

- 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,