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.
