

1683. *February 9.* The BAXTERS of CANONGATE *against* The MAGISTRATES of EDINBURGH.

THE bill of suspension presented by the Baxters of the Canongate against the Magistrates of Edinburgh, for fining each of them in £10 Scots, for importing bad, light, and insufficient bread, on the market-days, to Edinburgh, being reported by Forret; the Lords found the Magistrates had power, not only by the Act of Privy Council in 1609, and their own Act in 1649, but also by the Lords of Session's allowance, and immemorial possession, to cognosce and try the weight and sufficiency of all bread, though imported from the Canongate or elsewhere, (though, in the places where it was baked, they had their own deaconries, or a different standard of weight,) and found they had done them no wrong: but ordained them to be set at liberty out of prison, on consigning their fines in the Clerk of Session's hands; and ordained four of their number to meet and confer with the Magistrates anent the regulation of the bread-market in time coming, both as to weight, fineness, and price. *Vol. I. Page 216.*

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1683. *February 13.* SIR WILLIAM KER *against* SIR WILLIAM BENNET, CHARLES MURRAY, &c.

THE process betwixt Sir William Ker and Sir William Bennet of Grubet, Charles Murray of Haldane, and Others, anent the debatable lands on the borders between Scotland and England, being advised; the Lords found the King and Sir William Ker, his donatar, had the right of property; but that prescription might also run against his Majesty; and therefore found that the neighbouring gentlemen, having conterminous and adjacent lands, might prescribe, by forty years' possession, a right of commonty, and a servitude of pasturage through the same. *Vol. I. Page 217.*

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1683. MARGARET PEACOCK *against* DAVID PEACOCK.

*February 3.*—DAVID Peacock's service, as heir to Andrew his father, being advocated from the Bailies of the Canongate, to the macers, and three Lords being adjoined as assessors; and Margaret Peacock, relict of James Sands, her service, as heir to the said Andrew her cousin, who died in Dantzick in 1657, being produced to stop David:

The Lords repel the documents adduced for proving and instructing that David was Andrew's son, *viz.* a testificate from two burghers in Dantzick; because it was not taken by the magistrates of the place, nor at David's desire, nor bore that he was present, but that he was at Vidavia, in Poland, near 300 miles distant, &c. And, in regard that it looked suspicious that they were only

suborning an impostor to personate and give himself out to be that man's son, and that he might be only a bastard; they inclined to stop the service, and to direct a commission to Dantzick, to try if Andrew had left a lawful son called David, and if he be yet alive.

But, lest any of Mr Gordon, the factor for the said David, his witnesses, by whom he offered to prove David was his son, should die *medio tempore*, they examined them immediately, to lie *in retentis* for the use of the inquest, when they should come to serve affirmatively or negatively, conform to the probation; which must be the more concluding and pregnant here, where there is another though remoter served already, or else they may be pursued as *temere jurantes super assisam*. *Vide infra*, 13th Feb. 1683.

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February 13.—The macers and their assessors having met again on David Peacock's service, (mentioned 3d February current,) they led some more witnesses for either party; and it was proven by two that Andrew Peacock had a son called David, who was reputed a bastard.

The three Lords, by their interlocutor, ordained a commission to be directed to Dantzick and Vidavia, to examine if David be alive, and if he be a lawful son; and to try Andrew's relict, the mother, yet living, if she owns him for her lawful son; with this declaration, If he die *medio tempore*, this delay of his service shall not prejudge him, but, *quoad* Margaret, it shall be reputed as if he had been served.

But Gordon, the pursuer of the brief, offering caution to refund the money, if the probation on the report of the Commission should go against him; the three Lords condescended to give him the whole Lords' answer, if the service or commission should precede one another: which they did upon the 16th day of February; and the Lords, on Castlehill's report, ordained the service to go on; but, before extracting, ordained Gordon to find sufficient caution in the Clerks of Sessions' books, that, if he uplift the money in the Town of Edinburgh's hands, and his service be afterwards reduced upon trial, finding either that he is dead, or was not a lawful son, he shall then refund and repay the money. And accordingly the inquest served him nearest heir; and Margaret Peacock, who was already served, her procurators protested against them for an assize of error.

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1683. February 18. JEAN WISEHEART *against* The HEIRS of JAMES BONNAR.

JEAN Wiseheart, relict of James Bonnar, and Alexander Wiseheart, now her husband, against Bonnar's heirs. The Lords found a bond secluding executors heritable *quoad fiscum et relictam*, though a charge of horning given upon it was produced; which seemed, by the principles of our law, to render it moveable, as well as a requisition or charge looses an infeftment or wadset, there being no apparent disparity betwixt the two; but the Lords found it continued still heritable, because of its express conception of secluding executors *in omnem*