

are not teindable subjects ; so that the rule will not hold generally, that where the subject is not teindable there is no teind paid, but only in certain cases where the greatest part of the rent is paid for a teindable subject, such as corn, and only a small part of it for subjects not teindable, such as moss, cot-houses, &c. ; and this I take to be the foundation of all the deductions allowed in valuations of tithes.

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1752. November 16. STIRLING, &c., Merchants in Glasgow, *against* ———.

[Elch. No. 12, *Society*, and No. 28, *Bankrupt*.]

IN this case the Lords reduced, on the Act of Parliament 1696, declaring notour bankrupts, a payment made by a debtor to his creditors, by delivery of goods to them in place of money, after which the debtor within 60 days became bankrupt, in terms of the statute : This the Lords did with great unanimity, though they had found, in January last, in the case of *George Forbes*, merchant in Aberdeen, that payment made by a bankrupt in money does not fall under the statute. The reason of the difference seems to be, that money in the debtor's pocket cannot be affected by any form of diligence known in our law, and he may squander it or do with it what he pleases ; so that by giving it in payment to one creditor he is not supposed to prejudice the rest ; whereas goods in the debtor's possession may be carried off by poinding, so that the debtor by giving them away in payment to one creditor is understood to give him a partial preference,—which falls within the meaning of the statute, though not within the words, for these only mention *deeds*, such as dispositions, assignations, &c.

In this case the Lords also found, but only by a majority of one vote, *dissent*. Elchies, that a private trading company could be properly cited by citing only the principal person whose name the company bore, and that the process might go on, even though he should die, without calling his heirs or anybody else.

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1752. November 18. FULLARTON OF KINNABER *against* STRAITON OF KIRKSIDE.

[Elch. No. 3, *Salmon-fishing* ; Kaimes, No. 33.]

THE said Fullarton of Kinnaber stands infest in the salmon-fishing of the river of Northesk, *tam intra fluxum maris quam extra*, in every part of the said water opposite to his lands of Kinnaber, with the whole fishing on the sea-coast from the river of Northesk to the river of Southesk. Kirkside is infest in his lands of Kirkside, *cum piscaria salmonum infra limites dictarum ter-*