

1715. July 30. CREDITORS OF CALDERWOOD *against* BORTHWICK.

No 24.

ONE of many creditors pursuing the common debtor's relict, (as having got a disposition from her husband, in trust, for payment of his debts,) and recovering sentence against her, but nothing thereon being extracted, and the other creditors thereafter compearing, the said first creditor was found preferable for his expenses, to be paid out of the first and readiest of the subject, but the whole creditors were found to come in *pari passu*.

Fol. Dic. v. 2. p. 319.

*** This case is No 236. p. 1197, *voce* BANKRUPT.

No 25. 1735. January 18. LUTWIDGE *against* GRAY.

In a shipwreck, part of the cargo being saved and fished out of the sea, the goods were delivered to the freighters upon payment of the salvage. In a pursuit, afterwards, at the instance of the owner of the ship, against the freighters, for a proportional part of the freight, effecting to the goods saved, a counter claim was reared up by the freighters for a proportion of the salvage effecting to the pursuer's claim for freight, which it was contended they ought to be liable for, in respect if no goods had been recovered, no freight would be due. *Answered*, The salvage is no *commune negotium*, the labour and expense being entirely bestowed upon saving the goods, without any other supposed view. It is true the owners of the ship reap a consequential benefit by saving the goods, in being entitled to the freight, which otherwise they could not claim; but expense laid out in saving and preserving of any thing, follows the proprietor only, even where others reap a casual or consequential benefit thereby. THE LORDS found the full freight due, without any deduction upon the account of salvage. See APPENDIX. See Section 6th.

Fol. Dic. v. 2. p. 320.

1782. February 28. RUTHERFORD *against* RANKINE and LEES.

No 26.

Whether a party, whose right was only temporary, and has been set aside, has a claim for meliorations.

RANKINE possessed a tenement in the town of Cupar in Fife, by virtue of a disposition in security, upon which adjudication had followed. It consisted of a house, rented at L. 20 Scots, a small garden, and a space where a house had formerly stood, but which, for time immemorial, had been used as a dung-hill-stead.

Rankine having repaired this tenement, obtained decret of cognition from the Dean of Guild of the burgh, ascertaining the amount of the money laid out to be L. 52 : 15 : 6 Sterling.