

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 allegiance 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 allegiance, 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.*

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

No. 12.

Found usurious to stipulate that each term's annual-rent is to bear annual-rent, after due.

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 presentia*, it was alleged for Kinghorn, that annual of annual was a most usurious 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.*