

1683 and 1684. JAMES ALSTON *against* FRANCIS ROSS.

1683. *February 1.*—JAMES Alston against Francis Ross, pewterer in Edinburgh, reported by Castlehill. The Lords found the 8th Act of Parliament 1672, discharging Magistrates of Royal Burghs to arrest strangers, is only in favours of natives, not citizens, and not of foreigners; and that, notwithstanding of the said Act, such strangers may be arrested: but allow Ross the defender to prove it, as a relevant defence, that Macqueston, the person arrested, for whom he became caution, was *origine Scotus*, and had fixed a domicile here, forty days before he was arrested. Which being proven, they found the arrestment unwarrantable; seeing Alston had his bond for the debt, and so it was not merely due upon an account. And, before answer, ordained Ross to depone if he had any effects then in his hands belonging to Macqueston. *Vide* 8th January 1684. *Vol. I. Page 215.*

1684. *January 8.*—The Lords having advised the probation in James Alston's action against Francis Ross, the pewterer, mentioned 1st February 1683, found it not proven by Ross's witnesses that M'Queston was born a Scotsman, or did reside a year in Scotland before the date of his arrestment (which was quarrelled on the 8th Act of Parliament 1672, as now illegal,) and of Ross's bond of cautionry to present him to the Magistrates of Edinburgh: and therefore found the letters orderly proceeded against him.

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1683 and 1684. SIR WILLIAM PURVES *against* JAMES KEITH and The EARL of MARISHALL.

1683. *December 20.*—Sir William Purves, his Majesty's solicitor his action against Mr James Keith and the E. of Marishall was advised. The case was, Sir William Purves long ago disposed a comprising of my Lord Gray and Lord Marishall their estates, to James Allan, writer to the signet, who, in the warrantice, takes him obliged not only to warrant the formality and legality of the executions of the denunciation of the apprising, but also the reality, verity, and truth thereof. Thereafter, Mr James Keith, also a writer, having acquired the right of this comprising from James Allan, not for his own behoof, (as was thought,) but for the Earl of Marishall's use, he designedly, (as is affirmed,) to come back upon Sir William Purves for his special warrantice foresaid, causes another appriser of Marishall and Gray their estates, raise a reduction and improbation of Sir William Purves's apprising against Keith himself, as now having right thereto. And though, in law, after 24 years from the date of an apprising, one is not bound to produce the executions of his comprising, seeing the same messenger who denounces the lands, is oftentimes also judge to the decreet of apprising, and that they are loose papers easily exposed to perishing; yet if they be produced, they may be improven as false. And so Mr James Keith tamely produces the executions and all. And the two witnesses therein being examined, they depone, they do not remember that they were adhibited witnesses to that execution, or knew that messenger, or were ever upon the