

1676. July 14. SIR JOHN KEITH *against* ISOBEL CULLEN.

SIR John Keith, being infeft in the barony of Caskieben, pursued improbation and reduction against Isobel Cullen and the heir of her husband. She produced her contract of marriage and an extract of her seasine; and, before extract of the certification *contra non producta*, she produced a summons for proving the tenor of her charter and principal seasine; and gave in a bill, craving the certification to be stopped till she might conclude her tenor. Yet the certification was extracted without any answer to the bill, or repelling of the tenor. Sir John now insists on his reason of reduction, that the defender produces only her contract of marriage, and an extract of a seasine from the register of seasines; which being only for publication, without keeping the principal seasine, it hath no effect in improbations; so that certification being granted against the principal seasine, there is no real right. *2do*. Though the seasine were produced, it is base, holden of the husband; so that the certification against his heir makes the wife's right fall in consequence.

The defender ANSWERED, That she offered to prove that her husband had a wadset-right, and that by collusion with Sir John Keith, he transacted the same, and suppressed his infeftment: so that, albeit her right fell in consequence, yet she ought to be reponed, because of the collusion, to produce or instruct her husband's right:—all which she offers to prove by Sir John's own oath. And seeing there was no answer to her bill, in relation to the tenor, before the certification, the process ought yet to be stopped till time be granted.

The pursuer REPLIED, That there was not the least diligence done upon the tenor, there being a year since the certification was extracted. *2do*. Certifications cannot be annulled upon probation of tenors, unless the tenor be raised in due time, before the terms in the production be run; for then the tenor is as an incident, that may stop the principal cause of reduction: but if otherwise, certifications could be quarrelled upon probations of tenors, that great security of the lieges would be exceedingly weakened, and an inlet made for multiplying and continuing of pleas: but, as certifications in improbations cannot be reduced *sub prætextu instrumentorum de novo repertorum*, much less can it be reduced upon making up of the tenor by witnesses; which is far less than the principal writ found out after the certification.

The Lords found, That the certification being recent, and bearing the production of the tenor, and bill thereupon, without any answer of the Lords repelling or sustaining the same, they found the tenor was not thereby eleided; but would not stop proceeding in this state of the process, upon that account, but reduced with reservation of the tenor. And, as to the allegiance of the collusion, as to the husband's right, they allowed the same by reduction, and also reserved the wife's terce, in case she failed in the tenor.

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1676. July 26. UMPHRAY *against* CORNELIUS NEILSON.

CORNELIUS Neilson having freighted Umphray's ship from Aberdene to