

1678. *January.* TOWN of ABIRDENE *against* some of their BURGESSES.

IN the case of the Town of Abirdene with some of their Burgesses, it was queried if towns had power to stent, since that seemed only to be the power of King and Parliament. Yet the Lords found they had, both in regard of their possession and use to do it, and that there were some acts about it. *Vide supra, December 1672, No. 381, Town of Invernesse and Forbes of Culloden. See 20th November 1678, Wishaw and Lundie.*

*Advocates' MS. No. 709, § 3, folio 316.*

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1678. *January.* ANENT PROVISIONS in lieu of TERCE.

A WOMAN, in her contract of marriage, accepts a jointure in satisfaction of terce and third, or any thing she could crave. She dying before her husband, *quæritur* if that generality of the clause will exclude her executors from the *communio bonorum*; for it seems only to provide *in unicum istum casum* that she survive the husband. Lawyers differ on it. This clause uses to be conceived more amply now, whereby she is made to accept the liferent provision, in satisfaction of terce, third, or all other part, either of moveables or heritage due by the law or custom, which either she could crave by her husband's predeceasing, or that her executors could crave, if she happen to decease before her husband.

*Advocates' MS. No. 709, § 4, folio 316.*

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1678. *January.* ANENT SUCCESSION in BONDS.

A MAN takes a bond, payable to himself and his heirs, secluding his executors. *Quæritur*, if this will fall to the heir of line or heir of conquest. See Stair's System, *titulo* Succession.

*Advocates' MS. No. 709, § 5, folio 316.*

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1678. *January.* KINLOCH *against* KINLOCH.

THERE is a first contract of marriage, providing a sum to the heirs or bairns of the marriage: there were procreated of that marriage a son and a daughter. The Lords found both the son and the daughter might be served heirs of provision of the marriage; which was thought strange. The parties were *Kinloch against Kinloch*. It was made a query to the Lords. Sir George Lockhart was of opinion that the legal way was to serve the son, or if there had been more sons, the eldest heir in the whole; and he, then, would have been liable, *actione personali*, to the rest, for their equal shares and proportions; though, it may be, it was not the meaning nor intention of the parties contractors that they should succeed all alike, or be all of them at the expense of serving heirs. Yet there