Clandestine Crimes. For which Reason Women Omni Exceptione Majores were allowed to be Received as habile Witnesses to prove Adultery in order to Divorce before the Commissaries 1 January 1683 E. Monteith contra the Countess. Women witnesses, tho they could not Make up a total proof of Marriage, Yet were Allowed to Deponere Pota to Adminiculate other proof of a Controverted Marriage, and Cohabitation as Man and wife; and Clear the procreation of Children of such a Marriage 22 July 1714 Mullikin & Ba. Brown. Women are allowed to bear witness in Matters where there is Penury of Other witnesses, or where Women only use to be present, as Child birth, murdering or Changing Infants, where Women are Necessary Witnesses Stair ibid. Mackenzie ibid. Stuart ibid. Both Men and Women were allowed Officio as Witnesses for proving a Narrow point, Viz. the precise time of a Wife's death where the very hour was Examined 7 June 1681 Waddel contra Palmer. 2d Witnesses are Rejected because of the cause to be tried if they have Interest therein, or gain by the Event thereof, L. 10 ff. de Testib. L. 10 C. Eod. Prosp. Farinac de Testib. Quest. 60. n. 2. 4 Stair lib. 4 Tit. 43. §. 7. Vord. Secondly Mackenzie Crim. Part 2 Tit. 26 §. 10. For one cannot be sure that they will make Preparation Contrary to their own interest, men not being easily persuaded to speak to their own Disadvantage. If a Remote Substitute in a first tailzie Revoked by a second, was not sustained a witness for proving that the second tailzie was Elicited from the Granter on deall Reed by Importunity or Undue Insinuations whereby Judgment was Disturbed by sickness: Albeit the said substitute was Content to Renounce his Expectation by the first tailzie 14 June 1707 Livingstoun contra Menzies. A Member of a Community or Incorporation is not Received as a Witness in a cause where the Community or Incorporation is apparently the Particular Members have any Advantage in the Victory. But if the Property Redound only to the Community in General as a Community, a Member of the body may be Received a Witness L. 6. §. 1 ff. Ver. Dic. L. 7. §. 1 ff. quod Cujusq. Univ. Nom. Prosp. Farin. ibid. n. 450. 495. 496 Yet a Burgess may be witness in Behalf of the Burgh in a Matter Relating to the Jurisdiction thereof Stair Answers to Dirlet. doubts pt. Witnesses. Present Bailies or town officers cannot be witnesses in a cause Concerning the



the common good of the burgh, but other Members of the Incorporation, tho they have been formerly Magistrates or officers, may be witnesses 13 June 1672 Town of Inverness contra Forbes of Boloodin. In a process for a Verbal injury done to a present Magistrate pursued after he was out of office, his Colleague who fined the offender for that Injury, being a Lyo Exauctorated, was admitted as a witness for the pursuer. For whom also the Common town officers were Received witnesses 13 Novemb. 1712 Gordon contra Frick Francks. Sir George M'Kenzie (ibid.) Rejects a witness qui fovet Confimilem Causam. But Mr. Lord Stair (ibid.) does not exclude him: For that such a Relative interest concerns the Relevancy, and not the verity of the cause.

Other witnesses are Inhabile only as to some particular persons Concerned in the cause. 1°. According to the Canon Law Church men may be witnesses against Laicks, but not Contra Laicks against Ecclesiaticks c. 4 punct. c. C. 8 12 x. de Testibus. Partly, out of Deference to Church Men; partly, upon Account that Laymen were thought to bear no good Will towards them. And so by the Statute of King Robert 1 cap. 34 A Laick may not be admitted against a Clerk, nor a Clerk against a Laick. But this is Quite in Disuse. For our present Custom allows Ecclesiaticks to witness against Laymen, those against those without Distinction, M'Kenzie Crim. part 2. Tit. 26 §. 6 Stuart answers to Dirlet. Doubts Tit. Women Witnesses. 2d Witnesses are inhabile as to those within the Degrees Dependent by Blood or affinity. The Doctors of the Civil law Differ very much Concerning the Degrees of Affinity and Consanguinity that Disable a Man to bear witness for his Kinsfolk or allies, Prosp. Farin. de Testib. Quest. 54 n. 19. & Seqq. punct. n. 50 & Seqq. Husband or wife, father or son are Excluded from bearing witness for or against one Another, tho the Adversaries should Consent, partly, for preventing Rancour & Hatred betwixt so near Relations; for that such witnesses might be tempted to strain a point or to perjure themselves to serve their friends Interest Prosp. Farin. ibid. n. 170. 210. & Seqq. Quest. 78. n. 88 Stair lib. 4 Tit. 43. §. 7 Vord. Fortify. So in England a wife cannot be produced as a witness either for or against her husband Coke Inst. 6. 6. For that it might be a cause of perpetual Discord.