1672. *February* 17. DOUGLAS *against* VERNOR.

No. 14.
A proper wadset was conceived with a clause warranting the wadsetter against all taxations or other impositions. The wadsetter was found obliged to account in terms of act 1661, cap. 62.

Douglas of Morton having wadset certain lands to ——— *in anno* 1656, pursues count and reckoning for the superplus of the rent, more then the annual-rent, upon the clause of the act of Parliament, 1661, bearing, that the wadsets contain exhorbitant clauses, whereby the wadsetters bears no hazard; but it is provided, that he be relieved of all burden, that he shall be countable for the *superplus* above his annual-rent; and in this wadset the clause of warrandice bears expressly, "to warrant the wadsetter against all maintenance, taxations, and other impositions;" which clause the Lords found to make the wadsetter countable, since the act of Parliament only, although before the citation the said wadset did also contain a clause, obliging to set a tack to begin after the redemption; against which it was alleged, that this was an usurary paction, giving the wadsetter more than his annual-rent, by an indirect contrivance, which is condemned, and declared null by the act of Parliament, 1449. Cap. 19. It was answered, that the foresaid act bears, that such tacks as are set for the half mail, or near thereby, shall be void after redemption. But it is offered to be proved, that the lands contained in this wadset were set for the same duty contained in the tack, or near thereby, before the wadset; and so as the heritor at that time would have set the land, not being grassumed to any body for the old rent, so he might to the wadsetter. It was answered, albeit the narrative of the act bears, where tacks are set to the half avail, or near thereby, yet the statutory part bears, that such tacks shall not be kept, but if the land be set for the very mail, or thereby; and that it is offered to be proved, that these lands were much more worth the time of the redemption, than the duty contained in the tack; and it imports not what they were set for before the wadset, but what they were worth, and might be set for the time of the redemption.

The Lords found the tack was valid, unless the duty were far under what the lands paid the time of the wadset, and that regard was not to be had to the worth of the land at the time of redemption; for if the wadsetter, upon consideration of the tack, had improved the land before redemption, he ought not to be excluded therefrom.

Stair, v. 2. p. 70.

*** Found, contrary to the above, in a case, January, 1728, Creditors of Elliot against Maxwell, that the wadsetter was not accountable.—See APPENDIX.

1673. *July* 30. STEVENSON *against* WILKISON.

No. 15.
Retention not allowed.

In a supension betwixt Martin Stevenson and Wilkison, the debtor having alleged for a reason of suspension, that the creditor had not allowed the last term's retention, conform to the act of Parliament, but had taken full annual-rent according to the six *per cent.* and thereby had committed usury, and so lost the benefit of the sum; it was answered, That usury being a crime, is never inferred but