

But such a defence of pointing after arrestment was not sustained where the transfer of the goods did not only in a passive manner give way to the pointer, but shew'd himself desirous to prefer him by exhibiting them to be pointed. *Kope v. Mair* Pral. *Gibbs v. Armit* *Lock v. Linnock* contra *Halyburton*, *White contra Blair* & *Black v. North* was it sustained where the pointing was collusive, for the behoof of the persons in whose hands the arrestment was made, and found in a Decree against the *Common de Blair* for payment of *Kolograph* tickets granted by him to them, which proved not their anteriority to the arrestment, 20 January 1672 *Black contra* *Leeming* and *Williamson*. But tho' it be plain that, in case of payment for ordinary debts doth not hinder Execution by pointing a hearing was once allowed (4 Decemb. 1679) upon this point, whether pointing after diligence by arrestment for the Kings Excise, as a privileged debt could be sustained & that the point was not then determined.

§ 4. a good defence against a forth coming, that the thing arrested is a proper tilment, or otherwise not affectable by arrestment; *Stair lib. 3. tit. 1. § 37.*
 The Exceptions against the pursuers till being repelled or part from if he prove the Debtor's oath (and it frequently doth) upon the verity and quantity of the Debt or goods that was in his hand at the time of the arrestment due or belonging to the pursuers Debtor; and the pursuers suffer him to depone in General terms, that he had no such debts or goods in his hand he will not get him more particularly examined *ca. Intervall* ad *Evitandum perjurium*; but may before, or at his giving, such a General oath cause Interrogate him specially whether at any time he had money or goods pertaining to the pursuers Debtor; and how or when he satisfied or delivered the same; that he knew not he his own Judge as to the time when he was, or ceased to be Debtor, or the manner how, *Stair ibid § 41.* The Defender in a forth coming having depone'd that by a contract he had oblig'd him and the pursuers Debtor, the latter was oblig'd to deliver him a number of Cows, whereof he had received no more than he had paid for pro advance in part of payment of the whole, and that the said Contract was cancelled by them after the arrestment; the Lord refused

refused to sustain the quality of advance payment by the oath; because the party could not warrantably after arrestment cancel the Contract and then depone upon both the tenor and Implement of it. But the Defender was allowed to prove the tenor of the Contract, that thereby it might appear whether the advance money was there in acknowledged, and a term was assigned to him to prove the payment of an amount in kind appeared not him to have had, and the same term to the pursuers to prove that the same were received 24 Decemb. 1709 *Stair* contra *Leeming*. § 5. of the person in whose hands arrestment is made, with process and Intestate against the same in making the arrestment 2 Feb. 1627 *Lord Balmorloch* contra *Leeming*. *Stair* contra *Leeming* and *Williamson* and as Debtor to his Debtor, having a right for the committal term to the oath of the Debtor the time of the arrestment; and he having depone'd in general, adding, that he had been formerly Debtor to the said Debtor, and that that he were satisfied and paid, he not being in a particular process at the Instance of the same Debtor against the Defendant, found upon an application to the pursuers of the said Debtor and back bond in security and payment as he had been satisfied; the Lord found the oath to be good, and the pursuers were satisfied, did not give any more against the said Debtor, anything for the same as a pledge; and the said Debtor being nothing else in effect but the same paper by the said Debtor a different way of proof which the law doth not allow after a transaction upon oath 2 Feb. 1722 *Stair* contra *Leeming* & *Williamson* contra *Leeming* & *Williamson*. But the pursuers of a forth coming wherein the Debtor was called pointer & c. having referred to the Defendant a bill which he was owing to the pursuers Debtor, and he having depone'd; that oath was not found to hinder the pursuers Debtor to seek payment of what more the Defendant truly owed him there acknowledged by the oath 23 July 1707 *Kidder* contra *Hardie*. The pursuer in a forth coming having offered to prove scripta by two Bonds the Debt due to his Debtor by the person in whose hands he had arrested: It was pleaded for the Defender, that he offered to instruct by the oath of the pursuers Debtor (who with then bond was) that