

(Pais periculo petentis.)

No 17. was vassal admitted and entered by Balvanie, which were great presumptions that he was infeft, and by the which he had acknowledged the said compriser's debtor to be his vassal. This answer was not sustained to enforce the superior to receive the compriser in place of his debtor in these lands, except he shewed where the debtor was seafed therein: For the superior might receive a resignation in his own hands, from one who was never infeft, and when he liked he might enter or not enter him who resigned, as he thought expedient for his security; but he not being infeft, and the comprising deduced against him as having right to the lands, he ought to shew the same to the superior, and also he might receive payment of his feu-duty from any who would pay the same; from whence, it could not be necessarily inferred, that the payer was his vassal.

Clerk, Hay.

Fol. Dic. v. 1. p. 13. Durie, p. 426.

1629. March 12.

COLMSLIE against E. ROXBURGH.

No 18.
The same
found.

A CHARGE against the superior to receive a compriser's assignee, being suspended by the superior, because the compriser had made another assignee to that comprising judicially, as use is frequently to be done; and that assignee had made another assignee, and so the same had passed from hand to hand, and might be transmitted by many assignments, which the superior was not holden to acknowledge; for he *alleged*, That albeit he might be compelled to receive the assignee to whom the comprising was legally assigned; yet, he could not, of law, be compelled to receive that assignee's assignee, no more than upon his vassal's resignation, he could be compelled to receive him in whose favours the same was made; which reason was repelled, seeing he only received but one vassal by virtue of that comprising, no other being received thereupon: It was also here found, that the superior could not be compelled to receive the compriser, except he shewed that the debtor was infeft; albeit the charger offered to prove, that his father, to whom he was apparent heir, was infeft; and also shewed a decret of declarator of this same debtor's liferent of the same lands, gifted by the same superior to a donator; in which gift the superior had granted, that the same lands pertained heritably to the said debtor, and thereby gifted his liferent thereof, which liferent was declared in favours of the donator. Likeas, the said liferent right being again returned by the donator to the superior, the superior was in possession of the lands by virtue of that liferent, and so he could not allege that the debtor was not infeft, notwithstanding whereof, it was found, that the compriser should shew that the debtor was infeft, seeing the declarator of

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liferent might be against an apparent heir as well as against one infest; but this declarator was not obtained but as the liferent of a vassal who was infest.

No 18

A& Craig.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 13. Durie, p. 436.

1632. July 10.

BLACK against L. PITMEDDEN.

ONE Black, upon a comprising of lands from his debtor, charges Pitmedden to infest him, as being superior of the lands; who suspending, that the lands pertained to him in property, and were so possessed by him, and his authors, these thirty-six years bypast, so that he ought not to be compelled to infest any in his property: This was repelled, and the compriser ordained to be infest, without prejudice of Pitmedden's right of the property, which the LORDS declared should not be hurt by this infestment; but only found, that the compriser should be in that same state, for his right, as the author might have been, from whom he comprised, and would not put the parties to dispute upon their rights in this judgment.

No 19.

The law of the above cases altered, and the superior obliged to infest the appriser, without instructing his author's right.

A& Baird.

Fol. Dic. v. 1. p. 13. Durie, p. 647.

1636. March 11.

SCOT against ELLIOT of Stobs.

MARGARET SCOT having comprised lands, and charging Gavin Elliot of Stobs as superior, to infest her; who suspending, that he was heritable proprietor of the said lands, and had acquired the right from those who, and their authors, have ever been heritable proprietors; neither was any of his authors, or himself, superior at any time to that person, from whom she had comprised the lands, nor ever had acquired any right from that person, of whom her alleged debtor is alleged to have holden the said lands; and, it is against reason, that he should be compelled to grant a warrant to lease any in his heritage, where there is no right of superiority derived in his person, nor yet of property, from those who are alleged to be superiors to the compriser's debtor, but flows *aliunde* from other persons; notwithstanding whereof, the letters were found orderly proceeded, and the allegiance was repelled; but the LORDS declared, that the infestment, which the compriser should receive from this suspender, being done for obedience of this sentence, should be always without prejudice of the superior's right of property *prout de jure*, and that thereby his right should not be hurt; and it was thought he could not be a loser, receiving a year's duty for the lands, and bruiking the lands also, if he had a better right thereto than the compriser. *Item*, In this

No 20.

Superior must receive the appriser, *sed salvo jure cuiuslibet et suo.*