It is againſt reaſon to preſume from taciturnity, that they conſented to be entirely excluded; but if they had conſented at all, they behoved to have ſought to be aſſumed. The Earl, however, expreſsly ſhowed diſſent, by executing a charge of horning, five days after the date of the diſpoſition. No 244.

As to the perſonal objection, founded on proceedings in the ſeparate proceſs, relative to Merchiſton's diſpoſition; that was quite a diſtinct matter, nor did what paſt actually import voluntary acquieſence even in that caſe.

The Lords reduced, and preferred the Earl of Aberdeen.

For the Earl, *Cha. Areskine.* For the Truſtees, *Ro. Dundas.*

Fol. Dic. v. 1. p. 85. Session Papers in Advocates' Library.

1744. *November 13.*

Snodgrass *against* The Truſtees and Creditors of Beat.

No 245.
A perſon, bankrupt in terms of the ſtatute of 1696, cannot, by a general diſpoſition, tie up the hands of his creditors from ſubſequent diligence. But however inſolvent, if not bankrupt, a diſpoſition to all his creditors equally, if ſimple and unconditional, cannot be reduced.

The Lords have come and gone upon the queſtion, How far, where one is bankrupt in terms of the ſtatute, he can, by a general diſpoſition to his creditors, tie them up from after-diligence? and by the lateſt deciſions, it is found, that he cannot. But where there lies no ground of reduction on the ſtatute, there appears no foundation in the common law, upon which a diſpoſition by a man, however inſolvent, to all his creditors equally among them, can be reduced.

And accordingly in this caſe, where David Beat, the debtor, though inſolvent, was not bankrupt in terms of the ſtatute, a diſpoſition by him, in favour of truſtees, for the behoof of his whole creditors, duly intimated, was preferred to poſterior arreſtments, and the allegeance repelled, That a perſon inſolvent had it not in his power, by ſuch diſpoſition, to deprive his creditors of their right to obtain a preference to each other *vigilantia.*

But a few days thereafter, in the competition among the perſonal creditors of Sir Patrick Murray of Ouchertyre, creditors were found not bound to accept of ſuch diſpoſition, although they had done no diligence, in reſpect of a clauſe, declaring the truſtees only liable for their intromiſſions, and not liable for omiſſions.

Ibid. The diſpoſition by David Beat, to the truſtees, was found not to fall under the act 1696, in reſpect he was not under caption at the granting thereof, although he was under an act of warding, the ſtatute ſpecially requiring caption. *See* No 174. p. 1095.

Kilkerran, (Bankrupt.) *No 5. p. 51.*