'of 1000 merks Scots money, which was assigned by him to John Innes 'younger of Dunkinty, his son; and whereupon he raised diligence, by horn- 'ing, inhibition, and caption, for the said principal sum, penalty, and annual- 'rents contained in the said bond, in manner at more length specified in the 'said diligence; and seeing, after just count and reckoning betwixt the said 'John Innes and me, of this date, anent the said bond, and other bills and 'writs, that I was due to the said John Innes, or George Innes his father, con- 'form to a doqueted account apart, I am justly resting and owing to the said 'John Innes the sum of L. 500 Scots, as the balance of the said bond, and other 'accounts at the term of Lammas last bypast; and that he has superseded the 'payment thereof to the term of payment underwritten, upon my granting the 'bond of corroboration underwritten: Therefore,' &c. Upon this bond of corroboration John Innes adjudged the estate of James Fraser, and made his adjudication effectual by a charge against the superior.

No 8. to his father, is a good foundation for an adjudication, tho' the original bond be not produced.

In a ranking of James Fraser's Creditors, it was *objected* against this adjudication, That John Innes the adjudger had no right to the original bond of 1000 merks, said to be assigned to him by his father, because no such assignation is produced; and therefore, that the corroboration and consequent adjudications are null, as having no proper cause or just foundation.—It was *answered*, 1*mo*, That the bond of corroboration recites the assignation; and that this acknowledgment by James Fraser the debtor, while his credit was entire, is good evidence against him, and consequently against his creditors, the posterior creditors especially. 2*do*, Supposing there never had been an assignation, a corroboration to a son, of a debt due to the father, is notwithstanding an effectual deed. The debtor is bound by his bond of corroboration, and all he can demand is, that, upon payment, the son warrant him against the father.

'The Lords repelled the objection.'

Sel. Dec. No 115. *p.* 163.

1785. *February* 25. James Rutherford *against* Elisabeth Anderson.

No 9. The acceptance of a new real security, without renunciation, does not innovate the former one.

John Mason granted an heritable bond to James Anderson, on which he took infeftment. Afterwards Rutherford likewise obtained from Mason an heritable security over the same subject. James Anderson died, and was succeeded by Elisabeth Anderson, who delivered up to Mason her predecessor's bond, though not accompanied by a discharge or renunciation, being herself in a state of apparency; and in return received a new bond by Mason in her own favour, upon which infeftment followed. She afterwards recovered the possession of the old bond, and likewise of the infeftment, which had not been in the custody of Mason. In a competition of Mason's creditors, Rutherford claimed a preference before Elisabeth Anderson, on this ground, That the heritable right

No 9. granted to her predecessor, which was prior to his own, had been innovated and done away by the security obtained by herself, and which was posterior; so that this question occurred, Whether, by substituting the one security for the other, but without a renunciation, an extinction of it had been effected.

Pleaded for Rutherford; By accepting the latter bond, Anderson directly relinquished and renounced the preceding security. In other words, this obligation was changed into the other by *novation*; *l. 1. pr. D. De Novat*; Stair, B. 1. Tit. 18. § 8.; Erskine, B. 3. Tit. 4. § 22.; Select Decisions, 14th Feb. 1752, Duke of Norfolk, No 7. p. 7062.

Answered; The feudal right constituted by the prior bond and infeftment still subsisted, notwithstanding the mere delivery of the bond to the debtor. It could not be extinguished otherwise than by a proper discharge and renunciation, which was not given, nor could proceed from an apparent heir. Of course, the right might have been adjudged at the instance of any creditor of James Anderson, or it might have been taken up by any supervening heir.

THE LORD ORDINARY found, 'That the former debt was innovated; and therefore preferred Mr Rutherford.' But

THE LORDS altered that interlocutor; found that innovation had not taken place; and preferred Elisabeth Anderson.

Lord Ordinary, *Hailes*. For Rutherford, *Nairne*. Alt. *Buchan-Hepburn*. Clerk, *Colquhoun*.

S. *Fol. Dic. v. 3. p. 325. Fac. Col. No 205. p. 320.*

1785. *July* 24. DOUGLAS, HERON and COMPANY *against* JAMES BROWN.

No 10.

JOHN DOBIE, after inhibition had been executed against him by Douglas, Heron and Company, granted a bill to Brown, instead of one of a date long prior to that diligence, and which he then retired. On this new bill Brown deduced an adjudication against Mr Dobie's estate; in the ranking of whose creditors Douglas, Heron and Company then

Objected, That the bill in question having been affected by their inhibition, the diligence which followed was void.

Answered, This bill did not constitute a new debt, being a renewed document only of an old one, against which the inhibition could not strike.

The cause was reported by the Lord Ordinary, when

THE LORDS repelled the objection.

A petition reclaiming against this judgment was afterwards refused, without answers. See INHIBITION, No 67. p. 7010.

Lord Reporter, *Braxfield*. For Douglas, Heron and Company, *Blair*. Alt. *Honyman*. Clerk, *Home*.

S. *Fol. Dic. v. 3. p. 325. Fac. Col. No 223. p. 349.*

See APPENDIX.