

point, which discovers a manifest partial proceeding of the said William Dick's, and that the pointing was done by his gratification of one creditor to the prejudice of another, which fraudulent dealing is always prohibited by law; notwithstanding of which allegiance for the arrester, (which was repelled) the LORDS preferred the posterior pointer to the prior arrester and prior citation, for the same was found no impediment to another creditor thereafter to point; and this gratification of the haver was not respected, because it was not found, as it was qualified, to be such a deed as might derogate to the arrester's lawful diligence, except that he had refused to suffer the arrester to have the like liberty, which he granted to the pointer, if the arrester had desired the same, which not being done, the haver was not found to have done any unlawful act, permitting the pointing to have its own course, which was an execution lawfully used, and done by the authority of a sentence of a Supreme Judge, which he had no necessity to have staid.

Act. *Gilmour.*Alt. *Stuart et Nicolson.*Clerk, *Scot.**Fol. Dic. v. 1. p. 178. Durie, p. 760.*

1636: February 12.

LESLY against NUNE.

ONE GEORGE LESLY, merchant in Edinburgh, obtaining decret against L. Ludquharn for 1350 merks, he arrests for satisfaction thereof in the hands of George Nune in the Canongate, certain coffers with clothes therein, and silver work pertaining to Ludquharn, being in the said George Nune's house, and intents action against him, to make the same furthcoming; who *alleging*, That since the arrestment, another creditor pointed the same, by virtue of letters of pointing, and letters to make open doors; and the messenger, by virtue thereof, had taken out the said chests and trunks out of the defender's house, where they were input by the Laird of Ludquharn, and so this ought to liberate this defender, who could not resist this execution, done by authority of the King's letters;—and the messenger and the pursuer *replying*, That the pointing of the said trunks by another creditor, could not excuse this defender, in whose hands he had arrested the particular goods which were within the trunks, viz. the clothes and silver work, specially libelled; and it is not sufficient to say, that the trunks and goods therein were pointed, except he condescended upon the special and particular goods which were within the said trunks, that he may know what the same were which was pointed, and the avail thereof, and how far the debt was satisfied thereby, or what surplus was thereof;—THE LORDS found the exception relevant, notwithstanding of the reply, to liberate this defender from this action, and that the defender ought not to be compelled to condescend upon the goods within the chests, which he could not do, seeing the same stood only in the defender's house, input therein by the Laird of Ludquharn, who kept

No 3.

No 4.
Found as
above.

No 5.

the keys himself, and were not in the defender's hands ; but the same trunks being taken out by the messenger, and apprised by him, the defender was altogether ignorant what the messenger found therein : And the LORDS found, that the said pointing freed the defender of the arrestment, without prejudice of the pursuer's action against the pointer thereupon *prout de jure*, which the LORDS reserved to him against the pointer, as accords.

Act. *Nicolson.*Alt. *Belsber.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 178. Durie, p. 795.*1679. *December 4.*FORRESTER *against* The TACKSMAN of the EXCISE of EDINBURGH.

No 6.
Found as
above.

WILLIAM FORRESTER gave in a bill, representing that he had pointed the goods of John Grier brewer in Edinburgh, viz. his household plenishing and malt in his barns, and had apprised the malt by a parcel produced at the cross, and that the Tacksman of the Town's excise had procured a warrant from the Magistrates of Edinburgh, to close the doors where the said pointed goods were, whereby he was hindered in the effect of his pointing. Upon this bill the Tacksman compeared, and *alleged*, That before the pointing they had not only arrested for the King's Excise, but that the keys were taken off the rooms by the Magistrates, and that Forrester had come in but upon pretence to see the malt, and carried out a handful thereof surreptitiously, and thereby made a pretence of pointing the whole ; but as for the household stuff, they were carried to the cross, and the excise being a privileged debt, the pointing after diligence therefor could not be sustained.

THE LORDS found the arrestment did not hinder Forrester to point thereafter, and therefore sustained the pointing of the malt, whereof a parcel at the cross was sufficient, but not of the household plenishing, seeing they were brought to the cross ; and as to the privilege of the Excise, allowed a condescence to be made by what statute or custom it was pretended, and the parties to be heard thereupon.

*Fol. Dic. v. 1. p. 178. Stair, v. 2. p. 717.*1736. *February 13.*

Competition, JAMES CORRIE, Provost of Dumfries, with ROBERT MUIRHEAD.

No 7.
Even an in-
choate point-
ing, which
was stopt

JAMES MUIRHEAD, merchant in Dumfries, having failed in his circumstances, Provost Corrie, who was creditor to him, arrested in the hands of Alexander Gordon, who had the possession of some shop-goods belonging to James ; and