

1623. December 11. LADY COLLINGTOUN and her SON *against* KER.

In an action of the Lady Collingtoun, and Walter Henderson, her son, against Sir John Ker, for reduction of a back-tack let to the said Sir John by the pursuers, who, by contract, having acquired from the said Sir John a wadset of some lands, redeemable upon 16,000 merks, by the same contract, he lets the lands back again in tack, for payment of 1600 merks yearly, with a clause irritant, that if the duty of the tack was not paid, the tack should expire; whereupon declarator and reduction being pursued against the said Sir John, he compeared, and alleged, That no declarator ought to be granted to reduce the said back-tack upon the said failzie, and clause irritant, because that desire tended, by sustaining that clause of the contract anent the failzie, to give the pursuers, by virtue thereof, possession of the land, and of the rent thereof, during the not-redemption, which was, in effect, as much as to allow of contracts of usury, against the act 251, Parliament 1597, and to permit more annual to be taken than ten for each hundred, it being of verity, that the sum whereupon the land is wadset is only 16,000 merks, and the rent of the land, whereof the use, by this action, will be adjudged to the pursuer, is worth 50 chalders of victual yearly, which ought not to be sustained; likeas, he offered to find responsal cautioners to pay the pursuers the duty of the tack of all by-gone years unpaid, and in time coming yearly, during the not redemption. This allegiance was repelled, because the Lords found contracts of this kind, bearing failzies upon clauses irritant, were not usuary, neither came under the act of Parliament; and also the offer was refused.

Act. Nicolson.

Alt. Hope.

Clerk, Gibson.

Durie, p. 91.

1630. July 6. NISBET *against* EARL OF CASSILLIS.

One Nisbet, *in anno* 1609, having acquired the heritable right of some lands by contract, charter, and sasine, from the umquhile Earl of Cassillis, under reversion, which lands the Earl and his heirs were, in the contract, obliged to make worth to the wadsetter yearly 22 bolls of victual, and this Earl, as heir, in whom the contract was transferred, being charged to pay 2 bolls yearly for the whole years bypast, seeing the wadsetter had only received payment of 20 bolls, which were suspended by the Earl, alleging, that the same was usury, and that he was not subject to pay the 2 bolls acclaimed, because the 20 bolls received did complete him, and more, of his annual-rent, at 10 *per cent.* being a wadset redeemable upon £.1000, according to the act 251, Parliament 1597; likeas, he had used the order of redemption, and had consigned the principal sum the last year, viz. 1629, conform to the act of Parliament 1592, with the annual thereof extending to

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No. 6.

Found, that a wadset is not usurious, where the wadsetter bears the hazard of the rents, altho' they exceed the annual-rent of the sum.

No. 7.

Found, that a proper wadset, without back tack, did not fall under the act 1597.

No. 7. £.100; and the other party alleging, that this right came not under these acts, because it was a proper wadset of lands, neither bearing any back-tack or annual-rent, but a right of property, by virtue whereof he might claim the benefit of the lands wadset, and the yearly duty thereof, which the contracter and his heirs were obliged to make to be worth the quantity agreed upon, so that what inlaked thereof he ought to refund it;—the Lords found the reason relevant, and suspended the letters *simpliciter*; for it was found, that the charger could not personally seek from the contracter any greater quantity of victual, or profit of his money, but according to 10 *per cent.* seeing this personal charge upon that security made the same to come under the act of Parliament 1597; but if the party, by his right of property of the land, should seek the duties thereof from the tenants and possessors thereof, he might pursue therefor as he best might in law; but he could not seek personally from the party any more, as said is, than according to 10 *per cent.*; and in the redeeming of the wadset, the redeemer was found only obliged to consign the annual, according to ten for ilk hundred, and not the prices of the victual.

Act. *Nicolson & Neilson.*

Clerk, *Gibson.*

Durie, p. 526.

1632. *March 6.* LD. GARTHLAND *against* KER.

No. 8.

A party, for love and favour, having disposed his lands, redeemable for 12,000 merks, and having taken a back-tack of the same, bearing a duty more than the legal interest, this was found to be lawful, seeing usury relates to borrowed money only.

Durie.

* * This case is No. 45. p. 915. *voce* BANKRUPT.

1662. *January 21.* LAIRD of POLWART *against* HOOMS.

No. 9.

A wadset granted to a brother for his portion, containing a tack to commence after redemption, sustained, notwithstanding act 1449, cap. 19.

The Laird of Polwart pursues a declarator of redemption against Hooms; who alleges, Absolvitor, because the reversion was not fulfilled, which bore the sum of 1000 merks, and a tack for 19 years after the redemption. The pursuer answered, The allegiance ought to be repelled, because the lands wadset are worth 400 merks by year, and the tack-duty is only £.4, and so it is an usurious paction, whereby the wadsetter will have much more than his principal sum, and his annual-rent, and so it is null, by the common law, and by special statute, Par. 1449, Cap. 19. bearing, that when wadsetters take tacks for long time, after the bond be out quite,