

Lord Bankton, v. 2. lib. 3. tit. 2. ¶ 75., says, ' If the adjudication is essentially defective, or led for more than was due by the party, to whom the partial payment was made, it will be wholly annulled.' And his opinion is supported by an after judgment, in the question between Rose of Kilravock, and Rose of Clava, where an adjudication was *funditus* reduced upon a very inconsiderable *pluris petitio*.

No 31.

' THE LORDS sustained the adjudication as a security for principal sum, annual-rents, and necessary expences, accumulated at the date of the adjudication.'

Act. *Nairne*. Alt. *Swinton, jun.* Clerk, *Ross*.
Geo. Ferguson. *Fol. Dic. v. 3. p. 5.* *Fac. Col. No 94. p. 173.*
 (Lord Hermand.)

1775. July 27. WILLIAM HART against JOHN and JAMES NASMYTHS.

No 32.
 It is a *pluris petitio* to adjudge for termly failzies.

HART upon the title of an adjudication, led at his instance in 1774, insisted in an action of mails and duties, before the Court of Session, against the tenants in possession of the tenement adjudged. In this action, compearance was made for John and James Nasmyths, and an interest was produced for them, viz. an heritable bond over the tenement in question, for L. 480 Scots, as far back as the 1731, to which the Nasmyths had acquired right; a decree *cognitionis causa*, and an adjudication, at their instance, both before the sheriff of Hamilton in 1742; a charter of adjudication from the superior, and infeftment thereon; and lastly, a decree of expiration of the legal, obtained in absence in 1756. Upon these titles, the Nasmyths contended, that they had a preferable and absolute right to the subject; for, that the common debtor was totally denuded, by an expired legal, long before the pursuer obtained his adjudication; and consequently, that nothing could be carried by his adjudication.

Objected for the pursuer: That the foresaid adjudication, founded upon by his competitors, was null and void; at least, ought to be restricted to a simple security; because it was led for more than was justly due, and which would appear from the following state of the debt: The principal sum in the bond is L. 480; interest from Martinmas 1731, to 18th August 1741, the date of the decree of adjudication, L. 234; penalty L. 96; total L. 810. But in place of this, which ought to have been the accumulate sum, in the decree of adjudication, it appears to have been taken for the accumulate sum of L. 905.

The *answer* made to this objection was, That the difference was composed of the termly failzies, which amount to about L. 100 Scots.

' THE LORDS sustained the objection to the decree of adjudication in question upon the *pluris petitio*, in adjudging for the termly failzies, as well as the penalty in the bond. And a reclaiming petition was afterwards refused without answers.'

Act. *M. Queen*. Alt. *Morshland*. Clerk, *Campbell*.
Fol. Dic. v. 3. p. 5. *Wallace, No 187. p. 112.*