

1664. July 15. THOMAS CRAWFORD *against* PRESTON GRANGE.

Thomas Crawford, as assignee by the Earl of Traquair to a decret of the valuation of the teinds of Lethinhops, obtained decret against the Laird of Preston Grange, heritor thereof; who suspended, upon this reason, That these lands were a part of the patrimony of the abbacy of Newbottle, which abbacy was of the Cistercian Order, which Order did enjoy that privilege, that they paid no teinds for their lands, while they were in their own labourage or pasturage, of which privilege not only the Abbots, but, after them, the Lord Newbottle and the defender have been in possession; and, accordingly, Sir John Stewart of Traquair having pursued the Lord Newbottle before the Commissaries of Edinburgh, *in anno* 1587, for the teinds of the lands of Newbottle, upon the same defence he was assoilzied; which decret standing, must be sufficient to the defender, ay and while it be reduced; likeas, the defender stood infest in the said lands by the King, which express privileges *decimarum more solito*. The charger answered, *first*, That the foresaid privilege, which sometime did belong to all monasteries, was, by Pope Adrian IV. limited to the Cistercian Order, Templars, Hospitallers, and that for such lands only as they had before the Lateran Council; so that the suspender cannot enjoy that privilege, *first*, Because he cannot instruct the lands to have belonged to the abbacy before that Council; *2dly*, That being a privilege granted to churchmen, is personal, and cannot belong to their successors, being lay-men; and albeit the said decret be in favours of the said Lord Newbottle, yet he was Commendator of the abbacy, and so in the title of the Order.

The Lords found this reason relevant, and instructed by the said decret, and suspended, for such part of the lands as were in the suspender's own hand.

*Stair, v. 1. p. 215.*

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1664. December 13. BISHOP of the ISLES *against* JAMES HAMILTON.

The Bishop of the Isles pursuing Hamilton, a merchant in Edinburgh, for his teind fish taken in the Isles, which is a part of the Bishop's patrimony, the defender alleged, That he being a merchant, and not a taker of herring, cannot be liable for the teind thereof, any more than if one should buy corns in the market, or out of the barn-yard, he could be convened for the teind. It was answered for the pursuer, That it was the immemorial custom, that the first buyer from the fishers should be liable to the Bishop of the Isles for the teind of the fish bought; and, for proving thereof, produced a decret at his predecessor's instance against some merchants in Edinburgh, which decret did bear, that, in a former decret, betwixt the same parties, the Bishops had proved immemorial possession against the merchants; *2dly*, The instance holds not of buying corns in the market or barn-yard; but if any body should buy the whole crop, when it was upon the land

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