No 13.
as he had not attained poſſeſſion.

lands, for the ſaid ſums, whereupon he was infeft; and which compriſing and ſeaſin was a real execution, which behoved to make all perſonal execution ceaſe. THE LORDS found not this reaſon relevant; for, notwithſtanding of the compriſing and ſaſine, albeit the legal reverſion was alſo expired, they found, That the charger might alſo uſe perſonal execution, by horning and caption, againſt the ſuſpender, ay and while he were paid of his ſums: And found alſo, That he might retain the right of the ſaid compriſing and infeftment; and that he needed not to renounce the ſame before he took him to the other perſonal execution; but that he might keep that ſecurity: By the which the LORDS found, That he could not thereby be found to be ſatisfied of his ſum, and ſecluded from the ſaid perſonal execution, except that the compriſer had obtained poſſeſſion of the lands compriſed. Neither was it reſpected, where the ſuſpender *alleged*, That it was in the charger's default, that he wanted poſſeſſion, ſeeing he had never done diligence to recover poſſeſſion; nor could qualify any lawful impediment, which ſtayed, or could debar him therefrom; which was repelled, and the letters found orderly proceeded, ay and while he were paid of the ſum.

Act. *Baird.* Alt. *Chaip.* *Hay*, Clerk.

Fol. Dic. v. 1. *p.* 15. *Durie, p.* 299.

1628. *January* 30. MELDRUM *againſt* L. CLUNIE.

No 14.
If there be no impediment to prevent the compriſer's poſſeſſion, and he does not renounce; not entitled to uſe perſonal execution.
See No 16.

IN a ſuſpenſion, by Andrew Meldrum againſt L. Clunie; he deſiring to be relieved out of ward, wherein he was committed by Clunie; the LORDS found the reaſon of ſuſpenſion relevant, upon a compriſing of the ſuſpender's lands, deduced by Clunie, for that ſame debt for the which he was incarcerated; which compriſing ſtood unrenounced by the charger, albeit no poſſeſſion was apprehended thereby. THE LORDS found this ſufficient to produce liberty to the ſuſpender; for the ſame behoved to be reputed as payment, ſeeing the party neither would renounce the ſame, nor ſhew any juſt cauſe which might make the ſame appear to be unprofitable to him, nor qualify any impediment, which of the law might have debarred him from the poſſeſſion of the lands compriſed, ſeeing he had never done diligence to recover the ſame. And ſo the LORDS found, That the creditor ought not to retain the compriſing, and alſo detain the debtor in ward.

The like was done, the 9th of February, betwixt Hunter and ———; where the compriſing was found to take away perſonal execution, ſo long as the compriſing was not renounced; albeit the compriſing was not clad with poſſeſſion, ſeeing the compriſer alleged not, that he was debarred by any lawful impediment, after diligence done by him.

Act. *Mowat.* Alt. *Lawtie.* Clerk, *Gibſon.*

Fol. Dic. v. 1. *p.* 15. *Durie, p.* 336.