

No 10.  
the debtor to  
retain posses-  
sion for many  
years.

which duties of the crop now controverted he had arrested, and so craved to be answered of the samen; and, on the other part, they were craved by another creditor to the said Scot of Dryup, who, upon a registrate bond, had charged and denounced the debtor, and had arrested the saids duties libelled, long before the Sheriff's arrestment.—THE LORDS pteferred the compriser, who was infeft, as said is, to the creditor arrester, albeit the creditor, who had arrested, claimed preference, as doing more timely and lawful diligence than the compriser, seeing, divers years being past after his comprising and infestment, he had suffered his debtor to retain the possession of the lands comprised, and had done no diligence upon his rights to recover possession, as he might have done, which is a great presumption of simulation, and could not therefore give any preference to him against this arrester, who had done all which was necessary of law to recover his payment; notwithstanding whereof the compriser being infeft, as said is, was preferred, and the retention of possession by the debtor was found no impediment to this preference.

Act. Scot.

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. 1. p. 179. Durie, p. 320.

1628. December 2.

CUMING against CUMING.

No 11.

FOUND, that an arrestment of farms cannot be of force, being made before the term of Martinmas, if *medio tempore* the lands be comprised, and the compriser infeft before the term.

Fol. Dic. v. 1. p. 179. Kerse, MS. fol. 235.

1628. December 13.

HUNTLY against HUME.

No 12.  
Found in con-  
formity with  
the above.

IN a triple poinding, Huntly against Hume and L. of Renton, the lands of the common debtor being comprised by a creditor, viz. Renton, and he being infeft thereupon before the term of Whitsunday, and before the comprising, another creditor having arrested upon his sentence, that term's duty, owing by the tenant, possessor of the land, to the master, who was the common debtor, the arrestment being execute before that term of Whitsunday came, whereat the debtor was obliged to pay; and, while the term was running, the arrestment was laid on, and, after the term came, he obtained sentence, discerning that term's duty to be made furthcoming, whereon the question being drawn in by the tenant, if he should be subject to pay to the arrester or to the compriser; —THE LORDS found, That the compriser being seased before that term, ought to have that term's duty subsequent after the sasine, and not the arrester, albeit the arrestment was execute before the comprising, whereupon the sasine pro-