

1706. *July 17.*The TOWN TREASURER of DUNBAR *against* JEAN PRINGLE, Relict of GEORGE RUTHERFORD, Merchant there.

No 12.
Baillies of a burgh competent to judge concerning debts due to the burgh.

JEAN PRINGLE relict of George Rutherford raised advocation of a process commenced before the Bailies of Dunbar, at the instance of their Treasurer against her as representing her husband, for payment of a debt due by him per bond to the pursuer, upon this ground; That the action was for a debt resting to the Town treasurer upon the Town's account, and the Magistrates, who are administrators of the public stock of the burgh, could not judge in a cause concerning the subject of their administration, for which they are accountable; no more than a tutor can be judge in his pupil's cause.

THE LORDS repelled the reason of advocation, and remitted the cause: There being an express act of Parliament allowing deputes to be judges in the principal's causes; and the Bailies are but the Town's deputies, and may competently judge upon debts due to the Town. Nor doth the case of a tutor or curator meet; these being reputed as parties themselves; whereas magistrates of a burgh are not so considered in the concerns of the community.

Fol. Dic. v. 1. p. 230. Forbes, p. 124.

1711. *January 12.*PATERSON *against* The TOWN of EDINBURGH and JOHNSTON.

No 13.
In a process against a burgh, concerning a contract made with them, a declinator given in against one of the Lords, as being uncle to him who was town treasurer at making the contract, though now *functus*, was repelled.

THE TOWN of Edinburgh being in great debts, contracted on many public accounts, our Kings, from time to time, for supporting the metropolis, granted them an imposition of two pennies on every pint of ale brewed and imported within their precincts; and in 1693, King William, with advice and consent of Parliament, renewed this gift for 15 years and longer, but so as it should not exceed 30 in all. There being 13 years of this imposition yet to run, they enter into a transaction with Mr William Johnston of Sheines, Mr William Bogle and others, by which they were to assign them to the benefit of the said gift, on their engaging to pay the sum of L. 530,000 Scots, being the town's debt, and to recover and report sufficient discharges thereof in that 13 years time yet to run of the gift. This agreement taking vent before it was signed, Mr Alexandre Paterson, Bailie Gordon, and several other burgesses, applied to the town council, and offered L. 20,000 Scots more, and took instruments at the council-house door, in regard access was refused them; and finding Mr Johnston and his partners preferred to them, they raise a process of reduction and declarator against the Magistrates, and their tacksman foresaid, calling for production of the foresaid rights, to be declared void, unformal, partial and illegal; and that