

thrown over Board in the first Danger *l. 4. §. 1. ff. de Sege Rhodia*. Because the Goods which are recovered out of the Wrack would have perished in the first Danger, had it not been for the Loss of the Things that were then thrown over Board, which conduced to the Recovery of the former out of its Wrack, in so far as the Ship with them was brought to such a Place where they might be recovered. Nay, if a Ship is redeemed from Pirates, all who had boarded the Ship and plundered only some part of the Loading, the Owners of the pillaged Goods must bear the Loss, and cannot sue for a Contribution of that which is left *l. 2. §. 3. ff. eod.* Where a Ship that has been saved from one danger of Shipwreck, by throwing some of the Goods over Board, happens afterwards to be cast away in another Place, and he who Goods had been thrown over Board in the first Danger happens to recover them, he will not be bound to contribute towards making up the Loss of what perished in the second Danger: For it is not by the Means of this Loss, that he recovers what he lost in the first Danger *l. 4. §. 1. in fine eod.* But if the Things that have been thrown over Board, or a Part of the same, is to be recovered, the Contribution for the Loss of them will cease in Proportion to what is recovered: And if the Contribution has been already paid, those who have received it must restore it to the others *l. 2. §. 7. ff. de Sege Rhodia*. What one does for his own Profit, tho' others may have the Benefit by some consequential Advantage, will not be interpreted as done upon their Account, so as to oblige them to bear any Hazard or Share of the Charges by another's Interest as well as his comes to be secured; he hath no Claim, nor can he do his own Business. Thus a Ship in the Bottom whereof the Skipper with consent of the Merchants and Company on Board bored a Hole that she by opening thereof when near the Shore might find so as to carry her off, being boarded by the Capes before opening of the Hole from whom the Merchants ransomed their Goods, and the Ship being afterwards broken by a Storm arising that Night: The Merchants who got their Goods unloaded, were not bound liable to any Contribution of their Shares for the Loss of the Ship. Because the Hole in the Bottom of her tho' made use of as it were being French Ware might have been carried off by the Privateer, albeit the Ship had sunk, and therefore the Merchants were forced to ransom them, of which ransom the Skipper paid no Part. Besides that the Ship perished not by running a Ground upon Account of the Hole made of Consent which was never opened, but by the Storm a casus fortuitus or unforeseen Accident, having no necessary Connection with running ashore, and she might have reached a Port before the Tempest came on 15 January 1600 *Lellie* and *Milner contra Logan Weir* and others. The Contribution for the Loss of Goods thrown over Board to lighten a Ship, is not to be made till after the Ship is wrecked in the Haven *Arg. l. 4. §. 1. ff. de Leg. Rhod.* And those whose Goods have

have been thrown over Board to save the Ship, may for their own Security, hinder the unloading of the Goods that remain on Board the Ship, till they have paid their Proportion of the Loss; or may procure them to be watched, in case they are loosed *l. 2. pr. ff. eod.*

*Tit. 7. The inherent obligation of mutual Relief competent to several obligants.*

The inherent obligation of mutual Relief, competent to several Persons liable in solidum, i.e. solidly together, for the same Debt or Deed as Coprincipals or as Cautioners 27 January 1675. *Monteith contra Macfarlan* 1707 *Clighorn contra Forster*, as Coobligors Cautioners &c. is neither improved there both things all the rest pro rata, tho' there be no express words of Relief: Which, however usually admitted as maxims *utilem, magis, et ut non perit ex natura rei*. In regard ones paying or satisfying the creditor, treat not far as it exceeds the Payers Proportion. Nay Relief is competent to the Cautioner in a Bond of Correction, as well in such cases in the original Bond as in the Assignation to the Cause of Relief granted to them 2 March 1636 *Sybrack contra Vains Spotswood Pratts*. *Tit. Cautioner's Part l. 1. ff. de §. 1.* Thus where two Persons were obliged jointly and severally as principal Debtors to pay a Tack, it was found that a Clause of Relief pro rata must be put tho' not expressed 12 Decemb. 1665 *Ferguson contra* &c. where of some had proved insolvent having paid the Debt upon the Assignation pro rata of the solvent obligants pro rata of what he had paid more than his own Share; and for recovering their Proportions of the Portions of those who were insolvent at the Time of the Payment 21 Decemb. 1710 *Craily of Gintsey contra Revelors of Orkney*. But one who had executed a Subject upon a Bond wherein the Debtor and other two stood engaged, being preferred to others who had executed the same Subject, was not obliged to them for recovering off the other two Coprincipals therein, tho' he had paid to him out of the common Debtors Effects more than his third Share, albeit Relief of two thirds was competent to the common Debtor himself against these Coprincipals; In respect the Creditors postponed had not affected the said Policy of Diligence 24 Feb. 1708 *Kennedy contra Vains and Crawford*. A Creditor cannot cut off his obligation of mutual Relief due to Coobligants, by assigning the Debt against one of them only, who, if he pay the whole to the Assignee upon discharge, as he may be compelled to do, hath Action of Relief against the rest for their Proportions, whom the Creditors Assignation secured only against direct Action at the Assignees Instance 12 Feb. 1712 *Scot Lady Halkshaw contra D. Buccleugh* *Junct. 5 July 1712 inter eodem* 28 June 1665 *Monteith contra Anderson*.