

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.