

the bearer do Nothing against the peace and Government, it
 was in case of his Contravention. In respect it was shew'd
 that the grantor of the Supersedeas could not, upon his being
 Motu proprio in the land summarily d. his own hand put the
 Caption to Execution and thereby Judge in his own court
 before he got the Jurisdiction Declared by the Judge ordinary,
 Especially Confessing, that this is an Jurisdiction upon
 a positive fact to be proved, not like an Jurisdiction upon
 the Not payment of Annual rent which is a Neg. h. h.
 that proved it self 31 August 1691 Janes Gordon & Cor. Pleitron
 But it was sustained to Elde and take off the Defenses upon
 the Current Supersedeas, that the Supersedeas was not
 limited to the Messinger 31 July, 1691 Janes Gordon and
 Cor. Pleitron.

This Defense was sustained against a Deforcement
 in the pointing of sheep, that pointing was begun be-
 fore sun rising by the Messingers assistants gathering
 the sheep together and bringing them out of their pasture
 to the place where the Messinger was, that when over the
 sun was up he might proceed in the pointing, albeit
 it was pleaded for the pursuer, that the sheep were
 gathered after the sun was risen; and he being in libell
 and his Assertion positive and not Negative as the par-
 nels is, right talk preferred to the proof. In respect
 was answered for the pannel, that the a Defense belongs
 to the libel might be Rejected, and the pursuer allowed
 to prove his libel, yet such a Defense as this which only
 Elde the libel must be sustained and the pannel
 allowed to prove it. especially seeing he hath called
 the pursuer in a Reconvention upon the same grounds,
 and therefore ought to have the privilage of proof
 as being in libel 8 July 1700 No record of Head of
 and others. But this it be a good plea against a Defor-
 ment in Executing a pointing that the Diligence was
 used after sun set or Under Cloud or absence of Night

it would not be sustained Against Deforcement in Executing
 a Caption at that Unreasonable time 19 Feb. 1692 Gordon
 Against Deforcement in the Executing a Caption within
 a house, that it was done Under Cloud of Night, and the
 Deforcement had Reason to think that the Messinger and
 his assistants were thieves and Robbers; Especially Con-
 fessing, that the Messinger before his entering the
 house did not Intimate to those within, that he came
 to Execute a Caption, and they went not for the Blason
 on his Breast by Reason of the Darkness. Which plea
 was Rejected in respect the Night is the fellest time
 to seize those who lurk in the day; and the Displayed
 Blason on the Messingers breast, was sufficient to dis-
 cover his Errand to any who did not fraudulently shut
 their Eyes that they might not see it 7 Aug. 1695
 James Edmonston of Gordon and his brother. Nor was
 it sustained Relevant to justify the Deforcement of a
 Messinger dungs entry to a house for Executing a Cap-
 tion there, that he and his assistants broke through a wall
 in the house, albeit patent doors were offered to him
 and five of his associates. because no Rebel ought to
 Capitulate in opposition to the Executing a Cap-
 tion; and the Capitulation was Capitious, that five
 only Rebels entered with the Messinger when the Rebel
 had fourteen or fifteen armed men within doors to over-
 power them 31 July 1691 Mr Robert Keith of Inverness
 against Gordon. Nor yet was it admitted as a good plea against
 Deforcement of a Messinger offering to Execute a Cap-
 tion within the Rebels house, that after he the Rebel
 Refusing to Yield himself prisoner had got up to the
 top of a ladder or trappe narrow that it was proposed
 to get him down by other ways than by
 coming above him, and had thrust at the Messinger
 with a sword, the Messinger and his assistants