

1683. *March 20.* WILLIAM AIKMAN *against* SIR JAMES COCKBURN.

MR William Aikman of Cairney, advocate, against Sir James Cockburn of that ilk. The Lords found the general discharge yet open, and Sir James not bound to obtain Sir Walter Seaton's new discharge, till first Mr William counted and reckoned, and cleared any thing Sir Walter had to charge old Cairny with,—of intromissions, or connivance with the merchants, when he was sub-collector of the customs; conform to the qualities in the first discharge, and in Sir Walter's letter. *Vol. I. Page 227.*

1682 and 1683. JAMES BAYNE and his TUTORS *against* ALEXANDER YOUNG.

1682. *March 23.*—JAMES Bayne and his Tutors pursuing Alexander Young, as cautioner, for Suity, factor in Campvere, for the price of goods sent to the said factor; and for proving his receipt thereof, Suitie's holograph letters being produced; and Young objecting, they could not prove *quoad datam* against his exoneration:—(*Vide supra, March 1st, 1682, Trotter against Young.*)

The Lords, on Pitmedden's report, sustained the holograph letters, and found the factor's receipts, being relative to bills of loading subscribed by the skipper, is probative, *quoad* the date, to infer an obligation of payment on the cautioners for the factor. See Stair's Form of Process, p. 14, where bills of exchange, merchants' missives, receipts, and accounts, need not the solemnities of witnesses. A parallel case in 1676 was cited. *Vol. I. Page 179.*

1682. *December 2.*—In the cause James Bayn against Alexander Young, merchant in Edinburgh, (22d March 1682;) the Lords, on a bill given in by Alexander, and answers, adhered to their decret as of before, but superseded extract of it to the 15th of February next; and grant commission to Mr James Kennedy, present conservator in Holland, for inspecting umquhile Patrick Suity, the factor, his count-books, and to transmit an authentic report of any article he finds in these books or writs, for instructing payment of the debt now pursued for; and grant diligence against all others the havers of writs, for instructing the payment foresaid; but it is hereby declared that the time prefixed is allowed for ultimate diligence, without any further.

This favour was shown, notwithstanding that there was an act of litiscontestation in the cause, wherein he had offered to prove payment, and a circumduction following thereupon; and that, with us, merchants' books ought not to prove for them, else they had an easy way to pay all their debts: and it was so found, as observed by Stair, 20th November 1662, *Wardlaw*; and on the 30th November 1677, *Anderson*.

But the Lords considered he was only a cautioner for a dead bankrupt factor; and whereof he was publicly exonerated shortly after this furnishing now pursued for. *Vide infra, 17th Feb. 1683.* *Vol. I. Page 198.*

1683. *February 17.*—In the case between Bain and Young, (mentioned 2d December 1682;) the Lords, on a new bill given in by Young, and answers, superseded and prorogated the extracting of Bain's decret till the 10th of

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.*
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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.

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

BETWEEN James Oswald and Daniel Cathcart, reported by Pitmedden. The Lords reduced Daniel's comprisings.
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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 exercised 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