broke a hole in a side of the Roof of the house to remove the
Robol: because, our Law doth not allow walls or Roofs to
Scholtor out Law 7 August 1695 James Edmonstoun of Cardon
don and his Brothers. But it was sustained Relevant to
Exculpate from Deforcement of a Messenger in the Execu
tion of a Caption, that the Messenger Entred the Rebels
house on Sunday Night, upon which immediately the Re
sistance Against him began. Albeit, it was pleaded for
the Messenger that his coming to the house on Saturday
Night, (tho' might Annull his Diligence) could never
Warrand the Rebells to Commit Violence Against
him; and he Continued all that Night about the house and
proceeded to Execute the Caption on Munday Morning
a Lawfull day. Which plea was Repelled, because his
ting the house was the first Step of Executing the Cap
tion, and that done on the day following was but a Con
tinuation of the same Act Null and Unwarrantable in
the Beginning, which could not tract temporis become
Effectuall 7 August 1695 James Edmonstoun of Cardon
& his Brothers.

For Understanding how far a Messenger or officer
Justice may be opposed in the Execution of his office
on the Account of his Misbehaviour, See George Mackenz
(Crim. part.) tit. 26 §4 Vers. Another ordinary object
Distinguisheth, whether he misbehaved Via Facti (by
omitting formalities or Repelling just allegations
made to stop his procedure) or via facto (that Author
thinks, that a Messenger cannot be Resisted for any
wrong Step via facti, or upon Pretext of Injustice done
by him. Because it were Dangerous to allow private per
sons Interessed to Rectify what they think Injustice
done to themselves. But Lawyers are positive that
man can stop Execution upon the Account of Injus
Unless where such Injustice can be no other ways
redressed; In which case only they hold Resistance
to be Lawfull. Monach. de Recup. possess
Remed. C. n. 30 & 31. Cabal. decis. Crim. ca. 8. n. 32.

But yet it was sustained Relevant to a stop to
Deforcement in Executing a poinding of Goods by Horning, that
the Stopper of the poinding Appeared at the time and
water for the Master of the ground who had Arrested
the Horns, and alledged, that they could not be poinded &
he were paid: and the Messenger having offered to poind
notwithstanding, it was Reasonable to stop him. 16 No
vember 1667 Mr Archibald Bartlewick. Of Kin[illegible] Tutor
tory fastened for George Mckenzie (Sibbald) Impugned as Unjustly
Because 1o. A Messenger is Judge in a poinding and if Mes
lawfull to Resist Judges upon Protest that they Determine
Unjustly. 2o. Nunquam in Recurrendum ad Remedium Extra
ordinarium, quando licuit ordinarios. And if a Messen
ger do Wrong in the Execution of his office, he and his
person who became Surety for him to the Lord Lyon at
his Entry to the office, are liable for Damage and In
terest to the party Injured. However it was Again
found Relevant to take off a Deforcement in poinding
that the pannel produced a Disposition of the goods
sought to be poinded, with an Instrument of Possession
in his favour, and offered to make faith thereupon, or
to swear that the goods about to be poinded were his
own 20 November 1676 Robert Blair. It was also
sustained to Elide a Deforcement in the poinding of goods,
that the pannell's Brother Appeared at the Market Cross
before the poinding was Completed, and Produced a
Disposition of the goods in favour of the pannell
and Craved they might be delivered back to him; and
protested against the Messengers further proceedings
in the Illegal poinding. Albeit it was pleaded for
the pursuer, that no Regard could be had to the Dis
position produced at the Market cross, seeing the
Producer did not Make faith to whom the goods be
longed. In Answer it was Answered, that the Instru
ment did not bear that the Producer of the
Disposition was required to Make faith 8 July
1700