

ing the claim, and the debtor ought not to have neglected the interest of the cautioner : hence this case may merit a separate consideration from the common case.

PRESIDENT. The damage here is rather direct than consequential.

On the 27th July 1775, "The Lords found no damages or *solatium* due ;" altering Lord Pitfour's interlocutor.

Act. A. Crosbie. *Alt.* Alexander Abercrombie.

Diss. Coalston, Auchinleck, Stonefield, Hailes, Covington, President.

Non liquet,—Justice-Clerk.

1775. July 27. WILLIAM HART *against* JOHN and JAMES NAESMITH.

ADJUDICATION—*PLURIS PETITIO*.

Inferred from adjudging from the termly failyies as well as the penalty in the bond.

[*Faculty Collection*, VII. p. 112 ; *Dictionary*, 119.]

KAIMES. Termly failyies are the operation of parties, as much as penalties : why should the one part of their contract be less effectual than the other.

COVINGTON. Termly failyies and penalties are calculated for different purposes. Termly failyies are intended for answering the expense incurred in levying the annualrent. Now that expense does not appear, and therefore the adjudication contains a *pluris petitio*. This will prevent the legal from expiring.

PRESIDENT. In the case of *Dr Park* this was found to be irregular.

COALSTON. Here penalties are twice demanded.

KAIMES. While an adjudication is only a *pignus prætorium*, every objection may be listened to ; but when once there is an expiry of the legal, the adjudger is no longer creditor, but proprietor.

JUSTICE-CLERK. A penalty is commonly one-fifth part of the principal, but there is no law for this. A creditor, however, cannot take an adjudication for exorbitant termly failyies to the amount of 40 *per cent.* as in this case.

On the 27th July 1775, "The Lords found that the defenders have not the benefit of an expired legal, but must account for their intromissions ;" altering Lord Kennet's interlocutor. On the 10th August 1775, they adhered to their interlocutor.

Act. R. M'Queen. *Alt.* J. Morthland.

Diss. Kaimes, Stonefield, Kennet.