

"The Court adhered to the LORD ORDINARY'S interlocutor; and farther, awarded the expense of the answers," as the defender ought to have acquiesced then.

No 15.

Act. *Rae.*Alt. *J. Boswell.*Clerk, *Kilpatrick.**Fac. Col. No 183. p. 104.*

1775. November 17. MOIR against MORISON.

In this case, the following judgment was pronounced: "In respect that the charger, notwithstanding he has repeated the act of Parliament 1698 in his libel, has concluded nothing against the suspender thereupon, but only for his actual cutting of the trees libelled; and that the interlocutor of the Sheriff allowing the proof was in the same terms; the LORDS find, that the charger having failed in his proof that the suspender did cut the trees libelled, is not now at liberty to amend his libel, and to insist for the penalty contained in the acts of Parliament, and therefore suspend the letters *simpliciter*."

No 16.

Act. *Jo. Graham.*Alt. *M. Laurin.*Clerk, *Pringle.**Fac. Col. No 197. p. 134.*

1781. July 3. HELENUS HALKERSTON against JAMES WEDDERBURN.

MR HALKERSTON, thinking his garden at Inveresk injured by a row of elms, the branches of which hung over it from the garden of Mr Wedderburn, applied to the Sheriff for redress. After various steps of procedure, the cause was removed to the Court of Session by advocacy; when the following abstract question came to be considered, viz. Whether a person is bound to allow his property to be overshadowed by the trees belonging to a conterminous heritor?

Pleaded for Mr Wedderburn; The climate of Scotland is such as has induced the legislature to encourage the planting of forest-trees in hedge-rows, for the sake of shelter; and, for some time, it was even imposed as a duty upon every proprietor; act 1661, cap. 41. This, however, would have been an elusory enactment, if the common law permitted a conterminous heritor to lop such trees, whenever their branches extended beyond the line of march. By the common law, an heritor may plant so near the march, *in prædiis rusticis*, that the trees will protrude their branches into the air, over the adjacent ground; nor is there any thing in that law, which authorises the conterminous heritor to lop off such branches, unless he can qualify a material damage arising from their protrusion.

No 17.
Right of a
conterminous
heritor as to
trees protrud-
ing from ano-
ther's pro-
perty.