

knowledged on oath, that for a long time after James's death, he had never seen it, and it was at last recovered out of Mr Graham's repositories; but the claimant offered to prove by witnesses that it was sent to Mr Graham, with orders to take infestment and registrate it; but could not condescend more specially at what time, nor by whom these orders were sent, or whether it was by writing or by word that the message was sent; and therefore as this was a disposition of the granter's whole estate, reserving to himself only a small annuity of L.200 sterling, notwithstanding of which he retained full possession for three years till his death, and was thereafter recovered from the successors of his ordinary lawyer, who appears to have advised it; therefore we found the proof of delivery not sufficient; and as he would condescend no further, refused him a proof before answer; but some carried the point much further, and thought that no proof by witnesses was competent; and others thought, though there were sufficient proof of delivery, it would not avail; and therefore we dismissed the claim. Affirmed unanimously in Parliament, 30th March 1751, after taking the opinion of the Judges on the first point, which was unanimous.

No. 15.

1750. *December 12.* **ATTAINDER of the ESTATE of PERTH.**

No. 16.

A THIRD claim was entered on this estate of Perth by James Lundin of Lundin, the grandson of Earl of Melfort, as nearest protestant heir-male to James Drummond, and whose blood was saved from being corrupted by his grandfather's forfeiture, by a clause in the act attainting him, saving the blood of his first marriage with the heirress of Lundin; and the claim was founded on the act 1700; but we found that he could not be heir to James Drummond of Perth, because of the attainder of James Lord Drummond, the father of the said James Drummond, whereby that bridge was broken, as Chief Justice Hales expresses it. *2do*, We thought that the succession is not by the act 1700 established in the protestant heir, without either a service, or some other legal act, to ascertain, that the nearest heirs professed popery, and the protestant heir's own title; that till then the right of apparenency remains with the popish heir, who may possess and contract debts and be charged to enter heir, yea, and may be served and infest if no body oppose, and therefore may forfeit; and the succession having on the 11th May 1746 devolved to John, we thought the estate became forfeited by his attainder, and therefore dismissed the claim.