No 125. those who represented the husband, were liable for the wife's mournings, and for the aliment of the child.

Fol. Dic. v. 1. *p.* 396. *Stair. v.* 2. *p.* 340.

1681. *February* 23. GORDON *against* INGLIS.

No 126.
A husband whose wife died within year and day of the marriage, decerned to repay the tocher without any deduction except for the expenses of her funeral.

THOMAS INGLIS being married to Agnes Gordon, and having received 800 merks of tocher, Agnes dying within year and day of the marriage without children, Janet Gordon her sister, and executor, pursues Thomas Inglis to repete, and restore the tocher, who craved deduction of the expenses wared upon his wife's bridal-clothes, and her entertainment during her life, and her funeral charges. It was *answered*, That no deduction was ever allowed, or any expenses during the marriage, though this case has frequently occurred.

THE LORDS refused all expenses during the marriage, expended by the husband, but deducted the funeral expenses, as being debursed after the dissolution of the marriage, and likeways any debt of the wife's, contracted by the wife before her marriage, for marriage-clothes, and others, and paid by the husband.

Fol. Dic. v. 1. *p.* 396. *Stair, v.* 2. *p.* 867.

No 127. 1681. *November.* GEORGE HERIOT *against* HENRY BLYTH,

THE LORDS found an heir liable for the expenses of burying his predecessor's relict who had been meanly provided, and had not left wherewithal to defray the same, albeit the heir was not the defunct's son, but one of a remote degree, as a relict may be liable to the aliment of an apparent heir.

Fol. Dic. v. 1. *p.* 396. *Harcarse*, (ALIMENTS.) *No* 18. *p.* 5.

*** P. Falconer reports the sase:

IN the action of count and reckoning, pursued by Heriot heir to Lieutenant Colonel Heriot, against Dr Blyth and John Muir writer to the signet, as they, who by virtue of a commission from the Lords, had intromitted with the heritable estate, which belonged to the pursuer as heir, the LORDS sustained the funeral charges of the defunct's relict, who survived him, as an article of the defender's discharge; and found, that the relict having no means, or estate, to defray her funeral charges, the heir of her deceased husband was liable therefor, she having died widow.

P. Falconer, No. 1. *p.* 1.

*** This case is also reported by Fountainhall :

No 127.

IN the action of count and reckoning pursued by George Heriot against the said Mr Henry Blyth, for intromissions as his factor with the rents of his lands, by the space of seven or eight years, sundry points being controverted before Lord Forret auditor, he reported them this day to the Lords. The principal point was, Mr Henry sought to discharge himself with an article of funeral expenses paid by him, for burying the said Lieutenant Colonel Heriot; also his son, his relict, his mother-in-law, and sister-in-law, their burials. To which it was *answered* for George the heir, That there was an executry left by the said Colonel, which in law stood *primo loco* affectable for the said funerals, and, till they were exhausted, the heir could not be made liable. *Replied*, He legated his moveables to his relict by testament, and so his moveables cannot be applied to pay his funerals, but the same must come off the heir. 'THE LORDS found the moveables legated ought to pay the Colonel's own funerals; and repelled the allegeance founded on their being legated to the relict: and found the relict liable in so far as the moveables would extend to, notwithstanding of the legacy, but sustained the article of the discharge anent the son's funeral charges to affect the heir; but found the mother-in-law's funerals ought to affect the executry in the first place, and after the executry is exhausted, then to affect the heir for the superplus. As also allow to Mr Henry the funerals of the relict paid by him, unless it can be made appear that the relict had means of her own, out of which the expense of her funerals might have been satisfied. As also allow the article of the funeral charge of Agnes Keir the sister-in-law, because it was taken out by the Colonel in his own lifetime, and unpaid at his decease. *Item*, Sustain the article of five dollars lent by John Muir to the Colonel, upon Robertson his servant's receipt, the said John giving his oath that he delivered the said five dollars to his servant on the Colonel's credit. Allow the article of striking out the chimney in Patrick Steel's house, as profitably done for the good of the house, though the rent was not then augmented, the house being under tack. And, *lastly*, allow the 300 merks, furnished by the said Mr Henry to his heir's brother, John Heriot, and that in respect of his letter produced seeming to approve thereof.' But he knew not then of the legacy of 400 merks left by his uncle to the said John; and therefore the said 300 merks must be ascribed in payment of the said legacy *pro tanto*.

Fountainhall, v. 1. *p.* 161.

*** Sir P. Home also reports this case :

1682. *March.*—IN the count and reckoning pursued at the instance of Heriot, heir to Lieutenant Colonel Heriot, against Dr Blyth and John Muir

No 127. writer, as they, by virtue of a commisson from the Lords, had intromitted with the deceast Colonel Heriot's estate, the LORDS sustained that article of the discharge expended by the defenders for the funeral charges of Colonel Heriot's relict, and found, that the relict having no means or estate to defray her funeral charges, her husband's heir was liable for the same.

Sir P. Home, MS. v. 1. No 242.

1683. *March.*

No 128. MARQUIS of MONTROSE, Donatar to BUCHANAN's escheat, *against* His RELICT.

A person whose escheat was gifted, dying unrelaxed, the donatar was found liable for the expense of his funeral, and not his relict, who was provided in a jointure.

A HUSBAND becoming rebel at the horn, after he had disponed several goods to his wife *stante matrimonio*, the LORDS found these goods fell in his escheat, as being a tacit revocation, and a legal assignation of the moveables or goods that recurred back to him *jure mariti*; but found, that the donatar ought to allow the expense of the funeral of the rebel, who died unrelaxed, seeing in that case there could be no executry, and the donatar had got a lucrative disposition of his lands.

The Lady being provided by her contract of marriage to the house and parks *indefinite*, the LORDS found the provision was to be understood only of such parks as the husband kept for the use of his own family, and not such as were set out to fleshers for fatting of cattle, and that she had not the rent of these as *fructus bona fide percepti*, even before interlocutor, in respect she had a jointure payable out of the estate by way of annualrent, in payment whereof the rent of that park ought to be imputed.

Fol. Dic. v. 1. p. 396. Harcarse, (ESCHEATS). *No 427. p. 113.*

1685. *January 8.* GEORGE MONTEITH *against* His SISTER-IN-LAW.

No 129. FOUND that funeral expenses of a wife dying before her husband, ought to come off the head of the inventory, and that her clothes and paraphernalia were liable to no part thereof.

Fol. Dic. v. 1. p. 396. Harcarse, (EXECUTRY.) *No 464. p. 126.*

*** In conformity with this were decided Dicks against Massie, No 45. p. 5821; and, 24th July 1735, Lermont against Watson of Saughton, *see* APPENDIX. See also Aitken against Goodlet, No 16. p. 2562, and No 132, *infra*, which were decided in opposition to the above.