

Gosford reports this case :

No. 175.

The pursuers and defenders being five in number, and all of them being tutors dative, whereof four of them were nearest of kin on the fathers' side, and the pursuer related only by the mother, he did thereupon intent action : That seeing one of the cautioners of those on the father's side was dead, and had none to represent him, and that the said tutors on the father's side, without calling the pursuer, did either administrate, or when they did call him, did combine and outvote him ; that either they should of new find sufficient caution to warrant the pursuer from all hazards, or else that he should have the sole administration upon sufficient caution to warrant them from all dangers. It was alleged for the defenders, that they being all conjunct tutors with the pursuer, and having found caution, they could not be removed from their office unless they could libel against them as suspect tutors by reason of malversation.

The Lords did sustain the defence, and found, that the ground of this pursuit was a mere novelty, and that the law allowed no remedy to put a tutor out of his office but as being suspected upon malversation ; yet they ordained, that new caution should be found in the place of him that was cautioner for the tutor who was dead.

Gosford MS. p. 263.

1673. *January.*

————— *against* KIRKDELLS.

No. 176.

It was debated but not determined, if a minor or idiot, having had a tutor dative, if upon the tutor's death, there could be a tutor of law served, or only another tutor dative ; and thereafter my Lord Nevoy got a tutory dative, but the interlocutor was delayed.

Harcarse, p. 296.

* * Harcarse mentions Castlehill's Practicks as his authority for this case, and for Nos. 169, 171, 172, and 173.

1673. *July 9.*

ALEXANDER, THOMAS, and WILLIAM FORBESSES, and their CURATORS,
against FORBES.

No. 177.

In a pursuit at the instance of the said brothers, against John Forbes of Balfing, as executor to Forbes of Lesly, for payment of 1000 merks left in legacy by Forbes of Lesly, it was alleged that he had *bona fide* made payment to the pursuer's father, who was their administrator in law. It was replied, That that pay-

A father being denounced rebel and fugitate for murder, pay-