

which the defender offered to prove, and craved a day to that effect,—the Lords would not delay the pursuer's action upon this dilator, except it were instantly proven; but assigned a day to the defender to produce the writs called for; and, if the defender prove his dilator at any time before the last diet that should be assigned to the defender for production, the same should be received.

*Page 98.*

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1630. *November 30.* JAMES DOUGLAS *against* WARDLAWS.

If a donatar pursue a declarator upon the gift of a rebel's escheat: and the executors or intromitters with the defunct's goods and gear allege no declarator; because the horning whereupon the gift of escheat was taken, was null, because the debt was paid before the denunciation: The Lords will not admit this nullity by way of exception; but the party user of the exception behoves to reduce the horning.

*Page 87.*

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1630. *December 5.* LORD YESTER *against* PORTEOUS.

THE Lord Yester, baron of the barony of Oliver Castle, pursues Porteous of Fruid for the nonentry of the lands of Fruid, as part and pertinent of the said barony. The defender alleges, That the pursuer not being infeft *per expressum* in the said lands of Fruid, should prove that the same are part and pertinent of the said barony. It is replied, That the defender cannot urge the pursuer to prove parts and pertinents, except he disclaim the said lands of Fruid to be holden of the Lord Yester. Which reply the Lords found relevant. But many of the Lords voted that the pursuer should prove his libel.

*Page 140.*

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1630. *December 15.* JAMES OGILVY *against* LORD OGILVY'S HEIR.

JAMES Ogilvy, son to Mr David, comprised the right of a contract, whereby the unquhile Lord Ogilvy bound and obliged him and his heirs, to content and pay to the said Mr David the sum of 2000 merks, and to infeft him in an annualrent of 200 merks while the principal sum be paid; and, by virtue of this comprising, pursues for the byrun annualrents resting owing before and since the comprising. It was answered for the Lord Ogilvy, That the byrun annualrent being a moveable debt, could not be craved by reason of the comprising;