

fasting Sunday. Whereunto the master answered, That he was also sore spuilied himself that day for not putting out of a footman; it being the tenant's fault, who should have put him out. The Lords assigned a short term to the suspender to prove that which was *in fact*, and to liquidate the prices; or, if he had rather, more terms to prove his spuilie. The Lords found the letters orderly proceeded for the master.

Page 17.

1649. June 28. GILBERT HARDIE *against* HAMILTOUNE and POOLLE.

IN the advocation at Gilbert Hardie his instance, of an action of removing at the instance of Hamiltoun and Poolle against him before the town of Edinburgh,—there was a reason of suspected partiality, one of the bailies threatening Hardie, that he should be decerned to remove, and the assessor being the drawer up of the pursuer his allegiance and replies; and, farther, the matter dipping upon the discussing of double tacks, specially where the user of the advocation craved only to set while Martinmas or less, that he might get his wine and beer sold, otherwise he would be altogether ruined. Some inclined to try upon what conditions the tack pretended by Hardie was consigned in Jacob Nicolsone his hand, and so would have had it advocated. But others prevailed, that it should be remitted, because that might delay time, which was precious; for the great confluence of people now before Lammas, and advocations, in Removings, are important in the town of Edinburgh: yet recommended to the town to be gentle and tender herein towards their burges, Hardie, whose credit hinges upon his change.

Page 18.

1649. June 28. WIDOW WALLACE *against* —————.

IN the action for a terce, at the instance of Widow Wallace, furth of her husband his land of the Cannongate,—it was excepted, That all burgh lands ought to be free, and ought to have the like freedom. It was replied, That, by the old laws, the word burgh is only to be understood of burghs royal; who have that privilege, as it would seem, because they were almost merchants and tradesmen who dwelt therein, and did leave their dwelling-house to their heir; as the chief messuage in landward is likewise thought to be *præcipuum*: and that, out of the moveables, the relict might have a competent third. It was duplied, That the burghs of regality and of barony are of a like nature, the inhabitants having collected themselves to dwell together for mutual defence. And what is *privilegiatum* to the burghs royal, as, to vote in Parliament, to sell wine and wax, &c. those particular exceptions, by the Acts of Parliament, *firmiter regulam in omnibus casibus non exceptis*; and so they take infettment by hasp and staple, in the regals as in the royals. Likeas the custom has never been of seeking such a terce, albeit Anna Hay got it in the Cannongate,—the Raes, her good-sisters, not willing to oppose her for their own reasons; *quod unicum*