

1684. *November 26.* MURRAY OF POLMAIS *against* STIRLING OF CARDEN.

THE Lords advised the report of the visitation made between Murray of Polmais, and Stirling of Carden, upon this point, How far Carden's new built mill, half a mile below Polmais's old Carse-mill, on Bannockburn water, did prejudice the said old mill, by making it restagnate; or did undermine his banks, or spoil his fishing or grass-bleaching: and found this new mill having gone this twelve months only, no measures could be taken of the prejudice it does to the superior old mill, the last winter being extraordinary through the long frost, and the last summer by drought; and so these, being *de raro contingentibus*, could make no rule; *l. 3. D. de Legib.* Therefore, they ordained the same visitors to go again upon the ground, and take the height and the declivity of both grounds, and of the two mills, and the prejudice arising from the restagnating, or otherwise, and if it results by Carden's dam-head: for it was alleged for him, that this was *fallacia non causæ pro causa*; seeing, before the erecting of Carden's mill, the Carse-mill and its tail-dam used, by spring tides of the sea, or inundations, to be put in back-water: and witnesses might indeed depone on the effect, for that was obvious and visible, falling under the senses; but the true cause of it did not always appear, and might be very latent.

But the parties were ordained to wait on the Chancellor first, to see if he could agree them. Drumcairn was declined, because the young Lady Polmais, Durie's daughter, was his niece.

*Vol. I. Page 314.*

1684. *December 4.* JOHN CRAWFURD *against* PETER BLAIR.

JOHN Crawford having raised a reduction of a decret of the Commissaries of Edinburgh, against his father, in 1653, decerning him, as tutor to William Blair, in the sum of £1800, against Peter Blair, who, on that decret, had apprised and possessed his father's tenements several years; because the Commissaries had committed iniquity in refusing several articles of the tutor's discharge; and though the pupil's money was in irresponsable hands, yet they made the tutor liable for all:

The Lords found no iniquity, especially *post tanti temporis intervallum*.

But, on the 12th of December, the Lords having re-considered this case on a bill, they loosed the Commissaries' decret; and ordained Blair to count for his comprising, and Crawford for his father's tutorial accounts. *Vol. I. Page 317.*

1684. BECKS *against* PATRICK CRAWFURD.

*March 25.*—PATRICK Crawford, merchant in Edinburgh, against Becks. The Lords having considered the bill, with the pursuer's deposition, They find it proves that Crawford was entertained by his defunct master's relict, during the time of the prenticeship, but not that he went two voyages to London, France, or Holland, conform to the obligation in the indentures, to send him;