

No 18. at the sight of the Sheriff-depute; and this they did without any further precaution, of intimating to his heir, &c.

*Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 11. p. 473.*

1750. June 14.

NAIRN against His CREDITORS.

No 19.

Where a new proof is allowed of a subject, however small, there must be new letters of publication.

AFTER the ranking of the Creditors of John Nairn of Greenyards was finished, the sale advised, his lands of Greenyards and others appointed to be sold, and letters of publication executed, a petition was presented by the said John Nairn, setting forth, That there was a certain pendicle of land in the rental, to which one witness only had deponed, and that no value had been put thereon in the sale; and craving, that before the sale should proceed, a proof might still be allowed of the value thereof, and that the same, when proved, might be added to the valuation already put on the estate; and it appearing to be so in fact, the LORDS "allowed a new proof, and granted incident diligence."

But then the question was, Whether new letters of publication would be necessary? Where a price is upon application lowered, as is often done, no new publication is made; but this was thought to be a different case; and there is no arguing from the one case to the other, as the proved price must always be engrossed in the letters of publication.

And so much were the LORDS of this opinion, that a petition for John Nairn, the common debtor, craving that the proof already led by the one witness might be held as proof of the value, and that the roup might be allowed to proceed without new letters of publication, was refused, notwithstanding the whole creditors concurred in the request.

In a judicial sale, the Lords are the sellers, and are not to dispense with the forms of law, even at the desire of the creditors.

*Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 12. p. 473.*

1751. February 1. CREDITORS of Mrs MARGARET BALFOUR, Petitioners.

No 20.

Where a part of the subject had been omitted to be brought into the sale till proof was led.

WHERE a coal, which the Lady had in lands whereof the surface belonged to another heritor, had been omitted to be brought into the summons of sale, which only carried lands with coal, coal-heughs, &c. in general, till after the proof in the sale was led, a new process of sale was raised, containing said coal; and the creditors applied by petition, craving that the same might be conjoined with the former action.

This the Lords complied with, though not without some scruple made, how the proof led before that new summons was raised could be repeated in it.

*Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 14. p. 474.*