

some lesser circumstances, tending to show good acquaintance between them : he acknowledged an intended courtship, but denied criminal converse : no familiarities appeared. He objected to her character as to chastity with others ; but this was denied, and the contrary seemed proved, *viz.* that she was a girl of good character. The Ecclesiastical Judicatories, both upon her part as of the church, and his, as a seceder, were against him. And this day, 3d February 1779, the Lords refused a petition without answers, and adhered.

1774.

JEAN STEWART *against* SAMUEL M'KEAN.

JEAN Stewart brought an action, before the Sheriff of Wigton, against Samuel M'Kean, for aliment of a bastard child, of which she was delivered, 3d January 1772. The defender denied that he was the father of the child ; and the pursuer having referred to his oath, if he had not had criminal correspondence with her within twelve months prior to the birth of the child ; and he having deponed that he had had such correspondence 11 calendar months preceding 3d January 1772, but no later, the Sheriff assoilyied, and decerned.

Winter Session 1774, in an advocacy, the Lords advocated the cause, and assoilyied.

It seemed dangerous to extend the period of incubation of children, above that fixed by the law, in the question of legitimacy, where ten months is reckoned the highest ; for though perhaps instances may be found, as was alleged in this case, where women have gone eleven months instead of nine, or ten, yet such instances, if such there be, are not to be made a rule. But Lord Covington observed, that he doubted if the periods fixed by law held as to bastard children, confessedly allowed to be such, but that they were fixed *in favorem matrimonii*. However, the Lords determined as above, and did not seem to regard this distinction.

JACK *against* COPLAND.

DETERMINED to the same purpose, and on the same principles, 27th June 1775, Jack *against* Copland of Collieston.

In both the above cases, particularly the first, the women were of doubtful character.

1771. *March* .RAMSAY *against* STEEL.

RAMSAY brought an action against Steel, concluding, that he should be decerned in aliment to a child brought forth by Ramsay, of whom Steel was the

father. The action came before the Sheriff of Perth, and Ramsay and her sister emitted declarations, judicially, accusing Steel as the father; while, on the other hand, a counter-declaration was emitted by the defender. The Sheriff allowed Ramsay's oath to be taken in supplement. Steel complained by bill of advocation: The Lord Pitfour, Ordinary, remitted the cause *simpliciter*; and the Lords adhered.

In cases such as this, all that is often to be looked for, is a proof from circumstances; and therefore law has indulged the parties with an oath in supplement, as the only means by which the defect in the evidence, consequent from the nature of the cause, can be remedied.

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1777. February 27. JANET ROBERTSON *against* JAMES ALLAN, Messenger in Perth.

BUT this day, in a case, also from Perth, Janet Robertson *against* James Allan, messenger in Perth; Robertson pursued Allan for aliment of a child, of whom, as she alleged, Allan was the father. The Magistrates of Perth, upon advising a proof, found the pursuer entitled to her oath in supplement; but, in an advocation, the Lord Auchinleck pronounced this interlocutor, 29th November 1776,—“Finds, that as there is no evidence brought by the pursuer of the defender's guilt with her, so that the allowing her to give her oath in supplement would be, in a manner, allowing her to prove her libel, and to convict the defender of the crime of adultery, by her own oath; and that, besides, it appears from the proof, that the pursuer did formerly give up the defender's nephew, as father of the child, so that it is clear she is a person who has no regard to truth nor to honesty,—advocates the cause, and sustains the defences, and assoiliyies the defender, and decerns.”

And this day, on advising bill and answers, the Lords adhered.

In general, though an oath in supplement has been admitted in cases of fornication, yet it has not hitherto been admitted in cases of adultery.

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CALDWAL *against* STEUART.

IN the process, Caldwell *against* Steuart,—Steuart, though he did not directly own his having had criminal correspondence with Caldwell, yet, when called before the kirk-session of Beith, he made a declaration and offer to submit to discipline, provided the woman would swear before the congregation, that she had not, within a twelvemonth, had criminal correspondence with any other but him: This declaration was proved, and held both by the Sheriff of Ayr, and by the Lords, sufficient evidence to subject him in aliment of the child.