

It was further *alleged* for Frazer, absolvitor from the L. 10,000, because it being a moveable sum, fell under Sir Alexander Frazer's escheat, which was gifted to one Forbes, and declared expressly as to this L. 10,000, and assigned to the Lord Frazer.—The pursuer *answered*, That this sum was heritable, because it succeeded in the place of the principal obligation, not to alienate for such a time; and after that time, to offer the lands to Phillorth and his heirs, for L. 8000, which is clearly an heritable clause; and therefore this sum coming in lieu thereof, must belong to the heir or assignee, and so fell not to the fisk, seeing *surrogatum sapit naturam surrogati*, as sums consigned for redemption of lands before declarator are not moveable, but belong to the wadsetter's heirs or assignees; so in mutual obligations, whereby one person obliges to dispoise or resign lands, and another is obliged for a price, the price would not belong to the executor or fisk, but to the heir; any sums due for damage and interest, not performing a disposition, or upon eviction, belong to the heir, not to the executor.—The defender *answered*, That this sum is not in the case of any of the former allegances, neither is the question here, what would belong to the executor, but what would belong to the fisk; for moveable heirship belongs to the heir and not to the executor, and yet belongs to the fisk; so do sums without destination of annualrents, wherein executors are secluded; so also doth the price of lands when they are *de presenti* sold by the defunct.

THE LORDS found this sum moveable and belonged to the fisk, and therefore assoilzied the defender from that member also.

Stair, v. 1. p. 169.

1666. July 31.

GRAY *against* GORDON.

A BOND being granted to Sir Robert Farquhar, and bearing the term of payment to be diverse years after the date of the same, and annualrent to be paid in the interim, termly and yearly, was found to be heritable *quoad fiscum*, though Sir Robert Farquhar had deceased before the term of payment of annualrent; and the assignee was preferred to a donatar.

Dirleton, No 39. p. 16.

1668. June 26.

DAVID DICK *against* KER.

DAVID DICK, as donatar to the escheat of ——— Ker, insists in a special declarator for payment of a sum due to the rebel.—The defender *alleged* absolvitor, because it being a bond, bearing annualrent, it fell not under the single escheat.—It was *replied*, That bonds bearing annualrent are still holden moveable until the first term of payment of annualrent, and are disposeable by testament, if the defunct die before that term; but here the rebellion was before the date of the bond, and so the sum fell to the fisk the day it was subscribed.

No 16.

No 17.

No 18.

Bonds bearing annualrent are moveable before the term of payment of annualrent, and fall under single escheat.

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 practise.

Gosford, MS. p. 5.

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

No 19.

A SUM, due by a bond bearing an obligation to infest 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 Parliament, 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-pounding raised at the instance of the Earl of Anandale, 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