

1735. July 24.

SIR GEORGE MAXWELL of Orchardton *against* EDWARD CUTLER.

No 12.

A BOND of L. 5000 granted for the balance of an agents' accounts, and also a bond of provision to the agent for life, being challenged by reduction at the instance of the granter's heirs, upon this footing, That the accounts were false and extravagant, many gross articles being stated never given out, it was *answered*, That these accounts being ratified and approved of by the defunct, cannot now be challenged by his heir, seeing facility is not alleged.—*Replied*, Subscribing or corroborating of accounts bars all challenge with respect to articles presumed to fall within the obligant's knowledge, but can signify nothing with respect to articles alleged advanced or given out by the agent, and acquiesced in upon his sole faith; for if these afterwards be redargued and found false, the bond of corroboration, which evidently goes upon the supposition that the accounts were just and true, will never support such articles; and if the pursuer prevail in the proof, the consequence must be not only to restrict the bond to the just balance, but also to void the bond of provision *in toto*, which goes upon the narrative of good and faithful service.—THE LORDS, before answer, allowed both parties a proof with regard to the verity and reasonableness of the accounts. See APPENDIX.

*Fol. Dic. v. 1. p. 332.*

1749. July 18.

DRUMMOND of Logie-Almond *against* The KING'S ADVOCATE.

No 13.

A disposition not delivered, had no clause of dispensation. It contained several clauses said to infer simulation. The disponent was afterwards attainted. The disposition was not sustained.

JAMES DRUMMOND, commonly called Duke of Perth, disposed his estate, 11th June 1743, in trust, for uses mentioned, to Thomas Drummond of Logie-Almond, and died 11th May 1746.

An act of Parliament past 19th Geo. II. attainting the said James Drummond of high treason, from and after the 18th of April 1746, if he did not surrender himself to justice on or before the 12th of July that year.

His estate was surveyed by the Barons of Exchequer, and claimed by Logie upon the disposition; for that he not having lived till the day appointed for surrendering, when the attainder was to take place, never was attainted, and consequently his deed effectual for carrying it.

*Answered, 1st*, The disposition was never delivered, nor contained any clause dispensing with delivery, and was conceived in terms conveying the estate immediately, not on the death of the granter, and is therefore not a valid deed, but the estate, if James was not attainted, past from him to his brother John, and is forfeited by his attainder contained in the same act.