

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 prejudice 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-