the elections; and that severals were chosen who were not trafficking merchants; and that they had exacted sundry illegal impositions of tonnage, cartage, crannage, and for borough-missive dues, &c. And this complaint being remitted by the Parliament to be discussed summarily by the Session, the burgesses insisted, *primo loco*, on the nullity and illegality of the bygone magistracy: for, during the standing of episcopacy, the Archbishop of Glasgow named the provost; and, out of a leet of nine presented to him, he chose the three bailies. During the former abolition in 1640, the Duke of Lennox was presented by the King to the bishop's right. And now, at the last revolution, King William allowed them, in 1689, a popular election, and, at Michaelmas thereafter, the Town-Council to choose their sucessors; the King not seeming to be informed of his own right; and so was obtained by subreption, *celata veritate vel expresso mendacio*: *l. 5. et 6. C. Si contra jus vel util. pub.*

ANSWERED,—The electing by the poll was permitted in other boroughs as well as Glasgow; and to controvert the actings then is to strike at the root of the present constitution and establishment, which is a corner-stone *non tangendum non movendum.*

The *second* point was, If the charter given to the community and council gave the sole power of election to the council, or to the community represented by the two halls.

ALLEGED,—That Dovehill and his party had inhanced the magistracy, which ought to circulate; and that in electing the dean of guild and deacon-convener, and in buying and borrowing, the two halls are always consulted, and ought likewise to have an interest in electing the other magistrates.

ANSWERED,---The election is conform to the set and custom of that burgh; and it is true the power is radically and originally conveyed to the body of the people, but formally, *et in actu exercito*, unto the council, as its representative; and it is found in Edinburgh, and other places, that the giving the trades too great an influence and hand in elections is very inconvenient.

The Lords, finding an inclination in the parties to settle, did only give their interlocutor anent the legality of the magistracy, and appointed some of their number to commune betwixt them, as to the other points in controversy; for though there were several things in their set defective, which well deserved amendment, yet the remit did not empower the Lords to adjust a new set and form of government, but only to determine betwixt them according to law: Therefore the Lords, for sopiting their heats and animosities, fell upon this method to agree them. *Vol. II. Page* 118.

1701. *July* 16. ANDREW HAY and HAY of ALDERSTON *against* PATRICK AIKENHEAD.

MR Andrew Hay, and Hay of Alderston, his factor, pursue Patrick Aikenhead, son to Sir Patrick Aikenhead, commissary-clerk of Edinburgh, for payment of a balance of an account in his father's hands, as factor for the said Mr Andrew, before the Sheriff; and he having decerned, they suspend on this reason, That he, contrary to law, had sustained scrolls, missive letters, and unsub-

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 decreet. *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