

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