construction. And that the only case to be found where the words were thought not to admit it, is where the obligation was upon the father to pay to the children at a certain age, *e. g.* the age of sixteen. This was in the case of *Easterogle*, and of which decision the *ratio decidendi* is expressed, that the father was bound to pay at a certain age, whereby the father might have been obliged to pay in his own time. In such a case *dies* both *cedit et venit;* but in any other case there is nothing to hinder a Court to construct the words as importing only a destination of succession. Where contracts are so conceived that the father is to secure such a sum to the children, then there is no doubt but that it is only considered as a succession. And the only doubt in the present case arises from the word *pay;* but it is plain enough that it is a word improperly used, as it is applied also to the conquest. And to this opinion, and that given by the President, all the Lords agreed, and added some additional reasons, such as the bad consequences and danger to creditors that might attend a contrary judgment, for what creditor was safe, should such a clause in a latent contract of marriage, which would never come to light in the father's time, give the children the same rank with creditors who lent their money, seeing the father possessed of an opulent estate; I say, of what dangerous consequences might it be, if, in such a case, creditors should be in no better case than children, whose provisions had not a being when their debts were contracted, and which come only to start up debts on the father's death?"

This case is reported by *Elchies (Adjudication*, No. 41, and *Aliment*, No. 14.) It is also reported in *Fac. Coll. (Mor.* 996.)

1754. *July* 16. THOMSON and DUNCAN, Merchants in London, *against* ANDREW LOGIE, Merchant in Aberdeen.

THE pursuers claimed payment from the defender of L.44, 2s. as the balance of an account-current. The defender objected to this claim, on the ground that the pursuers were liable to him in damages for the loss he had sustained upon a cask of claret, which he had sent to them, to be disposed of along with other wines, they being commission-agents in London. It appeared that the pursuers, on receiving the wine, put it into the hands of a wine-cooper; and it was farther proved, that in consequence of the wine-cooper having neglected to fill up the cask regularly, while it remained in his possession, the quality had been so much deteriorated as to make it unmarketable.

The question was, whether the pursuers, who were not themselves dealers in wine, but to whom the wine in question had been sent, as factors and commission-agents, to be disposed of for the defender's behoof, were liable for the neglect of the wine-cooper, to whose custody they entrusted it. The Court held that the pursuers were liable. Lord KILKERRAN'S note of the proceedings is as follows:

"*July* 16, 1754.—The Lords, by the President's casting vote, found the pursuers liable for the damages sustained in the hogshead of claret.

"For the negative—Milton, Minto, Kaimes, E. Marshall. For the affirmative—Drumore, Strichen, Kilkerran, Shewalton, Woodhall, and the President's casting vote.

"It was on all hands agreed that it was a trespass to let the hogshead of claret

(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-