

of every act of administration. In this way, the nomination of the other tutors would become wholly useless. No. 307.

It is true, that the writers on our law lay it down, in general terms, that without the concurrence of the tutor *sine quo non*, no act is valid. But the mistake which this want of precision might occasion is obviated by Lord Kames, who observes, that “where a number of persons are named jointly to execute any office, though they all must concur, it follows not that they must all agree. If they be all present, the will of the party naming them is fulfilled, and the opinion of the majority must govern the whole body.” In the present case, it should seem, that the nomination of the widow as *sine qua non* only applied to the case where a majority of the tutors were present; and that where the whole were assembled, she had no greater power than the other tutors; Principles of Equity, p. 254. L. 17. § 7. D. De receptis qui arbit.

Answered for the widow: The evident meaning of a nomination of a tutor *sine quo non* is, that no act shall be valid without his approbation. Hence it has been found, that upon the death or failure of a tutor named in this manner, the tutory is at an end. And surely, if the authority of the other tutors is thought to be completely done away where the tutor *sine quo non* is unable to act, it cannot be thought that the whole administration may be conducted in opposition to his opinion. The authority of Mr. Erskine is decisive, that no act is valid without the special concurrence of the *sine quo non*; and Sir George Mackenzie says, “that where there is a tutor *sine quo non*, he must always be one of the managers and consenters. The argument from the terms of the present nomination is evidently erroneous; the authority of the widow, as a tutor *sine qua non*, not being annexed only to the proceedings of the *quorum* named by the testator, but to the nomination itself; Erskine Instit. L. 1. Tit. 7. § 7.; Sir George Mackenzie, L. 1. Tit. 7. 16th June, 1742, Lord Drummore, No. 273. p. 16347.

After advising memorials,

The Lords found, “That though Mrs. Vere cannot act as tutor or curator by herself, yet that she has a negative on the actings of the other tutors.”

And after advising a reclaiming petition, with answers, the same judgment was given.

Reporter, Lord Swinton.

For the Widow, John Dickson.

For the other Tutors, Ro. Hamilton.

Clerk, Mitchelson.

G.

Fac. Coll. No. 184. p. 374.

1791: June.

HALIBURTON against MAXWELL.

The Lords found the husband was curator to his fatuous wife, in preference to the nearest agnate.—See APPENDIX.

No. 308.

Fol. Dic. v. 4. p. 388.