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

No 20. relief was found moveable, and to belong to executors, though the principal bond was of a different and heritable tenor.

Fol. Dic. v. 1. *p.* 254. *Fountainhall, v.* 1. *p.* 334.

SECT. III.

To whom Single Escheat falls.

1542. *May* 28.

ORMISTON, the King's donatar, *against* The BURGH of EDINBURGH.

No 21.
If a man is convicted for slaughter within burgh, his escheat belongs to the burgh; but if he is fugitate for not compearance, his escheat belongs to the King.

GIF ony man committis slauchter within Edinburgh, and beis apprehendit and convict thairfoir, the escheit of his moveabill gudis aucht and sould pertene to the Burgh and communitie of Edinburgh, *ratione criminis commissi, infra burgum.* But gif ony persoun committis slauchter within the samin Burgh, and is fugitive, and denuncit rebell, for non-compeirance to underly the law thairfoir, in that cais his escheit aucht and sould pertene to the King, becaus in this cais his escheit falls not be reasoun of crime committit within the Burgh, but be reasoun of his non-compeirance.

Fol. Dic. v. 1. *p.* 254. *Balfour,* (BURROW.) *No* 43. *p.* 52.

*** This case is reported by Sinclair, No 18. p. 2265.

1609. *February* 23.

LAIRD of BAIRFUTES *against* DRUMMOND and MAUCHAN.

No 22.
A husband's *jus mariti* of lands, belonging to his wife which falls under single escheat, was found to belong to the wife's superior, and not to the King.

ARCHIBALD HAMILTON of Bairfutes, as having by gift of my Lord of Lothian, the liferent of sik lands as Agnes Mauchan held of his Lordship, fallen in his hands by the rebellion of Harry Drummond, and his remaining year and day at the horn, pursued for declarator thereof. Compeared Mr John Kerr, donatar to the said Harry's escheat, given to him by the King's Majesty, and being admitted for his interest, *alleged,* That no declarator could be granted to the pursuer upon the Earl of Lothian's gift, because nothing could fall to the Earl, but the liferent of his vassal who was not at the horn, and the rebellion of her husband could not make her liferent fall, because he was not vassal to the Earl; and if she was either divorced, or her husband died before her, neither his