

No 6.

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.

No 7.

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-