

No. 16. to the first, That crimes may be founded not only upon statute, but upon custom, and it is in contravense that it was the constant custom since 1649 to allow only six *per cent.* for annual ; and albeit that Parliament be rescinded, yet seeing it was submitted to by the whole kingdom, as a law for the time, those who took more annual than six *per cent.* are no less culpable than those who take it now, and the rescissory act doth not annul that Parliament and all its acts *ab initio*. To the second, the old act of Parliament 1594, Cap. 222. against usury, bears expressly, “ That the party payer, or obliged for unlawful profit, is liable.”

The Lords repelled both the defences, and found that usury inferring but a pecunial pain, might be sustained, notwithstanding of the rescissory act, and that the obligation to pay the same was sufficient by the old act.

*Stair, v 2. p. 359.*

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No. 17. 1677. January 24. HOME of FORD against STEUART.

A wadset being granted in these terms, That the wadsetter should possess the lands ; and that the granter should free the wadsetter of levies of horse, and feuduties, and Minister's stipends ; it was found that the wadsetter is not liable to count and reckon for the duties and superplus of the same, exceeding the annual-rent ; in respect, the wadset was a proper wadset ; and the wadsetter was not free of all hazards of the fruits, tenants, war and vastation.

Reporter, *Redford.*

Clerk, *Mr. Thomas Hoy.*

*Dirleton, p. 214.*

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1680. December 1. JOHNSTOUN against The LAIRD of HAINING.

No. 18.  
Usury found incurred by taking annual-rent before it was due.

Mary Johnstoun having obtained a decret against the Laird of Haining, he suspends upon this reason, that he hath right to the sum himself, as donatar to the usury committed by the pursuer's husband, by taking annual-rent before hand, proved by a discharge produced. It was answered, That the King by his act of grace and proclamation in March 1674, had discharged all arbitrary and pecunial pains incurred by law anterior to that time, and this discharge is of an anterior date to that time ; *2do*, The taking of annual-rent before hand is lawful, being no more than what would have been given to a broker for finding out the money. It was replied, That the proclamation could not extend to usury, which is a crime by the law inferring infamy, which is equivalent to death, and is not introduced by any pecunial statute in this kingdom, but is a general crime every where prohibited by divine law ; whereupon the King's advocate for the King's interest had a second hearing. It was duplied, That taking of annual-rent is no crime, though it was prohibited among the Israelites by the judicial law, and is yet prohibited by the cannon law, but is allowed by all Pro-