

No 2. in his hand, which he had given out of his hands without order of law, that would have been done upon his own hazard and peril ; but here, where there was no accession of any fact done by him, in whose hands the arrestment was made, to further the poinder, which pointing he could not stay ; therefore the arrestment was found could not make him liable to the arrester ; but reserved to the arrester to pursue him who had pointed, for rendering or repeating of the goods, *prout de jure*.

Act. *McGill & Sibball.*

Alt. *Nicolson & Stuart.*

Clerk, *Scot.*

Fol. Dic. v. 1. p. 178. Durie, p. 735.

1535. *March 11.* DICK *against* SPENCE and THOMSON.

No 3.
Found in conformity with
the above.

WILLIAM DICK having certain goods belonging to Spence, a bankrupt, in his hands, which being arrested by one Hunter, creditor to the said Spence, the said William is cited upon the arrestment, to make the goods furthcoming ; and after that arrestment and citation, Thomson, another creditor of the said Spence, having, upon his bond registrate against Spence, by virtue of the Lords' letters, pointed the same goods, out of the said William Dick's cellars in Leith, where they were the time of the arrestment preceding, and also at the time of the pointing ; the said William being convened by the arrester, to make the arrested goods furthcoming, and he defending, that the same were pointed from him, as said is ; likeas the charger compeared, and in respect of his pointing claimed preference to the arrester.—And the arrester *alleging*, That he ought to be preferred to the poinder, in respect to his anteriority of diligence, in his prior arresting, and citation also of the haver before the pointing, which so affected the goods, that the haver could not have suffered any other to point in his prejudice thereafter ; seeing if that were allowed, it should tend to make all arrestments unprofitable, and should give liberty to the haver to elide all diligence of the creditors, and to give way to the payment of any other creditors he pleased to prefer, which were against justice ; for the haver should not have suffered the poinder to enter within houses to point, while his arrestment had been tried, whereupon he was summoned before the pointing, as said is, and the collusion of the haver with the poinder is manifest herein ; likeas he offers to prove by William Dick's oath, that by express paction betwixt him and the poinder, they convened and agreed together, that he should give way to the poinder to point, and make open doors to him for that effect, to the effect he might be preferred, and the other creditor prejudged, which was not lawful to him to do ; and the time of the said arrestment, he took the poinder expressly bound to warrant him of the said prior arrestment, and of all danger which he might incur thereby ; and after that agreement, the said William Dick sent down his servant to make his cellars open, that the poinder might have free access thereto, and so

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.