

No 127.

writer, as they, by virtue of a commission 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. I. 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 disposed 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 fattening 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. I. 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. I. 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.