

specific to Infer a Detachment. Albeit Messengers may detain Criminals  
 under Caption where they live. Still it is. Yet they ought not to be necessary  
 to Detain prisoners for civil Debts in their hands upon predeal of objection  
 satisfaction, which might furnish them opportunity of suspending  
 should commit them to any Lawfull prison, tho' it be not the Riccarton.  
 Indeed there's no reason for passing by a sufficient prison to one that  
 Remote. But Custom allowed Messengers to do so, till Debtors may be  
 more effectually induced to pay their Debts. 47 & 16. 17. Captions may  
 be executed within the City of Edinburgh without concurrence of  
 Magistrates thereof. Who, or those of any other burgh or other jurisdiction  
 as Sheriff, Steward or Bailie, are, if espined by the Messengers, obliged to  
 assist him to put the person attached in prison. And against which Magis-  
 trates for refusing their concurrence, the lords will, upon sight of the  
 Caption and the Messengers Execution, issue for the burning of their  
 termed Letters or ~~Writs~~ Writs Writs Writs. Thereupon, after Capturing  
 of the copy of the Charge they may be Denounced and registered at  
 home, and Caption obtained against them.

But if the party at which Justice the first Caption was sought  
 to be executed think fit, he may petition Raising homing and a  
 tion against the Magistrates, binding them to pay the debt, upon the  
 refusal to incarcerate the debtor when the Messenger showed him a  
 Warrant and presents the Debtor to them. 22 Novemb. 1671. Writ  
 contra Hops. For Subduary Action or Diligence for the Debt, and  
 against those who fail in Duty fully Executing Captions, 21 of  
 against the Messenger who wilfully suffers the prisoner to escape  
 out of his Custody. Thus a Messenger was found liable for the  
 of a person whom he had taken with Caption and suffered to escape  
 Albeit the employer promised to go along with him and assist him  
 in the Execution, and yet left him in the way, tho' he was  
 prisoner, seeing the prisoner used no Violence, unless it had been  
 actually agreed that upon the Employers Deserting him, he should  
 proceed no further 5 Decemb. 1672. Writ contra Lawrie. A Messenger  
 having taken a debtor with Caption in Edinburgh, was found  
 obliged to Incarcerate him presently when required by his Employer  
 and not to keep him in his hands while a Stop of execution  
 might be obtained. Nor was it sustained Relevant to Exculpate  
 the Messenger that he met with Resistance in the execution, if  
 either he had a greater force than the Resisters, and ther Messengers  
 offering to put the Caption in execution with the same Assis-  
 tance if he would have given it up to him; or if he followed  
 and took Money from the prisoner to favour his escape. 9 Novemb.

Novemb. 1677 Robertsons and Falconer contra Drummer. But being  
 proved that a Messenger was hindered in the Execution of his office  
 by Men with drawn Swords but a still of execution came from some  
 of the Lords, while he and his assistants had no arms, and that the  
 Creditor being present did not call upon the Magistrates for assistance  
 of their burgh or guard, which if he had not been present, the Mes-  
 senger had been obliged to do, the Messenger was not liable  
 having had sufficient assistance against an arm of force, 20 Decemb. 1678.  
 Interposement. A Messenger having received a Caption, was found  
 obliged by his office to put it in Execution, tho' he had no money  
 so to carry, and received any Money from the Debtor before the  
 Execution, and having executed another Caption, having been  
 partly, he ought to have attached the prisoner and locked him in  
 the Jail, tho' he would also upon the former Caption, 12 Decemb. 1680  
 Drummond contra Drummer. A Messenger was found liable  
 tho' he made way for the prisoner to escape, and having the  
 required to incarcerate the prisoner, tho' he had no money  
 required to incarcerate the prisoner, tho' he had no money  
 liable to do it. And having sent a town officer with the Messenger, who  
 and having sent a town officer with the Messenger, who  
 from whom he had taken having, and after he was bound  
 escaped by being King; the Magistrate was found liable to pay  
 the Debt in the Caption, 20 Feb. 1674. A Messenger who had  
 attached a debtor having upon a Sunday, and in the  
 charged the Sheriff, the Sheriff to apprehend him, and in the  
 Sheriffs house, the Messengers execution was found to prove a party  
 had the Sheriff was charged to take him, but altho' that he was in the  
 Sheriffs house at the time of the Charge, 12 Decemb. 1674. By 9. McKenzie  
 contra L. Cartier. Magistrates once Lawfully charged to take a  
 person under Caption, tho' they cannot apprehend him at the time,  
 are still obliged thereafter to take him when ever they can do it,  
 and find time within their Jurisdiction, and they shall not be  
 Charge over again for that Effect; but the first Charge is sufficient  
 to put them in Mula fide for not doing the same thereafter, at  
 least they ought to do all Lawfull Diligence to take him, and  
 to set forth some Lawfull Impediment why their Diligence  
 was not effectual; and if they saw him afterwards, it was presumed  
 that they had power to take him, unless the contrary be instructed  
 12 June 1630 Morval contra Magistrates of Stirling. Nor was it  
 thought