

who was only for this defender, was sick of a disease, of which he died in January 1674, as is notour to the Lords.

No 162.

Whereupon the LORDS reponed the defender against the certification, providing the principal bond were produced out of the registers betwixt and Saturday next.

Fol. Dic. v. 1. p. 453. Stair, v. 2. p. 323.

1678. November 15.

EDMONDSTON against EDMONDSTON.

THE Laird of Duntreath having obtained certification against a bond of 7000 merks, granted by him to Mr John Edmondston; the said Mr John raises a reduction of the certification on this reason, that he is, and was the time of the process and certification, residenter in Ireland; and though the Lords are strict in reponing against certifications *ex intervallo*, as being the mean to secure the lieges against pleas and pretences; yet it hath never been extended with that rigour against those that reside out of the country, albeit, *de rigore*, they be liable to the Lords jurisdiction, *propter domicilium originis*; yea, the Lords reponed one Campbell against a certification obtained by Glenurchie against him, when he was a soldier in Ireland, though he was, not there *animo remanendi*. It was answered, That certifications are the lieges greatest securities; and that though this bond be now produced, it was never a delivered evident, but deposited in Mr John Spreul's hand, in order to a transaction; and, therefore, the Lords did not repon against the certification, till Mr John Spreul's oath was taken, which now is in process, declaring that the bonds, and some other writs, were put in his hand, to draw contracts upon, but were taken from him upon warrant from both parties; so that it appears it was not delivered *ab initio*, but hath unwarrantably come in Mr John Edmondston's hand, and was, after Mr John Spreul, in the hand of one Dobby in Ireland, arbiter betwixt the parties.

THE LORDS reponed against the certification but; upon further allegiance, that Mr John Edmondston, though residing in Ireland, compeared, and took terms to produce, they continued certification to the end of the cause; but allowed Duntreath to insist in his reason of reduction, upon deposition; and found it relevant, by Mr John Edmondston's oath, or writ, that it was deposited in Dobbie's hands, and by Dobbie's oath the terms of deposition.

Fol. Dic. v. 1. p. 453. Stair, v. 2. p. 646.

1695. December 24.

RORY MACKENZIE against THOMAS BOYD.

MERSINGTON reported Mr Rory Mackenzie of Dalvennan, Advocate, against Thomas Boyd of Pinkhill, for payment of a debt due to his sister, as a part of

No 163.
A party reponed against certification *de recenti*, being out of the country when pronounced.

No 164.
Notwithstanding of certification in an improbation, found competent to prove by the debtor's oath, that he had truly granted the bond in dispute.

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 *presumptio 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 negligentiae, 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 depone 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 steps, 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*;