such tacks shall not be keeped after redemption, unless they be for the very mail, or thereby. The defender answered, *first*, That statute is but an exception from the immediate preceding act of Parliament, in favours of tenants, that their tacks shall not be broken by singular successors buying the land, and therefore is only understood in that case when the wadset lands are bought from him that hath right to the reversion, by a singular successor; but this pursuer is heir to the granter of the wadset; *2dly*, That act is long since in desuetude; *3dly*, Whatever the act might operate among strangers, yet it is clear, by the contract of wadset produced, that the wadset was granted by the Laird of Polwart to his own brother, and so must be reputed to be his portion natural; and the eldest brother might well grant a nineteen years tack to his youngest brother, albeit there had been no wadset; likeas, in the wadset, there is reserved the life-rent of a third party, who lived thirty-six years thereafter, during which time the wadset got no rent. No. 9.

The Lords found the defense and reply relevant, and ordained no declarator to be extracted till the tack were produced, and given up to the wadsetter.

Stair, *v.* 1. *p.* 84.

1664. *November* 23. MALCOLM SCOT *against* LAIRD of BEARFOORD.

No. 10.
A proprietor of lands having borrowed a sum granted bond therefore, and let to his creditor certain lands. By the tack the tenant was allowed to pay a certain quantity of victual at 20*s.* less than the fiars. The tack was sustained, though the proprietor alleged that this clause was usurious.

Bearfoord having borrowed 4000 merks from Malcolm Scot *in anno* 1652, by his contract, he is obliged to pay the annual-rent thereof, and the sum at certain terms, which contract bears, that for Malcolm's better security, Bearfoord sets to him certain acres of land, for 53 bolls of victual yearly, at Malcolm's option, either to pay the bolls, or to pay twenty shillings less than the Candlemas fiars. Bearfoord alleged, that Malcolm ought to count for the full fiars, and that the diminution of twenty shillings was usurary, giving Malcolm more than his annual-rents, indirectly by that abatement; and therefore both by common law, and especially by the late act of Parliament betwixt debtor and creditor, that addition was void. It was answered, that there was here no usurary paction; but it was free to Malcolm Scot, to take the lands by his tack, for what terms he pleased, and he might have taken it for half as many bolls, or at four merks the boll, for each boll which would have been valid; *2dly*, The case of the act of Parliament meets not because that is only in wadsets; here there is neither infeftment nor wadset, but a personal obligement, and a tack.

3dly, There is a just reason to abate so much of the boll, because the tenant behoved to be at the expense of the selling thereof, and at the hazard of those that bought, if they failed in payment.

The Lords sustained the tack, without annulling the abatement, and found it not usurary.

Stair, *v.* 1. *p.* 228.

No. 11.

1666. *February.* LORD LEY *against* PORTEOUS.

In a declarator of redemption pursued at the instance of the Lord Ley against Mark Porteous, there being an allegeance proponed, That there could be no declarator, unless the Lord Ley should grant a three years tack of the lands to the defender, for 100 merks yearly, conform to the condition of the tack, the lands being worth 300 merks of yearly rent, the Lords repelled the allegeance, in respect of the act of Parliament 19th K. James II. (1449), and found all such tacks null, by way of exception, and so revived the foresaid act, which was gone in desuetude.

Newbyth MS. p. 56.

No. 12.
Found usurious to stipulate that each term's annual-rent is to bear annual-rent, after due.

1669. *January* 26. LADY BRAID *against* EARL of KINGHORN.

There is a bond of £.10,000 granted to the Earl of Buchan principal, and the Earl of Kinghorn cautioner to umquhile ——— Morison, of Darsie, and Dame Nicolas Bruce, now Lady Braid, then his spouse, bearing annual-rent, and a clause stating the principal sum after ilk term, as a stock to bear annual-rent, and termly penalties in case of failzie. This being called *in præsentia*, it was alleged for Kinghorn, that annual of annual was a most usurary paction, rejected by all law, and our custom, and cannot subsist in whatever terms it be conceived, otherwise by the like paction, the annual of that annual might bear annual, and so perpetually multiply; and if this were sustained, there would never be a bond hereafter in other terms. It was answered, that bonds of corroboration, stating annual-rents into principals by accumulation, have ever been allowed, and though that be done after the annual-rent is become due, making it then to bear annual-rent, there is no material difference to make it bear annual-rent by a paction *ab ante*, but not to take effect till the annual-rent be effectually due. It was answered, that custom had allowed the stating of annual-rents after they were due, into a principal, because then being presently due, they might instantly be exacted; but law and custom hath rejected the other case. The pursuer further alleged, that she being a widow, and this her livelihood, annual-rent at least should be due for the annual-rents, seeing she is ready to depone, that she borrowed money to live upon, and paid annual-rent therefore, or otherwise the termly failzies ought to be sustained.

The Lords sustained the defense, and found no annual-rent due of the annual, nor termly failzies, seeing there was no charge at the pursuer's instance against this defender, and that he was a cautioner, but modified for all £.100 of expenses.

Stair, v. 1. p. 593.