1775. *July* 21. HUGH LOGAN *against* ANDREW HOWATSON.

PLANTING AND INCLOSING—PROCESS.

1. Import of the statutes for preservation of Planting, in a question between Master and Tenant.
2. When a process falls asleep?

[*Faculty Collection, VII.* 104; *Dictionary,* 10,492.]

COALSTON. I doubt how far the judgment is agreeable to the statute 1698: the first words of the statute are extensive, but we must explain them by what follows:—A tenant is only liable when he or his family cuts or peels. Wood may be peeled without the tenant knowing any thing of the matter.

COVINGTON. That difficulty does not go to this case. The question is as to trees cut by no one knows whom; but there is evidence that Howatson gave orders to cut, and knew that he was doing wrong.

PRESIDENT. Judgment was pronounced upon a tenant on this very point, in the case of *Stirling* against *Christie,* 1761. A tenant has many opportunities of destroying trees: he has also the power of preventing others from destroying them. I cannot make a distinction between peeling and cutting trees, for the law has made no distinction. No bad consequences can attend this interpretation of the law, for the law has long subsisted under that form of interpretation, and we do not see that tenants have ever been hardly dealt with. Surely this tenant has not been hardly dealt with.

On the 21st July 1775, "The Lords decerned against the defender;" adhering to Lord Kennet's interlocutor.

Act. D. Rae. *Alt.* J. Boswell.

N.B.—In this case, a question occurred, Whether a case fell asleep if nothing was done in it for a year after the Sheriff had made avizandum? The Lords appointed the Sheriff-deputes, presently about Edinburgh, to report what was the usage: they reported, that a cause taken to avizandum did not sleep in the practice of the Sheriff-courts; and the Lords repelled the objection, that the cause was asleep when the Sheriff pronounced judgment.