

stituted to the rest, compears, and alleges, There can be no redemption nor declarator of the order, because the defenders were not premonished to accept of the assignations, but of money, and far less to accept of assignations to bankrupt debts; and that any reservation contained in the disposition made by the father to the children, that he should have power so to do, had not this effect, that he might accept of assignations to bankrupt persons, and so to evacuate the children's right; but was only an act of administration, as being tutor-in-law to his children; in whose prejudice he could do no deed; especially the assignation being procured after Whitsunday 1661, by the space of eight years, and the father, John Edgar, deceased. The Lords found, That the father, John Edgar, could not alter the condition of the disposition conceived in favours of the children, to their prejudice; and therefore ordained the pursuer of the order to pay the sums of money therein contained; and found, that the children were not obliged to accept of assignations to the debts mentioned in the subsequent agreement betwixt the father and the pursuer, in regard they were not purchased *debito tempore*.

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1664. December 9. The BISHOP of the ISLES *against* JAMES HAMILTOUN and ROBERT LEARMOUNT.

THE Bishop of the Isles having pursued James Hamiltoun, and Robert Learmount, merchant, for £4, for the teind of ilk last of herring bought by them from the fishers of the Isles, in the year 1663; the said teind-herring being an alleged part of his benefit: it was alleged for the defenders, No process; because the Bishop is not provided, *per expressum*, to the teind-herring, but only to the teind-fishes, great and small: and that they could not be liable therefor, they being neither slayers of the fish, nor outwaterers of the boats, nor furnishers of the provision; but only merchants in Edinburgh, who bought the same from the slayers, *bona fide*, from whom only the teind ought to be taken, and not from the merchants; and it was alleged, That a constant rate cannot be exacted, since the prices of the fishes alter yearly, more or less. To all which it was replied by the Bishop, That he offered him to prove, that his predecessors, Bishops of the Isles, have been in use to obtain decreets *in foro*, against the merchants, who were neither takers nor slayers, for the teind-herring bought by them, for four pounds for the last thereof. To which it was duplied, Non-relevant decreets; because there might have been collusion and a dispute inserted, albeit there was none; and this decret being against neither party, cannot wrong thir defenders; and that a single decret for one or two years is not sufficient to constitute a right of the teind-herring in the Bishop's person; and, as to the prices contained in this decret, they cannot be a rule for the future, since they vary daily. The Lords debated the case very contentiously, and some were of the opinion to consider the Bishop's right abstractly from the former decreets; but others were of the opinion it were better to join his right and the decret together.

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