

No. 29. must be liable to all kinds of burdens : It is even consistent with the nature of property, and of a feudal holding, that the proprietor be relieved of certain burdens that might affect the property, such as feu-duties and Ministers' stipends ; and therefore much more consistent with the nature of a proper wadset : On the other hand, where a relief is stipulated inconsistent with the nature of property, it will in most cases be found inconsistent with the nature of a proper wadset ; and of that kind, the upholding the rental, securing against the hazards of the fruits, out-putting and inputing tenants, certainly are. The other decision from Newton, makes also against the defenders, because there was no relief from the hazards of fruits, tenants, &c. And the reasoning in that decision was plainly weak on the part of the reverser, when he pretended there was no hazard as to the fruits, in respect of the situation of the ground being near the ports of Kinghorn. That is not at all what the law regards, whether there be hazard from the situation of the ground ; but whether there be a paction to relieve of hazards : There was no such paction in this case ; and even in probability, a tenant might turn bankrupt there, as well as in any other place.

It was contended in the second place, for the defenders, that the wadsetter, if he be accountable, ought only to charge himself with what he received more than twelve chalders ; since the reverser could only be liable for the deficient bolls of the twelve chalders, but not for what the price should be defective of the interest. To which it was answered, that neither can this hold : The reverser's being bound to uphold the rent, makes the wadset improper ; and that being once established, the counting must be according to the common rules observed in such cases ; the wadsetter must be paid of his yearly interest, and then hold count for the remainder.

“ The Lords found, that Waughton the reverser being obliged to pay the twelve chalders of victual yearly, free of cess and all other burdens ; the wadset is thereby improper.

*Rem. Dec. v. 1. No. 12. p. 23.*

No. 30. 1727. *February.* M'LELLAN *against* BARCLAY.

In the year 1704, while annual-rent was at at six *per cent.* M'Lellan, for the sum of 4500 merks, sold some lands to Barclay, and of the same date took from him a tack of the same for 10 years, for £.120 of money rent, and 18 bolls victual, or 10 merks *per* boll, in the option of the tacksman, out of which tack-duty he was to advance the whole teind, being £.40 yearly, and half of the cess. There was a clause adjected of a reversion competent to the seller, during the years of the tack, upon re-payment of the foresaid sum of 4500 merks. It was objected against the contract, That it appeared to be but a covered loan, and that a tack-duty being made certain to the creditor exceeding the ordinary annual-rent, the bargain was usurious, and the disposition and tack null.

The Lords repelled the objection.—See APPENDIX.

*Fol. Dic. v. 2. p. 500.*