

166; *S. C. 3 Bro. C. C. 549*; *S. C. 2 Dick. 600*; *Oxenden v. Comp-ton, 2 Ves. Jun. 70, 73*; *Hampton v. Hodges, 8 Ves. 105*; *Ex parte Phillips, 19 Ves. 119*; *Gower v. Eyer, Coop. Rep. 156*; *Bridges v. Stephens, 2 Swan. 159, note*; *Smythe v. Smythe, 2 Swan. 251*. Yet there does not appear to have been any clear well settled rules laid down as to what is to be deemed the proper age, size and season for cutting timber of any description. What, in some of the old books, is called *Sylva Caedua*, coppice, or under growth, was not considered as fit to be cut sooner than at twenty years growth. But latterly the common forest growth seems to have been regarded as timber, not according to its age, but by its size and utility. It would seem to have been held, in England, that the proper season for cutting timber was when the sap was down; that is, in the winter season after the trees had been divested of their foliage. *2 Inst. 642*; *F. N. B. 59*; *Chamberlyne v. Dummer, 3 Bro. C. C. 549*; *Bac. Abr. tit. Waste, C. 2*. In this country, it is believed, there are no legal rules in relation to this matter. But it has been said, that after the forest trees have parted with their leaves in autumn, that their organs still continue their functions, though more slowly, during the whole winter; and in so doing accumulate a considerable quantity of matter in the vascular tissue of the stem; which matter, except the resin of the pine, being often of a nature rather to accelerate than prevent decay, is believed to be liquified and carried up in the spring, and then by the newly formed leaves digested, and sent down again for the nourishment

**82** and enlargement\* of the tree. Whence, and from actual observation, it has been confidently asserted, that the best season to cut timber, as well as to prune fruit trees, to prevent the dry rot in the timber, or in that part of the living tree from which the amputated limb has been taken, is during the summer when the trees are in full foliage, and their sap is in pure and active circulation. *Essay on Vegetable Physiology, by Armstrong, Prof. &c. Washington College, Virg. chap. 7 and 19*; *The Farmers' Register, by Ruffin, 7 vol. No. 4 and 8*.

But all trees, although standing within the general range of their appropriate climate, are very materially affected by the peculiar soil and situation in which they may happen to be rooted. *2 Mich. Am. Sylva. 130, 226*. Even the great white pine, (*pinus strobus*,) the lofty chief of our forests, which in some instances elevates its top to the height of a hundred and eighty feet from the ground; *2 Mich. Am. Sylva. 293*; and the beautiful flowering poplar, (*liriodendron tulipefera*,) which may be ranked next to it in stature, and only after the oak in utility, exhibit, in the texture of their wood as well as in their size, the most unequivocal evidence of the generosity or unfriendliness of the soil in which they stand. *1 Mich. Am. Sylva. 302*; *2 Mich. Am. Sylva. 295*. But such is the peculiar constitution of the white oak, (*quercus alba*,) which for