

1729. *November* — LOCKART *against* PURVES.

No 30.

A pension being granted to an advocate for life, 'in consideration of by-gone kindnesses, services, &c. and in respect the granter had left the charge of his law affairs upon him,' was found not to subsist after the granter was made a Lord of Session, because the condition then failed, in view to which the bond was supposed to be principally granted, viz. the management of the granter's law affairs. See APPENDIX.

*Fol. Dic. v. 1. p. 426.*

1738. *December 19.*

JAMES WADDELL, &c. *against* WILLIAM WADDELL.

No 31.

A legacy was granted to a person abroad, he coming home to receive it. The legatee died abroad after the death of the testator. Found that he not having come home, the legacy was not due.

GEORGE WADDELL of Abovethell, disposed certain lands to William Waddell his brother, with the burden of 3000 merks to the children of George Waddell his nephew, to be divided amongst them, according to the proportions therein specified; and, amongst the rest, there was one in the following terms; 'To George Waddell sailor 800 merks, he coming home to receive the same.' The said George Waddell (son to George the nephew), to whom the sum was left, outlived the devisor, but died abroad; whereupon a process was brought at the instance of his Executors, against William, for payment of the 800 merks.

*Objected* for the defender; That the legacy was conditional, *in case the legatar came home to receive the same.* *Answered*; The meaning of these words was none other but the better to secure payment to George, that it might not be lost by remitting it to him abroad; or perhaps it carried an admonition or invitation to him to come home. To illustrate which, the case was put, That the testator had said with respect to this legacy, he granting a factory to receive the same. Surely his death before the factory was granted, would not have annulled the legacy, and no more ought his not coming home, seeing his executors in his right might still receive it, conform to *L. 85. D. De condit. et demonst. L. 48. D. De verb. obligat.*

*Replied*; The words of the clause are of the same import, as if it had said to , in case he come home to receive the same; for, in common sense, as well as in law language, the ablative, put absolutely, has the force and effect of a condition; and the supposed case, That the testator had adjoined to the legacy these words, 'he granting a factory to receive it,' is no ways applicable to the present question; seeing no other rational sense could be put upon such a clause than this, that the testator was willing it should be paid to George's factor, though he continued abroad: But, in all cases of this nature, reason and common sense must be the guide, for explaining when