

March next, and declare they will advise any report that shall come from the conservator *medio tempore*. And, in respect it is acknowledged by the tutor's oath that payment was made of 600 guilders to Hary Walwood, allow the said sum to the defender; but refuse the bill payable to John Sandilands, in regard there is nothing produced to prove that the factor, Suity, accepted or paid the same. And find that the tutor's oath does not prove that he has any writs that can prove payment by the factor to the defunct, except the foresaid 600 guilders; and modify and determine the guilder at twenty-three shilling Scots, the same being a Flanders guilder, and at twenty-two if a Holland's guilder. And find that annualrent is due since the factor was *in mora*. And declare they will determine the time from which the annualrent is due before extract. *Vide 21st March 1683.*
Vol. I. Page 219.

1683. *March 21.*—Between Bayn and Young, (mentioned 17th Feb. 1683.) The Lords, having advised the conservator's report, found that the factor's own count books could not prove his own payments; but, as to the article of Sandilands' debt, defalked and allowed it, because the bill was produced, Alexander Young finding caution to warrant the pursuer against it, in case it be found protested or unpaid. And refused annualrent, because the factor's cautioner was not *in tuto* to pay till it were confirmed, the pursuer's title being only an assignation from his father un-intimated; and allow all the factor-fee and other expenses contained in the factor's book.

And, on a new bill, they allowed Young to the first of November, to prove any further payments; he finding sufficient caution to pay whatever should be decerned, with the annualrent from the date of this interlocutor.

Vol. I. Page 227.

1683. *March 21.* JAMES OSWALD *against* DANIEL CATHCART.

BETWEEN James Oswald and Daniel Cathcart, reported by Pitmedden. The Lords reduced Daniel's comprisings.
Vol. I. Page 228.

1683. *March 22.* THOMAS HUNTER and LADY HAGBURN *against* OUGHTRED MACDOUGALL'S CREDITORS.

CAPTAIN Thomas Hunter and the Lady Hagburn against the Creditors of unquhile Oughtred Macdougall, reported by Harcous. The Lords found that Mr William Wallace's reservation of a power to dispone without the consent of the fiar, *etiam in articulo mortis*, being in the procuratory of resignation, whereupon instrument of resignation followed; and the faculty being exerced by the said disponer, in favours of Captain Thomas Hunter, for a liferent of 100 merks yearly out of the lands disposed; and in the assignation or disposition by the fiars of the two third parts of the procuratory and resignation foresaid in their favours to Oughtred Macdougall, the said Captain, pursuer, his liferent-right foresaid is also excepted and reserved as a burden on the fee; therefore