Or have not Discovered in the preliminaries of their oath when bribes were offered to them for things inconsistent which are ground sufficient to set them aside in any cause Stair ibid. vers. Thirdly. A person guilty of a Crime infamous in fame as Mullery, Robbery, Theft Stat. 2 Rob. 1 cap. 34 Mudd. Ha=fners to Dibel. doubts Jul. Witness, calumny or Forgery or bearing false witness L. 13 ff de Testib. L. 355 ff Eod. that is one Infamous sententia Judicis, against whom the guilt a=fixed by a sentence of Condemnation in a court of Justice 31 Ja=mary 1671 L. Milntoun contra Lady Milntoun M'Kenzie Prin part 2 Tit. 26 §6 Vers. Guiltiness is not qualified to be a Wit=ness. Because these Condemnations cast a Blemish on the Honour of the person, and Make him forfeit the Reputation of Hon=ty and probity, the necessary qualification of a Witness. Tho the Dependance of a Criminal process against one is a suffici=ent ground to set him aside from bearing Witness, if it was Commenced before he was Called to bear witness Prosp. Farin de Testibus Quest. 36 n. 167. But a posterior Citation wou not Incapacitate him M'Kenzie ibid. seeing other ways every wit=ness might be cast by Raising of a Criminal pursuit against him. Nor is an offer to prove instantly that a person is gui of an Infamous Crime, Relevant to Cast him, as Was found by the Lords of Justiciary 10 feb. 1673 in the case of Spalding of Ashintillie seeing every man is presumed Honest till he be Con=victed. It is not all together so Clear, whether one who is Re=deemed from Justice by a Remission of a Capital Crime, tho he may be a witness, should be admitted. Because on the one hand such a witness is Expressly Repelled by Stat. 2 Rob. 1 Cap. 34 Ubi Pandectus prece vel pretio, there being no greater pro than a Mans life Skin for Skin &c. And a Remission does not purge the guilt or alter a Criminals wicked Disposition by making him good who was bad before, but only frees him from punishment L. ult. C. de Generali Abolit. Nor Emel M. his temper are Furiture talis. And a Convicted Criminal bought off by a Remission hath been several times cast a a witness by the Court of Justiciary. But on the other ha this objection made against an English mans being Re=ceived a Witness in Argyles case was Repelled. An objection against a witness, that he had been under sentence of death for keeping out the Bass against the Government, was found taken off by the Articles of Capitulation betwixt the Government and the Garison: whereby it was Expressly Agreed for an general Cess

Viz. the surrendering the Garison that none of the Garison should suffer any Manner of wayson account of their out standing and opposing the Government 1 July 1709 Forbes & Atkinson contra Forbes & Monro. for George M'Kenzie Crim. part 2 Tit. 26 §6 Vers. Guiltiness Distinguisheth betwixt Criminals Ma=king use of a Remission before they are Convicted and such as take the Benefit of it after Conviction: Insinuating that the former, and not the latter, are qualified to bear Witness. But it hath been thought with more Reason that the Kings Pardon will Remove a Mans Disability to be a witness in all cases wherein it is only the Consequence of the Conviction or Judgement against him Kil. Rep. 33 Regm. Rep. 369 5 Mod. Rep. 16 Rookwood Jury. 42. 44. Godbolt. 288. 1 Vent. 349 And not an Express part of the Judgement as is in Forjury. For one Convicted of Forjury is incapable to bear witness in any case Bates 1 Jury. 68, Even tho he hath a pardon Sid. 52 5 Mod. Rep. 13. 16. 1 Vent. 349. Which point is more fully Explained in Vol. 2 pag. 830. 831. Sir George M'Kenzie Crim part 2 Tit. 31 §7 observes, that the Lords of Session had in his time Repelled the Common Accent cover of St. Johnstoun from being a Witness. Formerly a person Excommunicate could not be a Witness Prosp. Farinac de Testibus Quest. 36 n. 240 & seq. Stat. 2 Rob. II Cap. 34 M'Kenzie Crim. part 2 Tit. 26 §7. But now it seems they may bear witness Arg. Act. 18 Sess 2 Parl. W. & M. 10 Anna Cap. 7 §10. Tho the Civil law, a person of Heretick could not bear Witness against Orthodox Christians L. 21 C. de Haeret. & Manich. But a Jew may now bear Wit=ness in a court Criminal tho Christians Prosp. Farin. ibid. n. 218. 17 January 1712 Monzies & Clerk contra L. Poston=Grange. Because his Religion doth not hinder him to swear our formula, by God himself, and shall Answer to God at the Great day &c. Unless he were a Paddiece who denyes the Resurrection. According to the old Statute of King Robert, and in the opinion of the Doctors Farin. ibid. n. 185. per sons Incarcerated are not Capable to bear Witness. But de praxi prisoners may be witnesses. 4/ Persons not worth the Kings Unlaw, i.e. ten pound which is the ordinary Mulct in Middemanners, ought not to be Received as witnesses 24 Novemb. 1709 Stair lib. 4 Tit. 43 §9 pri. But a Witness being under a fee or having a trade may be sustained albeit he hath nothing in Real effects 24 Novemb. 1709. Now when the value of Money is less than it was formerly the Kings Unlaw for habilitating a witness ought to Receive an