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

his opinion in a case of this kind, which depended on the custom and practice with respect to letters of supplement; that he had advised with the most experienced writers, who were of opinion that it was customary to obtain such letters of supplement in cases of this kind; and when he further considered the bad consequences that might attend the not sustaining them, particularly, that there is no other method of carrying the cause; that all steps of diligence, such as arrestments, or inhibitions, must fall should the letters of supplement not be sustained; he was, therefore, of opinion, that they fell to be sustained.

"When the Lords came to reason upon this case, it appeared not to be without difficulty. So far behoved to be admitted that a principal party cannot be called by a supplement regularly; yet if it were true, that unless it were admitted in this case, all the proceedings that have been had, and upon which arrestments and inhibition had been used, must fall, it were hard. On which the President suggested, that the supplement might be sustained *ad effectum*, to advocate the cause, which to others looked a little odd; for if it was sustained, why should the cause be advocated, but rather remit to the sheriff. But his meaning was, that there could be no advocation except there was a defender; and, therefore, he was for sustaining the supplement to that effect. Others thought that the cause might be advocated simply for that very reason, that the cause could not proceed in the Inferior Court without a defender, which could not be there had; and that for that reason it ought to be brought into this Court.

"The Lords advocated the cause, and remitted to the Ordinary to proceed accordingly."

1755. *January* 8. ALEXANDER DONALDSON of Kinnairdy *against* OFFICERS of STATE.

THIS case is reported by Lord KAMES, (*Sel. Dec.* No. 72; *Mor.* 9926.) Lord KILKERRAN gives the following statement of the grounds of the judgment:—

"*January* 8, 1755. Preferred Kinnairdy, but not upon the grounds pled for him in the information, but on what follows:

"That the act 1587, its not annexing patronages was true, but not to the purpose, for these kirks that belonged to abbacies, and whereof that in question was one, were not patronat, they were served by monks appointed by the abbot. A few, it is true, there were that belonged to the Chapter, but they were but a few; the bulk of them belonged to the Abbot, and were served by monks of his appointment, as aforesaid. So that whether patronages were or were not annexed, (as certainly they were not,) is nothing to the present question, which falls to be determined upon the act 196, of the Parliament 1594. Before that act, there had been several of these abbacies erected into temporal benefices; but then all that the Lords of Erection got was the teinds. But there were no kirks till, by the aforesaid act 196, Parliament 1594, they were, for the first time, declared patronat, and to be provided by presentation as common kirks; the consequence of which was, that as the grant of the teinds did not carry the right of patronage, that was and remained in the crown, except where, in the after grants, the patronage or *jus presentandi* was given to