

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.

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### HOMOLOGATION.

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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 mails 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 obligation against all mortals, and even of the heritable bond and infeftment against the granter.

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### HORNING.

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

LORD MILTON reported a bill of horning upon a decret 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 decret 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