

land, that of a multitude of oaks he had felled there, he counted the concentrical rings of one of about thirty-four inches in diameter, which was sound at the butt, as nearly as he could ascertain them, to the number of two hundred; but those of the last fifty years growth, next the bark, were so thin, he could not count them with certainty; though, as he thought, with sufficient accuracy to ground a calculation upon as to the proper age for felling timber; ranging as to oaks from one to two hundred years of age; and as to elms from fifty to a hundred years of age. (e)

There is, according to the law of England, not only a custom as to what may properly be regarded as timber; (f) but also a custom as to what is called a husbandlike manner as well in regard to the best *season* as to the proper *growth* at which trees should be cut. And to prevent the violation of such customs an injunction may be obtained. (g) 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. (h) 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 and enlarge-

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(e) Rees' Cyclo. v. Timber.—(f) Co. Litt. 53; Chandos v. Talbot, 2 P. Will. 606.—(g) Aston v. Aston, 1 Ves. 264; Chamberlyne v. Dummer, 1 Bro. C. C. 166, S. C.; 3 Bro. C. C. 549, S. C.; 2 Dick. 600; Oxenden v. Compton, 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.—(h) 2 Inst. 642; F. N. B. 59; Chamberlyne v. Dummer, 3 Bro. C. C. 549; Bac. Abr. tit. Waste, C. 2.