

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.