

quhoun's right to the salmon-fishings is not disputed in this cause, found that he has right to the salmon-fishing in the river Leven, where it runs through the property of the pursuers: found that the pursuers have a right to fish trouts opposite to their respective properties, with trout-rods or hand-nets, but not with net or coble, or in any other way that may be prejudicial to the salmon-fishing belonging to Sir James Colquhoun." And, 5th December 1787, they "adhered, excepting as to hand-nets," as to which they appointed the petition to be seen: so that the general point is fixed.

*Act.* J. Morthland, H. Erskine, Ilay Campbell. *Alt.* Wm. Baillie, G. Ferguson, R. Dundas.

*Reporter,* Braxfield.

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1787. November 17. DAVID, &c. ARCHIBALDS *against* MARION MARSHALL.

WRIT—ACT 1579, C. 80—1681, C. 5.

A witness being designed in a deed by a familiar appellation, and subscribing in his proper one, vacates the deed.

[*Fac. Coll. X. 8; Dict. 16,907.*]

HAILES. Here we have a proof of the supine carelessness of men of business. Witnesses ought to subscribe before the testing clause is filled up. How could a writer, with his eyes open, certify that *Hilloch* subscribed as a witness while no such subscription appeared. It is in vain to say that this man had two names, *Hill* and *Hilloch*. By the same argument *Little* and *Littler*, *Smeal* and *Smeallie*, *Rosse* and *Rose*, may be the same names, because they resemble each other. It is also said that *Hill* is the name, and *Hilloch* a diminutive. But mark the consequences: a man may sign *Alexander* and be aptly designed *Sandie*: so *William* and *Willie*; *Richard* and *Dick*; *Robert*, *Rob*, and *Robin*; *Edmund*, *Nun*; *Francis*, *Frank*; *Thomas*, *Tom*, &c. Hence we shall have the following accurate designation: *Dr William Thomas*, advocate in Aberdeen; *William Thom*, witness: *George Alexander*, writer in Edinburgh; *George Sandie*, witness: *Philip Frank, Esq.*, late one of the Supreme Council at Calcutta; *Philip Francis*, witness.—Such instances are numberless.

BRAXFIELD. The Act 1681 is a wise one: since that time no condescence has been allowed to supply nullities.

PRESIDENT. In the case, *Duke of Douglas against The Creditors of Little-gill*, the defect was found suppliable, and supplied: *that* however related to a deed executed before the Act 1681.

On the 17th November 1787, "The Lords sustained the objection;" and, 4th December, adhered.

*Act.* G. Wallace. *Alt.* Alex. Abercrombie.