

No 11.

Found in conformity with Finlayson against Johnston, No 4. p. 8115.

1679. *January 14.*FARQUHARSON *against* STUART.

FARQUHARSON of Finzean having adjudged the lands of Balfedy from the apparent heir of Mr James Farquharson, who had appraised the same from umquhile David Farquharson of Balfedy, in *anno* 1637, and who, upon his appraising, attained possession; likeas there are produced his discharges to the tenants in *anno* 1641; but there being a liferenter infest before the appraising, the debtor dying, she came to possess, and continued therein till 1673, and now the adjudger pursues for mails and duties. It was *alleged* for Robert Stuart, That he stands infest in the lands by a disposition from the heir of umquhile David Farquharson of Balfedy, and *alleged* that the appraising led against him, whereunto the pursuer hath right by adjudication, was null; because, by the appraising, it is instructed, that it did proceed upon a bond, bearing annualrent before the year 1641, and so was heritable; and yet the appraising bears not that it was made moveable by a charge of horning, before the appraising, as was the inviolable custom at that time. It was *answered*, That appraising could not proceed without a liquid debt, and therefore where there was any infestment for the debt, containing a clause of requisition or premonition, it was not liquid till these were used; or, where the debt, secured by infestment, was payable on a single charge without requisition, till that charge was given; and though *ex abundante*, it was then ordinary to give such charges before appraising, yet it was not necessary, as it was found in a stronger case, wherein appraising was sustained without a charge, though proceeding upon a bond, bearing a clause of infestment, where no infestment followed, as is observed by Durie, July 10. 1629, Laird of Clackmannan, No 9. p. 69.; *see* No 6. p. 8116.

THE LORDS sustained the appraising, and found no nullity for want of a charge, seeing there was no infestment.

Fol. Dic. v. 1. p. 536. Stair, v. 2. p. 669.

1680. *February 11.* GORDON of Troquhen *against* HUNTER of Balmark.

No 12.

FOUND, adjudications, by the act of Parliament 1672, could not be deduced upon heritable sums till first they were made moveable by requisition.

Fol. Dic. v. 1. p. 536. Fountainball, MS. p. 189.

* * * See Stair's report of this case, No 3. p. 170. *voce* ADJUDICATION.