

testants and other nations, and the quantity of it is only restricted by our peculiar statute, so that a greater annual is declared usury by the same, which otherwise would not be so ; but the proclamation not being a discharge of one of these, which are called penal statutes, but of all pecunial and arbitrary penalties, yet the Lords sustained it to reach to usury. It was further alleged, That the statute could only take away the King's interest, but not the half, which the statute makes to belong to the party injured, or informer. No. 18.

The Lords found, that the taking of the annual-rent before hand, imported usury, but that the discharge proving it, being before the proclamation, anterior acts of usury were thereby discharged, and that any information given after the act, gave no share to the informer.

*Stair, v. 2. p. 809.*

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1681. July. SPARROW *against* MONCRIEF.

No. 19.

Samuel Moncrief having taken a bond of borrowed money, bearing annual-rent, from Captain Sparrow, for a sum far exceeding what was truly lent ; and the bond being questioned as exorbitant, the Lords restricted it to the sum truly lent, and interest at 6 *per cent.* ; although it was here pleaded, that the money being lent in order to merchandise, and so employed, Moncrief might have made much more profit than the interest at 6 *per cent.* and the borrower did actually make more profit by the same.

*Harcarse, No. 1002. p. 283.*

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1682. December 13. WILLIAM BROWN *against* PATRICK DICKSON, Miller.

No. 20.

It being alleged, that the taking full annual-rent *in anno* 1673, without allowing retention, was usury.

It was answered : That the creditor being an illiterate man, and the debtor one about the Exchequer knowing the law, who sent the discharge into the country, filled up the full annual-rent, to deceive the ignorant creditor, the creditor could only be liable in repetition of the retention-money ; *2do*, The act of Parliament did not restrict annual-rents for that year to 5 *per cent.* but only allowed the creditor to retain one of six ; so that he was not obliged to retain it, though he might, towards the release of the assessment imposed on the lands.

The Lords, in this circumstantiate case, assoilzied from the usury, and allowed retention of the 1 *per cent.* out of any subsequent annual-rents.

*Harcarse, No. 1003. p. 283.*