

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.

Rankine afterwards transferred his right to Lees, who built a handsome house upon the waste ground. The expenses of this building, amounting to L. 366:19:3 Sterling, were in like manner ascertained by the Dean of Guild.

Some years thereafter, Rutherford having made up titles by service to the property of these subjects, brought, and was successful in an action for setting aside the right of Rankine and Lees. The question then occurred, to what extent the defenders were entitled to the sums laid out by them on these subjects?

*Pleaded* for the pursuer; The general rule of law is, "*Inædificatum solo cedit.*" This rule, applied to cases like the present, is supported by the most obvious principles. Where a person builds on ground which he knows to be the property of another, he either does so in the view of the advantages which he is to reap from it during his own possession, or with an intention of making a donation to the proprietor; L. 7. § 8. *D. De acquirend. rer. domin.* A contrary idea would oblige the proprietor, either to purchase what was useless to him, or unsuitable to his circumstances, or part with his property against his inclination. The judgments of the Dean of Guild can in no way better the defender's plea. No law has authorised that officer to alter the nature of a subject within burgh, or to grant warrant for building on grounds not occupied with houses; and, in the present case, these judgments were not obtained by way of warrant, but as a species of proof, taken *ex parte*, of the expense actually laid out.

*Answered* for the defenders; The tenement in question was understood to be impignorated for a debt fully adequate to its value. Upon this security, confirmed by an adjudication, the creditors, considering it as a subject which the proprietor would never be at pains to claim, have expended large sums in making it useful and ornamental to the burgh. It would, therefore, be against the plainest principles of justice and expediency, that the pursuer should be allowed to assume to himself these buildings, which are many times more valuable than his property, without refunding to the defenders what he has profited by their operations.

THE LORDS were of opinion, That the defenders were entitled to what the pursuer was actually *lucratus* by these meliorations, and remitted to the Lord Ordinary to proceed accordingly.

Reporter, Lord Covington. Act. Crosbie. Aft. Geo. Wallace. Clerk, Menzies.  
C. Fol. Dic. v. 4. p. 218. Fac. Col. No 39. p. 60.