might pretend to some mitigation of the punishment, in respect of the *probabilis ignorantia*; and it cannot be extended to subjects who either do, or are obliged to know the laws, Leg. 9. C. De Legibus, Leges sacratissimæ quæ non constringunt hominum vitas, intelligi ab omnibus debent, ut universi præscripto earum manifestius cognito, vel inhibita declinent, vel permissa sectentur; and the pretended dubiousness of the act cannot free the charger from cases much more dubious, as is in back tacks and wadsets, and invictual, and in the case of simulate contracts; in all which cases, if there be more annual-rent taken than is allowed by the law, much more in this case, which is so clear, the law allowing retention of a sixth part of the annual-rents, and by 107th act, Parl. 7, James the First, it is expressly provided, That no man should interpret the King's laws and statutes contrary to the true intent and meaning of the act; and it were to interpret this law otherwise than the intent of it should be interpreted, if in any sense the taking of annual-rent more than is allowed by this law, should not infer the crime of usury; and it is expressly decided in the case of Ludovick Grant against ———, which immediately fell out after the act, that the taking of annual-rent which is allowed to be retained by the debtor did infer the crime of usury, and albeit the gift had been taken to the suspender's behoof, as it was not, there was nothing to hinder him to take a gift thereof from the King as any other person.—The Lords found, that usury is not inferred, notwithstanding that by the discharges produced, the whole annual-rents are paid without retention to the debtor of the sixth part, in respect the act of Parliament doth not express the penalty of not giving retention to be usury, and of the rusticity of the party, and smallness of the sum not retained, and the ambiguity of the practice as to this point; and therefore finds the letters orderly proceeded, except as to the sum whereof by the act of Parliament the debtor should have had retention, and finds the donatar to the usury hath no interest therein. No. 20.

Sir P. Home MS. v. 1. No. 212.

1685. *December.* DOWIE *against* CUNINGHAM.

Found that a wadset (though it was very lucrative, and bore relief of all public burdens, and some of the hazards mentioned in the act of Parliament) was not to be restricted to the annual-rent from the date of the wadset, but from the offer of caution, as had been formerly decided in the case of Captain Hume of Ford against Jean Telfer in Dunbar, in respect the wadset did not secure against all the hazards mentioned in the act of Parliament, viz. fruits, tenants, or war. No. 21.

Harcarse, No. 1029. p. 293.

*** This case is reported by P. Falconer:

No. 21. Robert Cuningham having granted a wadset of the links of Kinghorn to David Dowie, redeemable upon payment of £.1000, which wadset bore, That the granter of the wadset should pay the public burdens; there is a summons raised at the instance of Cuningham against Dowie, craving that Dowie might count for the superplus duty of the lands over and above the annual-rent, and that from the date of the wadset, in regard the wadset was improper, the granter of the wadset being obliged to pay the public burdens, and that there was no hazard that the same could be waste, it being grass lying at the port of Kinghorn, which the town could not want; the Lords found, that there were other hazards, viz. plague and war, which were mentioned in the act of Parliament, and which the wadsetter was liable to, and had no relief from the granter of the wadset, and therefore found him liable to count it not from the date of the wadset, but from the date of the offer of caution.

Therefore it was alleged, that the wadsetter behoved to be liable at the least from the date of a minute of agreement betwixt the pursuer and defender, whereby the wadsetter did restrict his wadset money for 1100 merks, which the granter of the wadset obliged himself to pay at Martinmas thereafter, and which 1100 merks the wadsetter was obliged to accept, and renounce the wadset, at the least he ought to count for the annual-rent of 400 merks, or a proportion of the mails and duties of the wadset lands effeiring to the 400 merks, being compared with the 1100 merks yet standing upon the wadset. The Lords found, that the restriction did not alter the nature of wadset, therefore found him only liable to count from the date of the offer of caution, and declared, that from that time he was only to have allowance of the annual-rent of the 1100 merks to which the wadset was restricted, and to count for the superplus duty.

P. Falconer, No. 114. *p.* 79.

1697. *February* 9.

ISOBEL M'CULLOCH *against* WALTER ROSS, Provost of Tain.

No. 22. A bond was quarrelled as usurious, because it was dated in the beginning of August, and payable at Whitsunday thereafter, with a year's annual-rent then, which made it bear interest a full quarter of a year before the date of the bond, contrary to the express tenor of the 222d act 1594. Answered, If the bond had borne to have been for borrowed money, this would have been a good objection; but its onerous cause was "that where she is justly addebted and resting owing," which presupposes a debt *ab ante*. Replied, The words being in the present time, in propriety of grammar, cannot be retrotracted; else this would make *is* and *was* owing all one. The Lords sustained this to purge the presumption of a crime