his office of conservator; notwithstanding of what is represented concerning the practice of former conservators, and the stating the matter before the commissioners of the burghs, without any new injunction from them.

Thereafter, *January* 29, 1708. Sir Andrew Kennedy alleged, that, by his commission, he was both resident and conservator, which are distinct offices: and though his right to the one be reduced, it stands good as to the other, wherein he hath behaved himself well and faithfully.

ANSWERED for Sir Alexander Cuming,—Not to mention the many particulars wherein Sir Andrew also abused his character of resident, who was a resident without residing, as he was a conservator without conserving; how can he pretend to act in that sphere, contrary to her Majesty's pleasure? And what imputation would it be to her Majesty, to have a minister palmed upon her after he hath rendered himself unacceptable abroad, and obnoxious at home? Especially considering that the sending and recalling residents and foreign ministers at pleasure, is her Majesty's royal prerogative.

The Lords repelled Sir Andrew's defence upon his office of resident.

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REVERSED on Appeal.—*Vide* Robertson's Appeal Cases p. 19.

1708. *February* 10. ANNA MUIRHEAD, and ROBERT LEITH, Writer in Edinburgh, her Husband, for his Interest, *against* GEORGE LOCKHART of Carnwath.

IN the charge, at the instance of Anna Muirhead, as heir served to Robert Muirhead, writer in Edinburgh, her father, and executrix confirmed to Martha Lindsay, her mother; for payment of L.4000 resting of L.9000, contained in a bond secluding executors, granted by George Lockhart of Carnwath, to the said Robert Muirhead: who disponed all his effects, heritable and moveable, in favours of the said Martha Lindsay, not mentioning her executors; with this provision, that she should be bound and obliged to pay to Anna Muirhead, their only daughter, the sum of 7000 merks at her age of fifteen years, or marriage, and the superplus of his estate, reserving Martha's own liferent thereof. Carnwath suspended upon this reason, that he was neither in *tuto* to pay to the charger as heir to her father, because he was denuded by the disposition in favours of his wife; nor yet as executrix to her mother, because the bond granted to the father expressly secluded executors: and the disposition to the mother was only to herself, and not to her and her executors: so that the debt continued heritable in her person, as it was heritable in the father's person; and the charger could not have right thereto, without being served heir to her mother.

ALLEGED for the charger,—1. The mother having no absolute right, but only a naked trust of administration for the behoof of the charger *nominatim*, which *fidei-commissum* ceased by the mother's death; a general service as heir to the father, who was creditor in the bond, was sufficient to establish the right in the charger's person. 2. The bond, though heritable in the father's person, was moveable in

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-