

1683. *March 23.* EDWARD FOUNTAIN *against* ANABLE and MARGARET LAUDER.

EDWARD Fountain against Anable and Margaret Lauders, reported by Castlehill. The Lords turned the bailies of Edinburgh their decreet into a libel, in respect, upon the production of the tack, it was expired, and they had used a warning against him, and so taken off his tacit relocation; and yet the bailies had decerned him to be repossessed.

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1681 and 1683. THOMAS RAMSAY and JAMES AITKENHEAD *against* HELEN RAMSAY and BROWN.

1681. *December 23.*—MR Thomas Ramsay, minister at Mordington, offering a cautioner in the loosing an arrestment laid on by Helen Ramsay, his sister, and James Aikenhead, apothecary, her husband, on a depending process; and the cautioner being refused by Sir William Bruce, clerk to the bills; and Mr Thomas offering *cautionem juratoriam*, that he could not find a better, the Lords absolutely refused to allow it in this case, though they admitted it in passing of suspensions. See Stair, *16th July 1661, College of St Andrew's.*

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See the intermediate parts of the report of this case, Dictionary, page 4234.

1683. *March 28.*—In Helen Ramsay's case against Brown, (mentioned 20th Dec. 1682;) she offering to prove, by his oath, that he promised that his wife's tocher of 1000 merks should come back to her friends, if she had no children; and he having deponed *negative*, she, upon a bill, got an order to reëxamine him, he always not altering the deposition to his own advantage. Which is a caveat may be used and adjected in such like cases of reëxaminations.

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1683. GEORGE SETON of BARNES *against* The LADY BEARFORD, &c.

*February 7.*—SIR Arthur Forbes, Viscount Granard, Lady Margaret Hay, and the Lady Bearford, gave in a bill against George Seton of Barnes, complaining he had vitiated a principal agreement, or decreet-arbitral, passed betwixt his father and him in 1658, by making *eighteen* hundred *sixteen* hundred, and *his* estate *this* estate, and adding the word *rents*, which corrupted the sense.

ANSWERED,—They were not vitiations, but amendments, inserted in it at the very beginning by the arbiters.

The Lords, having considered the bill and answers, recommend to my Lord Register and Redfoord to hear the parties anent the vitiation of the said decreet-arbitral, and upon the hail points controverted; and, for that effect, grant warrant to the Commissary-clerk of Edinburgh to exhibit and produce the principal decreet-arbitral in question; and to the Clerks of Session, and

Keepers of the registers and records, to exhibit and produce, before the said Lords, any grounds or warrants, and books, that can clear the whole matter. And ordain the Lords to make report. *Vide 13th March 1683.*

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*March 13.*—George Seton of Barns, in the affair between him and the Lady Bearford, &c. (mentioned 7th Feb. 1683,) on a bill gets a deliverance and warrant to examine the Commissary-clerk and his servants on the said minute and its extracts; as also a commission to examine Mr Robert Hodge, the arbiter, and writer of it, &c.—*Vide 30th current.*

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*March 30.*—The Viscount Granard, Lady Logie, and Lady Bearford, against George Seaton of Barns, (mentioned 13th current,) being advised; the Lords found, by the writs produced, the deposition of Mr Robert Hodge of Westgladsmuir, the arbiter, and writer of the minute of the decreet-arbitral, and the Commissaries their clerks and servants, and particularly by the oaths of Home and Sandy, that the said decreet at the beginning has borne *his estate*, and is since made *this estate*, by adding the letter T to *his* in two places of it, where Sir John Seaton, his father, is empowered to dispose upon the rest of his estate; and that it has no other vitiation in it; and that it appears that Barns, neither by himself nor others, had any accession thereto.

Barns, in this process, to blunt Lady Margaret Hay his stepmother's process, by the popish priests, agreed with her. Yet the enemies he left behind prevailed thus far, as we have seen; which they sought to counterbalance and enervate Barns's suit he had commenced in Ireland, for some lands there belonging to his father, where they made use of the foresaid decreet-arbitral as a renunciation of all he had to crave, save the lands of Barns. *Vol. I. Page 231.*

1683. SIR DAVID CARNEGIE OF PITTARROW *against* SMITH and MONTGOMERY.

*March 23.*—Sir David Carnegie of Pittarrow against Smith and Montgomery, tenants of Graham of Crigie, reported by Drumcairn. The Lords refused to allow the payments made by these tenants to Barbara Ramsay, and Lyles, her children; because, though they had preferable infestments to Pittarrow's, yet, being called to his decreet of preference among the other creditors, they are not ranked there, and that decreet of preference was the only rule for paying; and allowed the rest of the articles of their discharge. Only ordained the prices of the victual to be calculated at the sheriff's fiars for these years. *Vide 30th current.*

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*March 30.*—Sir David Carnegie of Pittarrow his general declarator of escheat against Smith, Crigie's tenant in Mathers, being reported by Castlehill; the Lords found the denunciation of the said tenant to the horn, null, because it was general for payment of a superplus not then liquid, and which could not be; because the very annualrent of those creditors ranked before Pittarrow in his own decreet, was far more than all his rent extended to, though there was a superplus due among the whole tenants. *Vol. I. Page 231.*