

No. 75. 1611. *February 12.* TUTOR of GADGIRTH.

The auld Laird of Gadgirth, elder, leaving tutors to his oye, whom he appointed to succeed to his lands, they sought the bairn to be delivered to them; which was refused, because his father had left tutors testamentars to him, and so, albeit the tutors left by the guidsir would fall the administrators of the lands and goods coming from him to the bairns, yet the keeping of his person pertained to the tutors appointed by his father.

*Haddington MS. No. 2159.*

No. 76. 1611. *November 13.* A. against B.

The Lords refused to my Lord ——— to let him choose curators by a procuratory, albeit the names of the curators were inserted in the procuratory.

*Kerse MS. fol. 149.*

No. 77. 1611. *December 12.* RUTHVEN against ———.

In an action pursued by William Ruthven, as tutor lawful to the bairns of Mr. William Ruthven, it was found, That he could not pursue as tutor in law, because there were tutors testamentars nominated, viz. the Laird of Pourie, Alexander Fotheringham, his brother, and the said Hary himself; and albeit Powrie be deceased, yet the tutory testamentar remained in the person of the said Alexander and Hary, *per L. Undecimum D. De Testamentaria Tutela.*

The like decided betwixt George Faside and Adamson.

*Kerse MS. fol. 150.*

No. 78. 1612. *November 20.* M'KENZIE against ———.

In an action for delivery of one Isobel M'Kenzie, pursued by Mr. John M'Kenzie, as tutor dative, the Lords ordained the bairn to be delivered to the pursuer; notwithstanding it was alleged, that the defender was goodsir and tutor dative by a prior gift, and that he was *alioqui successurus*; and yet the Lords ordained the bairn to be exhibited after her age of 12 years as a free person, under the pain of £.1000.

*Kerse MS. fol. 150.*