

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 infest, 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 infest, 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 infest 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 infest 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-

ceeded, seeing the heritor, who was debtor, being denuded lawfully of his right to the land before the term, by the said comprising and sasine, he had thereby right to the duties of the terms subsequent after his sasine, after the said term was come; and, as the debtor from whom he comprised could not seek that term's duty, no more could the arrester, who could not seek the same, but as the farm or duty owing to his debtor, who ceased to be heritor, he being denuded of his right by comprising before the term at which he might have craved the duty: For albeit the creditor might lawfully arrest before the term of payment came; yet the arrestment affected not the same to the arrester, so that he might seek the same when the term came, except at that term, the right thereof then subsisted with him, for whose debt it was arrested; as if the term's duty of lands, liferented by any, were arrested for the liferenter's debt, and that the liferenter should die before the term of payment of the arrested duty came, *quo casu* the arrester would get nothing, because the debtor's right became extinct; even so in this case, albeit there be great difference in these cases, yet so it was found, and for the same reason, another creditor claiming the same duty, by virtue of an assignation made to him by the debtor, divers years before the term controverted, and before all the other parties rights, in and to the duty of these lands, of certain years preceding that term, and divers years to run after that term, which assignation was intimate long before their rights; and also the assignee divers years in possession thereof before the term controverted, and done for satisfying his just debt; yet the compriser was preferred, for the assignation was not found a valid right against a singular successor: And it was found, that an assignation to the duty of a tack, set by the heritor, made to his creditor, would not work against a singular successor, in and to the setter's heritable right; but that either the compriser, or other acquirer thereof, or buyer, would have right to the tack-duty, notwithstanding of the preceding assignation, clad with possession.

Act. Craig.

Alt. Lawtie.

Clerk, Hay.

*Fol. Dic. v. 1. p. 179. Durie, p. 408.*

1667. July 2. WILLIAM LITSTER against AITOUN and SLEICH.

WILLIAM LITSTER having arrested his debtor's rent on the 5th of April 1665, he thereupon obtained decret for making furthcoming in July 1666; which being suspended, compearance is made for Sleich, who had right to several apprisings of the lands, which were deduced before the terms of payment of the rent; and craved preference to the arrester, because his arrestment was before the term, and the time of the arrestment there was nothing due; and also before the term the debtor was denuded by an apprising, whereupon infestment followed in December thereafter, and must be drawn back, *ad suam causam*, to

No 12.

No 13.

Arrestment laid on *currente termino*, affects the next ensuing terms rent. Such was preferred to an apprising deduced also before the term, though after