

from the day that the spuilie is proven to have been committed. It was inquired whether the violent profits of the goods for that very day whereon the spuilie was perpetrated will be included in that decerniture, and may be sought. It is thought not; because violent profits are penal and odious, and so the time is not counted to run *de momento in momentum*, and commences from that day *exclusive*. Some may argue the interpretation should be strictly taken against the spulyier, *in odium spoliantis*. *Vol. I. Page 56.*

ANENT DONATARS.

By law the donatar is obliged to pay the debt contained in the horning whereupon his gift proceeds: as also, by Act 1621, sums not bearing annualrent do bear it after denunciation of the horning; so that the rebel debtor denounced is from that time liable in annualrent. But the question is, whether or not the donatar is in the same case with the debtor, or in a better case, and if he will be liable for the annualrent due after the horning, and existing upon the denunciation, as well as for the annualrents due before the horning, as the common debtor is. *Qdo*, Since the donatar is bound to purge the debt of the horning, what if he alleged that, by intromission upon his gift, he hath not recovered so much as would satisfy the debt of the horning? I think, as to the debt of the horning, the donatar is like to an executor bound to do diligence, and to assign.

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1679. November 8. FRANCIS FARQUHARSON of FINZEAN *against* the EARL of ABOYNE.

FRANCIS Farquharson of Finzean pursues a declarator against the Earl of Aboyne, to hear and see the Earl discharged to molest the pursuer's fair, and to intercept the cattle coming thereto, upon the pretence that he hath a fair on the other side of the river of Dee that same very week; seeing the pursuer's fair is the oldest, and Aboyne's is only impetrated since *in æmulationem vicini*. See the like case in Dury, June 1642, *Glenfarquhar*. *Vol. I. Page 62.*

1679. November 8. DOCTOR TROTTER *against* JAMES KINNIER.

IN the suspension, Doctor Trotter against James Kinnier in London, the Lords having advised James Kinnier the charger's oath, they found it did not prove his reason of suspension, that the charger had received goods which were sent to the said doctor. Therefore they found the letters orderly proceeded. But, on a bill, assoilyied the doctor from the penalty, but refused to cause reëxamine the charger. *Vol. I. Page 62.*