No 67. his Majesty's special favour and bounty. It was *triplied*, That any decreet against the Earl of Morton and Sir Andrew, at the King's instance, was for null defence and no compearance, which they willingly agreed to, being confident of a remuneration another way, which Sir Andrew did procure by his yearly pension; and albeit he pretended that he hath not whereupon to aliment his family, yet it is too well known that they have fortunes secured in the name of Sir John Lesly, who is only a trustee, as likewise that he hath a process depending against the Earl of Kinghorn for a great sum. THE LORDS did find, That this pension was not arrestable for payment of this debt, which was due before the precept, which seems hard, being contracted for alimenting his wife and children; and albeit it was prior, yet being of that same nature, and advanced when Sir Andrew and his family were procuring this pension and precept, *et privilegiatus contra privilegiatum non utitur privilegio*; and until it had been made appear, that Sir Andrew had no other estate to aliment his wife and children, it was hard to hinder the payment of this debt by this precept of Sir Andrew's own procurement, in consideration of his interest in the estate of Orkney; and if the true cause had been represented to the King, it is like it had not been of that nature to seclude a creditor for aliment.

Gosford, MS. No 928. p. 605.

1677. *June* 14. BLACKWOOD *against* BOYD.

No 68.
An aliment to an apparent heir, which was considerable, was found affectable by creditors.

BLACKWOOD having arrested the rents of Pinkill upon a bond, wherein Pinkill became debtor for Adam Mushet, he pursues the tenants for making furthcoming.—It was *alleged* for Pinkill, That his father disponed the lands in question to the defender's son, reserving his own liferent, except 500 merks yearly to the oye; by which disposition the defender's liferent was expressly constituted as an alimentary provision; and as the disponer might have disponed all to his oye, without reservation; in which case the defender's creditors could have no access for the defender's proper debt; and all aliments expressly so constituted being *propter victum et amictum*, are still free of any debt, but what is for these ends; so the pursuer cannot quarrel the defender's aliment.—It was *answered*, That albeit aliments so expressly constituted by persons who are noways obliged, when only sufficient for intertainment of the party according to their quality, have been sustained against that party's other debts, but for aliment; yet here the liferent reserved is in favour of the disponer's apparent heir, and of his whole estate, which were of dangerous consequence to allow; especially seeing the estate doth far exceed a sober aliment in three or four thousand merks yearly; and if in any thing it were restricted, the pursuer's debt being very small, it would have effect.

THE LORDS repelled the defence, in respect of the reply.

Fol. Dic. v. 2. p. 77. Stair, v. 2. p. 523.

*** Dirleton reports this case:

No 68.

A FATHER having infeft his grand-child in fee of his estate, and his son, father to the fiar, in liferent, with a provision that the liferent should be alimentary to him; the LORDS, upon a debate amongst themselves concerning the said qualification of the liferent, were of the opinion, That the son being provided before to some other lands simply, without the said quality, the creditors of the son might, by their diligence, affect the said alimentary liferent; except so much of the same as the Lords should think fit to reserve for a competent aliment to the son; but there was not a decision in the case.

Clerk, *Hay*.

Dirleton, No 455. *p.* 221.

1680. *June* 21. HUME *against* LYELL.

No 69.
Tacks are personal, and cannot be conveyed to assignees, unless expressed.

MARGARET HUME being infeft in liferent in the lands of Belleta, obtained decreet against Janet Lyell and her mother, and their tenants, to remove; who suspend on this reason, That in the charger's infeftment the defender's liferent was reserved, she being first infeft. It was *answered*, That the suspender having set a tack to her son for years to run, the same doth accresce to the charger, his relict, whom he infeft with absolute warrandice. It was *replied*, That the tack is only to the son, and mentions not heirs and assignees; and it is a known principle, that tacks are *strictissimi juris*, and not assigneable, when assignees are not expressed. It was *duplied* for the charger, That this can only be extended to exclude strangers, to whom the settet is not presumed to design the tack; but this cannot hold in prejudice of the tacksman's heir, or his relict; 2*do*, The suspender hath homologated the tack, by accepting the tack-duty from the relict, for terms after her husband's death. It was *triplied*, That the *maxime* is founded upon the nature of the right, wherein the masters of the ground affect a particular choise in their tenants, which therefore can be extended no further than the tacks bear, and so neither to assignees nor sub-tenants; and there is no necessity of a clause to exclude assignees, though *ex superabundanti* that clause sometimes useth to be adjected, seeing the exclusion *inest ex natura rei*.

THE LORDS found this tack not assigneable, nor to accresce to the liferent of the tacksman's assignee.

Fol. Dic. v. 2. *p.* 75; *Stair, v.* 2. *p.* 772.

*** Fountainhall reports this case:

A CHARGE to remove.—*Alleged*, She bruiked by a tack set to her husband for seven years, whereof there were years yet to run.—*Answered*, The tack was