

when the town was burnt by the English, and never since observed, as Sir George Mackenzie tells us.

No 22.

THE LORDS found that the annual rent of the reparations could not affect or burden the fee during Arthur Temple's lifetime, while he or his assignee enjoy the rent of the tenement.

*Fol. Dic. v. 2. p. 319. Forbes, p. 106. & 243.*

1710. June 29. Lord SALTON against JOHN RITCHIE.

LORD SALTON having bought a callash in 1690, and Mr John Ritchie having a ship lying in Leith road, going to sail to the north, he put his callash in that ship; but a French privateer, from Dunkirk, having boarded them by the way, did keep Ritchie prisoner till he should pay L. 55 Sterling, which was the ransom put upon the ship and goods, though some of them were embezzled and carried away by the privateer, but my Lord's callash was saved and delivered to him. One of the merchants owners of the goods in the ship, pursues before the Water-Bailie of Leith for restitution. There it was contended for the rest, That the whole cargo behoved to be valued, and bear a proportional burden of the ransom, which the Bailie did, and accordingly L. 5 Sterling was put on my Lord's chariot; which he being charged for, suspends on this reason, that he was not cited to the decret, and so it was *res inter alios acta quoad* him; and though it was restored, yet it was deteriorated, wanting some of the seats and cushions belonging thereto; and *non constat* what the ransom was, and it was against equity to make the goods saved bear a proportion with those taken away. Answered, That the owners of the goods put aboard being dispersed *per omnes regni angulos*, it was next to impracticable to cite them, the expense overgoing the profit; but the Bailie took a full probation of the value, upon the oath of the crew, and in such accidents something is always rifled and spoiled; and the ransom-brief is now produced, with a translation by a sworn interpreter, which instructs both the capture and price exacted by the pirate; and it is the constant practice in the maritime law to make the goods saved pay a proportion of the contribution as well as those taken away, otherwise one might lose his whole goods, and another save all his, which is against all rules of law and common justice. THE LORDS repelled the reasons, and found my Lord Salton liable for his proportion, but, in regard the Ordinary had modified and reduced it to L. 30 Scots, as in the case of average, therefore they adhered to his interlocutor; though some of the Lords saw no reason for restricting the sum, but that my Lord should have paid the whole. See Section 6th.

No 23.

A ship was taken by a privateer, and the supercargo detained till he paid a sum as ransom. He paid it. One whose goods were saved found proportionally liable.

*Fol. Dic. v. 2. p. 319. Fountainhall, v. 2. p. 581.*