

also p. 591, 642; Falc., *22d January 1751, Hepburn against M'Lauchlan*; Kilk., p. 396, 401; Mack. Obs., p. 136; Dict., V. II, p. 74. See rather on the other side, Fount., *19th January 1710, Lady Ormiston against Hamilton*. But, upon looking at this decision, it is not in point.

PLANTING AND INCLOSING.

1762. *November 19. STIRLING of KEIR against JOHN CHRISTIE.*

By the Act 1698, tenants are obliged to take charge of the planting on their farm. In an action at the instance of Mr Stirling of Keir against John Christie, one of his tenants, "The Lords, 19th November 1762, found that John Christie, the suspender, was obliged, by the Act of Parliament 1698 for preserving of planting, to have preserved and secured all growing wood and planting upon his farm; and therefore found him liable in the value of the sixteen trees cut, at the rate of £20 Scots for each tree."

It appears from the 111 *New Coll.*, No. 99, that six of the above trees were proved to have been cut by Christie and his family; the other ten by persons unknown. The Justices of Peace, before whom the action was originally brought, found Christie liable for the whole. But, in the suspension, he pleaded that he was only liable for those cut by his order, or by his family, &c., but not by persons unknown. And this point, says the collector, though debated, was not determined. At the same time the above-mentioned interlocutor of the Court seems general, and to comprehend the whole trees.

The same point came before the Court, on informations, *anno*

1768. *The EARL of DUMFRIES and STAIR against JOHN and SAMUEL OSBORNS*; but was not decided: it was remitted to the Ordinary.

It again occurred,

1775. *November . MOIR of LECKIE against WALTER MORISON.*

But neither was it here decided; for, although the libel before the Sheriff of Stirling narrated the Act of Parliament, and the legal presumption thereby created, yet the conclusion was laid upon the actual transgression by the tenant and his sons, and servants. And, in the procedure, they dropt the Act of Par-