Answered for the Pannels that private parties not Authorized to apprehend the Kings Leiges, being under no obligation to Concurr in the Execution of letters of Caption the pannels without being Active in bounding out any of his family to oppose the Messenger could not be Understood Accessory to the Deforcement following him in Law and horse to Escape &c. Which Defence was sustained and the pannels Assoilzied from the Lybel.

Vide Gordon and Otters.

Deforcement in the Execution of a Caption, is termed in the Laws of England Rescous of a person; and Deforcement or Rescous in Execution of a poinding, called in the Lawbooks of the Law of Scotland Clareg. Majest. lib. 4 cap. 27. Namus Vetitus answers to what the English term Rescous of a Distress or goods Distrained.

Deforcement may be both Civilly and Criminally pursued Concerning the Civil penalty and prosecution of it vide Dalrymple 1 Vol. When a Deforcement is Criminally pursued, the offender Convicted thereof is punished in his person at the Kings will Act 16 Parly. act 54 Parl. 11 J. 6. or subjected to an Arbitrary punishment. Quhat the Commissioners of the boarry of Scotland in the Year 1669 ordained some Seamen in Burntisland to be Whipt at the Market Cross thereof for putting off a boat from the land for Custom boyes officer was stopping in quest of Unfree goods which by he dropt into the Sea and Narowly escaped Drowning M'Kenzie Crim. part 1 Pit. 26 § infin. Vide part 2 Jul. Pit. A Deforcer is not only liable to an Arbitrary punishment but also doth forfeit his Moveables, whereof one Moiety goes to the King, and the other to the person whose Execution he stops the Legal Warrand of the stopped Execution was obtained Act 150 Parl. 12 J. 6. 22 Feb. 1672 Gordon of Braco 28 June 1680 Margaret Gibb. The Court Clerk did more for his Infamy may, instead of Fining an half of the offenders Moveables, inflict for payment of the Debt and Damages due to him out of the first and Readiest of the whole, before the King draw any Shard act 118 Parl. 7 J. 6. Albeit the Deforcement of a Messenger Executing a Caption for Civil Debt, were only adjudged to have forfeited their Moveables, but also Decerned Jointly and Severally to pay the Debt for which the Caption was Raised 7th & 12 August 1695 James Edmonston of Carden, David & Charles Edmonstons of that Ilk Brothers Albeit such is the punishment of simple or Common Deforcement; yet one who Deforces a Messenger Executing letters of Caption against a Criminal is guilty as art and part of the Rescued persons Crime, M'Kenzie Crim. part 1, Pit. 26 § 4 infin. It's a Rule Among the Doctors, that Excommunication ob Manus Violentas, et Excarcerand a pari procedunt. Nam eodem Modo delinquit qui Deforcit Majestatem principis, et offendit Ministros eorum Justitiae Caballi Rosol. Crim. Cont. 1 cal. 6. But Sir George M'Kenzie (Ibid.) doubts very much whether Deforcement in our Laws may be punished as breaking of Prison. A Messengers Execution Silly pointed or hindered by Deforcement, is Declared to be Treason and accordingly as if it had been perfected Act 150 Parl. 12 J. 6. which is to the Understood only of Executions of Summons, or Charges of horning Relating to Moveables, and not of Executions of Land Rights Stair Inst. Lib. 4 Pit. 43 § 4 lib. 1 Pit. 9 § 29.

By the Common law of England when an offender after a lawfull Arrest is Rescued by others, the Rescuer is a felon if the Arrest was for felony, and a traitor if it was for treason Coke 2 Inst. 589. Hale pl. Cr. 116. Fulton de pace 143 a. Kel. Rep. 77. But a hinderance to Arrest one that had Committed felony, is a Misdemeanour only Coke Ibid. 590. Hale and Fulton Ibid. And the Rescuing one Arrested for treason pass, if one