

as come in their place, *per arbitrium boni viri* might supply this defect, as the only remedy law has provided in such cases. There being no answer nor opposition to the bill, the Lords thought themselves obliged to look more narrowly to the case; and therefore it was observed, that the bond of provision in its narrative bore it was for their education and upbringing, and made no mention of heirs or assignees, and so might seem to be extinct by the son's death. It was agreed, that if they had died before the father, the provision would have ceased; but that not being alleged, the Lords took it for granted that they outlived him, and so transmitted the debt to their sister, as nearest of kin. But then Asswanly craved the Lords might fix the term of payment, and the annualrents to begin at the father's death, which was proved to have happened about Martinmas 1699; but the Lords considered their power begun from the application made to them to supply the friends' defect; and therefore made the term of payment and commencement of the annualrent from this date, and decreed *cognitionis causa* in the constitution, that so he might proceed to adjudge. For though childrens provisions be *debitum naturæ*, yet children must be easy to parents on this head, and the Lords must follow what he would probably have done in such a case, according to the direction of *l. 34. D. De reg. jur. Semper in stipulationibus et cæteris contractibus id sequimur quod actum est; et si id non appareat, sequendum quod in regione illa frequentatur*, and if that be not apparent, then *ad id quod minus est, illa summa redigenda est.*

Fountainhall, v. 2. p. 649.

No 148.

1711. July. 3.

SIR WILLIAM BAIRD of Newbyth, JOHN BAIRD his Eldest Son, JOHN WAUCHOP of Edmonston, and ANDREW WAUCHOP his Brothers, Supplicants.

No 149.

THE deceased William Wauchop of Niddery having named by his testament the petitioners who are Protestants, and five others of his Popish relations, to be tutors to Andrew Wauchop now of Niddery his son, and appointed three to be a quorum, James Wauchop brother to the defunct, who is Roman Catholick, being always one; the LORDS authorised the petitioners to officiate and act as tutors by virtue of the foresaid nomination, and held the *sine quo non*, and other Popish nominees (who are incapable by law to officiate) *pro non adjectis.*

Fol. Dic. v. 1. p. 499. Forbes, p. 516.

* * * Fountainhall reports this case:

THE lately deceased William Wauchope of Niddery having named 10 friends to be tutors and curators to his son, any three to be a quorum, his brother James Wauchop being always *sine quo non*, who being a Papist, and other four of them being of the same persuasion; Sir William Baird of Newbyth, Wauchope of

No 149.

Edmiston, and the rest of the other five who were Protestants, gave in a bill to the Lords, representing that they were willing to accept the office, and that the other five were incapable by law to be tutors, being expressly debarred by the third act 1701, against the growth of popery, and offered to compear before the Lords, to qualify themselves *de fidei* and be admitted, that they might make up inventories of the pupil's estate, conform to the second act, Parliament 1672. There being no compearance made for the Popish tutors, nor any answer returned to the bill; it was reasoned by the LORDS, whether the nomination of the rest could subsist, seeing the *sine quo non* failed; even as in the case of a mother nominated *sine qua non*, who, by her re-marriage, forfeits the office? It was *answered*, That the appointing Roman Catholics to be tutors, being contrary to law, it was *conditio impossibilis de jure*, and therefore to be held *pro non scripta*, and as not adjected; for *id tantum possumus quod de jure possumus, et nemo potest cavere ne leges in suo testamento locum habeant*. Therefore the LORDS sustained the nomination in the persons of the Protestant tutors, and admitted them to the office.

Fountainball, v. 2. p. 655.

No 150.

1739. December 12.

WINRAM, Petitioner.

THE LORDS found, that the power of appointing an *interim* Commissary, in case of a vacancy in an inferior Commissariat, was in themselves, and not in the Commissaries of Edinburgh; and appointed accordingly.

Kilkerran, (JURISDICTION.) No 1. p. 314.

1741. December 22.

GOLDIE, Petitioner.

No 151.
An interim
commission
granted by
the Lords, to
a person, to
be writer to
the Privy
Seal.

IN a petition given in by Alexander Goldie, writer in Edinburgh, son of the deceased Thomas Goldie, writer to the Privy-Seal, setting forth, That his father died lately, the office of writer to the Privy-Seal was thereby vacant; that the records were in the petitioner's custody, at least in the custody of Alexander Syme, who acted in the said office under him; and that there being a presentation given in to be expedite, which could not admit of delay, and several other papers, the delay whereof might be a loss to the lieges; and that their Lordships were in use to grant interim commissions in such cases; and craving their Lordships would authorise the petitioner to write out and record any writs necessary to pass the said Seal: THE LORDS having heard this petition, they authorise the petitioner to write out, and record, what writs may be necessary to be expedite the said office in the interim, untill a new commission be granted.

Acts of Sederunt, p. 371.