

complainers might consider of this observation. The consequence was, that the complaint was not more insisted in.

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## BASTARD.

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1773. *December 16.* KIDSTON *against* SMITH.

THE Lords agreed, that the custody of a bastard child belongs, by law, to the mother; and that a decreet of the Justices of the Peace of Stirlingshire, taking a bastard child, a daughter, from the mother, and putting her under the custody of the father, was erroneous. See 11 *New Coll.* p. 106; 4 *New Coll.* p. 19.

Mr Erskine observes, that it does not seem fixed how long parents are bound to aliment their natural children. In the case of a gentleman, the obligation was found to continue till the child was fourteen years of age. See 2 *New Coll.* p. 97; 4 *New Coll.* p. 19; *Kilk.* p. 22.

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1773. *January 25.* MARION CALDWALL *against* WILLIAM STEWART.

IN a process, Marion Caldwell against William Stewart, for aliment of a child, a son, of whom Stewart was found to be the father,—at least was bound to aliment, as having had correspondence with the mother; Lord Auchinleck found, (25th January 1773,) that he was so bound, reserving relief to him against his *correi*. *Secundo*, His Lordship found, that, in the case of a bastard child, the father is bound to aliment, not the mother. *Tertio*, That the mother is entitled to the custody, especially where, as in this case, the father denied his being father. *Quarto*, He modified the aliment to L.1 per quarter; and, *Quinto*, fixed the continuance of it till the child should attain the age of 12 years complete. Upon petition and answers the Lords adhered.

William Stewart was a small feuar near Beith. The woman was of equal rank. Both of them in very moderate circumstances.

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1778. *March 5.* JANET SCOTT *against* WILLIAM OLIVER.

JANET Scott having pursued William Oliver, before the Justices of the Peace of Roxburghshire, for aliment of a bastard child, the Justices decerned. Oliver suspended; and Lord Stonefield, having turned the decreet into a libel, decerned against Oliver for a yearly aliment of L.4 sterling, payable quarterly,

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.

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## BATTERY PENDENTE LITE.

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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.