

1698. *November 10.* SIR GILBERT ELLIOT, JAMES LEVISTON, and OTHERS, Burgesses of Edinburgh, *against* The MAGISTRATES of EDINBURGH.

SIR Gilbert Elliot, James Leviston, and many other Burgesses of Edinburgh, who were fined, in 1683 and other times, for absenting from the church, baptizing their children with Presbyterian ministers, and other church-irregularities, pursue the present Magistrates of Edinburgh for repetition of these fines on the act rescissory in 1690. For proving their payment, some of them produced decreets under Alexander Gay, then clerk-depute, his hands, bearing their absolver, in regard they had paid in their fines at the bar rather than go to prison or be denounced. Others had discharges from John Trotter, the Town's collector. It was OBJECTED against the *first* instruction, That it could not prove the Town received these sums, seeing the assertion of a clerk can bind no debt on them without an act of their own, by their set and decreet-arbitral, and, at most, could only reach Gay and the Town's procurator-fiscal, unless they instructed they were *in rem versum* to the Town's use. Against the *second* it was OBJECTED,---Trotter had only a limited commission to uplift the imposition on ale, &c. or some other branches of the Town's revenue and common good, but no warrant to lift thir fines: unless they produce his special commission, or prove he has counted to the Town, or delivered them in to their treasurer, his receipt can never exoner them, especially seeing he died considerably in the Town's debt.

ANSWERED,---They *bona fide* paid; and the Town may seek their relief from those persons whom they trusted, or their representatives.

There was a question moved by some of the Lords, If it was not more just that the Magistrates then in office, when thir fines were exacted, should be liable to refund, or instruct what came of them, if applied to the Town's use or not, rather than the Town and present Magistracy, who were innocent of the matter? But it occurred that James Fleming, then Provost, and the other Magistrates then with him, were cited *incidenter* by a diligence in this process; yet they were not heard on their special defences: Therefore the Lords allowed them a diet to be heard. It made it favourable, on the pursuers' part, that most of them who were able offered to mortify their fines to an hospital, or some other pious use.

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1698. *November 11.* JAMES WATSON *against* GEORGE MOSSMAN.

THE mutual charges between George Mossman and James Watson, printers in Edinburgh, founded on indentures passed between the said George, and Patrick Watson, brother to the said James, and probation led thereon, were this day advised. George had charged his apprentice with some malversations, as purloining some books and money, and lending some of the types and instruments of printing to his brother James, which belonged to his master; and thereon hot words following, he thrust away his apprentice, and he, by way of instrument, required him to take him back again, who refused; and thereon being charged, George suspends on this reason, That he was not bound to receive