

ADJUDICATION AND APPRISING.

201

(*Pas periculo petentis.*)

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.*