

Tit. 49. §. 1. The Creditor is not only preferred to the King out of the first  
 = ceter, and the Preference is a superadded Privilege 13 Decemb. 1672. *Mierro*  
 contra French. For it were unreasonable to frustrate the Creditor of the  
 Benefit of his Action, because the Debtor had possessed of an honorable Estate  
 had no Movables. The Law is retained to proceed summarily in all Actions  
 Deformant and in Breach of Arrestment Act 118. Par. 7. §. 6. Which may be  
 = Stair (Lib. 4. Tit. 49. §. 4.) says with sufficient warrant here to take in all  
 Actions summarily without sending them to the Court; there being no cause  
 = for proceeding so with Debtors that condemn the Kings Letters, than  
 is for taking such a course (as it usually is) with Persons that slight the  
 Lords own Authority. But by George M. Lenzie (Observ. on Act 118. Par. 7.)  
 he thinks that such Debtors have no further Privilege than to come in upon  
 the Day of 6 Days and must abide the Order of the Court as others, seeing they  
 are not excepted from it in the Act of Regulation 1672.

Deformant must be proved Act 150. Par. 12. §. 5. And all the  
 the Messengers Executions bearing Deformant, are sufficient Evidence to  
 found a summary charge of turning against the Debtor; further proof  
 is required for execution their Movables if the Charge is suspended. There  
 Deformant is pursued only by Way of Action Stair Lib. 4. The proper Deformant  
 = ed in which Action arise from Violence in the Execution stopped, which is  
 all competent by Way of Defence, because his Action is highly penal. See  
 = Tit. 5. In an Action of Deformant of a Messenger executing Letters of  
 = poinding, it is a sufficient Defence, that the poinding was executed or begun  
 before the rising of Febr. 1620. S. Halberton contra Radie and Grievous  
 = that the Deccuter had not on his Oath. Nor will this last be elided by  
 = saying, that he was held and reputed to be a Messenger, or that he before  
 = knew him to be one, unless he knew him to be in the present Exercise  
 = that Office unadjudicated. But if one who is no authorized Messenger should  
 = use the same Badges and of the Office and be deformed in the Exercise  
 = of the same of the Pursuer of the Deformant, that he knew him to be  
 = Messenger, will be a Ground to absolve the Defender. But if the former  
 = says that the Executer was held and reputed to be one, and he knew Nothing  
 = to the contrary, the Deformant will be sustained Stair Lib. 4. §. 7. Again, an  
 = Allegation that the Goods poinded belonged to another Person than the Deccuter  
 = Faith thereupon, is relevant to hinder the stopping such poinding, <sup>wherein</sup>  
 = Deformant. But an Offer to prove so much in a Process of Deformant, and  
 = not appearing to depone at the poinding will not purge the Deformant's Febr.  
 = 1620. S. Halberton contra Radie and Grievous. Just as a Master or any from  
 = him, may stop poinding of his Tenants, for Security of a Years Rent  
 = due to himself tho' not upon Pretence of more Years due, without Hazard  
 = of Deformant 7 Decemb. 1630. *Duch* contra *Lords*. But if he stay the  
 = poinding

poinding without mentioning such a cause at the Time he cannot free  
 himself in a Process of Deformant by offering to prove, that he poinded a  
 = against whom the poinding was going to be executed, tho' he may sue him a  
 = Years Rent as his Tenant and the other <sup>deformant</sup> because had he at the  
 = poinding said his Reason for opposing it, the Debtor might have given  
 = him Satisfaction or Security for his Rent, and then proceeded in his Diligence  
 = a Landlord who had stopped poinding upon this Reason expressed in the saying,  
 = that three Terms Rent were owing to him, was not bound to have thereby  
 = incurred the Pain of Deformant, about his Rent not in Law due at the  
 = poinding upon his account or more than a Years Rent, seeing he had  
 = offered not Security for that Years Rent 7 Decemb. 1630. *Duch* contra *Lords*

Tit. 3.

Concerning Breach of Lawburrows

Violent and lawless Men would be tempted to tread upon more Freedom  
 to the detriment of the Commonwealth, had they no more to say than the  
 = making up any real Damage, that they sustain and their outrageous proce-  
 = dures, which either might not be worth the suing for or more than the Debtor  
 = is able to satisfy. Formerly Men were in Use to take Assurance one of  
 = another against their Violence. But in the Year 1499 the Kings Peace was  
 = declared to be Assurance to all Men, and any Person treating another was  
 = was ordained to pass to the Sheriff or to the Kings Officers, and make a  
 = or swear, that he dreads him, who were to take Burrows of Deceit. Act 12.  
 = Par. 6. §. 2. Tit. 129. Par. 9. §. 5. That is, Caution or Liberty to keep the Peace.  
 = Burrow or Burgh signifying Caution in our ancient Language. Where Caution  
 = had die at first secure the Party to whom it was found only from Hazard or  
 = hit Life. Act 129. Par. 9. §. 5. But Lawburrows came to be the Term afterwards  
 = in Use, which imports Caution against any Trouble or Harm otherwise than by  
 = the Course of Law. What goes with us under the Name of Lawburrows is the same  
 = with Caution de non offendendo in France and Flanders (Christen. de Leg. Meulin.  
 = Act. 1. Tit. 4.) and elsewhere (Favin. de ver. & Divers. Crim. Quast. 104. n. 11.)

The Session and criminal Court now have the Power of causing Persons find  
 = Caution of Lawburrows, which the Privy Council of Scotland when in Being also had  
 = M. Lenzie Observ. on Act 15. Par. 11. §. 6. Which sovereign Judges may find Caution  
 = of Lawburrows not only upon the Complaint of others, but also of their own Motion  
 = upon sufficient Evidence of Inclination to violate the Peace, from atrocious  
 = Words Threats or challenging to duell Stair Lib. 4. Tit. 48. §. 14. The Criminal  
 = Court exact Caution of Lawburrows only in Processes before them M. Lenzie's Ob-  
 = serve on Act 27. Par. 3. §. 4. But any Person may in ordinary Cases, upon a  
 = common Bill presented to the Lords of Session mentioning, that he justly fears  
 = to meet with such Harm or Trouble from another (which is passed by the  
 = ordinary