the mother's, whose executors were not excluded as his were. For by the Act of Parliament 1661, an express seclusion of executors is necessary to make a bond that is moveable, *quoad debitorem*, become heritable as to the creditor. And as a bond to a person, without mention of his assignees, is assignable: so must a bond without the adjection of heirs or executors, fall under confirmation.

ANSWERED for the suspender,—The provisions not being real, affecting the disposition, but only personal obligements upon the mother, notwithstanding whereof the right of the subject disponed, remained with her heirs until they be habily denuded by a sentence. 2. Though the bond had been disponed to the mother, her heirs and executors *per expressum*, it would not thereby have been rendered moveable in her person: far less can the destination be presumed altered from heritable to moveable, by the disposition to her, without mention of executors: because a bond secluding executors, is in a manner more heritable than one upon which infeftment hath followed; in so far as a charge of horning would render the latter moveable, and not the former.

The Lords found, That, in respect the assignation to Martha Lindsay bears in *gremio* to be for the charger's behoof, there is no necessity for serving the charger heir to her mother. That which seemed to influence the Lords in this decision was the practick, 9th June, 1669, Street *contra* Home.

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1708. *Feb.* 24. JOHN Earl of MARR *against* The FEUARS of Bothkenner.

IN the process at the instance of John Earl of Marr against the feuars of Bothkenner, immemorial use of payment was found to determine the quality of *bollas frumenti* contained in the *reddendo* of the defenders' feu-charters, to be wheat.

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1708. *Feb.* 28. [ANENT PROTESTATIONS for REMEID of LAW.]

The Lords peremptorily discharged any advocate in any case to protest for remeid of law by the general warrant of his gown, in the name of his client; without a special mandate from the client.

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1708. *June* 16. and *November* 27. The TAILORS of the CANONGATE *against* the TAILORS of EDINBURGH.

THE town of Edinburgh granted to the tailors there a seal of cause, in the year 1531, ratified by King James V. and another in the year 1584, ratified by King James VI. bearing "That the tailors of Edinburgh were heavily hurt and pre-

judiced by unfreemen dwelling in the Cannongate, Potterraw, and other suburbs, their taking clothes out of Edinburgh, to be wrought within their own freedoms, for the use of inhabitants in Edinburgh; and, therefore, ordaining, That if any person, not burgess freeman of the said burgh, be apprehended taking out or bringing in any such work, shapen or unshapen; it shall be lawful to the deacon or masters, or any of them, with the concurrence of an officer, to seize and keep the said work, till payment be made of forty shillings by the workmen, and as much by the owners, for giving work to be wrought without the freedom of the burgh." The tailors of Edinburgh having been in use, in consequence of these seals of cause, to seize unfreemen's work; the question of right and privilege came to be debated betwixt them and the Cannongate tailors, in mutual declarators before the Lords.

ALLEGED for the Cannongate TAILORS,—No act of the town council of Edinburgh could, by such extraordinary clauses, without calling or hearing the tailors of the Cannongate, and others interested, deprive them of their liberties and privileges. For this, upon the matter, is, *jus dicere extra territorium;* and acts of Parliament were found necessary to entitle some manufactures to such privileges, which yet are *salvo jure cujuslibet.* Nor can the sovereign grant a monopoly, except for the encouragement of a new invention; and a *novodamus* upon a party's resignation containing a bounding, doth not prejudice meiths and marches. Now, what may be the consequence of such a mighty power in the town of Edinburgh? All ranks of people, from every corner of the nation, who come to reside and spend their fortunes there, might come to find themselves abridged and deprived of the free disposal thereof, for meat and drink, as well as clothing; craftsmen might impose upon them, by setting extravagant prices upon their work; men would be provoked to buy clothes from others than merchants of Edinburgh. 2. Burgesses dwelling in Edinburgh cannot be subjected to such thraldom more than the rest of the lieges; for a burgess is only subject to such regular orders of the town council as are ordinary and necessary for the government of the place, without surrendering his common liberty and property, which he enjoys as any subject; and the Lords of Session have often rescinded town-council-acts, putting unreasonable restraints upon their own burgesses. 3. The tailors of the Cannongate have also their seal of cause, with full liberty to work to all the lieges; and bear burden as well as the tailors of Edinburgh.

ANSWERED for the TAILORS of Edinburgh,—All burghs being in use to grant such seals of cause to their respective incorporations, for maintaining of their liberties, in recompense of the burdens they bear of stent, watching, warding, and other services authorized by princes and parliaments; how can these be thought to encroach upon the liberties of the subject? True, in some respect, they restrain (as all privileges do) the liberty of others: but for the good of the nation; and so all men ought to comply with them. Seeing strangers coming to Edinburgh can be as well served within the burgh, what necessity is there to encourage their employing unfreemen, against the privilege of incorporations? Which privilege is both agreeable to reason, and countenanced by Acts of Parliament, particularly the 154th Act, Parl. 12. James VI. discharging and suppressing the exercise of crafts in the suburbs of royal burrows, as prejudicial to craftsmen bearing burden within burgh. 2. The tailors of Edinburgh are far from pretending to break into the shops of tailors in the Cannongate, or any ways to invade their just privilege

of working to all the lieges; but only to hinder them to steal, as it were, the meat out of their neighbours' mouths in Edinburgh, by working within their freedom, or taking out and bringing in work there. The tailors of the Cannongate have privileges, for any burden they bear, in which the Edinburgh tailors do not offer to wrong them; but it is certain that the tailors of the Cannongate are liable to no such burden of stent, watching, or warding, as those of Edinburgh are.

REPLIED for the Cannongate TAILORS,—They do not deny the town's power of granting seals of cause, with reasonable and ordinary clauses; but only controvert such as are extraordinary and exorbitant. The cited Act of Parliament is only against vagabond unfreemen, who fled from their masters in Edinburgh, and drew the work of the town to the suburbs, where they set up booths without being made free there: and to extend it against the Cannongate tailors, who have their own seal of cause, and particular freedom, were to besiege and shut them in from all employment.

The Lords found, that the seal of cause granted to the tailors of Edinburgh is an effectual restraint as to burgesses, and such as bear scot and lot there; and assoilyied them *quoad* these from the Cannongate tailors' declarator of immunity.

Thereafter, 27th November, 1708, the Lords found, that the said tailors of Edinburgh had no right to seize any work brought into the town, and made by the Cannongate tailors, belonging to strangers or others residing in Edinburgh, without bearing scot and lot. *Page* 252.

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1708. *June* 25. WILLIAM BELL, Portioner of Ridpeth, *against* JAMES DUNLOP, Factor for MORISTOUN.

JAMES DUNLOP having subscribed a writ, declaring that William Bell had agreed with him for the purchase of Brotherstanes, belonging to the laird of Moristoun, and was to pay 4600 merks as the price at the terms therein mentioned, and to give Moristoun good security therefore; and that he Moristoun was to give to Bell a disposition with absolute warrandice. And Mr. Dunlop having afterwards signified by a letter to Mr. Bell, that he had reported to Moristoun and his friends the bargain himself had made with Bell, and they would not resile from his agreement; and therefore desired Mr. Bell and his son to hasten into Edinburgh, that the same might be perfected; and, Moristoun having sold the lands to Sir William Scott of Harden: Mr. Bell required James Dunlop to implement the bargain, under form of instrument, and pursued him for payment of L1000 of damages.

ALLEGED for the defender,—The foresaid declaration was only writ *memoriæ causa;* containing no obligement upon him to cause Moristoun dispone, nor upon Bell to pay the price; and so is no contract, not being signed by Bell. And as such a writ could not oblige him to take the bargain, or make him liable for the price, neither could it tie Moristoun or his factor.

ANSWERED for the pursuer,—The declaration sufficiently instructed the tenor and conditions of the bargain, and so excluded *locum penitentiæ* allowed in ver-