

1684. *February 20.* SIR ROBERT SINCLAIR of STEVENSTON *against* HARY SINCLAIR.

SIR Robert Sinclair of Stevenston against Hary Sinclair, reported by Saline. The Lords found Harie's acquisition of Veatch of Dawick's apprising of the lands of Carfrae was but in trust, and in contemplation of a bargain Hary intended of these lands; and therefore that he could not seek the full of the comprising from Sir Robert, (though he had now sold the lands to Sir James Hay of Linplum; but it was after Hary had refused them;) but only what he gave for it himself.

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1684. *February 22.* RANKING of The CREDITORS of LORD ARGYLE.

THE Lords, as Commissioners of my Lord Argyle's forfeiture, for ranking the Creditors, met this afternoon; and Lundy, Treasurer-depute, as donatar to Hamilton of Monkland's forfeiture, having right to 10,000 merks owing by bond to Monkland, by Argyle; and having procured a letter of recommendation from the King; the Lords were much puzzled, for they had the hail creditors to rank again, and to adjust and cast up their proportions, to make room for taking him into the first class of the creditors; and they gave him Sir Colin Campbell of Arbuckle's locality.

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1684. *February 22.* MACDOUGALL'S WIFE *against* HER HUSBAND.

ONE Macdougall, a Highlander, is pursued by his wife, before the Commissaries of Edinburgh, for divorce *ex capite impotentiae*. And she having offered to prove, by inspection of chirurgeons, that he has nothing wherewith; he declined a visitation, as immodest, and absents himself. *Quid juris?* shall he be holden as confessed? *Nuda inspectio corporum* is condemned by Justinian, *ad princip. tit. Instit. Quib. mod. tutel. finit.*

The old way of trial was, by a silk cord down their belly, if it got free passage down, or not.

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1684. *February 22.*

ONE being to pursue a Scotsman living at Dantzick, on a registrate bond, he gives in a bill, representing, that the judges there did not regard his registrate extract under the clerk-register's hand; and therefore craves the Lords would ordain his principal bond to be delivered up to him, upon his returning all the extracts. The clerk-register argued much against this; seeing they could not

know how many extracts were given out, and boys might neglect to write on the back if it was the 2d or 3d extract.

Yet, by a famous Act of Sederunt in Latin, dated the last of July 1596, recorded 17th November 1599, there is a recommendation to foreign judicatories, that these extracts may be probative and authentic abroad, as they would have their notorial instruments or judicial Acts regarded by us. Only, I think those extracts which go abroad should not singly bear the Register's name, but also a large attest, with all his titles, and the seal of the College of Justice.

See *Seton of Barns's* case against his *Sister*, 14th March 1682.

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1684. *February 28.* The TRADES of EDINBURGH against The MERCHANTS.

HARCUS reported the declarator raised by the Trades of Edinburgh and their deacons against the Merchants, founded on King James VI. his decreet-arbitral, and a late Act of the Town Council of Edinburgh, in October last, That the crafts shall get out three of the six given in by them in list to be deacons; and the Lords declared in favours of the said act, and that it should not be lawful to the Merchant Council to give them out any but three of their own six.

The Trades ALLEGED,—This privilege was given them for quitting their right, at the time of the decreet-arbitral, that one of the four bailies should be a tradesman; and that the purer times near to the said decreet, (which was the best interpreter of it,) inviolably observed it; till of late, faction prevailing, Sir James Stewart, provost, began to give them out other three than any of their six; and then commonly they pitched on the poorest and most unworthy of the trade to be their led horses in their votes.

Yet the decreet-arbitral runs only, that the Magistrates shall ask the advice of the deacons of trades, who is the fittest to succeed them; but does not limit them to a number of six, more or fewer, (which custom hath since stated in six;) *et consilium non est obligatorium.*

Some of the Lords were for referring the case to his Majesty, to explain his grandfather's decreet-arbitral in 1583, (which is unclear in many things,) as being a point of government. Others, That trial and probation should have been led, what has been the uniform practice these forty years bygone: in which case, the Trades would have lost it. However, it carried but by one vote; and Carse was *non liquet.*

Though the Trades, while Trades, cannot now be Magistrates, yet this declarator does now give them a great influence in electing them, and may be the seed of much animosity between the two; for, by the Act, the Merchants may even yet pretend the six offered in list are not of the most worthy, as it is required they be.

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