

No 13. gence, or informality of the officer." The bond of cautionry bears, "that the officer shall leally, truly, and honestly, use and exerce the office of messenger." So far as the messenger did not execute the diligence of law, by poinding and imprisonment, he has neglected his duty; so far as he recovered a debt, in consequence of the diligence, and embezzled it, he has not honestly exercised his office, and his cautioners are therefore liable.

The *verba solemnia* in the execntion of poindings do indeed seem to imply the presence of the creditor, or his attorney. But as this practice would be very inconvenient and expensive, it is scarcely ever followed. Accordingly, there is not a week in which messengers do not recover debts in consequence of ultimate diligence. If, by means of such subtle distinctions as the present, their cautioners could shake themselves loose from their obligation, the salutary regulation introduced by the statute 1587, for the security of creditors unacquainted with the character of the messengers they employ, would, in a great measure, be frustrated.

Neither is the trust conferred on the messenger, nor the risk to which his cautioners are subjected, greater in this case than in many others which fall within that department. Thus, if a messenger is employed in executing a caption, and allows the debtor to escape, or if he is directed to inhibit, and neglects it, Are not his cautioners bound to indemnify the party suffering?

"THE LORDS sustained the defences."

Lord Ordinary, *Stonefield*. Act. *James Boswell*. Alt. *Alexander Millar*. Clerk, *Campbell*.  
C. *Fol. Dic. v. 4. p. 1. Fac. Col. No 16. p. 30.*

No 14.

1791. June 18.

ARCHER against LAW.

A messenger being employed to execute a caption against a brewer, whose residence was within the precincts of the Abbey, but who was not bankrupt, conceiving, that the debtor nevertheless enjoyed the benefit of the sanctuary, bethought himself of a device to bring him out of it, which was by writing a false citation at the instance of a fictitious creditor, summoning him to appear, on a certain day, before the Justices of Peace, which the debtor having accordingly obeyed, was apprehended by the messenger, and put in prison on a Saturday evening, where he remained till Monday. In a summary complaint, the LORDS were of opinion, That the device used by the messenger was illegal, and a prostitution of his office, and they found him liable in damages and expenses.

*Fol. Dic. v. 4. p. 2.*

Cautioner for a Messenger; see CAUTIONER.

*See APPENDIX.*