

* * Haddington reports this case :

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. 364I. *voce* ESCHEAT.

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

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, Gihson.

Fol. Dic. v. I. p. 536. Durie, p. 56.

* * See a similar decision 27th February 1623, Haliburton against Murthill's Creditors, No 36. p. 364I. *voce* ESCHEAT.

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

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

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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.

No 5.

Found in conformity with the above.

No 5.

bond, bearing the debtor to be obliged to pay annual, was an heritable bond, albeit the bond and sum therein contained was not made moveable by any requisition, or other preceding charge, executed or given before the comprising, in respect of the tenor of the bond, whereby the debtor was obliged to pay the sum to the creditor at any term whereat he pleased, without any requisition preceding to have been made; and therefore seeing the bond provided not that the creditor should be holden to use any preceding charge, but that it bore, that the debtor should pay at any term whereat the creditor pleased; as at any term, the term being bypast, he might point, so he might also comprise therefor; for, by the comprising, he declared his will, and it was a lawful and ordinary execution, as pointing or horning is. This was proponed in a double pointing.

Act. ———.

Alt. *Sandilands*.Clerk, *Scot*.*Fol. Dic. v. 1. p. 536. Durie, p. 116.*

*** Haddington reports this case:

IN the double pointing betwixt Patersons and Colthird, the LORDS found, That a bond being given for payment of 1000 merks, and failing thereof, to pay annualrent; and nevertheless, if, either at that term, or any time thereafter, the party liked to have his principal sum, that they should pay the same; that the party might crave the principal sum at any time after the term of payment, and that a comprising for the said sum was lawful, albeit Paterson had neither charged to pay the sum, nor made premonition for it.

Haddington, MS. No 3046. p. 2127.

*** See a similar decision, 4th July 1627, Edgar against Finlayson, No 95. p. 5536. *voce* HERITABLE AND MOVEABLE.

No 6.

1629. *July*. The LAIRD of CLACKMANNAN *against* BARROWNY.

IN an action, pursued by the Laird of Clackmannan against Barrowny, the LORDS found, that upon a bond bearing payment of a sum at a term, and in case of failzie of a penalty, together with an annualrent, the creditor might comprise at any time thereafter, without requisition.

Fol. Dic. v. 1. p. 536. Spottiswood, (CONTRACTS.) p. 70.

*** See Durie's report of this case, No 9. p. 69. *voce* ADJUDICATION.