

*Replied* for the pursuer; It does not alter the case, that the defender was a true creditor; for he may throw away his own as he pleases, or rather there may be an understanding betwixt him and the common debtor, for his payment another way. The disposition to the defender is absolute, and not in security; and though it were in security, it behoved to be completed by natural possession, otherwise it could not convey the property.

No 58.

THE LORDS found, that the defender having stopped the pursuer's pointing, by virtue of a simulate disposition, ought to make the goods and plenishing forthcoming to the pursuer in the same state they were in at the time the pointing was stopped; which if he failed to do, the LORDS found him liable for the debt due to the pursuer, in place of damages, the debt being within the value of the goods contained in the inventory and disposition produced for stopping the pointing.

*Forbes, MS. p. 84.*

1727. July 6.

NIVEN *against* GRIEVE.

No 59.

IN a case of the nature of the above it was *pleaded* for the creditor, That he, who unwarrantably stops a pointing, without any colourable title, ought to be liable for the debt, in name of damages, without regard to the extent of the subject, against which the pointing is directed; because, as the creditor is deprived of all means of proving, save by the delinquent's oath, which it would be hard to subject him to, there can be no other method for ascertaining his full damages, but to decern for payment of his debt. THE LORDS, notwithstanding, found the defender only liable *in valorem* of the subject intromitted with. See APPENDIX.

*Fol. Dic. v. 2. p. 343.*

1733. July 11.

BLAIR *against* GRAHAM.

No 60.

Thereafter it was found, that a party, who, upon a simulate disposition *retenta possessione*, did stop a pointing, was liable for the debt; but an offer made by the defender, to make the goods forthcoming *ipsa corpora*, conform to an inventory referred to in the disposition, was found relevant to assoilzie him. See APPENDIX.

*Fol. Dic. v. 2. p. 343.*