has already by his right in the diſpoſition; and, therefore, there was the ſame reaſon for ſtopping this diligence, that there is for ſtopping arreſtments and inhibitions, which is done every day upon equitable conſiderations.——The Lords refuſed to ſtop the adjudication. No 240.

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

1729. *July.* Farquharson *against* Creditors of Cumming.

No 241.
A diſpoſition by a bankrupt to truſtees for his whole creditors, was ſuſtained, notwithſtanding of a prior charge of horning, and the truſtees preferred to the charger.

Mr Alexander Farquharson, writer to the ſignet, held in truſt, for others, various debts due by George Cumming, Vintner in Edinburgh. He executed a horning againſt Cumming, and thereupon uſed arreſtments in the hands of Douglas.

Douglas purſued a multiple-poinding, and *condescended*, that he held the price of goods which had belonged to Cumming, and had been ſold by public roup, by truſtees to whom Cumming had diſponed his whole effects for behoof of his creditors.

The diſpoſition to the truſtees was intimated before Farquharſon's arreſtment; but his horning was executed a day before the date of the diſpoſition.

The Lord Ordinary had 'preferred the truſtees.'

Pleaded for Farquharſon, in a reclaiming petition:—The diſpoſition in favour of truſtees was fraudulent, as being obtained without an onerous cauſe, and granted in ſecurity of antecedent debts, in prejudice of prior diligence. It tended to give a partial preference. If ſuch diſpoſitions were allowed, diligence would no longer be of any avail. The recent deciſions tending to ſupport diſpoſitions *omnium bonorum*, had reſpect to the act 1696, which annulled only diſpoſitions granted by one creditor in *preference* of other creditors: But this caſe depended on the act 1621, which provides, That the creditor uſing the firſt lawful diligence by horning, ſhall be preferred to voluntary rights granted by the bankrupt.

Answered for the truſtees:—The ſcope of the ſtatute 1621, and that of 1696, was the ſame. No more was intended than to diſappoint partial preferences, by voluntary deeds, to ſome creditors in prejudice of others. But rights, equal and impartial, in favour of all the creditors, were not meant to be prevented. The petitioner can have no benefit from his diligence, as a charge of horning can, of itſelf, attach no particular ſubject. There is no iniquity in a debtor doing what is to benefit, and ſave expence to his whole creditors. Diligence ought never to be uſed, but as an extraordinary remedy: Here it is unneceſſary, and would be vexatious. The debtor has voluntarily done what diligence would have effected.

An arreſtment, prior to the diſpoſition, might perhaps have fruſtrated it as to moveables, or an inhibition as to real rights; but a ſimple charge of horning can have no ſuch ſtrong effect.

No 241. THE LORDS adhered to the Lord Ordinary's interlocutor, preferring the truſtees.

A ſecond petition was refuſed without anſwers.

For Petitioner, *Alex. Garden, William Grant.* For Reſpondents, *Alex. Hay.*

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

1734. *July* 12.

SNEE and Co. Merchants in London, and JOHN BOGLE, their factor, *againſt* The TRUSTEES for the CREDITORS of MICHAEL ANDERSON, Merchant in Edinburgh.

No 242.
Found, that no diſpoſition by a bankrupt can diſable creditors from doing diligence.

A BANKRUPT having granted a diſpoſition of his whole effects, to certain truſtees, for the behoof of all his creditors; in a reduction of it, upon the act 1696, the reaſons were, that a bankrupt was diſabled from granting ſuch a right, tho' not directly in preference of one creditor to another, yet indirectly, by putting all upon an equal footing, the moſt remiſs with the moſt vigilant. 2*do*, The truſtees were of the bankrupt's own naming, and his neareſt relations; and theſe truſtees inveſted with moſt unreaſonable powers, ſuch as, to adopt creditors or not at their pleaſure; to divide the price of the effects among the creditors, without being liable to any check; being impowered to do ſo as arbiters, and in that capacity to determine alſo the expences of management: Alſo it was declared, that they ſhould not be made liable for omiſſions: And *laſtly*, That there ſhould be a forfeiture upon the creditor, who ſhould quarrel or impugn the right granted to theſe truſtees, or who ſhould uſe ſeparate diligence.——THE LORDS found the reaſons of reduction relevant, and, at the ſame time, laid hold of this opportunity to declare their ſentiments againſt all ſuch diſpoſitions in general, and, in that view, cauſed inſert the following clauſe in their interlocutor: *And further find, That no diſpoſition by a bankrupt debtor can diſable creditors from doing diligence.*

Fol. Dic. v. 1. *p.* 85.

*** The opinion upon the general point, expreſſed in the above interlocutor, renders it immaterial what were the particular circumſtances of the caſe. There were, however, ſome not mentioned in the above report.

Bogle, factor for Snee and Co. had obtained from Anderſon a bond of corroboration of the debt due to his conſtituents, upon which, and upon two bills due to Jeremy Lupton and Samuel Dawſon, he charged Anderſon with horning. He was proceeding to poind, when he was ſtopt by Anderſon's truſtees, as having right, by the diſpoſition in their favour, which was dated the day poſterior to Bogle's charge.

Bogle inſtituted a reduction upon the ſecond branch of the act 1621. He prevailed in ſo far as regarded Lupton and Dawſon's bills; but it was pleaded by the truſtees, that at the time Anderſon granted the bond of corroboration of Snee and Co's debt, he was bankrupt in terms of the act 1696, conſequently the