

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 ;

and find the other points of the defence, anent helping him with the relict's credit, not proven by his oath: but, as to the modification of his damage, for want of insight, upon that account of not being sent abroad, remit the determination thereof to the opinion of Dean of Guild Baird, and Bailie Hall; and, in the mean time, stop the decreet at Becks' instance against the said Patrick Crawford.

It was ALLEGED,—That the expense of sending a common apprentice abroad is small, and, considering the short time they stay, needs not (going by sea) exceed £4 or £5 sterling; and by such voyage they can get little insight. *Vide* 5th December 1684. *Vol. I. Page 284.*

*December 5.*—The Lords having advised the case between Beck and Patrick Crawford, mentioned 25th March 1684, anent what modification Crawford should have, upon the account he was not sent twice abroad by his master, as the indenture bore: and seeing the two merchants, to whom the Lords referred it, had given no opinion, the Lords modified £10 sterling for his want of insight thereby: though the President thought £5 or £6 sterling enough for such small merchants and prentices in the Lawn Market. *Vol. I. Page 317.*

1684. *December 5.*—SIR JAMES COCKBURN of that Ilk *against* His FEUARS of DUNSE.

SIR James Cockburn of that Ilk, against his Feuars of Dunse, for relieving him of a proportional part of the new cess and taxation imposed by the last Parliament 1681.—By the last clause of the 3d Act thereof, feuars, vassals, tenants, and cottars, are bound to reimburse their superiors and masters, of the quotas therein mentioned.

But the Lords found Sir James could not exact from his feuars and tenants, though never so many, above the half of his own stent; else, in some places, a man might get more than his own part of the cess came to.

The interlocutor was:—The Lords found Sir James, by that Act, could not burden his vassals or tenants with more than the one half of the cess he pays for his own lands: and found, as to such feuars as were inrolled in the valuation-rolls by themselves, that they could relieve him of no part of the taxation, because they paid for their own lands; but, as to such as were not valued, who held some heritage of him in feu, and laboured other men's lands as tenants, that they should pay what the said act imposes on tenants, *viz.* £4 Scots; and, if they had no labouring, then £6 Scots; but if they had only a house, and had no trade at all, then that these should be reputed and cessed as cottars.

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1684. *December 6.* A DRAGOON'S HORSE POINDED.

A DRAGOON'S horse being poinded for his debt, he raised a summons of spuilzie, and ALLEGED,—If such poindings were allowed now in thir broken times, his Majesty's service might be easily retarded and frustrated. ANSWER-