

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.