

No. 95. being legally authorised by tutors, in so far as their father's nomination is dissolved and expired, for he had named three or four tutors, and Dame Sarah Sharp, his lady, *sine qua non*, and declared any two a *quorum*, she always being one; and so it is, her right of tutory ceases by her being re-married. Answered, This incapacity is no more than if she had never accepted; in which case the tutory would have subsisted in the person of any other two of the tutors nominated, which the father had declared a *quorum*. *2do*, Her being appointed *sine qua non*, hindered them to act, without her consent, so long as she continued a widow; but how soon she married again the first *quorum* did subsist and reconvalesce; and that the Lords found so in the case of the Marquis of Montrose's tutory, No. 92. p. 14697. when his mother re-married; and certainly the father confided in the friends he entrusted, whether in conjunction with his relict or not. The Lords having read the terms of the nomination, and that she was in all events made *sine qua non*, they found the tutory null, and that Adolphus could not safely pay till the children were authorized, either by the nearest agnate serving tutor of law, or by some person taking a gift of tutory-dative. This could have been prevented, by declaring, that the tutory should subsist even after the death, incapacity, or non-acceptance of the *sine qua non*; but this was omitted.

*Fol. Dic. v. 2. p. 384. Fountainhall, v. 2. p. 184.*

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1735. February 14. BLAIR against RAMSAY.

No. 96.

A MAN settling his effects upon his eldest son, an infant, did, in the same deed, appoint his wife and six other persons to be his son's tutors and curators, "the major part of the fore-named persons accepting, and being in life, to be a *quorum*, his said spouse being always one and *sine qua non*, and intrusted with the person of his said son during his minority, with power to her allenarly to nominate a factor, who shall have the sole intromission. The whole tutors, save the wife, refused to accept. Upon which head it was found, That the said nomination of the tutors was void, and that there was access for the service of a tutor of law. See APPENDIX.

*Fol. Dic. v. 2. p. 385.*

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1733. December.

The EARL of WEMYSS against The TUTORS of MR. FRANCIS CHARTERIS.

No. 97.

A WOMAN *vestita viro* being named tutrix *sine qua non*, of which office she is incapable while her husband is alive, the question occurred, If this behoved to suspend the whole operation of the tutory, or if the rest, in the mean time, could act without her? Debated, but not determined. See APPENDIX.

*Fol. Dic. v. 2. p. 385.*