

Executed by them cannot go in their own cause; and if such a thing were allowed, they might for their own Advantage Value the pointed goods to little or Nothing. What ever be in this a Messenger may not only point for the debt owing to his employer, but also may point for the flourish paid to himself for his pains. And this Defense Against the Forfeiture of a Messenger executing legal Diligence, that the pursuer himself had right to the Diligence, and so was in possession first to Execute it at his own instance, was Reported 4 June 1688 David Bolton of Bonquith. Again the it be a good Defense in an action of Spuilzie; that the things Unwarrantably Meddled with or taken away; were not taken within 24 hours in a good Condition and when taken (vide vol. 1 pag. 951). Yet it is not relevant to Exculpate for Forfeiting a Messenger in the Execution of a pointing, that the pointed goods taken from the Messenger were afterwards restored to him, 3 Jan any 1726 James Hamilton and others. The Reason of the Disparity is, because in the case of a spuilzie the private property of another is only Unwarrantably Meddled with, without any Violence done or Breach of the publick peace, and nothing hinders the party injured to Remit the injury on parts, and take back his goods: whereas no private party can Remit an offence Against the Publick Law, of so heinous a Nature as Forfeiture is.

Forfeiture, as other Crimes, may be proved by witnesses, even by those carried along with the Messenger for Verifying his Execution (March 1662 David Jamieson & others. Because without them Forfeiture could not be proved: and there is the same Reason for proving Forfeiture by them as for proving the Execution. Yea they will be

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sustained as witnesses, tho they were beaten in the Forfeiture if they raisee themselves out of Richard Campbell and Malice Melchior R.m. paid 1st July 26 58. and who the Cause of Forfeiture, and so not for as to any wrong done to themselves. Persons present by the Messenger as witnesses in his Execution of Forfeiture, were admitted as witnesses in the trial for the purpose, tho they were his own servants, July 16, 70. Kerrie M^{rs} M^{rs} of Barroth. And one of such witnesses was in a trial of Forfeiture at the instance of the Messenger and King's Advocates, tho so to bear witness ad vindictam publicam; albeit he was within the Degree of Forfeiture to the P^{ro}secutor in a Caption disappointed by the Forfeiture, in respect he refused to do so. Did not Concur in the trial, and he being witness in the Messenger's Execution, was a necessary and in effect an Instrumentary witness, who allances to the P^{ro}secutor in the trial. Liqueur could not hinder him to be an Evidence for the Messenger and the King ad Vindictam publicam 13 July 1669. French of Frenchland. But yet the Reason for sustaining Instrumentary witnesses in obligations, tho they were inhabile, is because they are presumed to be chosen by Mutual Consent of both parties present at their subscription; which cannot be said of witnesses in Execution, and who are chosen only by the Messenger him self. But witnesses in the Messenger's Execution, to whom any injury is libelled to have been done at the Forfeiture, will be cast from witnessing at the trial, tho they stand past from the injury done to themselves: because they were once stated as partial Melchior R.m. paid 1st July 26 58. per. And if witnesses in the Messenger's Execution for as to any wrong done to themselves that will be a ground to Reject them, as too possible of the injury or if such witnesses own before they are purged of partiality. Counsel tho. that they retain a Report of the injury done them, or confess that they were