

abrogatis et inusitatis, in *Hollandia vicinisque regionibus*, says expressly, ' Si arbor fundo, vel ædibus alienis impendeat, nostris et Gallorum moribus, non totam arborem a stirpe excindere, sed id quod super excurrit in totum adimere licet ;' tit. De arb. cæd.

No 17.

THE COURT had no doubt upon the principle ; and, therefore, adhered to the Lord Ordinary's interlocutor, " Remitting the cause to the Sheriff, with this instruction, that he find Mr Wedderburn is bound to prune his trees in such a manner, as they may not hang over the mutual wall, and thereby be of prejudice to Mr Halkerston's fruit and garden."

Lord Ordinary, *Braxfield*. Act. *Alex. Abercrombie*. - Alt. *Crosbie*. Clerk, *Campbell*.
L. Fol. Dic. v. 4. p. 81. Fac. Col. No 65. p. 105.

1784. *March 3.* JOHN BUCHANAN against DUNCAN MALCOLM.

SOME oak trees, which formed part of a clump of natural wood belonging to Mr Buchanan, having been unwarrantably cut down by Malcolm, the former sued the latter in an action before the Sheriff of the county, for the penalties enacted by the statute of 1685, c. 39.

No 18.
The act 1685, cap. 39. applies to natural woods.

The judgment of the Sheriff was this : " In respect it appears, that the trees libelled were not planted trees, but grew in a natural wood, from stools or roots of trees that had been formerly cut, ordains the pursuer to instruct the value of the trees libelled, at the time of their being cut by the defender, and what value they might have risen to, had they been allowed to grow to maturity."

The pursuer complained of the Sheriff's judgment by bill of advocation ; which was " refused" by the Lord Ordinary on the bills. But he having reclaimed to the Court,

THE LORDS seemed to consider the above mentioned act of Parliament as not exclusively applicable to planted trees, but as likewise relating to natural woods ; and accordingly they " altered the Lord Ordinary's interlocutor, and passed the bill of advocation."

Lord Ordinary, *Henderland*. Act. *A. Abercromby*. Alt. *Macnochie*. -
Clerk, *Home*.
S. Fol. Dic. v. 4. p. 81. Fac. Col. No 151. p. 236.

1784. *June 15.* EARL OF PETERBOROUGH against MRS MARY GARIOCH.

No 19.
The act 1661 not to be extended to the case of a conterminous fence, where the

THE Earl of Peterborough, as proprietor of an estate situated in Kincardineshire, preferred to the Sheriff of that county a petition, setting forth his intention of inclosing his grounds, in order to improve them ; and praying, that Mrs Garioch, the conterminous heritor, might, in consequence of the statutes of