

No 18.

building during her lifetime, might possess the same ; and put it in her option to do either.

*Gosford, MS. p. 233.*

1672. *February 2.* GUTHRIE *against* LORD M'KERSTON.

No 19.

A WIDOW having rebuilt her jointure-house, burnt *casu fortuito*, was found to have no action against the heir, unless the house had been accustomed to be let for mail, and, in that case, found the heir liable *in quantum lucratus*.

*Fol. Dic. v. 2. p. 319. Stair.*

\* \* \* This case is No 74. p. 10137. *voce* PERICULUM.

1676. *January 6.* FORBES *against* ROSS & PATERSON.

No 20.

Parties having a common interest in a law-suit, found proportionally liable for the expenses.

JOHN FORBES of Culloden, Robert Ross, and Alexander Paterson, having a joint right to the Miln of Inverness, and having certain lands and tenements holden of the town of Inverness, feu, and in burgage, the town of Inverness, by a decret of the Dean of Guild, ordained a vessel, by which they received the dues of the Miln, to be broken, as being larger than the due and accustomed duty. This vessel they called the Mutie. They did likewise stent these three, and other two persons, not only for their burgage tenements, but for the Miln, and their feu-lands in the forest of Drakies; and they conceiving that they were unequally stented, and burdens put upon them unwarrantably, raised a suspension in all their names jointly, of both the decreets, and; by a missive letter to Culloden, desired him to borrow money upon all their credits, for carrying on their common interest, and to spare no expenses, and obliging them to bear their equal fifth parts. Whereupon the process was carried on by Culloden, who attended at Edinburgh, and obtained a decret, first anent the Mutie, finding that the Town had done wrong to break it, and that it was the just due of the thirle. There was also a decret, declaring the Milns, and the Forest of Drakies, to be free of the Town's stents. Whereupon Culloden obtains a decret against Ross and Paterson, for their share of the expense, both for his attendance, and for the expenses of plea, extending the whole expenses to 10,000 merks. They suspended this decree, and *alleged*, That it was most unjust and exorbitant, obtained before his own nephew, upon his own oath, upon general articles, not otherwise instructed; *2do*, That they could be liable for no expenses after they disclaimed the plea, and intimated the same to him; for whether their letters will import a mandate or society, or communion only, they had always place to disclaim the process, or agree with their party; and it were of very evil consequence, if the joining in one process, for a common interest,