

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'LAUHLAN.

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