

No 364.

ficer not only made search, but likewise enquired at the pursuer, if he had any moveables else upon the ground. To which it was *triplied*, That the officer's execution, albeit it were produced, could make no faith, he being a party principally called in this process, against whom the pursuer does insist; *2do*, The pursuer offers him to prove, that he was *alibi* distant ten miles the time of the pointing, and so the messenger could not have enquired at him; *3tio*, The pursuer offers him to prove positively that there were corn-stacks in the barn-yard, and horse, nolt, &c. within the defender's view, which would have satisfied the debt. THE LORDS repelled the first allegiance, founded on the condition, in regard of the reply made thereto; and also repelled the allegiance of pointing, in respect of the reply and triply pronounced for the pursuer, whereby it is offered to be proved, that there were more goods pointable upon the ground of the lands, and in the pointer's view the time of the alleged pointing, than would have satisfied the debt.

Fol. Dic. v. 2. p. 242. Newbyth, MS. p. 88.

1685. *March 24.* GLENDINNING *against* GLENDINNING.

No 365.

FOUND a note of a messenger pointing some oxen, not sufficient to instruct that the creditor pointed them, because it was not by way of instrument, nor were the letters of pointing produced.

Fol. Dic. v. 2. p. 242. Fountainhall.

. This case is No 67. p. 9213, *voce* MUTUAL CONTRACT.

SECT. II.

Notary's Instrument.

1541. *March 24.* MILLER *against* The LAIRD of CULLERNIE.

No 366.

ANE instrument under the note and subscription of ane notary-publick, beir- and ony gudis or geir alledgit spuilzeit to have bene lauchfullie restorit, als gude as thay wer the time of the away-taking thair of fra him, preivis not the avail of the saidis gudis, nor zit that thay wer als gude the time of the restitutioun, as