

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. i. 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, *Halles*. For Rutherford, *Nairne*. Alt. *Buchan-Héburn*. 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, *Hume*.
S. *Fol. Dic. v. 3. p. 325. Fac. Col. No 223. p. 349.*

See APPENDIX.