

1632. July 17. LADY BORTHWICK *against* TENANTS OF CATKUNE.

IN the cause pursued by the Lady Borthwick against the Tenants of Catkune, found, That a factory granted by the Lord Borthwick to Cuthbert Borthwick, for uplifting his rents, ay and while he were paid of a certain sum owing to him by the Lord Borthwick, was not a real right which might hinder the said Lord to make any disposition of his lands to a third person.

*Fol. Dic. v. 1. p. 181. Spottiswood, (FACTOR.) p. 126.*

No 53.

A factory to a creditor, to uplift rents till he should be paid, is not good against a singular successor in the lands.

1635. November 28. MORISON *against* TENANTS OF ORCHARDTOUN.

JOHN MORISON pursues the tenants of the lands of Orchardtoun, for payment of the mails and duties thereof to him, by virtue of his infestment and comprising of the lands from the heritor, and they, and certain others of the heritor's creditors compearing, and defending with a tack of the lands set by him to the tenants, for payment of the duties therein exprest; which duties, by the said tack, they were obliged to pay to the particular persons specially enumerated in the said tack, who were the said heritor's creditors, for satisfying of the annualrent of their debt yearly, and so much of their principal sum as the said rents, by and attour these annualrents will extend to; in respect whereof, the creditors foresaid *alleging*, That they ought to be preferred in the duties of the said tack to the compriser, seeing the said tack not only precedes the said comprising, and all other diligence done by the compriser, but also is before the debt whereupon he comprised; and this tack must be repute, as if the same had been set to these creditors themselves *per expressum*, seeing it is expressly set for payment of the duties to them *nominatim*.—And the other *answering*, That his comprising and infestment gives him right to the duties of the tack, he being heritor now and singular successor; and the tack must be esteemed as if the duty thereby had been paid to Orchardtoun himself, *quo casu* he would have been preferred.—THE LORDS repelled this allegiance, and preferred the compriser in the mails and duties of the tack to the creditors, albeit spacially named, to whom, by the tack the duties thereof are appointed to be paid; seeing the author of the tack being denuded of his heritable right by the comprising and infestment, the duty behoved to pertain to the heritor, and could endure no longer to the use of his other creditors, than during the space that the heritable right remained with him who set the tack; but found, That the said tack-duty pertained to the said pursuer's singular successor, by apprising and infestment.

No 54.

A landlord binds his tenants to pay their rents to certain creditors named in their tacks. An appriser of the land found preferable to these creditors.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 181. Durie, p. 780.*