verbal message, or if there was any missive letter or other writing? *2do*, By whom and at what time these instructions were sent? But Mr Craigie said they could make no more special condescendence;—and that general condescendence I thought too vague in a matter of importance. Others carried the matter further, and thought no proof of delivery competent by witnesses. But the President carried it still further, and thought that though there were a clear proof of delivery, and though it would have excluded the forfeiting person himself, yet being but a personal deed, and not good against purchasers, therefore it would not be good against the forfeiture. He admitted that a man whose next heir was attainted, might lawfully and laudably put his estate by him; but if he did so by a personal deed only, and remaining in his own custody, with a clause dispensing with not-delivery, he asked if I thought that would be good against the Crown, and I owned that I thought it would. However, this question anent refusing a proof before answer, carried only by his casting vote. The objection of fraud was also argued, and my opinion was, that as James died *ad fidem et pacem Regis*, he could dispose of his estates as he pleased, and his deeds were not challengeable for any supposed intention of fraud to disappoint his own attainder, since he never was attainted, and it was no fraud but lawful to disappoint the forfeiture of his estate by his brother's attainder in case of his own death. But the President and others thought the whole contrivance fraudulent to disappoint the forfeiture, by either of them being attainted, and that therefore it fell under the act 13th Eliz. C. 5,—but this point was not decided. After the two first points had been voted, the third question was put, Whether to sustain or dismiss the claim? and several were for sustaining, which to me looked odd.

No. 16. 1750, Dec. 12. ATTAINDER of the ESTATE of PERTH.

THIS claim was founded on the act 1700 against Popery, and he (Lundin) claimed as nearest Protestant heir to James Drummond of Perth, the person last infeft, who died 11th May 1746, before the days limited for his surrender; and in the debate, he also insisted on the point overuled 30th ult. in Logie Almond's claim, that John Drummond never having surrendered, he was declared attainted from 18th April 1746, therefore his brother James having died after that day, when John was incapable to succeed to him, though he died before the 12th July, the day limited by the commission of the said act for his surrender, the estate could not forfeit by John Drummond's attainder, but only escheated *ob defectum hæredis*, and *2do*, that by the said act 1700, John Drummond being a professed Papist, was incapable of succeeding as heir. In the course of the debate, I moved a difficulty, Whether the claimant could be heir to John Drummond, because though by an express *proviso* in Earl Melfort's attainder by the Parliament of Scotland in 1695, the claimant, and his other issue by Sophia Lundin, his first wife, were saved from any corruption of blood, yet the father of James Drummond, the person last infeft, viz. James, commonly called Lord Drummond, having been attainted by act of Parliament 1st Geo. I. his blood was corrupted, and as the claimant was connected only by him to the person last infeft, the bridge was broken, as Hale expresses it? To which the claimant's Counsel made no other answer, but that he claimed as Protestant heir-male, and that by the law of England, an heir-tail's blood was not corrupted, but supposed entailed. But as this

estate was absolutely at the disposal of each of the heirs, who were under no limitation, the English statute of Edward III. *De Donis* could not apply, and therefore the Court found that the claimant could not be heir to James Drummond,—*renit.* Dun. 2*do*, They thought that the succession was not by the act 1700 established on the Protestant without some legal deed by service or otherwise ascertaining that the nearer heirs professed Popery and the Protestant heir's own title;—that till then the right of apparency remained in the Popish heir, who might levy the rents, contract debts, be charged to enter heir, and even be served heir and infeft, if the Protestant heir did not oppose; all which deeds of his would be effectual against the Protestant heir;—that therefore the succession having devolved to him before he was effectually attainted, that is, before the day limited for his compearance, he would forfeit the estate to the Crown, and the Protestant heir could not draw it back;—therefore we found that the estate was forfeited, and dismissed the claim.

No. 17. 1751, Jan. 10. CLAIM on the ESTATE of KINLOCH.

On this estate we had three claims, all of them founded on an entail made by the forfeiting person's grandfather, on which there had been charters and sasines, but never recorded in the register of tailzies, though dated only in 1686;—one claim for James Kinloch his eldest son, as next heir of tailzie; another by his brother, in case James's had been dismissed, because he was a son of the forfeiting person, and that the forfeiting person had incurred an irritancy by alienating part of the estate, and an heir contravening forfeited for himself and all his descendants; and a third for David Kinloch Kilrie, nephew to Sir David Kinloch, maker of the tailzie, and heir in remainder, (to speak in English style) for that both the forfeiting person and his father had incurred irritancies. We dismissed the first claim, in respect that the tailzie was not recorded. The second claim was not insisted in, and was dismissed for that reason;—and the third was dismissed both because the tailzie was not recorded, and the irritancy was not declared before the forfeiture.

No. 18. 1751, Jan. 11. CLAIM on DUNNIPACE.

THIS claim was by the brother of the forfeiting person upon an entail not indeed recorded, but then dated in 1677 before the record of tailzies was appointed, and therefore we generally thought that the not recording was not sufficient to make it forfeitable; but as it had been found by this Court in 1744 against this very claimant that the forfeiting person's debts and deeds were effectual upon the estate, because though the entail contained an irritancy of the contravener's right, yet it had no irritancy of the debts or acts of contravention, therefore we dismissed the claim.

No. 19. 1751, July 16. CLAIMS on LOVAT, for BAILIES KINCAID, &c.

ON Drummore's report we refused to sustain claims for merchant goods and others furnished after 24th of June 1745, and sustained only furnishings before that time; 2dly, We refused to sustain annualrent upon accounts, though furnished before that time.