

it without payment, but not against Carriston's creditors, who ought all to be preferred to it, since their debtor's oath ought not to prejudge them.

The Lords referred to the Lords Forret and Pitmedden to settle and agree the parties : who did so : and Winton purchased in Fergusson's apprising, and got an abatement of seven years' annualrent, and gave him bond for the remainder. See *21st June 1677, f. 286, in fine :—Item Massuer. prac. forens. tit. 19, de Præsumpt. p. 176.* Vol. I. Page 39.

ANENT MOVEABLES.

THERE is an heritable bond due to a minor ; his tutor uses requisition ; the minor dies ; a competition falls in betwixt the minor's heir, and his executors, who allege the sum belongs to them, because it was made moveable by requisition. The heir says, the tutor's deed cannot wrong him ; for, *1mo*, He could not uplift an heritable sum (especially if infestment followed on it, for that makes it like to lands,) *sine decreto judicis interposito*. *2do*, If he had lifted it, he was obliged to have reëmployed it on heritable security again, in which case it would have belonged to the heir.

It would be considered whether it was a redeemable or irredeemable right of lands. *2do*, If there was necessity to call for it, either because the minor stood in need of it, or that the party debtor was turning insufficient, or that a better occasion offered. The best lawyers were divided upon this question. If he was a pupil within 12 or 14, who can give no consent, some think the tutor alone cannot alter it ; but, if he be under curatory, it is somewhat more questionable. See the case, *Park against the Earl of Wigton, &c.* (which agrees with this case,) where a moveable bond, surrogated by a tutor in place of an heritable, *sapit naturam prioris*, and which the Lords found on the *21st June 1677*, in that case. Vol. I. Page 40.

1679. February 1. ANENT the TOWN of EDINBURGH'S IMPOSITION ON ALE.

I HEARD that the Lords had found the Town of Edinburgh's imposition of two pennies on the pint of ale extended only to what was brewed, vended, and consumed within the Town of Edinburgh's liberties, taking these words, *brewing* and *vending*, *conjunctive* and not *disjunctive*. What was brewed therein, but was consumed in the shire, without their liberties, they found the imposition did not reach to that, though the words of their gift from the King be copulative. Vol. I. Page 40.

1679. February 4. THE PEWTERERS of EDINBURGH against The PLUMBERS.

THE Pewterers of Edinburgh raise a declarator against the Plumbers, that they have as good right to work in lead, as making pipes, thatching platforms, &c. as the Plumbers. ALLEGED, *1mo*,—The Lords have found the Plumbers a distinct trade. (See Feb. 1676, No. 469.) *2do*, It is for the good of the king-

dom, to have sundry different trades. *3tio*, By Act of Parliament 1663, the Pewterers should not meddle with lead. *4to*, The whole deacons have given a decret in favours of the Plumbers. ANSWERED,—The decret of the other deacons is given *a iudicibus pedaneis*, and is of no moment. Some lead is always necessary to make tin work, in ley metal, such as stoups, chamberpots, &c., the standard and quantity of which mixture is decerned by an Act of the Burrows. The Act 1663 hinders them not to work in lead, but only to mix it with foreign tin. There is no mystery in plumbing, but easily any pewterer may do it; yet *stannum et plumbum* are different. The Pewterers are in the seal of cause with the Hammermen; the Plumbers are in none, but have a wheel-barrow for their essay. Different trades, where they are able to subsist, are useful; but, in Scotland, plumbers cannot subsist upon their work, as a distinct trade, there being little to do; only our curiosity is increasing daily.

This being reported, the Lords, before answer, ordained the Plumbers to condescend and prove, that, since their admission and incorporating of them with the Wrights and Masons, they were used, by and of themselves, to work in lead as a distinct trade and employment, and were in use to admit of apprentices, and to do such other things as are proper for a distinct trade and employment; and to condescend, and prove the time of their assumption and incorporation to be a distinct trade.

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ANENT PROOF by WITNESSES.

INTROMISSION with moveable goods, or with maills and duties, may be proven by witnesses, though they be of never so great a value; but not intromission with sums of money, which require a more exact probation, *scripto et juramento*, that the Judge may exactly know *quo animo* it was uplifted, and whether the uplifter had any right thereto or not.

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ANENT BONDS OF PROVISION and TESTAMENTS.

ONE makes a testament, and leaves legacies, and afterwards grants a bond of provision to his children: the bond of provision will affect the moveables preferably to the legatars, because *ambulatoria est hominis voluntas*; and here *posterius derogat prioribus*; and a testament is *sua naturá* revocable, *vel tacite vel expresse*, and is only *sententia de eo quod quis post mortem suam fieri velit*. But, if the bond of provision be on death-bed, it only affects the dead's part.

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1679. *February 7.* THOMAS CRAWFURD *against* The TOWN of EDINBURGH.

THOMAS Crawford, late Bailie of Edinburgh, against the Town of Edinburgh, for payment of a sum as the price of one of the tenements whereon the Tron-church is now built, and whereunto he has right as donatar to the bastardy of the last heritor thereof.

The Lords ordained the Town of Edinburgh to pay him the said money up-