

\* \* 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, Gibson.*

*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

No 3.

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.

No 5.

Found in conformity with the above.