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-

liament, and joined issue and went to proof only on the actual transgression. And having failed in this proof, the Lords, in a suspension, " found that Leckie was not now at liberty to insist upon any conclusion on the Act of Parliament; and suspended the letters." The Sheriff had decerned on the Act, and on the legal presumption.

1776. *July* . PATRICK BELL *against* The MAGISTRATES of GLASGOW.

IN the interpretation of the statute of Charles the II. concerning half-dyke, the Court have entered into equitable considerations, and have refused to extend it to the proprietors of stripes of ground where the expense of inclosing would be great and the advantage little. So they have decided in several cases; and in a case which occurred, — July 1776, betwixt Patrick Bell and the Magistrates of Glasgow, this was held to be law. In this case the Magistrates, intending to inclose a field, to the north of the Green of Glasgow, were opposed by Bell, as having right to a stripe of ground, in all about one-fourth of an acre, a *riga vel roda terræ* running through it, and making a communication betwixt his property of Bellshaugh and the highway. This stripe was his property, and, though commonly used as a road, had sometimes been used for other purposes. The Magistrates offered to inclose this stripe of ground provided he was at the expense of half-dyke, and to turn their field into two inclosures instead of one. This he declined on the footing of the equitable construction of the statute, as already mentioned; and this was held to be so. They then proposed either a gate with a key, or a flying gate and a stile for foot passengers: Bell refused both. The Sheriff ordained him to take his choice of the two; and in an advocation, the Lord Auchinleck, Ordinary, 31st January 1776, remitted the cause *simpliciter;* and, — July 1776, the Lords adhered. They considered that he who sought equity ought to give it. They considered the stripe chiefly in the light of a road, for which indeed it had generally been used, or could well be used with any propriety, and the opposition appeared *in æmulationem;* so it was entitled to no favour.

N.B. In a reclaiming petition for Bell, which was refused, without answers, it was set forth, that the stripe of ground held burgage, so at any rate did not fall under the statute 1661.