

only in favours of her children, excepting and reserving their aliment ; and which cannot be taken from them by any creditors of the father. The Lords, in respect the charger, Jean Watt, was married to a second husband, found that she should restrict her liferent to 600 merks yearly, unless compearance were made for Thomas Hamilton, only child of the marriage, and an allegiance made for his right as to the superplus ; and thereafter found the letters orderly proceeded for the 600 merks, and suspended them [*quoad ultra.*]

Page 6.

---

1664. December 3. WALTER M'GILL, Minister, *against* The EARL of CASSLES.

MR Walter M'Gill having pursued the Earl of Cassles, for payment-making to him of his stipend, for crop 1663,—the Lords found the minister, being presented before Whitsunday, hath right to the half of the stipend payable at Whitsunday, albeit his institution and collation was after.

Page 8.

---

1664. December 9. JAMES BRUNTFEILD *against* MARGARET EDGAR.

JOHN Edgar having right, by progress, to a wadset of land of Hassindean, flowing from Alexander Bruntfeild, redeemable for the sum of 5500 merks ; the said John disposes the same in favours of James, Anna, and Margaret Edgars, his children, *viz.* to James, the sum of 3000 merks ; to Anna, £1000 ; and to Margaret, 1000 merks. In which disposition it is provided, That it should not be lawful for the said John, in his own lifetime, to uplift the said sum, and to divide and dispoise the same in favours of the said James, Anna, and Margaret Edgars. And farther, it is provided, That in case it shall happen any of the said children to depart this life, not having lawful heirs the time of their decease, whenever the same should happen, their portions to accresce to the rest surviving. Upon this disposition the children are infest, and inhibition served against the father *in anno* 1647. Thereafter, by an agreement betwixt the father and James Bruntfeild, son to Alexander Bruntfeild, the first wadsetter ; it is agreed, That the wadset lands should be redeemable, either by payment of the sum contained in the reversion, or by procuring assignation, from Nicol Edgar, to as many debts as would amount to the sum of 5500 merks, due by the said John Edgar, or from any other of the creditors ; which assignation the said John, as taking burden for his children, did oblige him to accept, in place of these sums due upon the reversion. And it is provided, that, in case the assignation be not purchased betwixt and Whitsunday 1667, then the agreement to be null, and the children to bruik the lands, aye and while they be redeemed by payment or consignment of the sums contained in the reversion. James and Anna Edgars being deceased, and Margaret only in life ; and James Bruntfeild, having purchased assignation to the said John Edgar his debts, pursues declarator of redemption : wherein Margaret Edgar, the only person alive, and sub-

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*.

Page 9.

---

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.

Page 10.