1752. *February* 26.

Duke of NORFOLK and Others, CREDITORS of the YORK-BUILDINGS COMPANY, Petitioners.

No 21.
Where an execution at a kirk-door is omitted, a diligence may be granted for supplying it.

IN the process of sale of the York-buildings Company's estates, pursued by the Duke of Norfolk, *&c.* who were thereon Creditors to the extent of L.70,000 Sterling principal, ascertained by decrees of this Court, affirmed by judgment of the House of Peers; in the great variety of places at which the summons fell to be executed, one mistake had happened, viz. there are two parishes which both go under the name of Kinnaird, one of them in the presbytery of Dundee, the other in the presbytery of Brechin, whereby it had happened that as there was no addition in the summons to distinguish the one from the other, the summons had been executed only at the parish-door of one of them, without distinguishing which; and upon discovery thereof, the pursuers applied for an incident diligence for summoning the York-buildings Company and the Creditors edictally at the church-doors of both said parishes, to compear in the process of ranking and sale, upon twenty-one and six days warning, in terms of the act of sederunt.

As the York-buildings Company had never compeared in the process, it was none of their business to compear on this occasion; so the matter was to be considered by the Court *ex parte.* And some thought it not prudent for the pursuers to insist for such diligence, as it might be made a handle of twenty years after this to object to the sale, which was a matter of too much consequence to leave to any the smallest uncertainty; nor would such handle be without some foundation, as it could not be said that the terms of the act of sederunt had been complied with.

Nevertheless the Lords granted the diligence; but at the same time appointed the diligence and execution thereof to be recorded in terms of the act of sederunt, without which indeed it could not have answered the purpose of that act, when the lieges would have had no means to know of the diligence; but this being done, the Court considered the purpose of the act of sederunt to be complied with.

Fol. Dic. v. 4. *p.* 209. *Kilkerran,* (RANKING and SALE.) *No* 16. *p.* 476.

1752. *February* 27. The CREDITORS of JORDANHILL, Petitioners.

No 22.
A small subject having been omitted out of a sale, new letters of publication found necessary.

IN the sale of the estate of Jordanhill, a small superiority, with a feu-duty of L. 5 Scots yearly, having been left out of the proof of the rental and value, and so not comprehended in the sale and letters of publication, the creditors, after the lands were exposed to public roup, and sold, discovering the omission of said feu-duty and superiority, applied by petition, setting forth the fact, and

No 22.

craving an incident diligence for proving the value of said superiority; which was granted, and a proof thereof led, and a state thereof prepared for advising.

The Creditors now apply, representing that the scheme of division of the price of the subjects already sold cannot be made out, unless the superiority and feu-duty be also sold, and that new letters of publication would raise a great expense, and craving the Lords would advise the proof summarily, and dispense with new letters of publication.

THE LORDS refused the desire of the petition.

Fol. Dic. v. 2. p. 296. Kilkerran, (RANKING and SALE.) *No 17. p. 476.*

SECT. V.

Whether a bankrupt estate may be sold in parcels?

1712. *February* 22. The CREDITORS of RAMSAY of Laithers, Petitioners.

No 23.
The roup of a bankrupt estate was permitted to go on, although the sale did not include some lands, of which the rights were dubious.

THE Creditors of Ramsay of Laithers applied to the Lords, representing that their debtor had an heritable right on the lands of Crimon Megget, but had never attained possession, but was always excluded by preferable rights, though he contended they were near paid by their intromissions; yet this being a very dubious uncertain plea, it might hinder the sale of his other uncontroverted property lands, if they were exposed together; therefore craved allowance to leave them out of the roup, lest they should mar the whole, and scare buyers from bidding and offering for the rest. THE LORDS saw the acts of Parliament ordained the bankrupt's whole estate to be rouped; but thought this could be only understood of his clear liquid and undoubted property, but not of uncertain claims and clampers they might have on other men's estates; and therefore allowed the roup to go on, without including these lands; or else that they might be exposed to sale separately by themselves; where a new difficulty occurred, what price and value could be put on such dubious rights? For it was not to be expected they could sell at eighteen, nineteen, or twenty years purchase, as clear lands did. It has sometimes occurred, that the price set on bankrupt lands as the *minimum quod sic* has been so high, that no buyer could be found to bid the Lords' price, as particularly fell out in the case of Cleland of that Ilk, No 11. p. 13318. where the Lords had set eighteen years purchase, but though frequently exposed, none would come up to the price, the lands