

No. 117.

1628. December 9.

SUTOR against WATSON.

CATHARINE SUTOR having obtained a decret against three persons tutors to her, decerning them to pay to her a certain sum left to her by her father; afterwards she having charged David Watson one of the three, he suspended upon this reason, that the decret behoved to divide, because it was obtained against them conjunctly, and not against them and every one of them. The Lords found, *quod quivis tenebatur in solidum*.

Fol. Dic. v. 2. p. 386. Spottiswood, p. 346.

* * Auchinleck reports this case :

THREE tutors being left *conjunctim* to minors, and decerned by decret the hail three to pay the sum of 600 merks to the minor, one of the three is only charged to pay the hail sum. He suspends, alleging he was nominated tutor *conjunctim* with the rest, and the hail three were decerned, so that he could not be decerned for any more but his own part. The Lords found the letters orderly proceeded.

Auchinleck MS. p. 244.

* * Durie also reports this case :

IN an action, Sutor against three tutors given to a pupil, and accepting the office, every one of them is obliged *in solidum* to the pupil, and not each of them for their own part *dividendo*, and here a decret obtained by the minor against her three tutors, albeit neither by the libel it was craved, nor by the decret ordained, that they and each of them should pay the whole debt therein contained, but they were all three decerned to pay the sum therein contained; in respect whereof they alleged, that the sum should divide amongst them, albeit it might be granted that each of them was obliged in the whole, if they had been so pursued, but they being pursued *conjunctim*, and so decerned, they alleged that the sentence should divide; which allegiance was repelled; and notwithstanding that the decret bore them all to be decerned, yet it was found that the minor might execute for the whole against each one of them, and that every one of them was totally obliged, and that the words of the sentence should work against them, as they are obliged in law, of the benefit whereof the minor was not prejudged by the tenor of the foresaid decret.

Act. Russel.

Alt.

Clerk, Gibson.

Durie, p. 407.