

1684. *February 29.* JAMES FALCONER *against* The SECRETARIES of the MINT.

MR James Falconer, advocate, gave in a bill, complaining that, upon the decret of the Mint obtained against him, and the King's modification of his fine, (gifted to the two Secretaries, with Sir John Falconer's fine,) they had denounced him to the horn, though he had an intimated bill of suspension prior to the same; and so craving the denunciation might be recalled and annulled.

The Lords would not do this, (though the denouncing was a riot,) but only discharged the registrating of the horning till the bill were discussed; or, if it was registrate, then they discharged the booking it. *Vol. I. Page 277.*

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1684. *March 1.* WILLIAM LIVINGSTON *against* BETTY WHITEFORD.

THERE is a letter from the King, procured by Mr William Livingston, brother to the Viscount of Kilsyth, to the Lords of Session, desiring them to forbear the deciding of that advocacion raised by him against Mrs Betty Whiteford, daughter to umquhile Sir John Whiteford of Milntown, from the Commissaries of Edinburgh, of a process of adherence; and for declaring that he had owned her for his lawful wife, (for she had borne him a child,) and to lay it over till the 1st November; in regard he was at London sick and unable to attend it: and the King had caused his own physicians visit him, and they had attested and declared that he could not travel at this season, without hazard of his life: so it was no simulated sickness. Yet some can procure a fever to themselves for an hour or two.

This letter being intimated to her advocates, they objected that this was a private writing, not to be regarded by the 92d Act of Parliament 1679 and the 47th Act 1587; and was *mali exempli*, to stop justice, especially against her who was seeking to have the stain lying on her honour cleared, by proving that he owned her as his wife when she was in child-bed. Some did contend, that, by the 18th Act of Parl. 1681, anent the King's cumulative jurisdiction, he might stop any process depending before the Lords. But that was not meant by the Parliament, at the making of that Act. *Vol. I. Page 277.*

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1684. *March 5.* ROBERT LAUDER *against* JOHN PENMAN.

MR Robert Lauder, one of the clerks of Exchequer, being creditor by bond to John Penman, merchant in Edinburgh, in 1000 merks; and the said John breaking suddenly, and giving a fraudulent disposition of all to his wife and

brother; Mr Robert gave in a bill to the Lords, representing this conveyance, and that he had charged and arrested; and therefore craved sequestration of the goods.

The Lords ordained a padlock to be put on his shop, and his household-furniture to be inventaried, and his writs sealed, to be made furthcoming to all parties having interest: seeing he was *in meditatione fugæ* when he made the said right; and so it may be quarrelled on the Act of Parliament 1621, anent deeds of bankrupts.

*Quæritur* if this sequestration would hinder a lawful creditor to poind.

Then Mr Lauder, on a bill to the Lords, got a deliverance, on the 29th of March, ordering him to cause inventory the goods in the shop, and to roup them to the best avail, and to take off the padlocks off the shop-door, that the landlord may set it at Pasch to some other tenant; and allowed Mr Robert Lauder, as now donatar constituted to his escheat, to sell and intromit *medio tempore*, lest they perish, or the ware turn unfashionable.

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1684. The KING'S ADVOCATE *against* The CREDITORS of the EARL of ARGYLE.

*January 29.*—THE King's Advocate upon a bill gets his cause against the Creditors of the Earl of Argyle called summarily; against whom he alleged, That his Majesty's gift of forfeiture, in favours of his creditors, did not extend to the properties of those vassals of Argyle which fell in the King's hands through their not being confirmed before his forfeiture; seeing these vassals' estates were no part of Argyle's fortune at the time of his forfeiture; and it was the King's design to dispoise and convey no more to Argyle's creditors than what was his, the time of his forfeiture; and therefore, that the vassals' estate still remained with the King, and he was not denuded thereof; nor had the creditors any *jus quæsitum* thereto. And that the creditors could not say that it was upon the faith or in contemplation of these vassals' estates that they lent Argyle their money; and so they lose nothing of what they then relied on for their payment.

It was ANSWERED, for some of the creditors, (for they were not cited in the ordinary way, but only at the market-cross of Edinburgh generally,)—That they opposed the King's signature and charter under the Great Seal, whereby the King had dispoised, to them and others, all the benefit that had accresced and befallen to him through the Earl's forfeiture. But, *ita est*, under that generality the unconfirmed vassals' estates and properties will also fall to them.

The King's Advocate enlarged on the King's *jus supereminentis dominii* over the goods and possessions of his subjects, where the public good was concerned, from Grot. *lib. 1, de Jur. Bell. et Pac.* But see Zeiglerus in his animadversions upon him, who calls this *eminens dominium, figmentum Grotianum*. This was continued to a farther hearing. *Vide* 5th March 1684. *Vol. I. Page 265.*

*March 5.*—There is a letter from the King, anent the Earl of Argyle's vassals, mentioned 29th January 1684. The King, by this letter, declares, it was