

No 50.

1672. July 24.

EDINGTON *against* HOME.

A REDUCTION and improbation was sustained at the instance of an heir, though he was not entered at the time of the citation.

*Fol. Dic. v. 2. p. 303. Stair.*

\* \* \* This case is No 459. p. 11292. *voce* PRESCRIPTION.

\* \* \* A contrary decision is reported by Harcarse, November 1687, Earl of Airly against Pitliver, No 74. p. 6666. *voce* IMPROBATION.

No 51.

A decree, though defective in probation, sustained, in respect there was an apprising thereon.

1674. January 9. WAUCHOPE *against* Major BIGGER.

JOHN WAUCHOPE having right to an apprising of the lands of Hill, led against two of the six heirs-portioners of Mr David Anderson of Hill, and an adjudication against four of them who renounced; Major Bigger having a disposition of the same lands from the heir-male, in whose favour, by Mr David Anderson's contract of marriage, the daughters were obliged to renounce for £.20,000, and having established the title of the heir-male in his person; there were mutual reductions betwixt John Wauchope and the Major, wherein the Major did reduce the adjudication against the four daughters, who renounced, as being posterior to his right and diligence. Now Wauchope insists upon the apprising against two of the daughters as heirs-portioners, who renounced not, which is prior to the Major's right and diligence; and albeit he hath the first infestment, and that Wauchope hath neither infestment nor charge, so that the Major's right is the first effectual diligence, yet Wauchope's apprising must come in therewith *pari passu* by the act of Parliament 1661, as not only being within year and day of it, but before it. 2d, Albeit the Major's disposition and adjudication have been sustained as proceeding upon an onerous cause, instructed only by his own oath, yet the cause is not adequate to the worth of the land, and therefore, by the act of Parliament 1621, against bankrupts annulling rights, not being for an onerous cause and adequate price, it is competent to Wauchope, being an anterior creditor, to purge and satisfy the sums truly due to the Major, and thereby to reduce his right. It was *answered* for the Major, That this apprising founded on ought to be reduced, because it proceeds upon a null decreet, obtained at the instance of Mr David Anderson's relict, against her own daughters, as heirs of line, for the yearly annualrent provided to her by her contract of marriage, and for the aliment of the daughters, and yet there is nothing adduced in the decreet to prove that she did aliment them, or the time of the aliment. 2d, The aliment is most exorbitant, being £.300 for each of four young children yearly, whereas the whole means of the