

## DIVISION II.

## Average.

## S E C T. I.

Partial Loss.—Meaning of the clause, ‘Free from all Average, unless general, or the ship being stranded.’

1755. *January 18.*LUTWICH *against* GRAY.

No 26.

In a shipwreck, part of the cargo being saved, was delivered to the owners for payment of the salvage. The proprietor of the ship claimed the freight of the goods saved *pro rata itineris*. The freighters admitted the claim; but insisted, that as the salvage was beneficial to him on account of his freight, as well as to them on account of their goods, he ought to pay a proportion of the salvage. *Answered*, The expense was laid out entirely in the recovery of the freighter's goods, and therefore they ought to be liable.—THE LORDS found, that the proprietor of the ship ought not to pay any proportion of the salvage.

*Fol. Dic. v. 3. p. 334.*

1794. *January 16.*JAMES CRAIG and WILLIAM HISLOP, *against* JOHN SPENCE and Others.

A CARGO of grain originally belonging to James Craig, and by him sold to William Hislop, was insured on the voyage from Dantzic to Dumfries, by John Spence and other underwriters in Edinburgh. To the policy was subjoined, as usual, the following note:—‘*N. B.* Corn, seed, salt, fish, fruit, flour, and provisions of all kinds that are in their nature perishable, are warranted free from all average, unless general, or the ship be stranded.’

In a storm, the vessel became leaky, and also shipped a quantity of water, some of which got among the grain. Along with the water, part of the grain was pumped out. The master at last found it necessary to sail for the harbour of Egoag in Norway, to refit. The vessel got into the harbour in the night.

No 27.

A vessel, which strikes on a rock, and is got off again without being much damaged, is not held to be stranded.

Loss arising from grain having been accidentally pumped out along with water from a leaky vessel, not held to be a general average.