

tain to him, and not to the Lady;—in this process, it being questioned, if this factory could be obtruded against the Lady, who *alleged* the factory not to be a real right, and that it could not be obtruded against her, no more than a right to bruik lands, made to a creditor, to be possessed for payment of an annualrent of money lent, ay and while the money were repaid, could be admitted against a singular successor, as she alleged herself ought to be considered, seeing she alleged that her right flowed not from her husband, but proceeded upon the Earl of Lothian her brother's resignation, who was heritor of the lands, and resigned the same for infeftment alike principally, to be given to my Lord her husband, and to her, and to the longest liver of them;—and the other party *answering*, that the factory was real; being for a cause so onerous, specially against the Lady, who could not be reputed a stranger, nor singular successor, seeing her infeftment behoved to be reputed to flow from her husband, seeing the Earl of Lothian was obliged to resign in his favours and his heirs, and not in her favours, so that her infeftment behoved to be reputed her husband's deed:—THE LORDS repelled the allegiance; and found, that this factory was not real, and could not be respected against the Lady, nor her infeftment, which the Lords found ought not to be respected as an infeftment or donation flowing from her husband, seeing she was equally infeft with him, and that he could not revoke the same, not being his own deed.

No 31.

Act. Nicolson.

Alt. Stuart.

Clerk, Hay.

*Durie, p. 647.*1639. January 30. COCKBURN *against* TROTTERS.

No 32.

A MILL being feued, and the author having given a bond apart at the constitution of the feu, binding him to lead the mills-stones when required, on pain of losing a year's feu-duty; and the singular successor being required, and failing; the LORDS assoilzied him, because this was a bond *extra corpus juris*, and so could not bind a singular successor in the right of the feu.

*Fol. Dic. v. 2. p. 65. Durie.*** This case is No 4. p. 4187. *voce* FEU-DUTIES.1661. July 6. TELFER *against* MAXTON.

No 33.

AN appriser infeft having obliged himself to communicate whatever profit should arise to him by his apprising, out of the common debtor's estate, this paction was found not good against a singular successor in the apprising.

*Fol. Dic. v. 2. p. 64. Stair.*** This case is No 18. p. 5631. *voce* HOMOLOGATION.