No 164.

her portion. His *defence* was, That he had raised a reduction and improbation against her and sundry others, and obtained a certification. *Answered*, This being only a presumptive falsehood, arising from not production of the bond then, I now sufficiently elide the same, by offering to prove by your oath, that you truly granted that bond, and so cannot obtrude falsehood against it. *Replied*, Certifications being the great security of the nation, they ought not to be loosed on any pretence whatsoever. THE LORDS, remembering this case had been much debated between Edmondston of Duntreath, No 163. p. 6743. where the certification was laid open, they sustained the answer, if he refused to depone on the truth of the bond; for *præsumptio et fictio cedere debent veritati.* And some have questioned, whether you are secure by the 40 years prescription, whether I may not elide it by referring the verity of the debt, and that it is yet resting owing to your oath, though the bond will not be probative against you; yet that defence of prescription is introduced *in odium negligentiæ, et ne lites fiant immortales.*

Fol. Dic. v. 1. *p.* 454. *Fountainhall, v.* 1. *p.* 691.

1699. *January* 5. JOHN GLENDINNING *against* JOHN GORDON.

No 165.
A writ was produced within a week after certification was extracted; but it had been granted about an year before, and extract superseded, upon applications from the defender. THE LORDS refused to repone the defender.

JOHN GLENDINNING having acquired right to an apprising of the lands of Kirkconnel, led against Andrew Gordon, pursues a reduction and improbation against John Gordon of Kirkconnel, calling for an apprising of the same lands led against the defender's eldest brother, and whereunto the defender acquired right, when he was third brother; in which process, the bond which was the ground of the apprising not being produced, certification was granted, and stopped, from time to time, upon partial productions, or applications for new hearings, for the space of a year, and, at last, was extracted upon the 17th of February 1698.

The bond, which was the ground of the apprising, being registered in the books of Session, was extracted, and offered with a bill, upon the 23d of the same month of February 1698; and the bill desired, that the defender might be reponed against the certification, and the extract received.

It was *answered*, That the certification being fairly and legally extracted, a year after it was first pronounced, and after many stops, it was become his evident; and certifications are amongst the most secure and firm foundations of property, which cannot be shaken upon pretence of writs, falling under certification, recovered after the same is extracted.

It was *replied*, Certifications, after the course of some time, do indeed become firm foundations of property; but the Lords are not only very slow and tender in expeding certifications, but likewise, when they are extracted, the Lords may, and are in use to recall them, upon any application *de recenti;*

and here there intervened only six days betwixt the extract and production of the bond, which was the warrant of the apprising; and the defender is willing to refund the expense and damage, *cum omni causa.* No 165.

It was *duplied*, Certifications, after taking terms, are decreets *in foro*, which cannot be reduced, neither can they be recalled, if they be fairly and regularly extracted, without undue precipitation; and there is no distinction in law, whether recently quarrelled or not; because, *eo momento* that they are extracted, they are the party's evidents, and there is no more latitude or privilege to recall them *ex recenti* than *ex intervallo;* for, if they might be recalled at any time, it were not possible to fix a period of time at which they could not be recalled; and the Lords would be altogether arbitrary in that matter; and the rigour of certifications, with the importunity of parties, would often prevail; therefore, the legal extracting of such decreets is the period fixed by law.

"THE LORDS found, that the certification being fairly and regularly extracted, could not be recalled, though the writs called for were recently offered to be produced."

Fol. Dic. v. 1. *p.* 454. *Dalrymple, No* 9. *p.* 12.

1709. *November* 4. JOHN MURRAY *against* JAMES WOOD.

No 166.
The defender in an improbation, who took terms to produce, was reponed against an extracted certification, for not production, pronounced in the hurry of the end of a Session, upon application made for redress, in the beginning of the next, and payment of the pursuer's expenses, modified by his oath.

JOHN MURRAY, adjudger of the estate of Farquharson of Balloch, having pursued a reduction and improbation against James Wood, another adjudger, wherein all diligence at his instance, and grounds thereof, affecting the common debtor's estate, were called for, and terms taken by the defender to produce; and having, the 22d of July last, obtained a decreet of certification for not production, which was extracted the 8th of August thereafter, James Wood now represents by bill, That his writs were in town, in order to have been produced when the certification was pronounced, but his doers had not adverted to it, business being hurried in the end of a Session; and craved the Lords would recall the decreet, and allow his interest yet to be produced, in regard, however tender they are in reponing against certifications in improbations that have stood long unquarrelled, yet such may be got rectified, if quarrelled *de recenti*, Stair, Instit. lib. 4. tit. 20. sect. 11. Murray and Crichton against Murray, No 160. p. 6736. Bannantine against Rome, No 162. p. 6742. For no forms, if recently complained of, should be rigidly observed against equity.

Answered for John Murray, Decreets of certification in improbations having been always considered as the best and strongest securities in our law, so as they can hardly be overturned, though pronounced in absence; and the certification in question being orderly extracted, after compearance, and taking of terms, it can never be brought back. The cited decisions relate to cases where the production of rights was hindered, through accidents that human