1706. *February* 19. MUIRHEAD'S RELICT *against* Her FATHER-IN-LAW.

No 130.
Found in conformity with Hasty against HastyNo 124. p. 5922; that a relict is entitled, against her husband's representatives, to the expense incurred by the birth of a posthumous child.

ROSE FINCHAM, relict of James Muirhead of Braidisholm younger, against her father-in-law, Braidisholm elder, for modifying an aliment to herself and her children, during the dependence of a declarator she has for a terce, in respect her husband was once infeft, though the sasine be now abstracted. THE LORDS refused to modify any aliment for the children, in regard the goodsire offered to take them home to his own house, and to aliment them as he does his other children; for though infants are not to be taken from their mother during her viduity and their infancy, if she offers to keep them *gratis*; yet if she seek aliment for them, the grandfather may stop it by accepting them into his own family. But the LORDS found she ought to have an allowance for her expense of in-lying, and bringing forth the posthumous child, and for the nursing it; and referred the modification to the Ordinary.

On the 28th current the Lady Braidisholm entered an appeal against this interlocutor. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 396. *Fountainhall, v.* 2. *p.* 328.

*** See Forbes's report of this case, *voce* TUTOR and PUPIL.

1708. *June* 19. A. *against* B.

No 131.
The relict's part must bear a share of the husband's funeral expenses, as well as the dead's part.

IN a process between the relict and children of the following points came to be advised, viz. 1*mo*, The executors confirmed craved allowance and deduction for the moveable heirship, as the best of each species of the plenishing which the heir would have right to, but had not yet claimed. *Answered*, There could be no separation on that account, because *non constat* what he could elect, and therefore, you must pay in to me the whole. THE LORDS found the whole was to be accounted for, but ordained the receiver to find caution to warrant them against the heir, when he appears, to make his share forthcoming to him. 2*do*, Deduction being craved for the funeral expense, the relict *objected*, That could never affect nor diminish any part of her share of the moveables, because the communion of goods can be burdened with no debts, but what were contracted during the standing of the society; but *ita est* the funeral charges is a debt arising and existing after the dissolution of the marriage, and so can only affect the dead's part, and not the relict; and that my Lord Dirleton, who was long a commissary, and much versed in consistorial cases, is of this opinion, *voce* FUNERAL CHARGES. *Answered*, Burying her husband is one of the most privileged debts, and one of the laws of nature, *et debitum humanitatis, ne cadavera maneant insepulta*; and it is as reasonable that the relict bear a share of the burden as his children; and what-