

1724. July.

JUSTICES of the PEACE of MID-LOTHIAN *against* TENANTS of LIBBERTON, &c.

No 6.

AN heritor taking benefit of the act of Parliament to cast about the highway, was found bound to make up the new way all upon his own charges. See APPENDIX. *Fol. Dic. v. 2 p. 87.*

1734. July 24.

FERGUSON of Auchinblain *against* M'NIDDER.

No 7.

IN a pursuit against a tenant, upon the act of Parliament 1698, entituled, 'Act for preserving of planting,' it was proved, that a great number of natural growing trees in a glen, possessed by the defender, were cut during his possession; but that the ground where natural growing trees were, had been in use to be pastured upon by horse, nolt and sheep, as well before as since the defender's possession; and that these trees had not been preserved in time bygone to be cut for sale, and that they were not of such value as to be worthy of preserving and securing for sale: Therefore it was found, That they were not comprehended under the meaning of growing wood upon the defender's possession, which, by the said act, tenants are bound to preserve and secure, and assoilzied from the penalty of the said act of Parliament.

IN the same pursuit against a tenant for cutting of wood within his possession, upon the act 1698, entituled, 'Act for preserving of planting,' the act was found to infer a presumption, That growing timber cut or destroyed in a tenant's possession, is cut and destroyed by the tenant, unless the tenant will instruct that the same was done by a third party. See APPENDIX.

Fol. Dic. v. 2. p. 87.

*** See No 22. p. 8254.

1738. February 23.

GEORGE ORD *against* CHARLES WRIGHT.

No 8.

THE point in dispute betwixt these parties resolved in this question, Whether an action lay for payment of the half of the expenses of a march-dyke, which was begun to be built without requiring the defender to concur, in terms of the act 41, Parl. 1661?

For the pursuer it was *argued*, That the law did not make any requisition necessary, the clause founded on only requiring, 'The next adjacent heritor shall be at equal pains and charges in building, &c. that dyke which parteth their inheritance.' By the first part whereof, the adjacent heritor may, if he thinks proper, lessen the expense, by adhibiting the labour of his ser-

No action lies for half the expense of a march-dyke, if no requisition has been made to concur previous to the building.