

scribed accounts to be probative ; whereas, by the 5th Act of Parliament 1681, even writs subscribed are not probative, unless they contain the writer's name and witnesses', with their designations ; and far less can they make a debtor liable for annualrent ; as was decided *2d January 1678, M'Lurg against The Earl of Dalhousie.*

ANSWERED,—The Sheriff committed no iniquity ; for he sustained them only with this quality—The accounts and missives being proven to be all written with the said Sir Patrick Aikenhead's own hand-writ ; which was accordingly done.

The Lords repelled the reason of suspension, and sustained the Sheriff's decret. *Vol. II. Page 120.*

1701. *July 17.* ELIZABETH URQUHART *against* LESLIE, &c. Tenants of Gight.

DAME Elizabeth Urquhart, relict of Sir George Gordon of Gight, pursuing Leslie and the other tenants of her liferent-lands for maills and duties, it was OBJECTED,—The execution is null, because it does not design the pursuer, whereby she is called no more but Dame Elizabeth Urquhart. The pursuer having taken up the execution,, and procured a new calling some days after, they produce the same execution, with this addition on the margin, "relict of Sir George Gordon of Gight."

ALLEGED,—The execution having been plainly null by the 6th Act of Parliament 1672, and quarrelled as such, it could not be taken up and mended by the messenger. *2do*, This marginal addition wants witnesses, and so is still null by the 4th Act 1686. *3tio*, Executions cannot be mended *ex post facto*, especially after they are quarrelled ; and Stair, *book 4. tit. 38.* is peremptory that an execution produced being once found defective, another of a different tenor cannot be admitted, because this were to fix the verity of the execution on the lubricity of the witnesses' memory.

REPLIED,—Mended executions have been admitted by the Lords ; as in the case of *Mr James Alexander against The Lady Kinglassie*, in 1682.

The Lords thought it not safe, nor consonant to the Act of Parliament, to allow parties, after quarrelling, to mend the nullities of their execution. But some thinking the addition of Dame to her name was a sufficient designation to difference and discriminate her from any other, seeing it was not pretended that there was another Elizabeth Urquhart in the kingdom that had the title of Dame, as being a knight's relict, prefixed to her name ; therefore the Lords chose rather to bottom their decision on that ground, and ordained the parties to be heard whether that designation was not sufficient to satisfy the Act of Parliament. *Vol. II. Page 120.*

1701. *July 18.* The MAGISTRATES of ABERDEEN *against* The KILLERS of RED FISH in the DEE and DON.

THE Sheriff and Magistrates of Aberdeen, as having right, by the 111th Act

of Parliament, 1581, for punishing transgressors anent cruives and yairs, and killing of salmon and red fish in the rivers of Dee and Don, having pursued, by Thomas Farquharson, their procurator-fiscal, some transgressors, and fined them; they suspend on double pouding, that they live within the Duke of Gordon's regality, and so all the fines belong to him; and that the 111th Act founded on is but a temporary law, and a commission directed to these magistrates then in office, &c.; as appears by this,—that George Earl of Caithness and Alexander Earl of Sutherland are therein named, who were not immortal, and so was only a power during their life.

ANSWERED,—The Duke's regality is but late; and as that Act derogated from regalities then in being, *multo magis* it must be preferred to regalities erected since; and the Act is perpetual, for it allows them to hold courts yearly; which cannot be understood only of them in office at the time, but also of their successors.

REPLIED,—Thir fines, by the Act, belonging to the King, he, by erecting the Duke's regality, might give them to the Duke. And this is the same case with the competition between the *Laird of Grant* and *Dunbar of Westfield*, *sheriff of Murray*, about the casualties, mentioned *25th November 1699*, which was remitted by the Lords to the Parliament. And certainly he, as lord of regality, would have sole right to all the single escheats falling within his bounds; and why not to thir fines? seeing, if they be the King's, and at his disposal, they are conveyed by granting the right of regality.

The Lords found the Act not expired, but a perpetual law; and preferred the Magistrates to the fines in question, but prejudice to what the Duke shall impose in his own courts for such transgressions.

*Vol. II. Page 120.*

1701. *July 25.*

HENDERSON *against* MUIRISON.

WHITEHILL reported Henderson against Muirison, merchant in Aberdeen. The case was a bill of exchange accepted, but protested for not-payment; whereupon the creditor in the bill recurs against the drawer; who ALLEGED, no action could be sustained against him, because the protesting for not paying was not *debito tempore* intimated to him, whereby he might have had recourse against the drawer, but that he had kept it up a year; and, if this were allowed, then why not two or three years? And that both Marius and Scarlet, who write on bills of exchange, are positive that protests for not-payment ought to be advised within two or three posts thereafter, that the drawer may take such measures as may be necessary for his relief, otherwise he may be exposed to great inconveniences.

ANSWERED,—The certioration holds only in foreign bills of exchange; whereas this is an inland bill, where parties may know one another's condition without advertisement; and that our law prescribed no definite time for inland commerce.

To which opinion the Lords inclined: But, in regard it was alleged the debtor was broken before the term of payment of the bill and the protest, therefore they ordained that matter of fact to be tried; for, if that was true, there