

Note: This petition was part of a long-running legal dispute between the burgh of Tain and Roderick McLeod of Cadboll over encroachments on to the burgh lands. Several versions of the plan referred to near the end were produced by Sangster, one of which, dated 1750, is in Tain & District Museum.

(February 17. 1747,)
Unto the Right Honourable, the Lords of Council and Session,
THE
PETITION
OF
The Magistrates of Tayne,

Humbly sheweth,

That your Petitioners for themselves, and in name and in behalf of the Council and Community of the Burgh of Tayne, brought a Process of Molestation, Declarator, Damages and abstracted Multures against Roderick McLeod of Cadboll, for declaring the Town's Right of Property to certain Grounds specified and described in the Town's Charters and Infetments, complaining of certain Encroachments made by Cadboll within the Limits of the Town's Property, and for declaring the Lands of Inverethy, pertaining to Cadboll, to be thirled to the Town's Mills; with the proper Conculsions [sic] adapted to the several Heads of this Libel.

That in the Proceedings in this Cause before the Lord Elchies Ordinary, Cadboll having contended, "That these Encroachments complained of by your Petitioners were in reality no Encroachments, but Acts of Property by Cadboll within his own Limits;" The Lord Ordinary, by Interlocutor 5th July 1745, Ordained the Defender to produce his Rights and Titles to his Lands lying adjacent to the Lands libelled, and to give in a Condescendence of the Meiths and Marches of his own Lands.

That, by an After-Interlocutor of the 13th of July 1745, his Lordship, "Allowed your Petitioner to prove their Libel, and the Meiths and Marches and Boundaries of their Lands and Commonty libelled, of their perambulating the same, and Encroachments made thereon, and of all other Facts and Circumstances that may tend to clear up the Matters contained in the said Libel; and allowed the Defender a Proof of the Meiths and Marches of his own Lands adjacent to the Pursuer's Lands libelled: And granted a conjunct Probation to either Party, of all Encroachments, Interruptions and Acts of Property, etc. in Relation to the Premises; and granted Commission for taking the Proof in the Country, to be reported against the 4th Day of November then next: And ordained the Defender against the same Day to produce his Rights and Titles in vertue whereof he claims an Interest in the Lands and others libelled."

That Cadboll having attempted in vain to obstruct this Proof, each Party at length extracted their Act and Commission, and thereupon led a Proof. But all the Witnesses cited by Cadboll to compear before the Commissioners not being examined, when your Petitioner's Act was called upon the [blank] Day of December last, in order to make Avisandum with their Proof; he insisted for a 2d Diligence against such of his Witnesses as were not examined, which the Lord Ordinary granted; but none of the Witnesses against whom the second Diligence was obtained have yet been adduced by him: And your Petitioners having again put up their Act upon the 4th February current, great Avisandum was made with their Probation, and the Term circumduced against the Defender for not proving and performing the other Points in the Act admitted to his Probation, but with this Quality, That, in Case any of his Witnesses againts whom there is a second Diligence should appear within 14 Days, their Oaths should be received.

The Ground in Controversy is of so large an Extent, and the particualr Meiths and Marches pointed out by the Witnesses are so many and various, as adapted to the different Heads of Proof, which from the Number of Witnesses has swelled to a very great Size, that your Petitioners perceive it will be impossible for your Lordships to comprehend the Proof, or for the Council on either Side to argue the Case, so as to make themselves understood, without a Plan of the Ground, which will be equally for the Advantage of both Parties; It is impossible the Cause can now be advised this Session: And, as the Plan may be made out in the following Vacation, the Proof may be advised against the beginning of next Session.

Your Petitioners must at the same Time complain, that no Obedience is given to these repeated Interlocutors of the Lord Ordinary ordaining the Defender to produce his Rights and Titles to the Lands libelled, and in vertue whereof he claims an Interest in these Lands. If your Petitioners are well inform'd, the Defender's own Rights are so bounded and limited as to exclude any Pretence of Right within the Limits libelled: It was for this Reason your Petitioners did and still do insist, that the Defender be ordain'd to produce these Rights and Titles, with Certification.

May it therefore please your Lordships to grant Warrant to, and authorise Alexander Sangster Gardner in Balnagowan to make a Survey and Plan of the Grounds libelled, with the Meiths and Marches thereof, as pointed out and described by the Witnesses on both Sides, upon the joint Expences of your Petitioners and Cadboll; and to report the same against the 1st of June next: And in the mean Time to ordain Cadboll to lodge in the Clerk's Hands, against a Day certain, his Rights and Titles whereby he claims an Interest in all or any Part of the Grounds libelled, that so your Petitioners may have Access to peruse the same; with Certification, that, if he fails to produce the same, they shall be held to be exclusive of any Right or Interest upon the Grounds or within the Limits specified in this Summons.

According to Justice, etc.

ALEX.LOCKHART.

I Nathaniel McIntosh Clerk to David Monro Writer to the Signet, Doer for the Petitioners, did intimate the above Petition to John Mackenzie Writer to the Signet, Doer for Roderick McLeod of Cadboll, that Copies of said Petition are to be put in the Lords Boxes this Afternoon, to be advised by their Lordships To-morrow, the 19th of February instant; and that by delivering to the said John Mackenzie a Copy of the said Petition, betwixt 10 and 11 o'Clock in the Forenoon of this 18th Day of February 1747, in Presence of Angus McCulloch and Alexander Grant Writers in Edinburgh.