

No. 24. the less it be, it speaks the more covetous humour. Neither can it be palliated and excused as a mistake; for he has wrote on the back of the discharge with his own hand, that he had allowed three quarters retention, whereas it was due that whole year; and processes of usury have been sustained for less before the Justices, as in the case of Purdie in the year 1666, where the excess only amounted to threepence or thereby; and the like, 28th November, 1668, Hugh Roxburgh. The Lords thought it had happened purely by mistake, and therefore repelled the reason of suspension, and found no usury in this case; but ordained him to restore the exresce, or else default and allow it out of the next year's annual-rent.

Fountainhall, v. 2. p. 346.

1709. *January 26.* COLVIL *against* IRVINE.

No. 25.

A bond for a perpetual annuity above the legal annual-rent, redeemable by the debtor on payment of the principal sum and by-gone annuities resting at the time, was found to be usurious, although the principal sum was sunk *quoad* the creditor, who could not charge for payment thereof upon the bond.

Forbes.

* * This case is No. 6. p. 6825. *voce* INDEMNITY.

1711. *November 7.*

THOMAS SCOT in Castlemains of Crawford, *against* Mr. WILLIAM BAILLIE of Glentewing, Advocate.

No. 26.

One suing on a bond which acknowledged the granter to be justly addebted and owing to the pursuer's cedents a certain sum, and obliged him and his to pay the same to the pursuer, his heirs and assignees, at the time therein mentioned, with annual-rent

Thomas Scot pursued Mr. William Baillie, as heir to James Baillie of Glentewing, for payment of a bond dated 23d April, 1696, whereby James Baillie acknowledged himself to be justly addebted and resting to Robert Scot of Gilesby, the pursuer's author, 100 merks, which he obliged himself, his heirs and executors, to pay to Robert Scot, his heirs, executors, or assignees, at the term therein mentioned, with annual-rent from Martinmas preceding 1695.

Alleged for the defender: The bond is usurious and null; the debtor being obliged to pay annual-rent five months and twelve days before the date, without any declaration (as is usual when money is borrowed betwixt terms) that the money was lent at Martinmas, for this is like the taking annual-rent before hand, which imports usury, December 1st, 1680, Johnston *against* L. Haining, No. 18. p. 16414; and the many different shapes that usurious oppression has broken forth in, should be a prevailing motive to check the least appearance of it.

Replied for the pursuer: Usury by our law is the taking a greater interest for money than the act of Parliament allows, or taking fore-hand payment of interest;