

1726. *June 21.*SIR WILLIAM JOHNSTON OF WESTERHALL *against* MARQUIS OF ANNANDALE.

No 16.

A PARTY having uplifted the defunct's rents, and applied the same for defraying the expenses of the funerals, it was found, That he, having done the same by the relict's order, was to be considered as her hand; and therefore that he was liable to account to the heir for his intromissions; seeing, if the relict were pursuing for an exoneration upon this head, it would be competent to object to her, that she had in her hands the defunct's moveables, which ought to be applied, in the first place, towards defraying the funeral expenses.

Fol. Dic. v. 2. p. 318.

** Lord Kaimes's report of this case is No 4. p. 9281. *voce* NEGOTIORUM GESTER; and Edgar, No 3. p. 8486. *voce* MANDATE.

 SECT. IV.
Expenses laid out *in re communi.*1665. *February 23.* JACK *against* POLLOCK.

No 17.

A RELICT being infest in a ruinous tenement, repaired the same, and built it much better than ever it was. The heir was decerned to refund her expenses, not only in so far as necessary, but in so far as he should be a profiter by greater mail after the relict's death, she leaving the tenement in as good case as at the time of the pursuit.

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

** This case is No 36. p. 3213. *voce* DEATHBED.

1672. *January 24.* HACKET *against* WATT.

No 18.

An appriser of a burnt tenement, upon which there was a liferent constituted after it was burnt, repaired it after expiry of the legal. Fonnd,

HACKET being infest in life-rent in a tenement, which is mentioned in the infestment to be burnt, having pursued Hugh Watt, who apprised the tenement from her husband, and after expiring of the legal, had built and repaired the burnt tenement, she obtained decret for mails and duties. Hugh Watt suspends, and raised reduction on this reason, that the Bailies of Leith had committed iniquity, in sustaining this irrelevant reply, that it being alleged that *inædificatum solo cedit*, so that the building did accresce to her during her life, especially seeing the building was *mala fide*, the said Hugh Watt knowing, or