

(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.