only finable according to the quality of the person, time and
and place where the Rescue was Made Stamf. pl. Cor. 3
c. Woods Institt. of the Laws of England vol. 2 lib. 3 cha
pag. 605 8vo Edit.

A Messenger whom he is Deforced, is apt to break his
wand of peace, as a symbol of the Deforcement and proba
for remedy of law.

Deforcement can be pursued criminally only before
the Court of Justiciary Reg. Mayott lib. 1 cap. 27. And
Inferior Judges were found by the Lords of Session not
competent to Actions of this Nature and Consequence
7 July 1620 Lords contra Dick. Wotter processe C
for Amail may be sustained at the Instance of a Messen
ger without the Concurrence of the Creditor who Em
ployed him, was once Debated but not Determined 14 January
1714 Mr John Hume.

The Libel of Deforcement bears allways that the
Messenger broke his wand of peace: but the such a cir
cumstance be not proved; that Assize over being in the
pannel guilty of Deforcement if Resisting and oppos
or troubling the Messenger is proved 13 July 1669
Gronch of Gronchland. Mckenzie Contra pert, Fol. 265
Gronch of Gronchland. A Messenger Deforced does ordinarly give in with the
libel an Execution of Deforcement, Narrating how
and by whom he was Deforced: which is Necessary for fix
taining the Letters, or Summons as ordinary Execut
but the trial of Deforcement may go on without it
13 July 1669 Gronch of Gronchland. Because otherw
ways there could be no Deforcement pursued, if the
Messenger were killed and could give no Execution
or be bribed by the Deforcer and will give Nondi
In either of which cases, it were hard that the Pur
of Deforcement could not be pursued. Where a M
senger is Deforced in the Execution of Legal Dil
= gences

Diligence and horning Caption or poinding, such legal Dili
gence needs not to be given out with the Libel, in a Crimi
nal trial 3 January 1726 James Hamilton & Callan. Becaus
Deforcement might be tried tho the Messenger warrand
was not Extant, at when it is Violently taken from him
and Cancelled. Because at no law Required the giving out of
writs to be produced in Medium probationis.

The Common Defenses in a trial of Deforcement, are
founded upon the Informalities of the Indictment or Libel
or upon the Pannels Ignorance of the Messenger or officers
Warrand, or upon its insufficiency, or upon his Mistakeing
in the forming of such a Warrand.

The Dist. in a trial of Deforcement was Deserted in
Respect the libel did not Mention any day when the Deforce
ment was Committed 9 March 1673 James Forguharson.

Another Common Defence that the Messenger
whom Resisted or Mobbed had not a Blazon on his breast,
whereby people might know him to be such an officer
of Justice

It was sustained Relevant to Exculpate three of Nine De
forcers of a Messenger in the Execution of a Caption, that
one of these three Desired to know from the Messenger
upon what Account he came there, and that he Refused
to tell them, and did with his Company beat them before
they made any Resistance 7 August 1695 James Edmonston
of Cardonell & Brother. But it was not sustained Relevant
to Absolve from Deforcement of a Messenger in taking
a person prisoner, that the Messenger did not shew the
Caption to the party whom he Apprehended. Albeit it
was pleaded, that a Messenger were not obliged to
shew the Caption, that it may appear he was in Actu
Licito Officij clothed with Authority, a poor Beggar might