

No 4.

about the high-ways, and inflict penalties against the cutters or destroyers of planting, breakers of hedges or inclosure ; albeit it be temporary in so far as it appoints heritors and liferenters to inclose and plant a certain quantity of ground according to their valuations ; for it was thought proper to tie the heritors for a certain number of years to plant and inclose, with a view, no doubt, that they would find it their interest to continue and go on voluntarily in that practice. But all encouragements were designed to be perpetual, unless such as are limited to a certain time, as the exemption from cess, which is confined to 19 years. Where the act of the Parliament 1685 bears, ' Because the time ' prescribed in the said act 41st is now elapsed, it is statuted and ordained, That ' the whole heads contained in the said act, be observed for the space of 19 ' years next to come ;' these words, though not very exactly conceived, can be applied only to the clauses of the act that were limited to a time, viz. the obligation upon the heritors during the 10 years, and the 19 years freedom then expired.

*Fol. Dic. v. 2. p. 86. Forbes, p. 715.*

1719. November 17.

No 5.

NASMYTH against The INHABITANTS of the WATER of LEITH.

MR NASMYTH having had some young trees destroyed in the neighbourhood of a village called the Water of Leith, insisted in a process against the Inhabitants, founding upon an act, *imo Georgii*, entituled, ' An act for encouraging of planting,' which provides, ' That the inhabitants of such parish, ville, or hamlet, where trees are destroyed, shall be liable for the damages ; the LORDS found it relevant to make the defenders, inhabitants of the Water of Leith, liable *in solidum*, without relief from the rest of the parish, that the pursuer's tenement lies within, or is a part of the ville, or hamlet, called the Water of Leith ; but found, That before execution against the persons liable, competent time ought to be allowed for the defenders to meet, and stent themselves for making up the pursuer's damages, and for proportioning relief to such as shall be obliged to pay more than their share. And if the pursuer's tenement be not comprehended in the Water of Leith, in that case also the defenders were found liable *in solidum*, but with relief against the inhabitants of the whole parish, allowing them time, before execution, to meet and proportion the said relief amongst themselves. See APPENDIX.

*Fol. Dic. v. 2. p. 87.*