

see their work, that the lieges be not cheated and abused with base and insufficient work. As thir were the reasons that evinced the usefulness of reducing and fixing the trades under particular corporations, so the same militate as pregnantly now; for there can be no more but fourteen deacons still. The interest of the trades is much enlarged by thir assumptions still; the people's security against bad work requires the same still: so that the assuming of new trades can never be imagined to have been prohibited. 4<sup>to</sup>, As the words of the set, and reason and meaning thereof, make for me, so also custom, *quæ est optima legum interpres*, stands on this side; for in the incorporation of the hammermen there are eleven trades, such as spurrier, saddler, sword-slipper, &c. all assumed; of which there are four or five taken in since the date of the decreet-arbitral: and yet even some of these lately assumed trades, as particularly the coppersmith, have been actual deacons of the hammermen; which unanswerably proves, there is no difference as to the time of the assumption, whether before or after the set, as is pretended. And whereas the wrights and masons frame an argument from the acts of admission of thir three trades, as if they were limited and qualified *ad speciales effectus*, only to work in their own trades, and not to participate privileges,—it is answered, in so far as their admissions are indefinite, and not exclusive of their capacity, they, in construction of law, must extend to all privileges; *nam favores sunt ampliandi, et indefinitum æquipollet universali*. (*Lege 3. in fine, et 4. D. de Tutelis; L. 43. in princ. et 44. D. de Legatis, 2<sup>do</sup>, ibique Gothofredus. Dynus, ad Regulas Juris Pontificii, p. 4. cap. 15 et 61, de Regulis Juris, in 6<sup>to</sup>, ibique Dynus.*) 2<sup>do</sup>, Where it allows them to work in such and such work, which fell not naturally and properly under the subject-matter of their own occupation, the same is so far from being taxative, that it is demonstrative and in their favours, and is an evident ampliation and enlargement of their liberty, beyond what the limits of their calling would have borne them to; *et quod in alicujus gratiam conceditur non est in ejus odium detorquendum*. Now, freedom being that which all men naturally covet, thir pursuers' ambition swells no higher than to be declared freemen, and not slaves; to be capable of the deaconry, not to be deacons: and since, in all their common evidents, they are designed *confratri*, (for *confratres*,) let their animosities be this day buried, and all ordained, by your Lordships' decreet, to live together like brethren in unity.

The Lords declared in favours of thir three trades, that they had equal privileges with the masons and wrights, as well as the other five, who were incorporated and assumed before 1583; at which time the decreet-arbitral was made.—See, between the pewtherers and plumbers in another place, February, 1679.

*Advocates' MS. No. 469, folio 242.*

1676. *February.* ANENT INITIALIA TESTIMONIORUM.

I HAVE heard some hudibrass the *initialia testimoniorum*, viz. the examining of witnesses upon their age, their being married or not, &c. as an impertinent and insignificant old style; notwithstanding that the same is necessary to be interrogated and inserted; for, 1<sup>mo</sup>, If the witness be found lying and trinketing in thir, it vilifies and derogates much from the weight and faith of his testimony: but many doctors think that *falsum* committed by a witness *in extrinsecis, non facit testimonium cor-*

*ruere in totum.*—See M'Keinzie's Pleadings, p. 82. *2do*, By this it is known if the witness be past fourteen or eighteen; before which time a witness is not supposed to know the hazard of an oath, or to depone with judgment. The *3d* reason is, to distinguish them from other men bearing the same name or designation. *4to*, If they be deponing *in re antiqua*, the telling their age invalidates or adminiculates their testimony; as they were then of years capable to discern or consider such things, which must always be things falling under one of the five senses.—See my abridgment of Farinacius' tractate *De Testibus*.

In Saxony, Vesembec tells us, they go a greater length, and interrogate the witness anent his wealth and riches; for, if he be poor, he is suspected as more liable to be tempted: yet *vide parag. ult. Instit. de Suspectis Tutoribus*. This is coincident with our vulgar objection against witnesses, viz. that he is not worth the King's unlaw, estimated to L.10 Scots. But we set it at so low a rate, that it renders the declinator altogether unpracticable; for there is scarce any witness brought in but he is clear to affirm he is worth that: his clothes, if roused, would be of that value. It should be fixed at L.100 Scots, or something like that. Since all that is acquired by money has grown, the price of that should augment also; especially in this age, wherein the faith of witnesses was never more lubric and vacillant, nor ever so much perjury discovered: so that it is a most commendable part in our law to leave as little to the credit and probation of witnesses as can be; for it allows them not in a case above L.100 Scots; and really this way of probation cannot be restricted enough, considering the impudence this generation has arrived at.

*Advocates' MS. No. 471, § 1, folio 243.*

#### ANENT the VISCOUNT of OXENFUIRD'S CASE.

THE Lords found long ago, in the Viscount of Oxenfuird's case, *anno 1664*, that money lying beside him at his death, because of the destination of it, *per voluntatem patrisfamilias et domini*, to be the price of land which he had bought on his death-bed to evict his lady's terce, (he had more need to have been thinking on another thing,) was heritable, and no third due furth thereof to the relict, and the other two parts of the executors, but that all fell to the heir. See, in my Compend of the Decreets.

*Advocates' MS. No. 471, § 2, folio 243.*

#### VISCOUNTESS of OXENFUIRD *against* her SON.

WHERE a mother aliments her children, it falls to be controverted *utrum impensas istas animo repetendi fecit, an animo donandi, ex pietate datas fuisse presumendum est*. Bernardus Schotanus, *in examine juridico*, p. 124, answers, with five distinctions; 1mo, *Vel est protestata se nolle eos impensas donare, vel non est protestata*. 2do, *Vel super iis impensis rationes confecit, vel non*. 3tio, *Vel bona liberorum administravit, sicque eorum pecunias reditusque possederat, vel non*. (See