

No. 39. them; and therefore found that Young and Govan should bear Harry Hope's part, who was *lapsus bonis*.

Fol. Dic. v. 2. p. 380. Newbyth MS. p. 47.

* * Dirleton reports this case :

1665. *December 19.*—WALTER YOUNG, Harry Hope, and John Govan, having written to the Lord Macdonald, that they had commissioned ——— Donaldson to buy cows for their use, and that for such as should be bought from him, they obliged themselves to pay all such bills as should be drawn upon them; and the said Donaldson having drawn a bill upon the said persons, and any of them;—found, that in respect they were partners, and *socii* as to the bargain, and the Lord Macdonald had upon their letter trusted and sold the cows to the said Donaldson, they ought to be liable *in solidum* conjunctly and severally.

Dirleton, No. 8. p. 5.

* * Stair's report of this case is No. 36. p. 2282.

1683. *March.*

JOHNSTON *against* SIR WILLIAM BINNING and BAILIE NIELSON.

No. 40.

FOUND that the buying of bear by the clerk of a brewery, which came to be brewed there, made the masters of the brewery, who were *socii*, liable *in solidum* for the price of the bear, though the seller had no written receipt from the clerk or maltman; but that it was only proven by witnesses, and acknowledged by the clerk, that the same was delivered and brewed.

Fol. Dic. v. 2. p. 380. Harcarse, No. 854. p. 243.

* * The like was found February and March 1603, Dionysius Thomson *contra* Penman and others; and the like *contra* Sir James Stamfield, though here the clerk's commission in writ did not extend to the power of buying, which seems hard upon masters.

Harcarse. Ibidem.

1698. *January 26.*

BAILIE ALEXANDER BRAND *against* WARDEN and BUCHANAN.

No. 41.

WARDEN and Buchanan having employed one to go to Orkney to buy some bear, and their factor having entered into a contract with Bailie Brand, then Steward of Orkney, and having bound his constituents; when they are charged, they suspend, that they can only be liable *pro rata*, because there is a clause of relief-Answered, Your *exercitor* or *institor* was fully by his commission empowered to