

1752. February 26.

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

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 compare 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 compared in the process, it was none of their business to compare 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.

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 21.

Where an execution at a kirk-door is omitted, a diligence may be granted for supplying it.

No 22.

A small subject having been omitted out of a sale, new letters of publication found necessary.