

until the child, a boy, should attain the age of fourteen. On advising a reclaiming petition and answers, the Lords, (5th March 1778,) Oliver being only a common workman, or land labourer, restricted the yearly aliment to L.8, payable quarterly, to be paid to the mother until the child was seven years of age; and also thereafter, until either the father took him into his own keeping, or that the child should attain the age of ten. By which time they thought he might be able, by herding, or otherways, to gain a livelihood.

Oliver objected to the jurisdiction of the Justices in questions of this nature; but his objections were disregarded.

BATTERY PENDENTE LITE.

1776. November 30, JOHN DURWARD *against* JANET DURWARD.

DURING the dependance of a suit before the Sheriff of Forfar, John Durward against Janet Durward, an old infirm widow woman, John gave in a complaint to the Sheriff against Janet, for a battery *pendente lite*. The Sheriff found Janet guilty of a battery, and applied the penalty of the Act 1584, and decerned against Janet in terms of the libel. In an advocacy, the Lord Auchinleck, Ordinary, pronounced this interlocutor:—"The Lord Ordinary, having considered the mutual memorials, with the decret and other proceedings, finds, *first*, That the proof is by witnesses not habile; and *secondly*, finds, That the statute refers to batteries committed by men; *not* feminine scuffles, as it bears that *he* shall be subjected to the penalties, but does not say, *or she*; and therefore sustains the defences against the conclusions for the battery, and assoilyies.

Having afterwards taken the case to report, the Lords were of opinion that the Act of Parliament made no distinction between men and women; but they thought, that an old woman pushing a man out of her house, and making his head meet the wall so as to make his nose bleed,—and this proved chiefly by his agent's clerk,—was not a battery in terms of the Act; neither was it sufficiently proved. They pronounced this interlocutor:—"On report of the Lord President, in absence of Lord Auchinleck, and having advised the memorials *hinc inde*, the Lords find the complaint for an alleged battery not sufficiently proved; assoilyie from the complaint, and find the complainer, John Durward, liable in expenses hitherto incurred, which they modify to L.10 sterling."

This day, 30th November 1776, refused a reclaiming petition without answers, and adhered.

In pronouncing this decision, the Lords shunned to declare what a battery was, and therefore worded their interlocutor as above. There are three Acts of Parliament relative to battery *pendente lite*, 1555, c. —; 1584, c. 138; and 1594, c. 223.

The first of the above Acts is omitted in Skene and Glendoick's Acts, but is to be found in the Black Acts.

It was alleged that the above laws are peculiar to this country, and that there are none similar in any other country; but it is informed there are statutes much of the same import, both in England and France.

BILL.

1776. *August 3.* GIBSON *against* GIBSON.

THIS day, 17th July 1776, in a cause, Gibson against Gibson, the Lords held it to be a fixed point in law, that a donation could not be constituted by a bill. See Home, No. 36, and 111 *New Coll.* No. 20. The case here was of a father, unlimited in his powers, granting bills to his younger children. The Lords held, that, so far as the onerosity of these could be instructed, either by services or value, the bills were good; but so far as gratuitous, or by way of provision, they found they were not good: and this day, 3d August 1776, refused a reclaiming petition, without answers; and adhered.

1776. *July 23.* MURRAY *against* CALDER.

A BILL indorsed before the term of payment must be negotiated, in order to afford recourse against the drawer or indorser; but, if the term of payment is past before indorsation, strict negotiation is neither practicable nor necessary to found recourse against the drawer. See Kilk., p. 87, *Forbes against Young*. Accordingly the Lords, this day, 23d July 1776, in determining a cause, Murray against Calder, approved of this decision *Forbes against Young*; and held it for law.

1776. *February 10.* M'KENZIE *against* M'KENZIE.

IN a cause, M'Kenzie against M'Kenzie, the Lords found that a legacy could not be constituted by a bill. It had been so found by Lord Justice Clerk, Ordinary, 20th January 1776; and, this day, the Lords refused a reclaiming petition, without answers, and adhered: but with this quality, that they remitted to the Ordinary to hear parties if it was not good to the extent of £100 Scots; to which extent a nuncupative legacy would have been good. See 111 *New Coll.*, No. 20, *Wright against Wright*, 9th December 1775.