

U S U R Y.

1595. July. CRAVEN against WILSON.

No. 1.

CRAVEN, Englishman, lent the sum of £.30 Sterling to one Wilson, who gave his obligation to pay the sum of £.50 Sterling, and, upon the back of the said obligation, it was provided, that the condition of the obligation was, that in case Wilson paid betwixt and such a day the sum of £.30 Sterling, the obligation should be null. The day being expired, Craven pursued for the hail sum. Wilson alleged the obligation to be null and usurious, in so far as it exceeded the sum contained in the back-bond, and the rest was enormous and exorbitant profit, and could not be sustained. The Lords repelled the alleageance, and decerned for the hail sum, conform to the obligation.

Haddington MS. v. 1. p. 575.

1610. February 23. WAUCHOP against LADY BLACKBURN.

No. 2.

A contract containing annual-rent, answering to fifteen for the hundred, being quarrelled as usurious, will be sustained, if the party have not got payment of that extraordinary profit, and be content to restrict his contract and profit thereof to ten for the hundred.

Haddington MS. v. 2. No. 1817.

1622. February. LORD PITSLIGO against LAIRD MUCKALL.

No. 3.

THE Lord Pitsligo having wadset some lands to the Laird of Muckall, redeemable upon a certain sum, and, during the not-redemption, Muckall having set a back-tack of the lands to Pitsligo, for payment of a certain yearly silver-duty, which

Whether taking annual-rent before the term infers usury?

No. 3. answered to the annual-rent of the principal sum, to be paid yearly at the terms appointed by the back-tack, whereupon Pitsligo being charged to make payment of the silver-duty for the term of Martinmas 1621, the party suspended, upon the late act of Parliament, which prohibits any annual-rent to be taken before the term of payment of the principal sum were first come; and therefore, seeing the party could not charge for the principal sum at that Martinmas, it being only appointed to be paid at the Whitsunday thereafter, he could not seek the duty of the back-tack till the term of payment of the principal sum were come, albeit the said back-tack conferred the payment of the yearly duty to the terms preceding the term of payment of the principal sum, in respect of the said act of Parliament, and that the back-tack, albeit it appointed the duty to be paid yearly, as for the duties of the lands, yet it was only in effect the annual-rent for lent money, which ought not to receive any other construction. The Lords found not the reason relevant, but ordained the payment to be made at the terms appointed by the back-tack, albeit the same preceded the terms at which the party was debtor for the principal sum, seeing the duty appointed by the back-tack came in place of the farm of the land, the right whereof remained in the person of the setter of the back-tack foresaid, so long as the wadset stood, and so he having set the lands for that duty, he might ask payment of the duties of these lands at the terms appointed therefor by the said back-tack.

Act. *Hope & Nicolson.*

Alt. *Peebles & Baird.*

Clerk, *Gibson.*

Durie, p. 15.

* * See Johnston against Haining, No. 18. p. 16414.

No. 4. 1622. February 28. PHILORTH against IRVINE.

Philorth having obliged himself to pay, at Whitsunday 1604, to William Irving, the sum of 4000 bolls meal, and failing thereof, £.4 for the boll, providing, if he paid 6000 merks before the term he should be free, the bond being suspended, as unlawful, against the act of Parliament made *anno* 1597, the Lords suspended the bond for the principal sum of 6000 merks, and annual-rent at ten for the hundred since the day of payment.

Haddington MS. v. 2. p. 2607.

No. 5. 1623. March 8. KING'S ADVOCATE against MORISON.

A contract for usurious annual-rent is not punishable where the lawful annual-rent is only taken.

Erskine MS.

* * This MS. is not in the Advocate's Library.—See APPENDIX.