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 disponed 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 allegeance 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 usurary 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,

such tacks shall not be keeped after redemption, unless they be for the very mail, or thereby. The defender answered, *first*, That statute is but an exception from the immediate preceding act of Parliament, in favours of tenants, that their tacks shall not be broken by singular successors buying the land, and therefore is only understood in that case when the wadset lands are bought from him that hath right to the reversion, by a singular successor; but this pursuer is heir to the granter of the wadset; *2dly*, That act is long since in desuetude; *3dly*, Whatever the act might operate among strangers, yet it is clear, by the contract of wadset produced, that the wadset was granted by the Laird of Polwart to his own brother, and so must be reputed to be his portion natural; and the eldest brother might well grant a nineteen years tack to his youngest brother, albeit there had been no wadset; likeas, in the wadset, there is reserved the life-rent of a third party, who lived thirty-six years thereafter, during which time the wadset got no rent. No. 9.

The Lords found the defense and reply relevant, and ordained no declarator to be extracted till the tack were produced, and given up to the wadsetter.

Stair, *v.* 1. *p.* 84.

1664. *November* 23. MALCOLM SCOT *against* LAIRD of BEARFOORD.

No. 10.
A proprietor of lands having borrowed a sum granted bond therefore, and let to his creditor certain lands. By the tack the tenant was allowed to pay a certain quantity of victual at 20*s.* less than the fiars. The tack was sustained, though the proprietor alleged that this clause was usurious.

Bearfoord having borrowed 4000 merks from Malcolm Scot *in anno* 1652, by his contract, he is obliged to pay the annual-rent thereof, and the sum at certain terms, which contract bears, that for Malcolm's better security, Bearfoord sets to him certain acres of land, for 53 bolls of victual yearly, at Malcolm's option, either to pay the bolls, or to pay twenty shillings less than the Candlemas fiars. Bearfoord alleged, that Malcolm ought to count for the full fiars, and that the diminution of twenty shillings was usurary, giving Malcolm more than his annual-rents, indirectly by that abatement; and therefore both by common law, and especially by the late act of Parliament betwixt debtor and creditor, that addition was void. It was answered, that there was here no usurary paction; but it was free to Malcolm Scot, to take the lands by his tack, for what terms he pleased, and he might have taken it for half as many bolls, or at four merks the boll, for each boll which would have been valid; *2dly*, The case of the act of Parliament meets not because that is only in wadsets; here there is neither infeftment nor wadset, but a personal obligement, and a tack.

3dly, There is a just reason to abate so much of the boll, because the tenant behoved to be at the expense of the selling thereof, and at the hazard of those that bought, if they failed in payment.

The Lords sustained the tack, without annulling the abatement, and found it not usurary.

Stair, *v.* 1. *p.* 228.