

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-

on his discharge and absolute warrandice ; albeit his right was very defective, and he had only the gift of one of their bastardies, whereas there were four of those brethren, called Oliphants, that had right to the price, as appeared by the Act of the Town-Council. And whereas Thomas contended that he needed give no warrandice, because the Town was secured by the prescription of forty years' peaceable possession, the bargain being in 1638, the Lords repelled this upon a report of Craigie's.

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1671, and 1679. JANET KELLY, Lady Eistbarnes, *against* The TENANTS of EISTBARNES.

1671. *December 5.*—THIS was an action for poinding of the ground upon a bond of provision, and infestment, and annualrent, relative to her contract of marriage ; wherein compeared Mr Laurence Charteris, who had comprised thir lands, and ALLEGED, No process at her instance, because he offered him to prove that Mr Cornelius Inglis, granter of the bond whereon the pursuer's infestment followed, was denuded of the right of property of the lands in favours of Mr Patrick Inglis his son ; and the said Mr Patrick infest before the pursuer's infestment of annualrent ; and Mr Laurence has comprised the son's right. (*Vide infra*, in June 1677, numero 583.) See 7th February 1679, *Eistbarnes' Creditors* and the *Lady's Executors*.

REPLIED, for the pursuer,—1mo, Albeit the defunct Mr Cornelius had been denuded of the property in favours of his son, yet the son's infestment was base, and never clad with possession till after the Lady's infestment. 2do, The pretended right being a disposition by a father to a son, without any adequate price, and after the Lady's contract of marriage, whereto her bond of provision is relative, the son can never quarrel the Lady's right, because, by accepting the said disposition, she will be liable, as successor *titulo lucrativo*, to fulfil his father's obligation ; and the father, by granting the said infestment to his son, was noway incapacitated to give his lady an infestment, depending on a preceding most onerous cause, her contract of marriage, against which her son's infestment cannot be obruded.

DUPLIED,—They offer to prove the son was infest, and in possession before the Lady's infestment. 2do, The son's infestment proceeding upon a disposition bearing to have been granted for causes onerous, is sufficient *quoad* a compriser, who, being a singular successor, is not obliged to debate whether the causes were onerous or not.

TRIPLIED,—The son's infestment could not be clad with possession before the Lady's, because it is dated only in March 1669 ; and, the rent being victual, it is payable betwixt Yule and Candlemas, and the Lady's infestment is in December, that same year, and so the son could not be in possession. 2do, As to the comprising, it is led against the son after the Lady's infestment ; and albeit the compriser were infest, (as is denied,) yet the right, made by the father to the son without an adequate price, is such a deed as makes him liable *ut successor titulo lucrativo*. And he not being denuded before the Lady's infestment, which is for implement of her contract of marriage, anterior to the son's