

## LEGAL DILIGENCE.

## S E C T. I.

An heritable bond, when it becomes Personal, so as to be the foundation of Diligence.

1615. *December 14.* MOWAT *against* CREDITORS OF RICHARDSON.

**I**N an action of quadruple poinding, pursued by Alexander Mowat against the Creditors of George Richardson, the LORDS found, that one Homer could not make arrestment, because, at the making thereof, his bond was heritable, and sasine was given to him of an annualrent for the same; and albeit there was a provision in the bond, that it should be lawful to charge for the principal without requisition, yet before that charge the sum remained heritable, and so they preferred one George Smith to Homer.

*Fol. Dic. v. 1. p. 536. Kerse, MS. fol. 47.*

No 1.

1622. *July 20.*

MR ALEXANDER GIBSON CLERK and JOHN CRANSTON *against* The LAIRD OF LUGTON and Young EASTNISSET.

BONDS heritable cannot be moveable by virtue of the provision therein contained, that it shall be lawful to charge for the principal but requisition, except there be a charge used conform to the provision.

No 2.

Comprising laid upon a bond bearing infestment, found null, notwithstanding of the provision contained therein, that it should be lawful to charge for the principal sum without requisition, because there was no charge used upon the bond before the denunciation, without the which charge, the LORDS found, that

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

Heritable bond bearing infestment 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 allegiance 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.*