

Sovereign who here in Arthur's Case Communi. But if the Horn be made use of only to Debar any party from suing or defending, the Nullities may be received upon Intimation only to the officers of the St. Clair lib. 3 Ed. 3 § 12 lib. 4 Ed. 47 § 12.

2^o The Effect of Denunciation is taken off by letters of Relaxation which require the same solemnities of Publication and Registration, as Denunciation Act 75 Par. 6 juncto Act 26 A Par. 13 lib. 13 Par. 16 § 6. But Relaxation doth operate only to free from Escheating of goods acquire after the Relaxation 14 Feb. 1635 Lockhart contra Mann Stair lib. 4 Ed. 47 § 10.

While the party continues unreleased at the Horn, the duty of personal Diligence is to raise letters of Captions.

Chaps. 2. of Caption.

Caption or Letters of Caption, is a warrant in the King's Name under the Signet, for Seizing the Debtors person, and committing him to prison.

A Writer to the Signet to whom one deliver'd an execution bearing in order to Denounce the party charged and raise a Caption having employ'd a Messenger who Denounced before coming of the Days, and having upon that Denunciation after it was Requested rais'd a Caption, and the person at whose Instance was rais'd having been given by the Lord for its being precisely stately Executed in 20 pound Sterling paid to the party injured by that Unwarrantable Diligence: The Writer who signed the Caption, was Decern'd to Repay to his Client the said 20 pound of Damages 28 Novemb. 1710 Wood contra Fullerton. It was found Unwarrantable in a Messenger to Commit to prison by virtue of a Caption, after Intimation of a Dist upon a Bill of Suspension obtained by the prisoner, who was therefore absolv'd from the Creditors Expenses. Albeit he was in the Messengers hands before the Dist was Intimated or procur'd 27 July 1710 Lamb Supplicat contra Cleland and Gibson.

In this Execution of the body, the Messenger having his

Blazon on his Breast, toucheth the party with his Rod or Staff, and Reads to him the Kings Letters, whereof he gives him a Copy signed by himself. Stair lib. 4 Ed. 47 § 14. But the Messenger is not bound to shew the Caption for his Warrant to the Debetor or out Law, unless he require a sight thereof, nor yet to put it in his hands, as he should destroy it: it being sufficient to exhibit the same being Disinterested for present, and the Messenger answerable if he execute without a Warrant 19 Feb. 1672 In the Case of Gordon of Braes before the Court of Justiciary.

Execution may be put to Execution at any time whether in the day or Night either before coming or after 19 Feb. 1672 In the fore said Case of Gordon of Braes shew'd answer to David Doublet. Captions which binding can be Executed only while the day is Day. But it is in Warrantable to execute a Caption on the Sabbath day 4 July 1628 Fiscal contra Underwood. A Messenger may in virtue of the letters of Caption force open doors: because the Caption bears the Kings Authority to do so. There is the Execution of some getting no deep wants the additional Warrant of letters for making patent doors. A Quarter Attorn'd by a Messenger is entitled of Deference for refusing to go along with him. For albeit a Messenger may in the Execution of a Civil Caption carry his price by force without beating or detaining him he is not oblig'd to do so. Stair lib. 4 Ed. 47 § 7. But it is a reasonable excuse to the party attended, that he was unable by reason of sickness either to go or vice Stair iud. 56. The Lord Fair in one place lib. 4 Ed. 47 § 4. says, that if the prisoner should escape, his letters were read and a Copy given as aforesaid, he would not be liable to the pains of deforcement or others for his contempt and violence if the Blazon was not exposed and the Ceremony of touching with the rod performed unless he knew him to be a Messenger then, or in the present exercise of that office. But in another place (lib. 4 Ed. 47 § 5) The same Author tells us, that it is neither Necessary nor convenient for a Messenger to display his Blazon in the execution of Caption, lest thereby the party be scared from suffering the Messenger to touch him: Tho' if he hinder the Messenger to touch him, the Messenger shewing his wand of peace and offering to touch him there with, he