No 2. the bond remained heritable, and was otherways moveable, and that they could not *multo minus* comprise.

Heritable bond bearing infeftment cannot become moveable by virtue of the provision, that it shall be lawful to charge but requisition, except there be a charge used conform thereto.

Fol. Dic. v. 1. *p.* 536. *Kerse, MS. fol.* 48.

*** Haddington reports this case:

1622. *July* 18, or 19.—In ane action pursued be the Laird of Lugton against Alexander Cranston and others, for reduction of their comprising of the living of Eastnisbet, the Lords fand, that ane comprising was null, whairin the soumes of the comprising were greater nor the soumes contained in the denunciation, and would not permit the defenders to reduce their soume by their declaration to the soumes denounced for.

Haddington, MS. No 2656.

*** See Durie's report of this case, No 2. p. 64. *voce* Adjudication.

1622. *December* 13. Thomson *against* L. Murthill and his Tenants.

No 3.
Found in conformity with Mowat against Richardson's Creditors, No 1. *supra.*

In an action pursued by George Thomson, writer, against L. Murthill and his Tenants, in whose hands certain sums were arrested, for making of the saids arrested goods furthcoming, the Lords would not sustain the pursuit, because the arrestment, which was the ground thereof, was raised upon an heritable bond made to the pursuer, for satisfaction of the which heritable sum, before it was made moveable by the party to whom the heritable bond was granted, by raising charges against the party obliged, for causing of him to pay the principal sum.—The Lords found, that no such arrestment could be execute, nor pursuit thereupon sustained, for the principal sum; albeit the pursuer *replied*, that albeit the bond bore, that the party was obliged to pay annualrent for the sum, yet it is thereby provided, that he should pay the principal sum, whensoever the pursuer should suit the same, and by his arrestment he suits the same; neither is it necessary to him to use any preceding charge; for, as he may poind without a personal charge preceding, and could not be debarred therefrom by that alleged heritable clause of paying annualrent contained in the bond, so he might arrest lawfully, notwithstanding of that clause; which allegeance and answer was repelled by the Lords, and the action was not sustained.

Act. ——. Alt. *Haliburton.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 536. *Durie, p.* 39.

*** Haddington reports this case:

No 3.

1623. *December* 14.—GEORGE THOMSON having a bond of L. 1000 made to him by Lyall of Murthill, which was heritable, with provision, that, notwithstanding thereof, it should be lawful to him, at any term, to seek payment of the principal sum; he arrested a debt owing to Murthill, and pursued to make it furthcoming. Compeared Mr George Haliburton, who having the like bond of Murthill, whereupon he had charged for payment of the sum, and denounced Murthill, and so had interest to stay Thomson, to be preferred, and *alleged*, that Thomson's arrestment was not lawful, because he had not made the sum moveable, by charges for payment thereof, before the arrestment; which the LORDS found relevant.

Haddington, MS. No 2700.

*** See a case between these parties, No 36. p. 3641. *voce* ESCHEAT.

1623. *March* 6. FINLAYSON *against* JOHNSTON.

No 4.
Found, that a person might comprise upon an heritable bond, where the bond gave liberty to the creditor to ask the money without requisition, altho' there was no preceding charge used against the party to pay the sum, thereby to make it moveable.

IN an action of Robert Finlayson *contra* David Johnston, the LORDS found, that any person might comprise upon an heritable bond, where the bond gave liberty to the creditor to ask the money without requisition, albeit there was no preceding charge used against the party to pay the sum, thereby to make it moveable, except the clause of the bond made express mention, that a charge should precede; for the bond bearing, that the sum should be paid when the party pleased to seek the same, without requisition, and providing that execution of horning and poinding should pass thereupon, as it was lawful to poind the debtor's moveable goods thereupon, without any other preceding charge, so it was lawful to comprise; and that the deducing of the comprising was enough to declare the parties will, that he made the same moveable, seeing the bond bore no clause for any preceding charge to be used.

Act. *Nicolson & Cunningham.* Alt. *Hope & Belshes.* Clerk, *Gibson.*
Fol. Dic. v. 1. *p.* 536. *Durie, p.* 56.

*** See a similar decision 27th February 1623, Haliburton against Murthil's Creditors, No 36. p. 3641. *voce* ESCHEAT.

1624. *March* 2. COLTHIRD *against* PATERSON.

No 5.
Found in conformity with the above.

IN an action betwixt Colthird and Paterson, the LORDS sustained a comprising deduced upon a bond, for payment of a sum to the compriser; which