

APPENDIX.

PART I.

SOLIDUM ET PRO RATA.

1803. November 23. WALKER against BROWN.

At a meeting of the distillers of Scotland, on the 16th January 1788, it was unanimously resolved, that Mr. William Walker, attorney in Exchequer, should be employed as agent to attend to their interest in London: "And they hereby appoint him accordingly, at the joint expense of the whole trade." It was at the same time provided, That the fund for defraying this expense should be raised by a contribution of six-pence *per* gallon of the contents of the licensed stills of each distiller: "And the meeting oblige themselves to pay to the said William Walker, for his trouble in going to and attending at London, 300 guineas, besides paying his personal expenses in going to and returning from London, and while he remains there, or shall disburse in this business."

Walker accordingly went to London on the business of the distillers, and upon that, as well as subsequent occasions, expended considerable sums of money on their account, all which was from time to time approved of at other meetings. For repayment of these advances, as well as for his trouble in the business, he raised an action against Mathew Brown, formerly distiller at Portnauld, and a great number of other distillers, concluding against them as conjunctly and severally liable.

The Lord Ordinary reported the cause.

The pursuer *pleaded*: When an agent has been employed to do business for a number of persons engaged in a common concern, he is entitled, in the first instance, to demand payment from all and each of them, *singuli in solidum*.

They may afterwards settle their claims of mutual relief among themselves.

Unless this were the case, it would be impossible for an agent for a number of

No. 1.

An agent, employed by a meeting of distillers in the business of the trade, is entitled to claim against each individual by whom he was employed, for payment of his whole account.

No. 2. persons ever to obtain payment of his account. He must raise an action against every individual for payment of his proportion, however small; and after obtaining his decree, and ascertaining the precise sum due by each, he must submit to the loss which the insolvency of any number of his employers may occasion. Accordingly, in several instances, the employers of an agent have been found liable to him, each *in solidum*, as in the case of Mr. Walter Scott against Dewar of Vogrie, and in that of Mr. Laurence Hill's heirs against the Peers of Scotland, 25th November 1801, (not reported.) It makes no difference upon the nature of the claim in this case, that the distillers resolved to defray the expence incurred, by an assessment according to the extent of their respective stills. This was altogether an arrangement among themselves for the convenience of the trade, in which the pursuer had no concern.

Answered: Although it may be true in general, that those who take a concern in the proceedings of a meeting are liable *in solidum* for the expence incurred in the prosecution of any measure for the general benefit, the pursuer is in this case barred by his own conduct from thus following out his claim. He originally undertook the business, relying upon the proposed assessments of the distillers by whom he was employed, and continued afterwards regularly to demand from each individual the particular proportion of the assessment imposed upon him. Having acted in this way hitherto, he must be understood as having homologated these proceedings of the distillers, and he cannot now change his ground, by insisting against any individual *in solidum*.

The majority of the Court were of opinion, That all who attended these meetings, or acceded in any way to the measures therein adopted, were liable conjunctly and severally, as Mr. Walker's employers, to satisfy his just demands.

The Lords 'found the defenders liable to the pursuer jointly and severally, 'for defraying the expenses of the business in which he was employed by 'them.' And a petition against this interlocutor was refused, (21st December 1803.) There was at the same time a remit to the Lord Ordinary, to adjust certain points.

Lord Ordinary, *Meadowbank.* Act. *H. Erskine, Dickson.* Agent, *Party.*
 Alt. *Boyle.* Agent, *J. Macritchie.* Clerk, *Pringle.*

J.

Fac. Coll. No. 127. p. 271.

1808. *February 2.*

WILLIAM FORBES, Esq. of Callender, *against* The TRUSTEES of the EARL of GALLOWAY.

No. 3.

Circumstances in which the non-ac-

ON the 3d July 1804, the Earl of Galloway executed a trust-deed, wherein he 'Gives, grants, and disposes to, and in favour of the said Ann, Countess