

No 12.

yearly two stone of cheese, and deponed that it was by way of gift, yet the LORDS allowed the same in part of payment of his annualrent.

*Fol. Dic. v. 2. p. 20. Stair, v. 2. p. 484.*

1696. June 3.

SUTHERLAND *against* SINCLAIR.

No 13.

An assignation to a tack was reduced, being granted of the same date with a bond of borrowed money, and acknowledged to have no other onerous cause.

IN the concluded cause, Sutherland of Eusdale against Sinclair of Dumbeth, a debate arose in the advising of an oath, whether a tack was not the onerous cause of the bond charged for, and he having deponed it was not, but given him gratuitously over and above, the LORDS thought this looked very like an usurious paction, seeing it has been found, that the accepting of some stones of cheese, above the ordinary annualrent, to continue the sum, implied usury; and though men were not restrained from gifting, yet, at the time of such bargainings, it did not seem to be a free gift. Yet, there being no process of usury depending, the LORDS decerned, reserving the pursuit upon the usury, which they recommended to the advocate present to insist in. Some contended, it might be taken in summarily, by way of exception, seeing the acts of Parliament allow the debtor the half of it, in case he be the first revealer, and make it receivable summarily, by way of exception.

June 20.—THE LORDS having of new heard the parties, in the case mentioned 3d current, between Sutherland and Sinclair, they found the allegiance of an usurious paction might be summarily received *quoad civilem effectum*; and shunned to brand the assignation to the tack as direct usury; yet they reduced it as null, being of the same date with the bond for borrowed money, and acknowledged in his oath to have had no other onerous cause but a gratuity, to make a good understanding between them as to other differences; but in regard he deponed, it was agreed to betwixt them, before any mention was made of borrowing the money, the LORDS looked on this as an extrinsic quality, and only *palliata usura*, therefore did not regard it, unless they subsumed on some obligation in writ, by which he might have been compelled to perform it. And the LORDS have been very severe on this point, 2d January 1677, Sir Patrick Nisbet against Humbie, *supra*, where they would not so much as allow creditors to take gifts from their debtors, else this crime of usury might be under such pretences easily evacuated and eluded.

*Fol. Dic. v. 2. p. 20. Fountainhall, v. 1. p. 717. & 722.*