No 13.

till his death, albeit there was no contract of marriage, nor a tocher, and that the husband had, after the marriage, given some provision to the wife.

Fol. Dic. v. 1. p. 385. Stair, v. 1. p. 290.

*** Newbyth reports the same case:

ISOBEL EDGAR, relict of James Pitcairn of Lordon, having right to the sum of 4000 merks by virtue of her contract of marriage; and this sum being acclaimed by William Oliphant, who was executor creditor decerned and confirmed to the said James Pitcairn, and to the which sum it was alleged the said James had right *jure mariti*, and consequently was *in ejus bonis* the time of his decease;—it was *alleged* for the relict Isobel Edgar, That the sum could not belong to her husband *jure mariti*, being heritable, the term of payment being come, and bearing annualrent before the marriage; and, by the late act of Parliament, in *anno* 1661, it is provided, that albeit bonds bearing annualrent be moveable *quoad* the executors; yet, where such bonds are made to the wife, no part thereof is to pertain to the husband *jure mariti*; nor, where bonds were made to the husband, no part to pertain to the wife *jure relictæ*, and is *correctionem juris veteris*, and drawn back to the year 1641. To which it was *replied* for the pursuer, The allegeance ought to be repelled; because the term of payment was not come, nor did bear annualrent the time of the act of Parliament 1641; and, by the said act of Parliament, all bonds, even bearing annualrent, if they bear not an obligement to infeft, and seclude the executors, are declared to be moveable, and belong to the executors; and the only exception in that act is, *nisi quoad fiscum et relictam*, which *format regulam in casibus non exceptis*.—THE LORDS found there was no *jus mariti* in this case, in this sum of 4000 merks, by virtue of her parent's contract of marriage, to which the husband, and consequently his creditors, could have right; but found they had good right to the annualrents preceding the husband's decease.

Newbyth, MS. p. 30.

*** In conformity with the above, was decided the case Rollo against Brownlee, No 121. p. 2653.

1673. *December* 6. ROBERT ROBERTSON *against* LORD HALKERTON.

No 14.

IN an action pursued at Robertson's instance, as assignee in and to a bond granted by the Lord Halkerton, father to the pursuer's cedent, viz. the Lord Halkerton's sister against the Lord Halkerton, as representing his father, it was *alleged*, That this assignation not being intimated before the cedent's marriage with the Laird of Laurieston, the bond, being a moveable bond, did fall to him

jure mariti, and Laurieston's executors could only have right to pursue therefor. It was *replied*, That Laurieston's executors did not compear nor crave preference; and if they were compearing, they could not crave preference upon the foresaid ground, because the assignation bearing absolute warrandice, Laurieston and his executors could never quarrel the same as not being intimated, they being obliged in law to make good the Lady's assignation to the pursuer.—THE LORDS did repel the defence in respect of the reply, but ordained the pursuer to grant a receipt, with sufficient warrandice, against the Laird of Laurieston, or any representing him.

No 14.

Fol. Dic. v. 1. *p.* 385. *Gosford, MS. No* 644. *p.* 375.

1682. *January* 26. BARCLAYS *against* PEARSON.

No 15.

THE creditor in a bond dying after the term of payment of the principal, and before the term of payment of annualrent; the bond was found moveable as to the relict, the payment of annualrent being that which makes it heritable *quoad relictam*; but a clause to infeft would have made the bond heritable *ab initio*; and it is debateable, if a clause secluding executors would exclude the wife from her part of a bond, otherwise moveable, albeit it would cut off the fisk and executors.

Fol. Dic. v. 1. *p.* 385. *Harcarse*, (BONDS.) *No* 171. *p.* 38.

1684. *March*.
MR WILLIAM GORDON, Advocate, *against* Sir PATRICK OGILVIE of Boyn.

No 16.

A BOND heritable by a clause to infeft, assigned to a woman, her heirs and executors, found to remain heritable in the assignee's person, and not to fall under her husband's *jus mariti*.

Fol. Dic. v. 1. *p.* 385. *Harcarse*, (BONDS.) *No* 195. *p.* 44.

1693. *January* 19.
SCOTT, and THOMAS FENDAR, now her Husband *against* PARKS, her Children.

No 17.
Found, tho' a charge of horning, on a bond bearing annualrent, made it moveable

THE LORDS found, seeing there was no contract of marriage between her and her first husband, that his putting her name in the liferent of a bond of four thousand merks could not be ascribed in satisfaction of her third of the moveables *pro tanto*: But, as to the 2*d* point, found, though a charge of horning, on a bond bearing annualrent, made it moveable *quoad* the nearest of kin, and