

1775. November 17. GEORGE MOIR of Leckie *against* WALTER MORRISON.

PLANTING.

Amendment of a libel laid on the Acts of Parliament for the preservation of Planting, not allowed after a proof led.

[*Fac. Coll.*, VII. 134; *Dictionary*, 10,495.]

COVINGTON. The libel respects actual cutting : we cannot extend the libel to a separate statutory offence.

HAILES. Not only does the libel respect actual cutting, but the interlocutor of the Sheriff allows a proof of that fact, and it only ; besides, the charge and the judgment respect two trees. Now what was cut was two branches springing from one root. Unless this penal statute were to be extended, we cannot find that there were two trees from one root. If there had been a dozen suckers from one stool, there would, by parity of reason, have been an action for cutting a dozen of trees ; and thus he who would have but recovered one penalty for the first cutting of a single tree, would recover twelve penalties for the second cutting of the same tree.

COALSTON. I understood the Act to mean that the tenant should be liable for himself, and for his servants, and family, though there are general words in it ; but there are decisions which hold the obligation on the tenant to be wider. And I would not take up that ground of the tenant not being liable. I go upon this, that the statutory offence charged is not proved. It is impossible for the prosecutor now to amend a criminal libel.

KAIMES. I do not approve of the words of the Act, but I approve of its spirit. It is the duty of a tenant to take care of the trees on his farm. This is a duty in common law. The tenant was negligent here in not informing his master that the tree was cut. The action however is wrong laid, and *that* must operate an absolvitor.

GARDENSTON. I like the statute, as it provides for the safety of timber, a great national object. The statute may have the appearance of severity, but it is attended with specialties. Whenever we see any rigour on the part of the master, we may fall upon specialties.

PRESIDENT. Were it not for the liberal interpretation of this statute, we should have all our trees cut down. But here a penalty is sought, and the action is wrong laid. I take this opportunity of declaring that I hold all the suckers from one stool as constituting but one tree. I had mistaken the fact in supposing that there were two distinct trees cut down.

On the 17th November 1775, " In respect that the libel was laid, and the proof granted on a charge of actual transgression by cutting timber, the Lords found that Mr Moir could not insist on the other branch of the Act of Parliament ; and assoilyied."

Act. John Grahame. *Alt.* J. M'Laurin.
Reporter, Stonefield.