(for as to that only it was agreed the defender had any claim) stand so long unfilled up, and all the question was, Who was answerable for it?

"The minority were of opinion that where wines are sent to a factor to dispose of, there is no more incumbent on the factor than to put them in the hands of a wine-cooper of character, and if such wine-cooper should fail in his duty, no matter to the factor, who is bound to no more than to commit the wine to such wine-cooper, against whom the merchant may But the plurality were of a different opinion, *viz.* That the factor was answerable to the merchant, and who might seek his relief from the cooper; and, accordingly, found as above, on the supposal the hogshead of claret was yet on hand not disposed of by the defender, as to which fact, remit was made to the Ordinary."

1754. *July* 20. ANDREW SIMPSON *against* GEORGE HENDERSON, son of the deceased JOHN HENDERSON of Broadholm.

THE said John Henderson, deceased, was debtor conjunctly with two other persons in a bond, to which the pursuer Simpson acquired right by assignation. Simpson used arrestments in the hands of one of John Henderson's debtors, and brought an action of furthcoming upon the eve of the quinquennial prescription.

It was objected to the execution of the summons against the tutors and curators of the defender George Henderson, that it was null, as being only signed by one witness. The Lord Ordinary sustained the objection; but upon advising a representation, craving that a new execution, produced and regularly subscribed, might be sustained, his Lordship, "In respect of the execution now produced, sustains process, and decerns in the furthcoming, reserving to the defenders to quarrel the execution produced by improbation as accords."

In a petition the defenders argued that it was not necessary for them to bring a reduction, and they also contended that the defective execution having been once produced, could not now be amended, nor could the defect be supplied by the production of a new one.

The following is Lord KILKERRAN'S account of what passed on the bench at advising this petition:—

"On moving this bill, it was observed by DRUMORE that a voluntary deed once produced in judgment cannot be supplied by the witnesses signing thereafter. A bill not signed by the drawer, once produced, he will not be allowed thereafter to add his subscription, and he could not see between that case and this. The President took notice of two decisions, one in the case of Duncan of on an objection to an intimation of an assignation once produced with only one witness; when a new one was produced, with the addition of the other witness, it was refused to be received. The other, of a bond by two notars, which required four witnesses, and three were only at the deed when produced, and the fourth having, thereafter, added his subscription, it was not admitted; he added, that he had always a doubt of these decisions. ELCHIES took notice of some other decisions to the same purpose, and one particularly in 1741, in the reduction of the election, in which there was a speciality which might perhaps apply to this case. The execution of the citation in the reduction when produc-

ed had but one witness; thereafter a fresh execution, and the then President, Arniston, having asked the question whether the new execution was produced within the time allowed by law for bringing the complaint, and it appearing that it was not, the execution was not received; he declaring his opinion, at the same time, that he should have opined that it ought to have been received, had it been produced in court within the time allowed by statute for the complaint. The Ordinary, on this occasion, gave his reason for his interlocutor, that in deeds which do require the witnesses to sign *unico contextu*, the deed once produced in judgment must stand or fall as it then is; but the case is different in executions where it is not necessary they be signed *unico contextu*.

"Another quoted the case of a verbal report by an Ordinary, in the summer session 1748, where the Lords laid down the rule, that an execution might be amended where there was no inconsistency between the first and second.

"*N. B.* The reason the President gave for his not approving of the foresaid decisions was, that deeds till completed, and still pendent while incompleted, ought not to hinder their being made complete, for it is not true that even the witnesses to a bond must all sign *unico contextu*. So far, at the same time is true, the deed will only have its effect from the date of its becoming complete, *e. g.* if it be the execution of an arrestment, an arrestment will be only understood good, from its being made complete by the new execution to the of a

"*July*, 20, 1754.—Something new occurred since moving the petition, which the other party has left to the Lords to do in it as they shall think fit. It is this; the act of parliament, which makes arrestments prescribe in five years, unless, &c. Now, though the five years were run at the date of this new execution; but then the execution against the arrestee is unexceptionable, as also the execution against the principal debtor, and all the objection is to the execution against his tutors and curators; and the question is, if the prescription is run or interrupted; but this not having been before the Ordinary, nor in his eye when the interlocutor was pronounced;

"The petition was remitted to the Ordinary."

1754. *November* 28. A. *against* B.

"BEFORE this case was heard, as a part of Lord Huntingdon's trial, he reported an ordinary action from the Outer-house, which was as follows:—A process was brought before the sheriff of East Lothian, and after it had depended for some time, the defender died, and his heir and executor both residing in England, the pursuer obtained letters of supplement under the signet, whereupon the heir and executor were cited at the market cross of Edinburgh, pier and shore of Leith; and when the cause came before the sheriff, the sheriff sustained the objection made to the supplement, that the same was irregular and inept, as a principal defender could not be called by a supplement; on which the pursuer brought an advocation of his own cause, at discussing whereof the question was, whether the defenders were regularly brought into Court by the supplement, which the Lord Probationer coming to report, he with great modesty expressed his diffidence of