

1610. July 14. BRUCE *against* SINCLAIR.

No. 71.

In an action of ejection pursued by Andrew Bruce of Sandweek *contra* Captain William Sinclair, for ejecting him forth of certain lands, which were possessed by the said Andrew as tutor dative to Laurence Sinclair, apparent of Burg, the Lords found, That the said pursuer could have no action as tutor, without concurrence of the pupil, specially in respect the tutory was expired, and the minor had chosen curators, of whom the said defender was one, and it was lawful for him to enter to the possession of the said lands to the minor's behoof, *fnita tutela*. *Item*, The Lords found, that he could have no action for spuilziation of the corns growing upon the lands which were sown by the tutor, for the causes foresaid—Confirmed by a new interlocutor.

*Kerse MS. fol. 149.*

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1610. July 18. ROSYD *against* CATHCART.

No. 72.

In an action pursued by William Rosyd, son to William Rosyd, burghess of Ayr, against Allan Cathcart of Colphin, cautioner for Bessie Johnston, mother and tutrix to the pursuer, the Lords assoilzied the said Allan from the alternative of the summons, bearing, that the tutrix intromitted, at the least might have intromitted; because from the date of becoming cautioner and the decease of the tutrix, there interviened only four months, during the which time it was *constat* that the burgh of Ayr was infected with the plague.

*Kerse MS. fol. 149.*

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1610. November 30. NIMMO *against* ROBERTSON.

No. 73.

A testament appointing a man to be governor to his bairn, was found a sufficient tutory.

*Haddington MS. v. 2. No. 2023.*

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1611. January 11. CHALMERS *against* LD. GADGIRTH.

No. 74.

He that is apparent heir to a minor, albeit he be his tutor testamentar, will not get him delivered to his keeping, albeit he be apparent heir only in a part of the lands. And in case that same tutor be donatar to the minor's ward and marriage, he will not get the minor delivered to his keeping, in respect of the superior, *ne inducat votum captandæ mortis alienæ*.

*Haddington MS. v. 2. No. 2101.*