term, may deprive the landlord of his hypothec, the consequences will be fatal. The Roman law is clear. There is one decision with us, and possibly there may have been more, though not collected. I do not value the opinions of modern lawyers, who wrote after the Roman law had ceased to have full authority with us.

ESKGROVE. [On the second hearing.] Unless sub-tacks be expressly excluded, the landlord, by this judgment, will lose his hypothec. If the landlord intimate to the subtenants not to pay to the principal tenant, he thereby takes them for his own tenants. [This will not diminish his right as to the principal tenant.] Every landlord has two rights and securities, the personal one against the tenant, and the right of hypothec on all the goods on the ground.

On the 1st February, 1785, "The Lords sustained the defences;" altering the interlocutor of Lord Eskgrove.

Act. G. Ferguson. *Alt.* R. Corbet, R. Blair.

Diss. Stonefield, Monboddo, Ankerville, Eskgrove, Swinton, Rockville.

N.B. The opinions of the Judges are fully stated, though it cannot be said that the general point was determined. It was proposed, but very improperly, to make *two votes; one* on the general point and *one* on the specialties.

1785. *February* 23. ALEXANDER TENNANT and OTHERS *against* ANDREW JOHNSTON and OTHERS.

BURGH-ROYAL.

Qualifications of a Bailie,—Non-residence.

[*Fac. Coll. IX.* 318; *Dict.* 1888.]

SERVICE ON MR ANSTRUTHER.

BRAXFIELD. Prayer for a warrant to serve is sufficient.

PRESIDENT. Warrant to serve implies warrant to serve regularly; and the service has been regular, as the party was out of the kingdom.

NON-RESIDENT.

BRAXFIELD. If an unqualified person is put on the leet, the leet is good for nothing.

PRESIDENT. Three bailies are always on the leet. If *one* unqualified person may be put on the leet, *three* may, and then, in effect, there will be no leet at all, and the bailies must be chosen.

On the 23d February 1785, " The Lords sustained the service, and found that, the leet not having been properly made up, the bailie was improperly chosen ;" and therefore, in the result, reduced the election.

Act. A. Crosbie. *Alt.* A. Wight.

Incidental; Inner-house.

1785. *February* 25. ELIZABETH ANDERSON *against* JAMES RUTHERFORD.

INNOVATION.

The Acceptance of a new real Security, without Renunciation, does not innovate the former one.

[*Fac. Coll. IX.* 320 ; *Dict.* 7069.]

BRAXFIELD. Were an infeftment once put an end to, it would be dangerous to the records to raise it up again. But *here* the infeftment was not properly put an end to ; all that was done was the delivering up the instrument of debt. The act of retiring is not sufficient without a discharge and renunciation. Suppose a creditor of Anderson should adjudge the heritable bond, and take infeftment, this would be good, notwithstanding all that has happened.

ESKGROVE. The case of the *Duke of Norfolk* does not apply. In order to extinguish an heritable title, actual delivery is not sufficient;—there must, besides, be intention, title, and proper form. Now, Elizabeth Anderson did not mean to renounce: she was only an apparent heir, she could not renounce; nor did she. Had Mr Rutherford lent his money on the faith of the record, the case would have been more favourable.

JUSTICE-CLERK. On the face of the record Elizabeth Anderson is creditor in *two* heritable debts. It is only from her own acknowledgment that she appears to be creditor in *one* debt only. Her acknowledgment ought not to cut her out of *both*.

On the 25th February 1785, " The Lords preferred Elizabeth Anderson ;" altering the interlocutor of Lord Hailes.

Act. G. Buchan Hepburn. *Alt.* W. Nairne.
