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1735. *December 4.* / BURNS *against* CREDITORS of M'LELLAN.

No law subjects a man to recompense or remuneration who reaps an occasional or consequential benefit from the deed of another, done with no view to his interest; and therefore in a competition of creditors upon a tenement built by the common debtor some short time before his bankruptcy, the tradesmen and furnisher of materials were found to have no preference, because they followed the faith of the common debtor allennarly. See APPENDIX.

*Fob. Dic. v. 2. p. 316.*

## SECT. I.

Supposing the intention of benefiting, in what cases Recompence due.

1626. *July 22.*

MORISON, LORD PRESTONGRANGE, *against* HEIRS of the EARL of LOTHIAN.

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The Lords sustained action at the instance of a wadsetter for declaring that the reparation of a harbour in the wadset lands to be made by him, was profitable to the reverser.

THIS day, there was an action moved at the instance of Mr Alexander Morison, one of the Lords of Session, against the apparent Heirs of the Earl of Lothian, by the which he, as having the wadset of the lands of Prestongrange and Aitchison's Haven, granted to him by the umquhile Earl of Lothian, desired that it might be found, that it was necessary and profitable to the Heirs of Lothian, to have the harbour of Aitchison's Haven beeted and re-edified again by him, which was cast down, and demolished by a preceding tempest, and was made thereby so unuseful to barks, that none could have access or entry, nor safe being within the same, except the same were repaired; without which reparation, the people and in-dwellers of the lands of Prestongrange would leave the ground, they finding their chief conveniency to consist by the said harbour, which gave them occasion to export the commodities of the ground, and to receive by the intercourse of trade and sailors, and others passing out, and coming in, within the said harbour, benefit and profit, which made the in-dwellers more meet to labour the said land, and to pay the rent thereof to the master and heritor; and which would not so continue, if the harbour were not re-edified; and so the heritor would want his rent, for the in-dwellers would leave the land; and therefore he desired, that the LORDS would find and declare, that it was profitable and necessary for the heritor, that the same should be re-edified by the pursuer, who had the wadset, and that the expenses which he should deburse thereon, should be refunded to him by the heritor, or any other who had right to redeem the same, before the lands should be re-

deemed from him, and that the sums debursed should accree to the reversion. This action was sustained; and after commission given by the Lords to two of their number to consider the estate of the harbour, who made report again of the ruin of the same, the summons was found relevant; and after probation by witnesses, decret was given, and the action sustained, conform to the desire of the summons. But no party compeared here for the defender.

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Clerk, Scot.

*Fol. Dic. v. 2. p. 317. Durie, p. 223.*

1669. February 20. BRUCE against LAIRD and LADY STANHOPE.

ANDREW BRUCE, merchant in Edinburgh, pursues the Laird of Stanhope for payment of a continued tract of merchant accounts, inserted at several times in the account book, as being taken off by Margaret Sinclair, in the name, and for the behoof, of the Laird of Stanhope, upon these grounds; *1<sup>mo</sup>*, That the ware was worn and made use of by the Laird of Stanhope and his Lady, and so was converted to their use; *2<sup>da</sup>*, That Margaret Sinclair was entrusted by the Laird of Stanhope and his Lady, to take off ware for them from time to time, as appears by several missive letters of theirs to the said Margaret; so Margaret having taken off the ware, and being entrusted so to do, they must pay the same; *3<sup>to</sup>*, Not only was Margaret Sinclair trusted to take off merchant ware in general, but particularly to take off the same from Andrew Bruce, upon these grounds; *1<sup>mo</sup>*, Because there is produced an account in the pursuer's books, before the accounts in question, which is not controverted; so that Andrew Bruce was Stanhope's merchant, when Margaret Sinclair began to be employed; *2<sup>do</sup>*, By one of the Lady Stanhope's letters, it appears, that a satin pettycoat and lace were taken off from Andrew Bruce by Margaret upon trust of Stanhope, and the Lady desires that Margaret may endeavour to get the lace taken back, and their names put out of the account book; *3<sup>to</sup>*, The Laird and Lady's oaths being taken, *ex officio*, the Lady acknowledges, that she was several times in Andrew Bruce's shop with Margaret Sinclair, and that she was present with Margaret Sinclair, when the last part of the account of L. 114 was taken off; all which are sufficient evidences of a warrant or commission to Margaret to take off the ware in question from the pursuer. The defender *answered*, that none of these grounds were relevant to oblige him; for albeit he acknowledged the goods to be converted to his use, there is nothing to make it appear, that he had any meddling with the pursuer, but by the letters written by him and his Lady to Margaret Sinclair, made use of by the pursuer, it is evident, that he only employed Margaret Sinclair to furnish him upon her credit, and did prohibit to put him in any merchant's account, saying, that he would be only her debtor, and no others; so that it were of most

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One was found liable for goods purchased in his name, altho' without his order, in so far as converted to his use, and in so far as he could not instruct that he had paid the money to the person who had purchased them.