

dicial to the superior heritors, and destructive to the fishing, and ought to be discontinued.”

*Act.* A. Crosbie, &c. *Alt.* W. Baillie, &c.

1771. November 15. WILLIAM PARK *against* ROBERT CRAIG.

#### ADJUDICATION.

An Adjudication, where both the penalties and termly failyies in an heritable bond were accumulated, found liable to the objection of a *pluris petitio*, and restricted accordingly.

[*Faculty Collection*, V. 199; *Dictionary*, App. No. I., *Adjudication*, No. 6.]

PITFOUR. Termly failyies are adjudged for, and yet not due; for there was no pointing of the ground. Would cut off penalties and even expenses. It is true, that, since the Act 1672, there is no apprising; but still an adjudication must be led in the same form as an apprising for *debita fundi*: The only difference is, that the Lords of Session are the Judges, instead of the messengers, as of old. Apprising led upon termly failyies, without a previous pointing of the ground, is improper.

KAIMES. It was an error to adjudge for termly failyies, which are *debita fundi*: this is not a *pluris petitio* from intention, but from ignorance. I would not annul the adjudication, but I would strike off after-profits. Whatever is due in equity, is here due; *i. e.* the capital sum and annualrents accumulated at the date of the adjudication. Doubt as to expenses.

MONBODDO. The only question, How termly failyies are to be made effectual? I think, in the same manner as the principal sum. I see no difference.

COALSTON. The adjudger has not adverted to a distinction in the Act 1672, which provides, that adjudications upon *debita fundi* must proceed as formerly, in apprisings, *i. e.* by a pointing of the ground.

HAILES. There is no reason for cutting off *necessary expenses*, for they will be no greater in this case than they would have been had the adjudication been regularly deduced. It is true that the adjudger has put the other party to expense in this cause: but this seems no reason for making a set-off of the expense of diligence against the expense of litigation, when it is considered that the plea was carried the length of annulling the adjudication altogether.

On the 15th November 1771, “The Lords restricted the adjudication to principal sum, and interest accumulated at the date of the adjudication, and the necessary expenses;” altering Lord Monboddo’s interlocutor.

*Act.* G. Ferguson. *Alt.* R. Blair.