

1692. *December 22.* WATTS *against* SCRYMZEOUR.

[*See the prior part of the Report of this Case, Dict. p. 14700.*]

THE LORDS advised the case, mentioned 10th current, Watts against Scrymzeour and found, that the failing of the *sine quo non*, and much less the failing of the *quorum*, did not annul the whole tutory, as long as there were any of the persons nominate alive, and ready to accept and act; for they thought the defunct testator trusted any of these he had named, more than the tutors of law. Yet sundry of the Lords dissented from this, and urged that a parent might nominate a writer or servant in conjunction with others whom he trusted more, that the said servant might do the servile part; yet, if it had not been in contemplation of the rest, their check and oversight, he would not have given him the tutory alone, if the rest should either die, or abstain from accepting; and that in a nomination of two or more tutors jointly, though there were neither a *quorum*, nor *sine quibus non*, named, yet it seemed to be the defunct's conjectured meaning, that except they all embraced none could act. But the plurality of the Lords sustained the tutory.

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1692. *December 22.* HEUGH CHAMBERS and JEAN INNES *against* MARGARET STRAHAN.

MR. HEUGH CHAMBERS, minister, and Jean Innes, his spouse, against Margaret Strahan. The Lords found the bonds, which she caused her husband subscribe, (though the money was his own,) could not be taken away by the writer, and witnesses oaths, but only by the creditors, their own oaths; but ordained them to be confronted with the said witnesses, and to depone in their presence; the like was done, *Stair*, 17th Jan. 1679, *Cheyne*. As also found, her intromission with her husband's goods, either *stante matrimonio*, or since, sufficient to make her liable *in valorem*, and repelled that allegiance, that *actio rerum amotarum* was only competent to the husband himself; and as to the bond granted by herself to Lindsay, *stante matrimonio*, with which she sought to exhaust the inventory of the testament as a debt of her husband's, in regard she granted it as *præposita negotiis mariti*; the Lords, before answer, ordained her to prove she was in use to buy ware during her husband's infirmity for many years, and to grant bonds for the price, though she had no special factory or commission from her husband to that effect; for it appeared of a dangerous preparative to the Lords, if a wife's bonds should indistinctly oblige the husband's.—*See Stair*, 3d Jan. 1680, *Buchannan*. And as to the last defence against the 100 merk-bond that it was presumed paid, in so far as the debtor assigned him to some rents of a wadset posterior thereto; the Lords repelled it, in respect of this answer, that the said disposition bore expressly for love and favour, and so it elides the presumption that it was designed *animo dissolvendi debitum*, seeing he expressly ascribes it to another cause.

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