

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