the same by a resignation *ad remanentiam*, the Duke of Hamilton, his heir of conquest, claimed the same, as being a separate subject, not consolidated with the superiority. The Lords found, That they belonged to the Earl of Rutherglen, who was heir of investiture of the superiority; and the same was found with regard to the teinds of Crawford, purchased in by the defunct, the lands being entailed upon the Earl of Rutherglen.

*Fol. Dic. v. 2. p. 401. Kilkerran.*

\* \* This case is No. 10. p. 5615. *voce* HERITAGE AND CONQUEST.

1742. February 5.

MR. GEORGE AYTON *against* The CREDITORS of ALISON of Birkhill.

No. 42.

February 25, 1675, Sir John Leslie, proprietor of the lands of Newton, &c. resigned the same to himself, in life-rent, and to John Leslie his son, &c. which failing, to Clara Leslie his daughter, and the heirs of her body; which failing, to Helen Leslie his youngest daughter, and the heirs of her body; and failing all, to his nearest and lawful heirs and assignees whatsoever, &c. At this time Sir John had two other daughters, than the two called by the above substitution, viz.

An heir expressly excluded cannot succeed even on the failure of all the substitutes nominated.