No 18. —It was *answered*, That the 32d act, Parliament 1661, declares bonds bearing annualrent to exclude the fisk, without any exception or limitation.

THE LORDS having considered the act, found, That it left bonds bearing annualrent in the same case that they were formerly; and found, that before the term of payment of annualrent they were moveable.

Fol. Dic. v. 1. *p.* 253. *Stair, v.* 1. *p.* 544.

*** Gosford reports the same case:

DAVID DICK, donatar to the escheat of Alexander Ker, did pursue a special declarator against James Ker, debtor to the rebel, for payment of 500 merks, conform to a bond bearing annualrent, granted to the rebel anno 1653. After his rebellion, this bond was found to belong to the donatar, notwithstanding it was *alleged*, That by the late act of Parliament, bonds bearing annualrent, *quoad fiscum*, should remain in the same condition as they were before November 1641, not to fall under escheat, because the bond being granted to the rebel, who was at the horn before the term of payment, before the year 1641, it would have fallen in escheat by the constant law and practique.

Gosford, MS. p. 5.

1677. *January* 12. JAFFRAY *against* LAIRD of WAMPHREY.

No 19. A SUM, due by a bond bearing an obligement to infeft and requisition, was found to be moveable after requisition, and to fall under escheat, notwithstanding the late act of Parliament ordaining bonds bearing annualrent to be heritable; but remains still heritable *quoad fiscum;* in respect bonds of the nature foresaid became moveable by requisition, even before the said act of Parliament; and the fisk, since by the foresaid act of Patliament, is not put in better case, is not in worse.

Reporter, *Glendoich.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 253. *Dirleton, No* 424. *p.* 211.

*** Gosford reports the same case:

THE Lady Wamphrey, as having right to the Laird of Wamphrey her husband's escheat, in a double-poinding raised at the instance of the Earl of Annandale, who was debtor to the deceased Laird of Wamphrey in the sum of L. 1000 Sterling, by an heritable bond bearing a precept of sasine; it was *alleged* for the Lady, That she ought to be preferred, as having right from the

donatar to her husband's escheat, because, albeit the bond was heritable, yet her husband had made requisition against the Earl of Annandale, and thereupon taken instruments herewith produced, which made the sum moveable and to belong to the fisk so soon as he was denounced rebel and put to the horn. It was *answered* and *alleged* for the Creditors, That notwithstanding they ought to be preferred, 1*mo*, Because albeit requisition of an heritable sum makes it become moveable, so as it may be confirmed and belong to the executors; yet the bond continuing to bear annualrent, is not moveable *quoad fiscum*, and cannot fall under escheat more than any other bond bearing annualrent, without any precept of sasine, which by the act of Parliament are still heritable *quoad fiscum et relictam*; 2*do*, The instrument produced can be no ground to sustain a legal requisition, because it does not bear that the procuratory was either produced or read, or the bond. It was *replied* to the *first*, That by requisition of an heritable sum which became altogether moveable, and fell under the Creditors' escheat, so soon as he became rebel, the principal sum as well as the whole annualrents, did belong to the fisk, ay, and while they were paid. It was *replied* to the *second*, That the instrument was now produced with these amendments, under the notary's hand, and was offered to be proven by witnesses who were present, and saw both the bond and procuratory read and produced the time of the requisition. THE LORDS, as to the first point, did prefer the donatar, and found that by requisition the whole sum contained in the bond became moveable, and the Creditors having done no diligence before Wamphrey became rebel, and his escheat gifted and declared, the Creditors had no right to compete; but, as to the second point, they found that the requisition was not lawful, the instruments first produced not bearing, that the procuratory was shown and read, and that it could not be supplied by a new instrument, the notary being *functus officio*; and that all such legal deeds being produced imperfect, it is not in the power of a notary to make up the same, neither is it probable by witnesses,

Gosford, MS. No 938.

No 19.

1685. *January* 27. A. *against* B.

No 20.
A bond of relief not being liquid falls not under escheat, unless there had been a distress prior to the denunciation by which the relief could take effect.

THIS case was reported by Pitmedden, if a bond of relief and warrandice of an heritable sum secured upon infetment, falls under the single escheat of him to whom the said bond is granted, as being *jus mere personale*, or if *sapit naturam surrogati*, and assumes and participates of the nature of the heritable right to which it is accessory; 'THE LORDS found, it not being liquid, that it could not fall under his escheat, unless there had been a distress prior to the denunciation by which the relief could take effect.' Yet, *see* Balmanno's Practiques, Edgar against Cant, *voce* HERITABLE AND MOVEABLE, where a bond of