

complaint incompetent. He added, that the remedy lay in the Privy-Council or Admiralty, but in no court civil or maritime.

“ ANSWERED,—This is not a complaint against a press-gang, which, if it were, the above first argument might apply.

“ The Lords dismissed the complaint as incompetent.

“ From the showing of the petition, it is out of Bailie Stewart’s power to stop the order which is already execute. It, therefore, resolves into an action of damages, which is not competent by way of summary complaint.

“ I should have no doubt but a summary complaint might be competent to stop the execution of an order which is immediately to be put into execution.”

A second petition was presented by Smith, praying for an alteration of the interlocutor, but it was also refused without answers. Lord KILKERRAN says, “ After differing much, a motion was made to intimate to the lawyers for the Crown, to set forth whether the petitioner is pressed for the King’s service; and the agent for the Crown being present, and averring that he was aboard one of the King’s tenders at Leith,—The Lords refused the petition.”

1755. *March 7.* JOHN HERRIES *against* THOMAS and JOHN LIDDERDALE and THOMAS CARLISLE.

THIS case is reported by Lord Kames, (*Sel. Dec. No. 86. Mor. 2046.*) and in *Fac. Coll. (Mor. 2044.)*

Lord KILKERRAN’S note of what passed on the Bench is as follows:—

“ On advising this complaint, with the answers, it was agreed, that whatever was competent in the case of a foreigner’s coming into this country, for his creditors to do, was in this case competent, as the debtor in this case had his fixed residence in a foreign country. And then the question was, Whether a foreigner could be arrested till he found caution, *judicio sisti et judicatum solvi*?

“ And that he could not be obliged to find caution *judicatum solvi* was given up, as that is in no case allowed but in the Admiralty, and that in causes properly maritime.

“ And as to the caution *judicio sisti*, the question turned upon this, whether as *arresta jurisdictionis fundandæ gratia* were allowed in this country, of effects, it was also competent to arrest the person, which some thought to be competent in no case but where there was a *meditatio fugæ*. But on the other hand, it being observed, that even the arrestment of effects was, for the first time known in Scotland, in the case of Captain Hamilton and the East India Company, from the example of other nations, there was thought more reason (from the example of other nations) to extend it to the arrestment of the person; and accordingly, the Lords ordain the Magistrates not to dismiss the prisoner, unless he found caution *judicio sisti* in any process to be brought in the space of six months.”