No 44.
otherways alimented by him.
See No 54. p. 10372.
See No 50. p. 10368.

caldy, who was *domiuus bonorum* belonging to her, he behoved to be answered and obeyed. She *alleged*, That she should be preferred, because the bond was given for aliment of her and her bairns, and of her husband remaining with them within this country, and that he being absent the terms controverted, and some years before, the whole sum belonged to her and her bairns for their aliment.—THE LORDS considering the meanness of the sum, the quality of the woman, and number of her seven bairns, found the sum mean enough for their aliment, and that no part of it could be subject to her husband's debt. The bond was of 400 merks yearly, to be paid at four terms, and was given by Smeiton, and Sir Robert Hepburn his brother, to James Aikenhead, to the behoof of the woman and her bairns, for their aliment, and was now in the person of Charles Edmondstone to their behoof for their aliment.

Fol. Dic. v. 2. p. 76. Haddington, MS. No 2681.

No 45.
A tack was let to a man and his wife during their lives, and to their heir after them. Their apparent heir, after their decease, assigned the tack. Found, that the tack was personal to the liferenters and their heir, and not assignable.

1623. *February* 14. RATTRAY *against* GRAHAM.

IN a reduction of a decreet of removing obtained by Mr James Graham, which was pursued by one Rattray, upon this reason, viz. that the Lo. Gray, who was author to Mr James Graham in the right, whereupon he had obtained the sentence of that removing long before the right made to Mr James, had set a tack and assedation of these lands controverted to one ———, and his spouse, during their lifetimes, and to their heir after their decease; and that the eldest son of these liferenters, and apparent heir, had made the pursuer of that reduction assignee to his right of that tack, who being on life, as he and his assignee might have defended against the removing, if they had compeared, so now he, as assignee constituted to the tack by the apparent heir yet on life, might reduce it.—THE LORDS assoilzied from this reason of reduction for these two causes, which were both found relevant, viz. because the assignation was made by the apparent heir, who, albeit he might bruik *hoc nomine* as apparent heir, yet he could not transmit nor assign the tack and right thereof, except he had been served heir, the tack being set to the heir, otherways the assignee might bruik during the lifetime of the apparent heir his author, and yet, after his author's decease, another might come and serve himself heir to the first persons, who were the first liferenters in the tack, and bruik during that heir's lifetime, and so the tack should be extended to a liferent longer than it was granted, and than the tenor thereof proports, which cannot be, seeing the apparent heir's assignee should bruik during the apparent heir's lifetime, and he who truly entered heir should bruik during his lifetime also, whereas the tack is only set for the lifetime of one heir; 2do, THE LORDS assoilzied from that reason, because the tack was set personally to the liferenters therein named, and to their heir, without making mention of the assignees, and so the tack

being thus conceived, not giving power to make assignation, he could not make an assignee to his tack, which was personally set; both which allegeances were found relevant. See SERVICE and CONFIRMATION.

No 45.

Act. *Cunninghame.* Alt. *Aiton, Russel, et Craig.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 75. Durie, p. 46.

*** Haddington reports this case:

IN an action betwixt Hay, relict of Dr Killoch, and Graham, now her spouse, against ———, the LORDS found, that a tack set by the Master of Gray to Dr Killoch and his wife, during their lifetimes, and after their decease to an heir, could not make the apparent heir able to set a tack, or defend a tenant pursued for the mails and duties of the lands, unless he were served heir; for otherways he might bruik as apparent heir, and, after his decease unentered, another, next of kin, serving himself heir to his father, might still bruik the tack.

Haddington, MS. No 2762.

1623. *February* 21. KER *against* TENANTS of NISBET.

No 46.
An assignation to a warning was not found a sufficient title in a removing.

ANE constitute assignee by Sir John Ker to a warning used in his name against the Tenants of Nisbet, pursued removing. The Tenants *alleged*, That an assignation to a warning was not a title to furnish an action, specially the cedent being denuded of the lands, which were comprised by Alexander Stewart. Alexander Stewart offered to concur with the pursuer, which the LORDS would not admit, because they thought, that albeit the comprising denuded Sir John Ker, yet it gave not right to the compriser to the warning.

Fol. Dic. v. 2. p. 78. Haddington, MS. No 2772.

1626. *July* 12. STEWART *against* E. of HOME.

No 47.

ALTHOUGH a subject cannot unite lands, yet they being once united by the King, a subject may dispone them in the same manner as if he had the same granted to himself, although the disposition be not confirmed by his Majesty.

Fol. Dic. v. 2. p. 78.

*** This case is No 8. p. 9060. *voce* MINOR NON TENETUR.