and divers other acts of oppression; and when it was enrolled, one of the parties, without any debate, moved the Ordinary to make avizandum, which he did; and next vacance the defender died, and the pursuer transferred the process against his heir; and an act before answer being pronounced, a proof came this day to be advised, and though the proof was far from being clear, but such as we thought would have been concluded against the last Killearn, if alive, yet because there had been no litiscontestation, in his life, we found that the process did not lie against his heir.

No. 2. 1751, Jan. 22. HEPBURN *against* M'LAUCHLAN.

See Note of No. 23, *voce* *PACTUM ILLICITUM*.

PERSONAL OBJECTION.

No. 1. 1734, June 25. GRAY and CORBET *against* GRAY.

THE Lords (6th February 1734) found the suspender cannot recur to his reasons of suspension. 25th June, The Lords adhered. *Vide* DIRLETON'S DECISIONS, No. 126.

No. 2. 1735, Feb. 6. ROGERS *against* MELVILL.

See Note of No. 3. *voce* FRAUD.

PLANTING AND INCLOSING.

No. 1. 1734, June 7. FERGUSON *against* MACNIDDER.

UPON the act 1698 for preserving planting, found unanimously relevant against a tenant, that trees planted about his yard were cut, to infer the penalties in the said act, without libelling that they were cut by the tenant, his wife, bairns, servants, or others in his family. —N. B. Those plantings were not inclosed. We found that libel proven as to one tree above 20 years old. As to the natural wood in the glen found that the act extends not to it. The Lords had different reasons; some that it was scroggie wood not fit for sale, commonly pastured; others *inter quos ego,* because it was natural wood (not planted) not inclosed.

No. 2. 1738, Feb. 28. ORD *against* WRIGHT.

MR ORD having pursued Wright for the half of the charges of a march dike, it was objected that this process was not competent, since most part if not the whole dike was

built before any requisition made to him to concur in the building. I thought the defence well founded in terms of the statute. But because of a practique in 1679 Seaton against Seaton, (DICT. No. 2. p. 10,476.) I repelled it so far as might extend to the expenses it would have cost him had he actually concurred in building a sufficient dike. But Wright having reclaimed, the Lords thought the former decision wrong, and therefore found the action not now competent; and on the 28th they adhered without answers.

No. 3. 1739, July 3. DOUGLAS *against* PENMAN.

THE Lords considering the extent of these grounds, the one six acres and the other eight, found that it is not comprehended within the act of Parliament.

No. 4. 1744, July 24. ROBERTSON *against* MAJOR ROBERTSON.

THE question was, Whether the act 16, Session 7, King William, included fruit trees as well as barren planting? The President was exceedingly clear that it did not. However it carried by a good majority (and I thought rightly) that fruit trees are included, and therefore we adhered to our former interlocutor.

POINDING.

No. 1. 1734, July 30. FERGUSON of Auchinblain *against* JOHN DICK.

THE Lords sequestrated the crop, and remitted to the Ordinary on the bills in time of vacance to name the sequestrator.

No. 2. 1736, Jan. 28. DRUMMOND *against* MOWBRAY.

THE Lords thought it no nullity that the registrate bill bore no special warrant to poind, but only for all executorials necessary after a charge first given.

No. 3. 1736, Feb. 13. MUIRHEAD *against* PROVOST CORRIE.

THE Lords thought that letters of open doors are not necessary to open locked presses or chests. They also thought that Gordon warrantably stopped the poinding. But they found that the poinder having done all that on him lay, they preferred him to the debt in question upon which no sequestration had been obtained. They seemed also to think that a possessor of goods is not bound to assist in poinding or opening doors, but only to suffer the messenger to do it. But here it appeared by the execution that the messenger really was stopped.