

(Læ debito naturali.)

In a suspension of this judgment, at the instance of Oliver, the Lord Ordinary found that he was liable in that sum annually, until the child should attain the age of fourteen years.

But the Court, in reviewing this judgment, were of opinion, that, for persons in his circumstances, the sum was too large, and the time too long; and, therefore, they 'restricted the quantum of the aliment to L. 3 in the year, to be paid quarterly, until the child should attain the age of seven years; and also, thereafter, until either that the father shall take the child into his own keeping, or that the child shall attain the age of ten years.'

For Suspendor, *H. Erskine.*Adv. *Adam Ogilvie.**Fol. Dic. v. 3. p. 25. Fac. Col. No 21. p. 36.*

1782. November 19. JANET GLENDINNING against JAMES FLINT.

JANET GLENDINNING sued Flint for aliment of a bastard female child, whom she had born him.

In determining the *quantum* of that allowance, the Court was influenced by a specific obligation under the hand of Flint. With regard to the endurance of it, or of the mother's right to the custody of her child, their Lordships seemed to be chiefly moved by the consideration of the child's being of the female sex.

THE LORD ORDINARY had found, 'That the pursuer, Janet Glendinning, was entitled to keep the child until it attain the age of seven years, and to be paid an aliment therefor, at the rate of L. 100 Scots yearly.' But

The Court varied that interlocutor, and 'found the pursuer entitled to aliment for her child, at the rate of L. 10 Sterling per annum, ay and until she arrives at the age of ten years complete; reserving to the child to apply afterwards for aliment, as accords.'

Lord Ordinary, *Westhall,* Adv. *Little.* Adv. *Henry Erskine.* Clerk, *Colquhoun.**Fol. Dic. v. 3. p. 25. Fac. Col. No 68. p. 106.**Stewart.*

1782. November 29. AGNES PATERSON against ALEXANDER SPEIRS.

AGNES PATERSON, a woman of low rank, having brought an action against Speirs, who was possessed of a considerable estate, for aliment of a natural child of the male sex, of whom he was the father, the Lord Ordinary pronounced two interlocutors, one of them respecting the *quantum*, and the other concerning the duration of the aliment.

No 76.

No 77.

How long the mother is entitled to the custody of a female bastard child, and to payment from the father for its maintenance.

No 78.

To a male bastard child, an aliment of L. 100 Scots per annum, till he arrive at.

(Ex debito naturali.)

No 78.
seven years of
age, is order-
ed to be paid
by his father,
a man of con-
siderable
estate.

The first was as follows: 'THE LORD ORDINARY, as to the aliment of the defender's natural son, in the circumstances of this case, is of opinion, That the precedent established by the Court, 27th January 1779, in the question of aliment of the natural children of James Kincaid of Auchinreoch, (*not reported*) ought to be followed; therefore modifies the aliment of said natural child of the defender's to L. 100 Scots yearly.'

In this judgment both parties acquiesced.

With respect to the endurance of the aliment, the LORD ORDINARY 'found the defender only liable in payment to the pursuer of the aliment awarded, till such time as the child in question arrives at the age of seven years.'

The pursuer reclaimed to the Court against this interlocutor; when it was

Observed on the Bench: There is no established general rule for determining cases of this nature; which are always to be regulated according to their peculiar circumstances; and therefore, though in the case of Flint and Glendinning, No 77. *supra*, the continuance of the payment for aliment, sought by the mother, was protracted to ten years, the child being a female; yet, in the present, which respects the aliment of a boy, seven years appear a more proper period.

THE LORDS therefore adhered to the interlocutor of the Lord Ordinary.

N: B. The Lord Ordinary's interlocutor contained this *ratio decidendi*, 'In respect, from the nature of the business carried on by the father, the defender, being that of bleaching, drying, and dressing of cloth, the child in question will be fit for being employed in certain branches of it by the time he arrives at the age of seven years.' It is however to be remarked, that the Court disapproved of this observation as a ground of decision; and that therefore it had no influence whatever on their judgment.

Lord Ordinary, *Westball*. Aft. *J. Boswell*. Alt. *Ilay Campbell*. Clerk, *Menzies*.
Stewart. *Fol. Dic. v. 3. p. 25.* *Fac. Col. No 72. p. III.*

No 79.
A husband,
who had inhi-
bited his wife,
and paid her a
competent
aliment, dur-
ing the de-
pendence of a
divorce a-
gainst her,
absolvied
from an ac-
tion against
him, raised
by a person
who had sup-
plied her.

1776. December 13. GORDON against SEMPILL.

GORDON pursued Sempill, whose wife he had alimented during the dependence of a divorce before the Commissaries at the husband's instance.—*Urged* in defence, That before this debt was contracted, Gordon had inhibited his wife; and during the dependence of the divorce, an interim aliment had been modified and paid.—*Answered*, No inhibition can relieve a husband from alimenting his wife; and the sums modified were not sufficient for that purpose.—THE LORDS sustained the defence, and absolvied.

Fol. Dic. v. 3. p. 25.